



# CatchmentModeller

## 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: 1 - 3 College Yard, Worcester, Worcestershire, WR1 2LB.  
Company registration number: 4471760. Vat Number: 551 4282 57.

## CatchmentModeller Licensed End User Agreement

These pages together with the Miso order form (Order Forms) tell you the terms and conditions on which we have agreed to provide our Service to you. Please read these terms and conditions carefully before ordering or using the Service. By ordering or using the Service you agree to be bound by this Agreement.

### **BETWEEN:**

- (1) Dotted Eyes Limited, trading as Miso, a company registered in England and Wales under number 04471760, whose registered office is at 1 - 3 College Yard, Worcester, Worcestershire, WR1 2LB (“the Supplier, Miso, we, us or our”) and
- (2) the Customer as named in the Order Form(s) (“the Customer, you or your”)

### **WHEREAS:**

- (1) The Supplier is an authorised reseller of Service detailed in Schedule 1.
- (2) The Customer wishes to use the Service described herein as provided by the Supplier under a non-exclusive Licence, from a remote location, in return for the payment of a Licence Subscription Fee to the Supplier and subject to the terms and conditions of this Agreement.

### **1. How this Agreement is formed between the Supplier and the Customer**

- 1.1 You need to complete an order for the Service using the Order Form(s) (Order). The Order constitutes an offer by you to us to buy the Service. 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.

### **2. Accepting the Terms**

- 2.1 In order to use the Service, you must firstly agree to the Terms. You may not use the Service if you do not accept the Terms.
- 2.2 You can accept the Terms by simply using the Service. You understand and agree that Miso will treat your use of the Service as acceptance of the Terms from that point onwards.
- 2.3 The Terms form a legally binding agreement between you (this includes your organisation, it’s employees Affiliates and Contractors) and Miso in relation to your use of its Services.
- 2.4 The Terms apply to all Users of the Service.

### **3. Definitions and Interpretation**

- 3.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

**“AddressBase® Premium”** a third party dataset used within the Service in which Ordnance Survey and/or it’s licensors owns the Intellectual Property Rights;

<b>“Affiliate”</b>	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% of the shares or is under common control;
<b>“Agreement”</b>	the Order Forms(s) together with these Terms and Conditions and any schedules, annexes, appendices and documents reference in this Agreement;
<b>“Authorised User(s)”</b>	means an employee of the Customer authorised by the Customer to use the Service;
<b>“Business Day”</b>	means any day other than Saturday or Sunday that is not a bank or public holiday or the period from 25 December to 1 January;
<b>“Business Hours”</b>	means any time between 9:00 and 17:00 on a Business Day, during which the Supplier is open for business;
<b>“Commencement Date”</b>	means from the earlier of the date of the last signature to this agreement, the date detailed in the Order Form(s) or the date you first use the Service;
<b>“Customer”</b>	as detailed in the Miso Order Form(s);
<b>“Customer Computer Systems”</b>	means the Customer’s computer hardware, firmware, software and communications infrastructure through and on which the Service is to be used;
<b>“Data Protection Legislation”</b>	means all legislation in force in the UK from time to time relating to data protection and privacy including, but not limited to, the Data Protection Act 2018, EU Regulation 2016/679 General Data Protection Regulation (“GDPR”) and any other directly applicable EU regulation relating to data protection and privacy (for as long as, and to the extent that, EU law has legal effect in the UK) and any successor legislation relating to data protection and privacy;
<b>“EV Map”</b>	means EV Map Dataset, a detailed parking propensity dataset which is used within the Service, the proprietary rights and Intellectual Property Rights of which belong to Field Dynamics.
<b>“Field Dynamics”</b>	the trading name of Dotted Eyes Solutions Limited, company number 09506624, who’s registered office is at 1-3 College Yard, Worcester, England, WR1 2LB. An Affiliate of miso;
<b>“Group Company”</b>	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;
<b>“Intellectual Property Rights”</b>	means all vested contingent and future intellectual property rights including but not limited to goodwill, reputation, rights in confidential information, copyright, trade marks, logos, service marks, devices, plans, models, diagrams, specifications, source and object code materials, data and processes, design rights, patents, know-how, trade secrets, inventions, get-up, database rights, (whether registered or unregistered) and any applications or registrations for the protection of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created;

