



DataOptimiser

Terms and Conditions

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miso is a trading division 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.

DATA OPTIMISER

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 miso service 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**).

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 1 - 3 College Yard, Worcester, Worcestershire, WR1 2LB. 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. Accepting the Terms

- 3.1. 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.
- 3.2. 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.
- 3.3. The Terms form a legally binding agreement between you (this includes your organisation its employees, Affiliates and Contractors) and miso in relation to your use of its products and services.
- 3.4. The Terms apply to all users of miso portal and the DataOptimiser Service.

4. Changes to the Terms

- 4.1. Miso reserves the right to make changes to the Terms & Conditions from time to time. The most current version of our DataOptimiser Terms and Conditions (including that updated date) can be found at www.misoportal.com/legal It is therefore important that you check our website frequently for updates Your continued use of the Service, after the date our updated Terms are made available on our website, will constitute your acceptance of the updated Terms and Conditions.

5. 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% of 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 Administrator: person authorised to sign legally binding agreements on behalf of the organisation.

Authorised Users: those nominated individuals within the customer Organisation and Contractors, Subcontractors and Affiliates of the Customer who you authorise to and/or give

access 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

Customer Subcontractor: each subcontractor of yours who is authorised by you to use the service on your behalf.

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 Privacy and Electronic Communications (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 Services and Transactions as set out in Order Form and referred to in clause 12 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. supplied to you under this Agreement

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.

<https://opensource.org/licenses/postgresql> and

<http://docs.geoserver.org/stable/en/user/introduction/license.html>

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.

Ordnance Survey: the national mapping agency for Great Britain, Explorer House, Adanac Drive, Southampton, SO16 0AS.

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 “miso” software packages which are proprietary to Dotted Eyes and the “Safe Software FME Server” software which is proprietary to Safe Software Inc.

PSGA: means the Public Sector Geospatial Agreement.

Services: the software that we provide to allow Authorised Users to access and use the Software

Service Levels: the service levels set out in the Appendix A(2)

Software: the Proprietary Software and the Open Source Software used in this service

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.

6. Our Obligations

- 6.1. We shall use reasonable endeavours to provide the service in accordance with the Order Form(s) in all material respects.
- 6.2. 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

- 6.3. 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 C(1) Data Protection, the Appendix C(2) Data Processing Activities and our Information Security document and Privacy Policy which can be downloaded by going to www.misoportal.com

7. Services and Licence

- 7.1. We shall use reasonable endeavours to perform the Services in accordance the Service Levels detailed in Appendix A(2).
- 7.2. In relation to the Proprietary Software:
 - (a) we hereby grant to you subject to the terms and conditions of this agreement a non-exclusive, non-transferable licence to allow Authorised Users to access the Proprietary Software through the Services and to use the Proprietary Software solely in object code form and solely for the purpose of receiving the Services;
- 7.3. DataOptimiser Licence:
You agree to be bound by and adhere to the DataOptimiser Your Responsibilities contained in Appendix A(1)
- 7.4. The use of the Open Source Software is subject to the terms and conditions of the relevant software licences.

8. Miso portal Account

- 8.1. In order to access the service we will create a miso portal account for you and set you up as an Authorised Administrator. You must provide accurate and complete information at the time that the account is opened for you.
- 8.2. You must keep us informed of any changes to the account and your information
- 8.3. You must notify us should you leave the Organisation
- 8.4. It is your responsibility to keep your account password secure and confidential
- 8.5. You must notify us immediately of any breach of security or unauthorised use of your miso account that you become aware of.
- 8.6. You agree that you will be solely responsible (to miso and others) for all activity that occurs under your miso account
- 8.7. You agree you are bound to the provisions of Clause 11 regarding Customer Data and Customer Personal Data.

9. 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.misportal.com/legal

10. Your Obligations

- 10.1. You represent, warrant and agree that throughout the term of this Agreement:-
 - (a) to be bound by Appendix A(1) (Data Optimiser Your Responsibilities)
 - (b) that you have provided us with the necessary accurate information to comply with Appendix A(1) and that you will notify us, in writing to the miso address detailed in Clause 1, of any changes within 5 business days.
 - (c) you have entered into an appropriate agreement with Ordnance Survey or other data provider in respect of any Datasets proprietary to them and delivered via or utilised by the service;
 - (d) you are licensed to use any Datasets proprietary to Ordnance Survey or other data providers under the relevant agreement with them.
 - (e) The use by us of the Datasets for the provision of the Services will not infringe the Intellectual Property Rights of any third party;
 - (f) You will provide us with not less than 5 business days written notice of any change in the Datasets which you are authorised to use.
- 10.2. You warrant to cover all costs incurred by us should you breach either Ordnance Survey or the DataOptimiser licence terms contained in Appendix A(1) and throughout these Terms and this Agreement
- 10.3. You agree to maintain accurate records regarding the use of data supplied by miso and user terminal numbers to ensure compliance with Ordnance Survey and our DataOptimiser Licence Agreement for 3 years after payment to miso. miso and Ordnance Survey shall have 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 fee payment. miso shall treat such records as confidential.

