



FME Software

Terms and Conditions

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miso is a trading name of Dotted Eyes Limited

Dotted Eyes Ltd is registered in England. Registered office: Rutland House, 148 Edmund Street, Birmingham, B3 2FD.
Company registration number: 4471760. Vat Number: 551 42

FME SOFTWARE TERMS AND CONDITIONS

These pages together with the Dotted Eyes (miso) order form (**Order Form**) tell you the terms and conditions on which we have agreed to provide our FME Software to you. Please read these terms and conditions carefully before ordering any Services. By ordering any Services you agree to be bound by these terms and conditions (**Terms & Conditions**).

By installing, downloading, copying, accessing or otherwise using the Software and Related Material, you agree to be bound by the Terms and Conditions of this agreement. If you do not agree to all of these Terms and Conditions do not download, install or use the software or related materials.

Miso will not be bound by any standard terms furnished by the Customer in any of its documents, unless the Customer specifically states in writing separately from such terms that it intends such terms to apply and miso acknowledges such notification in writing.

1. Information about us

Miso is a trading name of Dotted Eyes Limited. Dotted Eyes Limited (**Dotted Eyes, miso, we, us or our**) is registered in England and Wales under company number 04471760 and our registered office is Rutland House, 148 Edmund Street, Birmingham, B3 2FD. You are the entity named as the customer on the Order Form (**Customer, you or your**).

2. How this Agreement is formed between you and us

You need to complete an order for the Services using the Order Form (**Order**). The Order constitutes an offer by you to us to buy the Services. All Orders are subject to acceptance by us, and we will confirm such acceptance to you by sending you an invoice and/or an email relating to your Order that confirms that we have accepted your Order (**Order Confirmation**). The agreement between us (**Agreement**) will only be formed when we send you the Order Confirmation.

3. Changes to the Terms

Miso reserves the right to make changes to the Terms & Conditions. from time to time. The most current version of our Terms and Conditions (including the updated date) can be found at www.misoportal.com/legal It is therefore important that you check our website frequently for updates. If you do not agree to the updated Terms and Conditions you must stop using the Service. Your continued use of the Service after the date the updated Terms are posted will constitute your acceptance of the updated Terms and Conditions.

4. Defined Terms & Interpretation

Affiliate: of a Party means any Person which, during the Term, is a subsidiary or sister company, or representative of that Party in which the relevant party, directly or indirectly, owns more than 50% or the shares or is under common control

Agreement: the Order Form(s) together with these Terms & Conditions and any schedules, annexes, appendices and documents referenced in this Agreement.

Applicable Law: means, where applicable to a Party and relevant to this Agreement, any and all (a) legislation, laws, statutes, decisions, rulings, codes, government policies, regulations, by-laws or licensing conditions (including Data Protection Laws); and (b) mandatory industry requirements and regulations, binding codes of practice, and decisions and directions of any relevant governmental or regulatory, co-regulatory. or self-regulatory authority or agency of competent jurisdiction

Authorised Users: those nominated individuals within the Customer organisation who are authorised to use the Service.

Business Day: any day which is not a Saturday, Sunday or public holiday in England.

Confidential Information: means all information disclosed by a Party (the "Disclosing Party") to the other Party (the "Receiving Party"), whether orally or in writing, if designated as confidential, that reasonably should be understood to be confidential given the nature of the information and the circumstances surrounding the disclosure. Confidential Information does not include any

information that: (i) is or becomes generally known to the public, other than due to Receiving Party's breach of this Agreement; (ii) was rightfully known to the Receiving Party before obtaining it from the Disclosing Party; (iii) is received from a third party without breach of any obligation owed to the Disclosing Party; or (iv) was independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information and for which the Receiving Party can provide documentary evidence created at the same time as the development that verifies the development was independent.

Contractor: means those independent third parties who perform services related to this Agreement for you, but solely to the extent they are acting on your behalf.

Customer Data. "Customer Data" means any business information or other data which you input, upload or provide to miso for the purpose of using the service

Customer Personal Data. means all Personal Data processed by miso and its Affiliates on behalf of the Customer under or in connection with this Agreement

Documentation: means any supporting product help and technical specifications documentation provided by miso with the online service to you.

Data Protection Laws: means any laws and regulations relating to privacy or the use or processing of data relating to natural persons, including: (a) EU Directives 95/46/EC and 2002/58/EC (as amended by 2009/139/EC) and any legislation implementing or made pursuant to such directives, including the Data Protection Act 1998 (the "DPA") and the Privacy and Electronic Communication (EC Directive) Regulations 2003; and (b) EU Regulation 2016/679 ("GDPR") and (c) any laws or regulations ratifying, implementing, adopting, supplementing or replacing GDPR. In this Agreement, unless the context otherwise requires, "**Data Controller**", "**Data Processor**", "**Data Subject**", "**Personal Data**", "**process**", "**processing**", "**transfer**" (in the context of Personal Data transfers) and "**appropriate technical and organisational measures**" shall have the meanings and otherwise be interpreted in accordance the GDPR.

Effective Date: the date set out in the Order Form(s), the date of this Agreement or the date you first use the service

Fees: the fees for the provision of the Service as set out in Order Form and referred to in clause 19 of these Terms & Conditions.