<b>“Licence Subscription Fee”</b>	means the sums payable by the Customer in return for access to the Service in accordance with Clauses 6 of this Agreement;
<b>“Marks”</b>	the trade marks, trade names or service marks belonging to the Supplier;
<b>“NCR”</b>	National Chargepoint Registry. An Open Data database of public charge points in the UK used within the Service. The database is provided by Cenex on behalf of the Office of Zero Emission Vehicles (OZEV) and the Department for Transport (DfT). Licensed under an Open Government Licence (OGL);
<b>“Order Form(s)”</b>	a Miso order form completed by you or our Statement of Works, Proposal or Quotation signed by you, relating to the Service which shall be governed by these Terms and Conditions;
<b>“Ordnance Survey”</b>	the national mapping agency for Great Britain, Explorer House, Adanac Drive, Southampton, SO16 0AS;
<b>“OS MasterMap Topography Layer®”</b>	a third party data set used within the Service in which Ordnance Survey and/or its licensors owns the Intellectual Property Rights;
<b>“Permitted Purpose”</b>	the meaning given to it in Schedule 1 and sub-clause 9.10.1
<b>“Personal Data”</b>	As defined in the Data Protection Legislation;
<b>“Professional Services”</b>	means any bespoke services in addition to the standard Service, as detailed and agreed in the Order Form(s) and as governed by our Professional Services Agreement;
<b>“Scenario Output(s)”</b>	as defined in Schedule 1;
<b>“Service”</b>	the CatchmentModeller Service and Scenario Output(s) as set out in Schedule 1 as the same may from time to time be amended by agreement between the parties;
<b>“Service Levels”</b>	the service levels as set out in Schedule 3;
<b>“Sub-Processor”</b>	means a Miso third party Supplier, Group Company or Affiliate relied on by Miso in order to provide the Service to the Customer;
<b>“Term”</b>	as detailed in Clause 5;
<b>“Territory”</b>	Great Britain;
<b>“User(s)”</b>	means an employee of the Customer who is an Authorised User and who shall, from time to time, access the Service.
<b>“VAT”</b>	value added tax charges under English law for the time being and any similar additional tax.

3.2 Unless the context otherwise requires, each reference in this Agreement to:

- 3.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- 3.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 3.2.3 “this Agreement” is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;

- 3.2.4 a Schedule is a schedule to this Agreement; and
- 3.2.5 a Clause, sub-Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule.

3.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.

3.4 Words imparting the singular number shall include the plural and vice versa.

3.5 References to any gender shall include the other gender.

#### 4. **The Service**

4.1 The Supplier shall, with effect from the Commencement Date, provide the Service to the Customer on a non-exclusive basis for the duration of the Term of this Agreement and in accordance with the terms and conditions of this Agreement.

4.2 The Service to which the Customer shall have access to is defined in Schedule 1 to this Agreement.

4.3 The Supplier shall provide access to the Service through the Field Dynamics Accelerated Insight Platform and shall use its best and reasonable endeavours to ensure that such access is available, without interruption during Business Hours. This undertaking shall be subject to the exceptions contained in Clauses 6, 18 and 21 of this Agreement.

4.4 Any professional Services required by the Customer shall be provided under a separate Professional Services Agreement.

4.5 Any support shall be provided under a separate Support Agreement.

#### 5. **Term**

5.1 The Service will be provided by the Supplier during the term of this agreement (the "Term"), which shall commence on the Commencement Date and shall continue for the Term detailed in the Order Form unless otherwise terminated in accordance with Clause 21 of this Agreement.

5.2 The Term may be renewed on the same terms and conditions as set out in this Agreement for a further Term provided that the Customer has properly observed and performed their obligations under this Agreement throughout the Term and has signed a valid Order Form for which the Customer has received an Order Confirmation from the Supplier.

5.3 Each Term must be renewed before the end of the current Term in order to avoid interruption of the Service to the Customer.

5.4 Unless renewed in accordance with sub-clause 5.2 and 5.3 the Customer shall be off-boarded from the Service on expiry of the current Term per Clause 23.

5.5 The Supplier accepts no liability to the Customer in relation to loss of Service or Scenario Outputs due to the expiry of the Term or a delay in renewal by the Customer.

#### 6. **Licence Subscription Fees and Payment ("Fees")**

6.1 The Fees due for the Service are as specified in the Order Form(s) (Order). Such Fees are to be charged plus VAT.

6.2 The Customer shall pay to the Supplier all Fees due within 30 days of the date of the invoice from the Supplier for the same.

6.3 In the event that the Customer does not pay all Fees due within the time period specified in sub-Clause 6.2 above, the Supplier has the right to suspend the Customer's use of the Service by whatever means it deems appropriate.

- 6.4 In the event that the Customer fails to pay under sub-Clause 6.2 then, without prejudice to sub-Clause 6.3, that amount shall bear interest from the due date until payment is made in full, both before and after any judgment, at 4% per annum over Barclays Bank plc's base rate on a monthly basis from the due date of the payment until payment has actually been made. The Customer shall notify the Supplier within 10 days of receipt of an invoice that an invoice is in dispute.
- 6.5 The Supplier reserves the right to vary the Fees from time to time as it may deem appropriate. The Customer shall receive 30 days' written notice of any such variation. Such variations shall take effect upon expiry of such notice.