- 10.4. PSGA data products and services are charged at a rate assuming that your organisation has the correct PSGA licence for that data. If you are not licensed under the PSGA for this data you warrant to notify us at the point of order and cover any additional costs incurred by us
- 10.5. You undertake to defend us from and against any claim or action that the possession, use or by us in delivering the Services infringes the Intellectual Property Rights or Licence rights of a third party, UK or EU law and shall fully indemnify us and hold us harmless from and against any losses, damages, costs (including all legal fees) and expenses incurred by or awarded against us as a result of or in connection with any such claim.
- 10.6. You shall ensure that you will keep your log in details and passwords for use of the Services confidential and that each Authorised User keeps his password for the use of the Services confidential.
- 10.7. You warrant to cover all reasonable costs incurred by us should any Customer Data or Customer Personal Data uploaded by you to DataOptimiser be found to contain Malware including but not limited to Trojans, Spyware and Viruses
- 10.8. That you will not, unless pre-agreed by us in writing, provide us with, in any form, Customer Data or Personal Data deemed as a special category of Data under GDPR.
- 10.9. Carry out your obligations as described in the Order Form(s)
- 10.10. 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

11. Customer Data and Customer Personal Data

- 11.1. 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.
- 11.2. 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.
- 11.3. 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 C(1) Data Protection and Appendix C(2) Data Processing Activities, nothing shall prevent miso from disclosing Customer Personal Data or Customer Data to their Group Companies, Affiliate, 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
- 11.4. 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
- 11.5. 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 C(1) Data Protection and Appendix C(2) Data Processing Activities
- 11.6. 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

- 11.7. **Rights in Customer Data.** As between the parties, you shall retain all right, title and interest (including any and all intellectual property rights) in and to your Customer Data as published on DataOptimiser. Subject to the terms of this Agreement, you hereby grant to miso a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, and distribute, perform and display (including publicly), modify and create derivative works of the Customer Data solely to the extent necessary to provide the service in accordance with this Agreement and the Documentation.
- 11.8. **Storage of Customer Data.** miso does not provide an archiving service. We agree that we shall not intentionally delete any Customer Data prior to termination or expiration of Customer's applicable Term. Except as otherwise set forth herein, miso expressly disclaims all other obligations with respect to storage of Customer Data

12. Fees and payment

- 12.1. You shall pay the Fees in accordance with the associated payment terms as set out in Order Form.
- 12.2. 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,
- 12.3. 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.
- 12.4. 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).

13. Confidentiality

- 13.1. Subject to clause 13.2, 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.
- 13.2. 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.
- 13.3. 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
- 13.4. The provisions of this Clause 13 shall remain in full force and effect notwithstanding termination of this Agreement for any reason

14. Proprietary Rights

- 14.1. You acknowledge that:-
- (a) all Intellectual Property Rights in the Proprietary Software shall belong to us or to the proprietary owner thereof;
 - (b) all Intellectual Property Rights in the Open Source Software belongs to the third party proprietary owner thereof; and

that except as expressly stated herein, this Agreement does not grant you any Intellectual Property Rights (including but without limitation any licences) in or to the Software, Services or any related documentation.

- 14.2. We undertake at our own expense to defend you or, at our option, settle any claim or action brought against you alleging that the possession or use of the Services (other than the Open Source Software) in accordance with these Terms & Conditions infringes the UK Intellectual Property Rights of a third party (**Infringement Claim**) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against you as a result of or in connection with any such Infringement Claim.
- 14.3. Clause 14.2 is conditional on:
 - (a) you notifying us in writing, as soon as reasonably practicable, of any Infringement Claim of which you have notice;
 - (b) you not making any admission as to liability or compromise or agreeing to any settlement of any Infringement Claim without our prior written consent, which consent shall not be unreasonably withheld or delayed; and
 - (c) us having, at our own expense, the conduct of or the right to settle all negotiations and litigation arising from any Infringement Claim and you giving us all reasonable assistance in connection with those negotiations and such litigation at our request and expense.
- 14.4. If any Infringement Claim is made, or in our reasonable opinion is likely to be made, against you, we may at our sole option and expense:
 - (a) procure for you the right to continue using the Proprietary Software or Services (or any part thereof) in accordance with these Terms & Conditions; or
 - (b) modify the Proprietary Software or Services so that it or they cease to be infringing; or
 - (c) replace the Proprietary Software with non-infringing software; or
 - (d) terminate this Licence immediately by notice in writing to you.
- 14.5. The foregoing states your sole and exclusive rights and remedies, and our entire obligations and liability, for Intellectual Property Right infringement.