Force Majeure: means any cause, preventing either Party from performing any or all of its obligations, which is beyond the reasonable control of the Party so prevented and which may include nationwide strikes, lock-outs or other industrial disputes, nuclear accident or acts of God, war or terrorist activity, riot, civil commotion, malicious damage, compliance with any new Applicable Law or change in Applicable Law, breakdown of plant or machinery, internet delays or failures or connectivity issues, fire, flood, storm or default of suppliers or sub-contractors (but only where such supplier or sub-contractor's default is itself attributable to force majeure as set out here) and any other acts, events, omissions or accidents

Group Company: means in relation to a Party, a company that directly or indirectly controls, is controlled by, or is under common control with any subsidiary or holding company of that Party

Initial Term: as set out on the Order Form.

Intellectual Property Rights: all patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world.

Licence: the right to use the Services as set out in these Terms & Conditions.

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day, excluding Bank Holidays.

Open Source Software: the computer programs used by the Proprietary Software which are sub-licensed by miso under third party open source licences.

Order Form(s): an order form completed by you or our Statement of Works signed by you, relating to the Services which shall be governed by these Terms & Conditions.

Parties: you and us and "Party" means either you or us (as the context dictates).

Person: means any (i) individual; or (ii) partnership, firm, corporation, limited liability company, joint venture, association, trust, unincorporated organisation, or other legal entity or organisation.

Proprietary Software: the "FME Software" which is proprietary to Safe Software Inc.

Related Materials: means all of the user, reference, operating, training, or related information supplied by miso and/or Safe Software in printed or electronic form including new, revised, and corrected documents.

Safe Software: Safe Software Inc. Proprietary owner of FME Software. Miso is a reseller of Safe Software products and services.

Software: means the actual copy of all or any portion of Safe Software's proprietary software technology, including all editions of FME Desktop, FME Server, and software development kits ("SDK"), on any media and in any format and includes backups, patches, service packs, updates, extensions, or permitted merged copies

Sub-Processor: means a miso third party service provider, Group Company or Affiliate appointed by miso to process Customer Data and Customer Personal Data

Term: means the period between the dates indicated in the Order Form(s) as the start date and the end date

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

In the case of conflict or ambiguity between any provision contained in these Terms & Conditions and any Order Form, these Terms & Conditions shall take precedence.

5. Our Obligations

- 5.1. We shall use reasonable endeavours to provide the service in accordance with the Order Form(s) in all material respects.
- 5.2. You acknowledge and agree that miso relies on its Group Companies, Affiliates and third party service providers, in order to provide its Services and Products to you, and that as such miso may share and give them access to your Customer and Personal Data in order to supply the services and products to you under this Agreement. You further acknowledge and agree that such parties may be based in different jurisdictions and shall have access to Customer Data and Personal Data in those jurisdictions.

Full details can be found:

- On our website www.misoportal.com in our:
 - Information Security document
 - Privacy Policy

We reserve the right to change the above policies and documents and their location from time to time. It is therefore important to check our website regularly. Last updated dates will be clearly shown.

- In the appendices to the agreement including:
 - Data Protection
 - Data Processing Activities

We reserve the right to change this Agreement including any appendices contained within and their location from time to time. It is therefore important to check our website regularly. Last updated dates will be clearly shown

- 5.3. We shall remain liable for the acts and omission of any third party engaged by it in the provision of the Services, and our dealings with Sub-Processors and transfers of Customer and Personal Data are governed by the Appendix D(1) Data Protection, the Appendix D(2) Data Processing Activities and our Information Security document and Privacy Policy which can be downloaded by going to www.misoportal.com

6. Permitted Uses

- 6.1. Pursuant to the terms and conditions of this Agreement and any Order Form, miso hereby grants to you a limited, non-exclusive, non-transferable license to install and use the Software and Related Materials as follows:
 - (a) If you acquire a fixed license, you are authorised to install and use one copy of the Software on a single designated physical or virtual machine in such a way that the Software is only accessible to a single user.
 - (b) If you acquire a floating license authorising a specified number of concurrencies, you may install the Software on multiple machines, provided that the number of users using the Software at any one time is not greater than the authorised number of concurrencies.

- (c) If you acquire a server license authorising a specified number of engines, you may install the Software on multiple machines, without restriction to the number of users. However, you may use no more than the authorised number of engines associated with your server license.
 - (d) If you acquire a Subscription service, you are authorised to install a number of different software licences as described in the Enterprise Subscription service in Appendix G
- 6.2. You may provide access to and use of the Software to any Affiliate, consultant, or contractor solely for your benefit. You may make additional copies of the Software and Related Materials only as reasonably required for internal backup protection. Any other use must be approved in writing by miso.
- 6.3. FME Server Software may be used as part of a cloud-based application or web service offered to the public. When used as part of a cloud-based application or web service, FME Server may be used to process your own data or third party data for the benefit of third parties. However, there must be added functionality or value to your cloud-based application or web service and the FME Server functionality cannot be offered to third parties in a standalone configuration.
- 6.4. You agree to be bound by the FME Software License Agreement published on the Safe Software website <https://www.safe.com/legal/> a copy of which is available on request.