## 7. On-Boarding

- 7.1 The On-Boarding process is as detailed in Schedule 2.

## 8. Service Licence

- 8.1 The Customer shall use the Service under a non-exclusive, non-transferrable licence, as set out in this Agreement. Unless otherwise agreed in the Order Form(s) this licence permits a maximum of 5 Authorised Users to access the Service, such access is only permitted through the Field Dynamics Accelerated Insight Platform.
- 8.2 The Supplier is an authorised reseller of the Service.
- 8.3 All services, Scenario Outputs, software and data provided by the Supplier are the property of Field Dynamics, an Affiliate of miso, and shall be covered by the terms of the licence included in this Agreement. Where services, software or data are the property of an additional third party this shall be detailed in Schedule 1.
- 8.4 Where services, software or data provided as part of the Service are the property of a third party, the Supplier warrants that they have all requisite authority to sub-licence them to the customer for the purposes of this Agreement and for use under its terms.

## 9. Service Terms of Use

- 9.1 The Service may only be used for the Permitted Purpose.
- 9.2 Under this Agreement, as indicated in sub-clause 8.1 above, unless otherwise agreed in the Order Form(s) a maximum number of 5 Users may access the Service.
- 9.3 The Supplier shall make the Service available to the Authorised Users.
- 9.4 Should the Customer require an increased maximum number of Users, such an increase shall be permitted at the exclusive discretion of the Supplier. The Supplier reserves the right to increase Fees in the event of an increase in the maximum number of Users.
- 9.5 Use by Non-Customer Users is not permitted under this Agreement in the absence of express written consent from the Supplier, such consent not to be unreasonably withheld. The Supplier may require such details as the reason that access to the Service is required by the Non-Customer User, details of the Non-Customer User and other information which may be specified from time to time.
- 9.6 The Customer is exclusively responsible for its use of the Service, including the conduct of individual Users (Users to include any authorised Non-Customer Users) and must ensure that all use is in accordance with this Agreement. The Customer shall notify the Supplier immediately of any breaches of this Agreement by any Users or Non-Customer Users.
- 9.7 The Supplier shall monitor the Customer's use of the Service from time to time to ensure compliance with the terms and conditions of this Agreement and with the Reasonable Usage Policy annexed to this Agreement as Schedule 1. In the event that the Customer's use of the Service exceeds levels deemed reasonable by the Reasonable Usage Policy, the Supplier reserves the right to suspend the Service without giving notice to the Customer.

- 9.8 The Supplier is not responsible for the retention of Scenario Outputs, it is the responsibility of the Customer to retain any Scenario Outputs from the Service;
- 9.9 The Customer must not be concerned or interested either directly or indirectly in the manufacture, sale, promotion, marketing or importation into the Territory of any goods which compete with the Service;
- 9.10 The Customer shall throughout the Term:
  - 9.10.1 Use the Service solely for the Permitted Purpose, as detailed in Schedule 1, unless otherwise agreed in writing by the Supplier;
  - 9.10.2 ensure that each User keeps their password confidential and that each User only uses their own User password when accessing the Service. The Customer acknowledges that they are responsible for keeping all User information provided to the Supplier for the provision of the Service accurate and up to date;
  - 9.10.3 hold a valid licence to the third party data detailed in schedule 1 and retain evidence of such a licence for 3 years after the last supply of the Service to the Customer;
  - 9.10.4 obey the Supplier's reasonable instructions in relation to the intended use of the Service;
  - 9.10.5 supply to the Supplier such information and support as may enable the Supplier to carry out its obligations under this Agreement;
  - 9.10.6 comply with their obligations as set out in Schedule 2.
- 9.11 The Customer shall indemnify and keep indemnified the Supplier from and against any and all loss of fees and costs incurred by the Supplier resulting from breach of this Agreement by the Customer including:
  - 9.11.1 any act or neglect or default of the Customer, Customer Users and Non-Customer Users;
  - 9.11.2 a successful claim by a third party in relation to breach of third party Intellectual Property Rights;
  - 9.11.3 a claim by the third party data provider detailed in Schedule 1 with regard to a breach by the Customer of clause 9.10.3.
  - 9.11.4 viruses and/or malware in the Service reasonably deemed to have originated from the use of the Service by the Customer, Customer User or Non-Customer User.
- 9.12 The Customer's use of the Service shall be subject to the following limitations, any of which may be waived by the Supplier giving their express written consent:
  - 9.12.1 The Customer may not use the Service for the purpose of conducting the business of a Supplier;
  - 9.12.2 The Customer may not redistribute or reproduce the Service through any network;
  - 9.12.3 The Customer may not allow any unauthorised third party to access the Service.

## 10. Training

In the event that any Users require training in order to use the Service, it shall be the responsibility of the Customer to ensure that all Users are appropriately trained and to bear any costs associated with such training. The Supplier shall not provide any training of any kind unless agreed in writing by the Supplier.

**11. Service Levels and Maintenance**

11.1 As detailed in Schedule 3.

**12. Customer Computer Systems**

12.1 The Customer accepts that it is the responsibility of the Customer and not the Supplier to ensure that the Customer Computer Systems are compatible with the Service prior to purchasing the Service.

12.2 In the event of any unauthorised access by the Customer of the Service, in breach of Clause 9 or otherwise the Supplier shall be entitled to terminate access indefinitely or temporarily as it deems appropriate and to terminate this Agreement in accordance with Clause 21 below.

12.3 The Customer shall ensure that no Customer Computer Systems are connected to a third party ASP system or other service, communications system or network in such a way that the Service may be accessed by unauthorised third parties.

**13. Intellectual Property**

13.1 The Supplier or its licensor is the owner or licensee of all Intellectual Property Rights forming part of the Service and Documentation (including the Marks).

13.2 Where expressly indicated, the Intellectual Property Rights subsisting in certain third party data provided with the Service including any supporting software and documentation is the property of named third parties.

13.3 Neither this Agreement nor any licence granted under this Agreement shall be construed to convey or transfer any ownership or proprietary interest in any Intellectual Property Rights in the Service, Documentation or the Marks to the Customer or any third party.

13.4 The Customer agrees that it will make no other copies of the Service nor any print outs of the Documentation save that it may make a reasonable number of copies of such but only to the extent and for the duration that is reasonable for the Permitted Purpose.

13.5 Except to the extent that the Supplier cannot prohibit such acts by law, the Customer agrees not to translate, adapt, vary, modify, disassemble, decompile or reverse engineer the Service, the Scenario Output data, any other data and/or Documentation or create derivative works of the same for any purpose (including error correction or any other type of maintenance) without the Suppliers prior written consent.

13.6 The Customer undertakes to first consult the Supplier regarding any data the Customer requires in order to achieve interoperability or to deduce underlying ideas and principles so that the Supplier may consider making the same available to the Customer.

13.7 The Customer agrees that:

13.7.1 the Service and Documentation are the valuable property of the Supplier and it's Affiliates and shall be treated as confidential as described under clause 14;

13.7.2 they will not sell, license, lease, rent, loan, lend, transmit, network, or otherwise distribute or transfer the Service and/or Documentation in any manner to third parties save as is expressly permitted otherwise in this Agreement; and

13.8 The Customer undertakes throughout the Term:

13.8.1 not to cause or permit anything which may damage or endanger the Supplier's Intellectual Property Rights or the Supplier's title to them or assist or allow others to do so;



- 13.8.2 to notify the Supplier of any actual, threatened or suspected infringement of the Supplier's Intellectual Property Rights;
- 13.8.3 to take such reasonable action as the Supplier may direct at the expense of the Supplier in relation to such infringements;
- 13.8.4 to compensate the Supplier for any use by the Customer of the Supplier's Intellectual Property Rights otherwise than in accordance with this Agreement;
- 13.8.5 to indemnify the Supplier for any liability incurred from third parties for any use of the third parties Intellectual Property Rights, for third party data contained within the Service, otherwise than in accordance with this Agreement;
- 13.8.6 on the expiry or termination of this Agreement forthwith not to use the Intellectual Property Rights save for any Service already purchased under the terms of this Agreement.

#### 14. **Confidentiality**

- 14.1 'Restricted Information' means any private, secret or confidential information which is disclosed by either party pursuant to or in connection with this Agreement (whether orally or in writing and whether or not such information is expressly stated to be confidential or marked as such).
- 14.2 Both parties shall at all times during the continuance of this Agreement and after its termination:
  - 14.2.1 use their best endeavours to keep all Restricted Information confidential and accordingly not disclose any Restricted Information to any other person; and
  - 14.2.2 not use any Restricted Information for any purpose other than the performance of its obligations under this Agreement; and
  - 14.2.3 be responsible for the activities of any properly appointed sub-contractors or subsidiaries and undertake that they will be bound to the same extent of confidentiality as this clause.
- 14.3 The provisions of clause 14.2 shall not apply to:
  - 14.3.1 any information in the public domain otherwise than by breach of this Agreement;
  - 14.3.2 information in the possession of the receiving party before disclosure thereof by the disclosing party;
  - 14.3.3 information obtained without restriction from a third party; and
  - 14.3.4 information required to be disclosed by a court of competent jurisdiction, governmental body or applicable regulatory authority.