7. Uses Not Permitted

- 7.1. Except as expressly provided in this Agreement, you may not use the Software to provide paid consulting services to third parties and you shall not act as a service bureau or application service provider that allows third parties direct access to the Software. You shall not sell, rent, host, lease, sub-license, lend, timeshare, transfer, or otherwise provide unlicensed third parties direct access to the Software. You shall not reverse engineer, decompile, disassemble, alter, modify, or create any derivative works of the Software and Related Materials except to the extent permitted in this Agreement or by law.
- 7.2. Other than as part of a cloud-based application or web service that uses FME Server, you may not use the Software to process third party data solely for the use and benefit of third parties. You may not use FME Desktop to provide any stand-alone data translation system or web service for third parties unless a separate written agreement is obtained from Safe Software. If you want to purchase rights beyond those granted by this Agreement, you may do so by contacting miso.

8. Sample Data & Authorised Credentials

You may use the sample data provided with the Software to test, evaluate, and demonstrate features of the Software, and for no other purpose. As well, the Software may contain pre-installed authorization credentials (the "Credentials") to permit connectivity with various web services. These Credentials are provided for testing, evaluation, and demonstration purposes. You may only use these Credentials in connection with the Software. These Credentials are provided by third party licensors, are not within the control of miso or Safe Software, and may be disabled at any time without notice. If you use the Software for production purposes, then you should obtain your own account and authorisation credentials for the web service(s) you plan to use. Instructions for obtaining your own authorisation credentials will be available in the Related Materials.

9. Third Party Components

The Software may include third party software components ("3rd Party Components"). Copyright notices and/or licenses for 3rd Party Components are available in the Legal Notices file located in the "About" box of the Software or may be requested by contacting legal@safe.com. All 3rd Party Components' license terms work in conjunction with this Agreement and together are complete statements of your rights and restrictions with respect to the Software.

10. Upgrades

If you upgrade the Software from one license type to another (for example, from fixed to floating) or to an edition with additional functionality (for example, from Professional Edition to Database Edition), then you agree to uninstall the old Software license key prior to installation of the upgraded Software license key. All upgrades are provided to you on a license exchange basis. By using the upgraded Software, you voluntarily terminate your rights to use any previous version of the Software, except to the extent that the previous version is required to transition to the upgraded Software.

11. Ownership & Copyright

Safe Software and its 3rd Party Component licensors retain exclusive title to and ownership of any copy of the Software and Related Materials licensed under this Agreement. The Software and Related Materials are protected by United States, European, and Canadian copyright laws and applicable international treaties and/or conventions. The structure, organization, and code are the valuable trade secrets of Safe Software and its licensors. You shall not remove, obscure, or deface any logo, notice, trademarks, or legend of copyright from the Software or any Related Materials. You have no right to use any of Safe Software's trade names, trademarks, service marks, logos, domain names, or other distinctive brand features. You agree not to export the Software and Related Materials into a country that does not have copyright laws that will protect Safe Software's proprietary rights. From the date of receipt, you agree to use reasonable efforts to protect the Software and Related Materials from unauthorised use, reproduction, distribution, or publication.

12. Third Party Applications for the Software

If you use the Software in conjunction with applications developed by you or third parties, you agree that miso and Safe Software are not responsible for those applications and are not liable for any loss or damage resulting from the use of such third-party applications. You must ensure that any license terms for such third-party applications do not: (a) create, or purport to create, obligations for miso, Safe Software or its 3rd Party Component licensors with respect to the Software; (b) grant, or purport to grant, any rights to miso, Safe Software or its 3rd Party Component licensors' intellectual property; or (c) grant, or purport to grant, any immunities under this Agreement.

13. Export Controls

You acknowledge and understand that the export or re-export of certain goods or technical data from Canada, the United States, or your applicable jurisdiction may be controlled by export control laws. The Software may be subject to such export restrictions. To the extent that it is, the Software may not be shipped, transferred, licensed, exported, or re-exported into any country or used in any manner prohibited by any applicable export laws, restrictions, or regulations. You are responsible for obtaining any and all appropriate permissions prior to exporting or re-exporting products incorporating, encompassing, or relying upon the Software.

14. Limited Warranty

the Software is provided "AS IS" and with all defects and errors. Miso and Safe Software warrants that the media upon which the Software and Related Materials are provided will be free from defects in materials and workmanship, under normal use and service, for a period of ninety (90) days from the date of receipt. Miso and Safe Software warrants that it has the power to grant the license rights described in this Agreement. To the maximum extent permitted by applicable law, miso and Safe Software makes no other warranties, express or implied, as to merchantability, use of reasonable skill and care, or fitness for any particular purpose. Without limiting the generality of the foregoing, miso and Safe Software assumes no liability for damage to any system on which this software is installed, for corruption of any data translated by the software, or for losses arising in the event third parties are able, for any reason, to use or access the software or your data or services without charge.

Your exclusive remedy during the warranty period and miso's entire liability under this Agreement shall be: (i) to replace the media containing the Software and Related Materials; or (ii) to refund the initial Software purchase price.