#### 15. **Warranty**

- 15.1 The Supplier does not warrant that the functions of the Service will meet any particular requirements or that their operation will be entirely error-free or that all program defects are capable of correction or improvement. All other warranties including any implied warranties of merchantability, satisfactory quality or fitness for purpose or ability to achieve a particular result are hereby excluded. In the absence of fraud, no oral or written information or advice given by the Supplier or its agents or licensees shall create a warranty or give rise to any other liability other than is given in this Agreement.
- 15.2 The Supplier does not warrant the accuracy of Third Party Data sets provided as part of the Service and as detailed in Schedule 1.

**16. Liability**

- 16.1 The Supplier shall not be liable to the Customer for any indirect or consequential loss the Customer may suffer even if such loss is reasonably foreseeable or if the Supplier has been advised of the possibility of the Customer incurring it.
- 16.2 The Supplier's entire liability to the Customer in respect of any breach of its contractual obligations, any breach of warranty, any representation, statement or tortious act or omission including negligence arising under or in connection with this Agreement shall be limited to 125% of the fee paid to the Supplier during the preceding 12 months.
- 16.3 Notwithstanding any other provision in this Agreement, the Supplier's liability to the Customer for death or injury resulting from the Supplier's own negligence or that of their employees, agents or sub-contractors shall not be limited.

**17. Indemnity**

- 17.1 The Customer will fully indemnify the Supplier against all costs, expenses, liabilities, losses, damages and judgments that the Supplier may incur or be subject to as a result of any of the following:
  - 17.1.1 The Customer's misuse of the Service;
  - 17.1.2 The Customer's breach of this Agreement; or
  - 17.1.3 The Customer's negligence or other act of default.
- 17.2 The Supplier shall be under no obligation to indemnify the Customer against any costs, expenses, liabilities, losses, damages and judgments that the Customer may incur or be subject to arising out of any matter covered by this Agreement.

**18. Record Retention and Audit Rights**

- 18.1 You agree to maintain accurate records regarding the use of the Service and the Scenario Output(s) to ensure compliance with our Agreement for 3 years after payment of the Licence Subscription Fee. The Supplier has the right, at their own expense and on reasonable notice, to audit your records at your organisations premises to verify compliance with this agreement. Any audit shall occur within 3 years following the applicable Licence Subscription Fee payment. The Supplier shall treat such records as confidential.

**19. Non-solicitation**

- 19.1 You shall not, without the prior written consent of the Supplier, at any time from the date of this agreement to the expiry of 12 months after the last date of supply of the Service, solicit or entice away from the Supplier or its Affiliates or employ any person who is, or has been, engaged as an employee or consultant of the Supplier or its Affiliates during the provision of this Service.

**20. Force Majeure**

- 20.1 Neither the Supplier nor the Customer shall be liable for breaching this Agreement where that breach results from Force Majeure.
- 20.2 Force Majeure refers to any event that is beyond the reasonable control of the parties and includes, but is not limited to: power failure, internet Supplier failure, industrial action, civil unrest, theft, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental

action or any other event that is beyond the control of the Party in question.

## 21. Termination

- 21.1 The Supplier reserves the right to terminate this Agreement or to suspend the Service in the following circumstances:
  - 21.1.1 If the Customer fails to pay Fees due under Clause 6 of this Agreement;
  - 21.1.2 If the Customer is in breach of the terms of this Agreement;
  - 21.1.3 If the Customer exceeds the Reasonable Usage Policy;
  - 21.1.4 If the Customer becomes the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986;
  - 21.1.5 If the Customer is unable to pay its debts within the definition of Section 123 of the Insolvency Act 1986; or
  - 21.1.6 If the Customer has a receiver, manager, administrator or administrative receiver appointed over all or a substantial part of its undertakings, assets, or income; has passed a resolution for its winding up; or is the subject of a petition presented to a court for its winding up or for an administration order.
- 21.2 The Customer reserves the right to terminate this Agreement in the following circumstances:
  - 21.2.1 If the Supplier is in breach of the terms of this Agreement;
  - 21.2.2 If the Supplier becomes the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986;
  - 21.2.3 If the Supplier is unable to pay its debts within the definition of Section 123 of the Insolvency Act 1986; or
  - 21.2.4 If the Supplier has a receiver, manager, administrator or administrative receiver appointed over all or a substantial part of its undertakings, assets, or income; has passed a resolution for its winding up; or is the subject of a petition presented to a court for its winding up or for an administration order.
- 21.3 The Supplier shall not provide a refund or credit note to the Customer for Termination under sub-clause 21.1.
- 21.4 The Supplier accepts no liability to the Customer due to Termination or suspension of the Service due to this Clause 21.
- 21.5 Upon Termination of this Agreement for any reason:
  - 21.5.1 all licences granted under the Agreement shall immediately terminate;
  - 21.5.2 the Customer shall have no further right to use the Service or the Scenario Output(s);
  - 21.5.3 the Customer shall within 30 days of such termination or expiry remove and destroy all Scenario Outputs, Scenario Output data and any data derived from the Service in any media in which it is held (including embedded in any other material) and provide at the Suppliers request, a written statement signed by a duly authorised person stating that the Customer no longer holds the Scenario Outputs, Scenario Outputs data or any data derived from the Service;
  - 21.5.4 the Customer will be off-boarded from the Service per Clause 23.

## 22. Termination Consequences

On the termination of this Agreement for any reason:

- 22.1 Clauses that are necessary for the enforcement or interpretation of this Agreement shall survive, which shall include clauses relating to confidentiality and protection of Intellectual Property Rights; and
- 22.2 Subject as otherwise provided in this Agreement and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement.

**23. Customer Off-Boarding**

- 23.1 The Customer Off-Boarding process is detailed in Schedule 2.

**24. Data Protection**

- 24.1 All Personal Data that the Supplier may use will be collected, processed, and held in accordance with the provisions of the Data Protection Legislation and Customers rights thereunder.
- 24.2 You acknowledge and agree that the Supplier relies on its Group Companies, Affiliates and third party Suppliers in order to provide its Service to you, and that as such the Supplier may share and give them access to Customer Personal Data in order to supply the Service to you under this Agreement. You further acknowledge and agree that such parties may be based in different jurisdictions and shall have access the Customer Personal Data in those jurisdictions.
- 24.3 We shall remain liable under Data Protection for the acts and omission of any third party engaged by Us in the provision of the Service
- 24.4 For complete details of Our collection, processing, storage, and retention of personal data including, but not limited to, the purpose(s) for which personal data is used, the legal basis or bases for using it, details of the Customer rights and how to exercise them, and personal data sharing (where applicable), please refer to Our Privacy Notice and Information Security Notice which can be found on Our website [www.misoportal.com\legal](http://www.misoportal.com/legal) and our Data Protection Policy and Data Processing Activities Document which can be found in the Schedules to this Agreement.

**25. Notices**

- 25.1 All notices under this Agreement shall be in writing.
- 25.2 Notices shall be deemed to have been duly given:
  - 25.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
  - 25.2.2 when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or
  - 25.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
  - 25.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- 25.3 In each case notices should be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

26. **Relationship of Parties**

Nothing in this Agreement shall create, or be deemed to create, a partnership, the relationship of principal and agent, or of employer and employee between the Supplier and the Customer.

27. **Assignment**

Neither Party shall assign, transfer, sub-contract, or in any other manner make over to any third party the benefit and/or burden of this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld.

28. **Severance**

The Parties agree that, in the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

29. **Entire Agreement**

29.1 This Agreement embodies and sets forth the entire agreement and understanding between the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this Agreement. Neither Party shall be entitled to rely on any agreement, understanding or arrangement not expressly set forth in this Agreement, save for any representation made fraudulently.

29.2 Unless otherwise expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both of the Parties.

30. **No Waiver**

The Parties agree that no failure by either Party to enforce the performance of any provision in this Agreement shall constitute a waiver of the right to subsequently enforce that provision or any other provision of this Agreement. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

31. **Non-Exclusivity**

The relationship between the Parties under this Agreement is and shall remain non-exclusive. Both parties are free to enter into similar relationships with other parties.

32. **Law and Jurisdiction**

32.1 This Agreement shall be governed by the laws of England and Wales.

32.2 Any dispute between the Parties relating to this Agreement shall fall within the jurisdiction of the courts of England and Wales.



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

SIGNED:

Name:

Job Title:

Date:

**for and on behalf of Dotted Eyes Limited trading as miso**

SIGNED:

Name:

Job Title:

Date:

Company Name:

**for and on behalf of the Customer**

## **SCHEDULE 1**

### **Service – CatchmentModeller**

#### **1. Service Overview**

CatchmentModeller is a self-service scenario tool that helps local authority teams plan their public EV charging infrastructure roll-out.

The Service is proprietary to Field Dynamics. Miso is an authorised reseller of the Service.

The Service allows Users to create and download multiple scenarios (“Scenario Outputs”) informed by detailed datasets and the Users own local knowledge.

CatchmentModeller includes data from two sources:

- a) EV Map, a detailed parking propensity dataset developed by Field Dynamics;
- b) NCR, an OGL dataset containing the location of publicly accessible EV charge points in the UK.

The Service is delivered via Field Dynamics Accelerated Insight Platform, a web-based cloud intelligence platform.