15. Professional Services

Professional Services are available to you for an additional fee dependant on the scope of the work to be done. If you have purchased Professional Services from us this will be detailed in the Order Form or Statement of Work. Any Professional Services purchased will be governed by the Professional Services Terms and Conditions which can be found at www.misoportal.com/legal

16. Support

Ticketed Online Support is optional add-on and can be purchased for an additional fee. If you have purchased Technical Support this will be stated in your Order Form. Any Technical Support purchased will be governed by the Technical Support Terms and Conditions which can be found at www.misoportal.com/legal

17. Your Obligations

- 17.1. You represent and warrant that throughout the term of this Agreement:-
- (a) you will adhere to Safe Software's FME Software Licence Agreement including in the Appendix.
 - (b) you will not use the Service in a way that will infringe the Intellectual Property Rights of any third party;
 - (c) you will ensure that Customer Data and Personal Data deemed as special category of Data under GDPR is not uploaded or given to us in any form unless pre-agreed by us in writing.
- 17.2. Carry out your obligations as described in the Order Form(s)
- 17.3. You shall not, without the prior written consent of miso, at any time from the date of this agreement to the expiry of 12 months after the last date of supply of the Services, solicit or entice away from miso or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant of miso in the provision of the Services.

18. Customer Data and Customer Personal Data

- 18.1. You, not miso, have sole responsibility for the entry, deletion, correction, accuracy, quality, integrity, legality, reliability, appropriateness, and right to use the Customer Data. Miso is not responsible for any of the foregoing or for any destruction, damage, loss, or failure to store any Customer Data beyond its reasonable control or resulting from any failure in data transmission or operation during the service provided to you by us.
- 18.2. You represent and warrant that you have and will maintain all necessary licences, consents, and permissions necessary to provide the Customer Data to miso and for them to store and process the Customer Data and Customer Personal Data in accordance with the terms of this Agreement.
- 18.3. If miso processes any Customer Data and Customer Personal Data on your behalf when performing its obligations under this Agreement, the Parties acknowledge that you shall be the Data Controller and miso shall be a Data Processor and in any such case:
- (a) you shall ensure that you are entitled to transfer the relevant Customer and Customer Personal Data to miso so that they may lawfully use, process and transfer the Customer Personal Data in accordance with this Agreement on your behalf
 - (b) you shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable Data Protection Laws;
 - (c) each Party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage; and
 - (d) notwithstanding any other provision of this Agreement, but subject always to Appendix D(1) Data Protection and Appendix D(2) Data Processing Activities, nothing shall prevent miso from disclosing Customer Personal Data or Customer Data to their Group Companies, Affiliates, Sub-Processors and third party service providers as necessary to provide the Services, and otherwise in order to comply with Applicable Law or at the request of a governmental, regulatory or supervisory authority
- 18.4. The Customer must ensure that Customer Data and Customer Personal Data deemed as a special category of Data under GDPR is not uploaded to the service or given to us in any form unless pre-agreed by us in writing
- 18.5. From the commencement date specified in the Order Form(s) or this date of this Agreement (whichever is the earlier), the Parties shall comply with Appendix D(1) Data Protection and Appendix D(2) Data Processing Activities
- 18.6. You are solely responsible and liable for any transfer of Customer Data made by you (or made by miso at your request) to a third party and for ensuring that such transfer is in compliance with the Parties' obligations under the Data Protection Laws

19. Fees and payment

- 19.1. You shall be invoiced and pay the Fees in accordance with the Order Form.
- 19.2. The charges exclude:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom miso engages in connection with the any Services. Such expenses shall be invoiced by miso at the rates state in the Order Forms(s); and
 - (b) VAT, which miso shall add to its invoices at the appropriate rate,

- 19.3. Unless otherwise agreed in writing, each invoice is due and payable 30 days after the invoice date (**Due Date**). Without prejudice to any other right or remedy that it may have, if the Customer fails to pay miso on the Due Date:
- (a) the Customer shall pay interest on the overdue amount at the rate of 3% per annum above Barclay's Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and
 - (b) miso may suspend all Services until payment has been made in full.
- 19.4. All amounts due under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

20. Confidentiality

- 20.1. Subject to clause 20.2, each Party shall, during the Term of this Agreement and thereafter, keep confidential, and shall not use for its own purposes nor without the prior written consent of the other disclose to any third party, these Terms & Conditions or any information of a confidential nature (including, without limitation, trade secrets and information of commercial value) which may become known to such Party from the other Party and which relates to the other Party or any of its Affiliates (**Confidential Information**), unless such information is public knowledge or already known to such Party at the time of disclosure, or subsequently becomes public knowledge other than by breach of these Terms & Conditions, or subsequently comes lawfully into the possession of such Party from a third party.
- 20.2. You shall be entitled to disclose to Authorised Users only such of the Confidential Information as is necessary for them to know in order for them to perform a Transaction. We shall be entitled to disclose to the proprietary owner(s) of any of the Software such of the Confidential Information (including these Terms & Conditions) as is required for our suppliers to fulfil their obligations to us or us to fulfil our obligations to them.
- 20.3. Privacy Policy
- (a) Your use of the service is subject to the miso Privacy Policy, a current version of which is available at www.misoportal.com
- 20.4. The provisions of this Clause 20 shall remain in full force and effect notwithstanding termination of this Agreement for any reason

21. Proprietary Rights Infringement

miso will defend and indemnify you from any action brought against you, to the extent that it is based on a claim that the Software or Related Materials infringe a copyright, patent, trademark, or other intellectual property right of any third party, provided that: (a) miso is promptly notified in writing of the claim; (b) you provide miso and Safe Software with reasonable assistance, information, and authority necessary to negotiate and settle the claim; (c) such claim does not arise from the use of a superseded or modified release of the Software if such infringement would have been avoided by the use of the current or unmodified release of the Software; and (d) such a claim does not arise from the use, operation, or combination of the Software with programs, data, equipment, or materials not provided by Safe Software if such infringement would have been avoided by use of the Software without such programs, data, equipment, or materials. Should the Software become, or in miso and Safe Software's opinion be likely to become, the subject of any such claim of infringement, then you will permit miso and Safe Software, at their option and expense, either to: (a) procure for you the right to continue using the Software; or (b) replace or modify all or a portion of the Software so that it is non-infringing. In the event neither of these remedies is available or practical, miso may terminate this Agreement and return to you the initial Software purchase price, reduced on a pro-rated basis by 20% for each year since delivery, as well as a pro-rated refund of any pre-paid support fees for the then-current support term. This Clause states miso's entire obligation for Property Right Infringement.