#### **2. Permitted Purpose**

Unless otherwise agreed in writing with the Supplier, the Service which includes any Scenario Outputs(s), is licensed solely for the following Permitted Purpose:

- Internal business use by the Customer to plan their public Electrical Vehicle charging infrastructure roll-out for the Customers Local Authority Boundary.

For the avoidance of doubt, unless otherwise agreed in writing by the Supplier, the Service (including the Scenario Output(s)) and any data derived from the Service must not be shared outside of the Customer Organisation or with anyone that is not an employee of the Customer Organisation.

#### **3. Fair usage Policy and Service Restrictions**

Each Customer using the Service is subject to a fair usage policy which is subject to the following limitations and service restrictions:

- a) only 5 Authorised Users may use the Service.
- b) a maximum of 12 Scenario Outputs can be obtained from the Service during a 12 month period.
- c) each scenario can include a maximum of 1,000 charger sites.
- d) if the speed or performance of the Service is deemed by the Supplier to be negatively affected by the use of the Service by the Customer, the Supplier has the right to suspend the Service.

#### **4. Area Coverage**

Local Authority Customers are able to order the Service for their Local Authority Boundary as defined by Ordnance Survey.

Bespoke areas are available but are not standard for the Service and may incur additional fees.

#### **5. Scenario Output(s)**

Scenario Outputs are available to the Customer in a GIS format.

It is the responsibility of the Customer and not the Supplier to maintain copies of each Scenario Output.

The Supplier has the right but not the obligation to delete any Scenario Outputs that it deems infringes the Fair Usage Policy.

Scenario Outputs deleted from the Service due to infringement of the Fair Usage policy will be deleted in chronological order starting with the oldest first. The Supplier has no obligation to provide the Customer notification of the deletion. The Supplier shall not be held liable for any losses or costs suffered by the Customer due to the deletion of Scenario Outputs in accordance with the Fair Usage Policy.

## 6. **EV Map Proprietary and Intellectual Property Rights**

The Service utilises the parking propensity dataset EV Map.

Field Dynamics, an Affiliate of miso, owns the proprietary and Intellectual Property Rights to this dataset.

## 7. **Third Party Data Sets and Licensing**

The Supplier makes use of the following additional third party datasets as part of the Service:

- a) OS MasterMap Topography Layer® and AddressBase® Premium:
  - i) EV Map contains data derived from these datasets;
  - ii) the Intellectual Property Rights in both datasets are owned by Ordnance Survey and /or its licensors;
  - iii) the Customer must, throughout the Term of this Agreement be licensed to both datasets for their particular Local Authority Boundary as defined by Ordnance Survey and provide the Supplier with the necessary supporting paperwork if requested.
  - iv) a copy of the current Ordnance Survey Licence Agreement is available on request.
- b) NCR:
  - i) an Open Data database provided by Cenex on behalf of the Office of Zero Emission Vehicles.
  - ii) Licensed under an Open Government Licence.

Third party datasets must only be used for the permitted purpose and in accordance with this agreement.



## SCHEDULE 2 Customer Onboarding and Offboarding

### 1. **Overview**

This section includes details for the following process:

- Onboarding
- Offboarding

### 2. **Onboarding**

#### Licence Subscription and Ordering

For each Licence Subscription Term each Customer must supply us with:

- A fully completed Order Form;
- If applicable and requested by the Supplier, the relevant Ordnance Survey Licence documentation; and
- If applicable a signed Statement of Work for any additional requirements not provisioned as part of the standard service.

#### Set-up

Once we have received the Licence Subscription Fee and all necessary Ordering documentation:

- Your Customer account will be created in the Service and Users added to the account as detailed in the Order Form.
- Users will be sent registration access with passwords and log in details.

### 3. **Offboarding**

On termination of the Service for any reason Miso shall for each Customer:

- Remove all User access to the Service.
- Remove and delete all Scenario Outputs from the Service.

**SCHEDULE 3**  
**Service Levels and Maintenance**

**1. Service Level**

The Service will be available 99% of the time during business hours including Scheduled and Unscheduled maintenance. This excludes Unscheduled maintenance due to a malicious attack or a third-party Supplier on which the Service relies on.

**2. Maintenance**

We may interrupt the Service to perform emergency maintenance. In addition, we may interrupt the Service for scheduled maintenance provided we supply a minimum of 1 weeks notice. We shall at all times use best endeavours to keep any service interruptions to a minimum.

## SCHEDULE 4 Data Protection Policy

### 1. Definitions and interpretation

1.1 In this Schedule, 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 Personal Data, and terms defined in a provision of this Schedule 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 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 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 Schedule or as necessary to perform its obligations under this Agreement, save as otherwise required by any Applicable law.