22. Limitation of Liability

- 22.1. This Clause 22 sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:
- (a) any breach of this Agreement;
 - (b) any use made by you of the Services or the Software or any part of them; and
 - (c) any representation, statement or tortious act or omission (including negligence) arising

under or in connection with the Agreement.

- 22.2. Nothing in this Agreement will limit or exclude either Party's liability for: (i) death or personal injury resulting from negligence or for fraud, fraudulent misstatement, or fraudulent misrepresentation; (ii) any liability which may not be limited or excluded as a matter of law; or (iii) any claims arising under a Party's obligations of indemnification. Nothing in this Agreement will limit your obligation to pay any undisputed fees.
- 22.3. Subject to Clause 22.2 neither Party shall be liable (in contract, tort (including negligence), strict liability, or otherwise): (i) for any loss arising from or in connection with loss of revenues, profits (whether direct or indirect), contracts or business, or failure to realise anticipated savings, loss of use or other economic advantage arising from your use of the Service, including the inability to use the Service; loss or corruption of data; unauthorised access to data; or (ii) for any indirect, special, incidental, exemplary, enhanced, punitive, or consequential losses or damages, suffered or incurred by the other party arising out of or in connection with this Agreement even if such Party knew of, had been advised of the possibility of, or foreseen such damages in advance.
- 22.4. Subject to Clause 22.3 and except as set out in the remainder of this clause, neither Party's aggregate liability in connection with any Order Form(s) will exceed 125% of the amount actually paid by you under that Order Form in the 12-month period preceding the event giving rise to such liability, regardless of whether such liability is based in contract, tort, strict liability, or otherwise. With respect to a Party's breach of its obligations set out in Clause 20 (Confidentiality) or Appendix D(1) (Data Protection) or Appendix D(2) (Data Processing Activities), neither Party's aggregate liability will exceed the lesser of £1,000,000 (one million pounds sterling) and five times the amount actually paid by you under the applicable Order Form in the 12-month period preceding the event giving rise to such liability.

23. Term and Termination

- 23.1. This Agreement shall commence on the Effective Date and shall (unless terminated as provided in the remainder of this clause) continue for the Initial Term.
- 23.2. Unless otherwise specified in appendix G or elsewhere in this Agreement or in the Purchase Order for the Software, the Software is licensed in perpetuity. Any related support and maintenance services may be ordered in annual increments for an additional fee.
- 23.3. Without prejudice to any other rights or remedies to which the Parties may be entitled, either party may terminate this Agreement without liability to the other if:
 - (a) the other Party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that Party being notified in writing of the breach; or
 - (b) If the Software license was granted to you for evaluation purposes, then it automatically terminates on the earlier of: (1) the expiration of 30 days from the original installation of the Software; or (2) when the Software ceases to function as a result of timing out, unless you have subsequently purchased a license from Safe Software, in which case the terms of this Agreement shall be deemed to have continued in full force and effect.
 - (c) if the other Party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction; or
 - (d) the other Party ceases, or threatens to cease, to trade; or
 - (e) the other Party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 23.4. We have the right (but are not obliged to), on written notice to you, at our sole option, to immediately either suspend or terminate the Licence in the following circumstances:-
 - (a) where you have failed to pay any invoice due under these Terms & Conditions in full within 30 days of the Due Date; or
 - (b) where you have breached your obligations under any of clauses 7,8,9,11, 12,17,18,19,20.
- 23.5. On termination of this Agreement for any reason:
 - (a) all licences granted under this Agreement shall immediately terminate;

- (b) you shall have no further right to use the Software;
- (c) you shall immediately pay to us any and all sums due under this Agreement; and
- (d) each Party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other Party; and
- (e) the accrued rights of the Parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced

24. Force Majeure

We shall have no liability to you under this Agreement if we are prevented from or delayed in performing our obligations under this Agreement by acts, events, omissions or accidents beyond our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving our workforce or that of any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors. We shall notify you of such an event and its expected duration.

25. General

- 25.1. No forbearance or delay by either Party in enforcing its rights shall prejudice or restrict the rights of that Party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach unless expressly set out in writing by the waiving Party.
- 25.2. If any provision in the Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions shall not be prejudiced.
- 25.3. Any amendment, waiver or variation of the Agreement shall not be binding on the parties unless set out in writing, expressed to amend the Agreement and signed by or on behalf of each of the Parties.
- 25.4. No term in the Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a Party to it.
- 25.5. In relation to assignment and sub-licensing:
 - (a) you have no right to sub-license or to assign the benefit or burden of the Agreement in whole or in part, or to allow the Software to become the subject of any charge, lien or encumbrance without our prior written consent.
 - (b) We may sub-license, assign, charge or otherwise transfer any of our rights or obligations under the Agreement, provided we give written notice to you of any sub-licence, assignment, charge or other transfer.
- 25.6. All notices given by you to us must be given to us in writing at the address shown in clause 1 or to cancellations@misportal.com. We may give notice to you at either the email or postal address set out in the Order Form. Notice will be deemed received and properly served 24 hours after an email is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case an email, that such email was sent to the specified email address of the addressee and that no error message indicating failure to deliver has been received by the sender and provided further that within 24 hours of transmission a hard copy of the email is sent by post to the intended recipient.
- 25.7. These Terms & Conditions, and any schedules, annexes, appendices and documents referenced in this Agreement and the Order Form(s) contain the whole agreement between the Parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.
- 25.8. The Agreement, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and submitted to the non-exclusive jurisdiction of the English courts.
- 25.9. The provisions of clause 25 shall remain in full force and effect notwithstanding termination of the Agreement for any reason



The Parties have caused this Agreement to be executed by their respective duly authorised representatives.

Dotted Eyes Limited
trading as **miso**

Customer

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Date: _____

Date: _____



APPENDIX A

FME Software Licence Agreement

You agree to be bound by the FME Software Licence Agreement published on the Safe Software website <https://www.safe.com/legal/fme-sla/> a copy of which is available on request.

The Agreement may be modified at any time in Safe Software's sole discretion. All modified Agreements will be posted at <https://www.safe.com/legal/fme-sla/>. It is your responsibility to review the Terms regularly for updates.



APPENDIX B

Professional Services Terms and Conditions

Professional Services are available to you for an additional fee dependant on the scope of the work to be done. If you have purchased Professional Services from us this will be detailed in the Order Form or Statement of Work. Any Professional Services purchased will be governed by the Professional Services Terms and Conditions which can be found at www.misoportal.com/legal

The Terms may be modified at any time at our sole discretion. It is your responsibility to review the Terms regularly for updates.



APPENDIX C

Technical Support Terms and Conditions

Ticketed Online Support is optional add-on and can be purchased for an additional fee. If you have purchased Technical Support this will be stated in your Order Form. Any Technical Support purchased will be governed by the Technical Support Terms and Conditions which can be found at www.misoportal.com/legal

The Terms may be modified at any time at our sole discretion. It is your responsibility to review the Terms regularly for updates.

APPENDIX D(1)

Data Protection

1. Definitions and interpretation

1.1 In this Appendix, unless the context otherwise requires:

"**DP Regulator**" means any governmental or regulatory body or authority with responsibility for monitoring or enforcing compliance with the Data Protection Laws;

"**Data Subject Request**" means a request from a Data Subject to exercise its rights under the Data Protection Laws in respect of that Data Subject's Personal Data;

"**Security Breach**" means any actual loss, unauthorised or unlawful processing, destruction, damage, or alteration, or unauthorised disclosure of, or access to the Customer Personal Data, and terms defined in a provision of this Appendix shall have the meaning given to them in that provision

2. Compliance with Data Protection Laws

2.1 miso shall comply with its obligations under the Data Protection Laws as they apply to it as a Data Processor of the Customer Personal Data.

2.2 The Customer shall comply with its obligations under the Data Protection Laws as they apply to it as a Data Controller of the Customer Personal Data.

3. Processing and security

3.1 In performing its obligations under this Agreement, miso shall only process the categories of Personal Data and only in respect of the categories of Data Subjects, and only for the nature and purposes of processing and duration, as is set out in the Annex to this Appendix or as necessary to perform its obligations under this Agreement, save as otherwise required by any Applicable law.

3.2 In processing the Customer Personal Data, miso shall:

- (a) process Customer Personal Data only in accordance with the Customer's written instructions from time to time (including those set out in this Agreement) except as otherwise required by any Applicable Law;
- (b) not process the Customer Personal Data for any purpose other than those set out in the Annex and as necessary to perform its obligations under this Agreement unless otherwise expressly authorised by the Customer;
- (c) promptly notify the Customer if it receives a Data Subject Request in respect of Customer Personal Data;
- (d) as far as reasonably practicable, co-operate with and provide assistance to the Customer in relation to any Data Subject Request in respect of Customer Personal Data;
- (e) taking into account:
 - (i) the state of the art;
 - (ii) the nature, scope, context and purposes of the processing; and
 - (iii) the risk and severity of potential harm,protect the Customer Personal Data by ensuring that it has in place appropriate technical and organisational measures, including measures to protect the Customer Personal Data against the risks of a Security Breach; and
- (f) ensure that any persons authorised by miso to process Customer Personal Data are obliged to keep such data confidential.

3.3 miso shall, without undue delay after discovering any Security Breach or any failure or defect in security which leads, or might reasonably be expected to lead, to a Security Breach (together a "**Security Issue**") notify the Customer of the same.

3.4 Where a Security Issue arises, miso shall:

- (a) as soon as reasonably practicable, provide the Customer with details of the Security Issue, the actual or expected consequences of it, and the measures taken or proposed to be taken to address or mitigate it;
- (b) co-operate with the Customer, and provide the Customer with all reasonable assistance in relation to the Security Issue; and
- (c) unless required by Applicable Law, not make any notifications to a DP Regulator or any Data Subjects about the Security Issue without the Customer's prior written consent (such consent not to be unreasonably withheld or delayed).