3.2 In processing the Personal Data, Miso shall:

- a) process 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 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 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 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 Personal Data by ensuring that it has in place appropriate technical and organisational measures, including measures to protect the Customer Person Data against the risks of a Security Breach; and
- f) ensure that any persons authorised by Miso to process 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 Personal Data in its control or possession when it no longer requires such 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 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 Subject to clause 5.2, Miso shall, at the Customer's sole expense, comply with all reasonable requests from the Customer to allow the Customer or its third party auditors to access and inspect Miso premises, records and personnel relevant to any processing of Personal Data, in each case to enable the Customer to audit and verify that Miso is complying with its obligations under this Agreement and under the Data Protection Laws in relation to Personal Data ("**Data Protection Audit**").

5.2 Miso acknowledges that the Customer (or its third party auditors) may enter its premises for the purposes of conducting a Data Protection Audit, provided that the Customer gives it reasonable prior written notice, conducts such audit during normal business hours, and take all reasonable measures to prevent unnecessary disruption to Miso operations. The Customer will not exercise its audit rights under this clause 5 more than once in any twelve (12) month period, except if: (i) required by instruction of a DP Regulator; or (ii) the Customer reasonably believes a further audit is necessary due to a Security Breach suffered by Miso.

5.3 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) under clause 5.1 as necessary to demonstrate Miso 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 Personal Data; and

- b) deal with and respond to investigations and requests for information relating to the 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 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 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 Schedule.

7.2 The Customer hereby consents to Miso's use of the Sub-Processors listed at [www.misoportal.com/legal](http://www.misoportal.com/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 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 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 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 Schedule.

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 Schedule.

## 8. Transfer of Personal Data

8.1 Miso shall only transfer Personal Data outside of the EEA where there is adequate protection for such 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 Schedule the Customer consents to the transfers of Personal Data to those non-EEA locations listed at [www.misoportal.com/legal](http://www.misoportal.com/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 Schedule, in the event of any inconsistency between the provisions of this Schedule and the other provisions of the Agreement including any schedule or annex thereto, the provisions of this Schedule and its Annex shall prevail.

Miso reserve the right to change their Data Protection Policy documentation and its location from time to time.

## SCHEDULE 5 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 CatchmentModeller Service to you.

#### 1.2. Nature

CatchmentModeller is a self-service scenario tool that helps local authority teams plan their public EV charging infrastructure roll-out.

The Service allows Users to create, save and download multiple scenarios (“Scenario Outputs”) informed by detailed datasets and the Users own local knowledge.

#### 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"> <li>Identity</li> <li>Contact</li> </ul>	<ul style="list-style-type: none"> <li>Performance of a contract with you</li> </ul>
To process and deliver your order including payment and collection or recovery of those payments	<ul style="list-style-type: none"> <li>Identity</li> <li>Contact</li> <li>Financial</li> <li>Transaction</li> <li>Marketing and communications</li> </ul>	<ul style="list-style-type: none"> <li>Performance of a contract with you</li> <li>Necessary for our legitimate interests (debt collection)</li> </ul>
To manage our relationship with you which will include: <ul style="list-style-type: none"> <li>Notifying you about changes in our terms or privacy policy</li> <li>Asking you for feedback or take a survey</li> </ul>	<ul style="list-style-type: none"> <li>Identity</li> <li>Contact</li> <li>Profile</li> <li>Marketing and communications</li> </ul>	<ul style="list-style-type: none"> <li>Performance of a contract with you</li> <li>Necessary to comply with a legal obligation</li> <li>Necessary for our legitimate interests (to keep our records updated and to study how customers use our products/services)</li> </ul>
To enable you to take part in a competition, prize draw, or survey	<ul style="list-style-type: none"> <li>Identity</li> <li>Contact</li> <li>Profile</li> <li>Usage</li> <li>Marketing and communications</li> </ul>	<ul style="list-style-type: none"> <li>Performance of a contract with you</li> <li>Necessary for our legitimate interests (to keep our records updated and to study how customers use our products/services)</li> </ul>
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"> <li>Identity</li> <li>Contact</li> <li>Technical</li> </ul>	<ul style="list-style-type: none"> <li>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)</li> <li>Necessary to comply with a legal obligation</li> </ul>
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"> <li>Identity</li> <li>Contact</li> <li>Profile</li> <li>Usage</li> <li>Marketing and communications</li> <li>Technical</li> </ul>	<ul style="list-style-type: none"> <li>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)</li> </ul>
To use data analytics to improve our website, products/services, marketing, customer relationships and experiences	<ul style="list-style-type: none"> <li>Technical</li> <li>Usage</li> </ul>	<ul style="list-style-type: none"> <li>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)</li> </ul>

**To make suggestions and recommendations to you about goods or services that may be of interest to you**

- Identity
- Contact
- Technical
- Usage
- Profile

- 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 reserve the right to change their Data Processing Activities documentation and its location from time to time.