4. Return or destruction of Personal Data

4.1 Subject to paragraph 4.2, miso shall return or, at the election of the Customer, irretrievably delete all Customer Personal Data in its control or possession when it no longer requires such Customer Personal Data to exercise or perform its rights or obligations under this Agreement, and in any event within 30 days following expiry or termination of this Agreement.

4.2 To the extent that miso is required by Applicable Law to retain all or part of the Customer Personal Data (the "**Retained Data**"), miso shall isolate and cease all processing of the Retained Data other than as required by the Applicable Law.

5. Audit

5.1 miso shall provide such information, reasonable co-operation and assistance in relation to any request made by the Customer (or its auditors, or its or their representatives) as necessary to demonstrate miso's compliance with the Data Protection Laws in relation to this Agreement.

6. Co-operation and assistance

6.1 miso shall co-operate with the Customer, and provide such information and assistance as the Customer may reasonably require, to enable the Customer to:

- (a) comply with the Customer's obligations under the Data Protection Laws (including Articles 32-36 of GDPR) in respect of Customer Personal Data; and
- (b) deal with and respond to investigations and requests for information relating to the Customer Personal Data from any DP Regulator.

6.2 If miso receives any complaint, notice or communication from a DP Regulator or other third party (excluding a Data Subject Request) which relates directly or indirectly to Customer Personal Data or to either Party's compliance with the Data Protection Laws, it shall notify the Customer as soon as reasonably practicable.

7. Sub-Processors

7.1 miso shall not subcontract any processing of the Customer Personal Data to any Sub-Processor except as authorised by the Customer in accordance with this paragraph 7. The Customer consents to miso engaging Sub-Processors to process the Data provided that: (i) miso provides at least 30 days' prior notice of the addition of any subcontractor (including details of the processing it performs or will perform) ("**Sub-Processor Notice**"); and (ii) miso complies with paragraphs 7.4 and 7.5 of this Appendix.

7.2 The Customer hereby consents to miso's use of the Sub-Processors listed at www.misoportal.co.uk/legal/ which shall be maintained and updated when any Sub-Processor is added or removed in accordance with this paragraph 7.

7.3 If within 30 days of receipt of a Sub-Processor Notice the Customer notifies miso in writing of its refusal to consent to miso's appointment of a Sub-Processor on reasonable grounds relating to the protection of Customer Personal Data, then either: (i) miso will not appoint the Sub-Processor; or (ii) if miso does appoint the Sub-Processor, the Customer may elect to terminate the Agreement without penalty or cost to either party save that any portion of the fees paid in advance in respect of Services not yet delivered as at the effective date of termination shall be refunded to the Customer. If after 30 days from receipt of the Sub-Processor Notice the Customer has not indicated its refusal of the appointment of a Sub-Processor in

accordance with this paragraph, then the Customer is deemed to have given its consent and miso shall be entitled to appoint the relevant Sub-Processor with immediate effect.

7.4 If miso appoints a Sub-Processor, Miso shall ensure that:

- (a) such Sub-Processor shall only process Customer Personal Data in order to perform one or more of miso's obligations under this Agreement; and
- (b) it enters into a written agreement or other legally enforceable terms with that Sub-Processor prior to any processing by the Sub-Processor, requiring the Sub-Processor to:
 - (i) process Customer Personal Data only in accordance with the written instructions of miso or the Customer; and
 - (ii) comply with data protection obligations equivalent in all material respects to those imposed on miso under this Appendix.

7.5 Notwithstanding the appointment of a Sub-Processor, miso is responsible and liable to the Customer for any processing by the Sub-Processor in breach of this Appendix.

8. Transfer of Personal Data

8.1 miso shall only transfer Customer Personal Data outside of the EEA where there is adequate protection for such Customer Personal Data in accordance with applicable Data Protection Laws and as authorised by the Customer in accordance with paragraph 7.

8.2 As at the date of this Appendix the Customer consents to the transfers of Customer Personal Data to those non-EEA locations listed at www.misoportal.co.uk/legal. miso shall ensure that such list is maintained and updated from time to time to reflect any changes.

9. Precedence

In relation to the subject matter of this Appendix and its Annex, in the event of any inconsistency between the provisions of this Appendix and its Annex and the other provisions of the Agreement including any schedule or annex thereto, the provisions of this Appendix and its Annex shall prevail.

miso reserves the right to change their Data Protection Policy documentation and its location from time to time.

APPENDIX D(2)

Data Processing Activities

We want you to know what Personal Data Processing activities happen when you use our Services.

1. Processing by the provider

1.1. Scope

To allow us to provide the FME Software to you.

1.2. Nature

Software that enables you to:

Connect your Applications. Transform your Data. Automate your Workflows. Gain more value from your data with FME, the leading software for integrating spatial data.

1.3. Purpose of processing and types of personal data

We may process personal data for more than one lawful ground depending on the specific purpose for which we are using your data. Please contact us if you need specific details about the specific legal ground that we are relying on to process your personal data, where more than one ground has been set out in the table below.

| Purpose / Activity | Type of data | Lawful basis for processing including basis of legitimate interest |
|--|--|---|
| To register you as a new customer | <ul style="list-style-type: none"> Identity Contact | <ul style="list-style-type: none"> Performance of a contract with you |
| To process and deliver your order including payment and collection or recovery of those payments | <ul style="list-style-type: none"> Identity Contact Financial Transaction Marketing and communications | <ul style="list-style-type: none"> Performance of a contract with you Necessary for our legitimate interests (debt collection) |
| To manage our relationship with you which will include: <ul style="list-style-type: none"> Notifying you about changes in our terms or privacy policy Asking you for feedback or take a survey | <ul style="list-style-type: none"> Identity Contact Profile Marketing and communications | <ul style="list-style-type: none"> Performance of a contract with you Necessary to comply with a legal obligation Necessary for our legitimate interests (to keep our records updated and to study how customers use our products/services) |
| To enable you to take part in a competition, prize draw, or survey | <ul style="list-style-type: none"> Identity Contact Profile Usage Marketing and communications | <ul style="list-style-type: none"> Performance of a contract with you Necessary for our legitimate interests (to keep our records updated and to study how customers use our products/services) |
| To administer and protect our business and website (including troubleshooting, data analysis, testing, system maintenance, support, reporting and hosting of data) | <ul style="list-style-type: none"> Identity Contact Technical | <ul style="list-style-type: none"> Necessary for our legitimate interests (for running our business, provision of administration and IT services, network security, to prevent fraud and in the context of a business reorganisation or group restructuring exercise) Necessary to comply with a legal obligation |
| To deliver relevant website content and advertisements to you and measure or understand the effectiveness of the advertising we serve to you | <ul style="list-style-type: none"> Identity Contact Profile Usage Marketing and communications Technical | <ul style="list-style-type: none"> Necessary for our legitimate interests (to study how customers use our products/services, to develop them, to grow our business and to inform our marketing strategy) |
| To use data analytics to improve our website, products/services, marketing, customer relationships and experiences | <ul style="list-style-type: none"> Technical Usage | <ul style="list-style-type: none"> Necessary for our legitimate interests (to define types of customers for our products and services, to keep our website updated and relevant, to develop our business and to inform our marketing strategy) |
| To make suggestions and recommendations to you about goods or services that may be of interest to you | <ul style="list-style-type: none"> Identity Contact Technical Usage Profile | <ul style="list-style-type: none"> Necessary for our legitimate interests (to develop our products/services and grow our business) |

1.4. Duration of the processing

Whenever we collect or process your personal data, we'll only keep it for as long as is necessary for the purpose for which it was collected. At the end of that retention period (usually no longer than seven years), your data will either be deleted completely or anonymised, for example by aggregation with other data so that it can be used in a non-identifiable way for statistical analysis and business planning. For information stored in backup archives, we will securely store the information and isolate it from any further use until deletion is possible.

2. Categories of data subject

2.1. When using this Service, the groups of individual's data by category

- Your *end users using the service* that you deliver
- The personal data about your *employees and contractors* that we collect as a Customer of ours to complete account administration and set up
- The personal data that we collect about the *service user access* technical information (e.g. browser, IP address)
- The details of your *employee and contractor interactions* with us when you require support for the Service (information that you choose to submit)

miso reserves the right to change their Data Processing Activities documentation and its location from time to time.



APPENDIX E

Information Security

Our information security document is available on our website.

miso reserves the right to change their Information Security document and its location from time to time. The current copy, including the update date, can be found at www.misoportal.com



APPENDIX F

Privacy Policy

Our Privacy Policy is available on our website.

miso reserves the right to change their Privacy Policy and its location from time to time. The current copy, including the updated date, can be found at www.misoportal.com



APPENDIX G

ENTERPRISE SUBSCRIPTION

Terms and Conditions

The following terms are part of the Enterprise Subscription (“Subscription”) for FME software:

1. Miso is an authorized partner of Safe Software Inc. and is authorized to offer Subscriptions for FME software to its customers.
2. You are purchasing a Subscription that includes the right to use new, term-based FME Desktop and FME Server licenses (collectively, “New Inventory”), Old Inventory, and Maintenance during the Subscription Term(s).
3. A “Term” is a one-year period. The initial Term will start on the Effective Date. Under this agreement, your Subscription may be extended for additional Terms by issuing additional orders.
4. For the Term, provided that you do not exceed your Threshold, miso agrees to offer annual Subscription pricing as detailed in the Order Form. Thereafter, miso may adjust the annual Subscription price with notice to you.
5. The “Threshold” is the maximum Software Inventory permitted to be used each Term. If you exceed the Threshold, then the next annual renewal price will be increased to match the new, corresponding Threshold level.
6. “Old Inventory” is FME software previously purchased by you on a perpetual term basis and which you have elected to include in this Subscription. The Old Inventory is detailed in the Order Form.
7. “Software Inventory” includes Old Inventory and New Inventory. The value of Software Inventory is calculated using standard list pricing for non-subscription FME software.
8. Upgrades and technical support (collectively, “Maintenance”) for all Software Inventory will be included during the Subscription at no additional cost.
9. All New Inventory and all Maintenance shall expire at the end of the Subscription. Old Inventory licenses will not expire, but will continue as unsupported perpetual licenses unless you purchase separate Maintenance for each Old Inventory license immediately following the end of the final Subscription term.
10. The Subscription does not include access to Extra-Cost Plugins or FME Cloud.