15. Limitation of Liability

- 15.1. 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.
- 15.2. Subject to Clause 15.1, 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.
- 15.3. Subject to the overall provision in paragraph 15.1 above. Miso shall not be liable to you for:
 - (a) The deletion of, corruption of, or failure to store, any Content and other Metadata or Datasets uploaded to or published by DataOptimiser
 - (b) Your failure to provide miso with accurate account information
 - (c) Your failure to keep your password or miso account details secure and confidential
- 15.4. The limitations on miso's liability to you in paragraph 15.3 above shall apply whether or not miso has been advised of or should have been aware of the possibility of any such losses arising
- 15.5. Subject to Clause 15.2 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 13 (Confidentiality) or Appendix C(1) (Data Protection) or Appendix C(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.

16. Service Level and Maintenance

16.1. See Appendix A(2)

17. Term and Termination

- 17.1. 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.
- 17.2. After the Initial Term (and each renewal) this Agreement shall automatically renew for a further year at the standard rates, unless either Party notifies the other, in writing, at least 30 days before the end of the then current term.
- 17.3. On becoming aware of any potential violation of these Terms, miso reserves the right (but shall have no obligations) to decide whether Content complies with the content requirements set out in these Terms and may remove such Content and/or terminate a User's access for uploading Content which is in violation of these Terms at any time. Without prior notice and at its sole discretion
- 17.4. 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 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
 - (c) the other Party ceases, or threatens to cease, to trade; or
 - (d) the other Party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 17.5. 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 8, 10, 11, 12, 13, 14
- 17.6. 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 Services;
 - (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

18. 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.

19. General

- 19.1. 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.
- 19.2. 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.
- 19.3. 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.
- 19.4. 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.
- 19.5. 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.
- 19.6. All notices given by you to us must be given to us in writing at the address shown in clause 1 or to cancellations@misoport.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.
- 19.7. These Terms & Conditions, the Schedule and the Order Form 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.
- 19.8. 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.
- 19.9. The provisions of clause 19 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(1)

DataOptimiser Your Responsibilities

1. Your Responsibilities

- 1.1. You are responsible for ensuring you have a current and appropriate licence to all data sets ordered via MISO DataOptimiser
- 1.2. If you are covered by the PSGA you are responsible for providing us with the extents that you require
- 1.3. If you are not covered by the PSGA you are responsible for providing us with the initial Ordnance Survey data which we require in order to provide you with the Data Optimiser as set out below:-
 - (a) where you source data from Ordnance Survey under a collective purchase agreement, you will on or before the Commencement Date, provide to us the original CD or DVD (or such other media as Ordnance Survey may use from time to time) containing the ordnance data which Ordnance Survey has licensed to you (**Ordnance Survey Licence**);
OR
 - (b) where you source data from Ordnance Survey other than under a collective purchase agreement, you will on or before the Commencement Date provide to us the original CD or DVD which is the subject of the Ordnance Survey Licence
- 1.4. It is your responsibility at all times to maintain an appropriate data backup procedure to enable the recovery of lost or corrupted data files.

You agree to comply with all our reasonable instructions, guidelines and directions in relation to the receipt and use of Data Optimiser

APPENDIX A(2)

Service Levels and Maintenance

Service Levels

We shall use our reasonable endeavours to ensure that the Services are available during Normal Business Hours.

Maintenance

We may interrupt the Services to perform emergency maintenance. In addition, we may interrupt the Services outside Normal Business Hours for unscheduled maintenance, provided that we have given you at least 3 days advance notice (via our website). We shall at all times endeavour to keep any service interruptions to a minimum.

APPENDIX B

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 C(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.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 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.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 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 C(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 DataOptimiser Service to you.

1.2. Nature

- DataOptimiser frees up the time taken to style and translate OS MasterMap and/or OS VectorMap Local into formats suitable for use in GIS and/or CAD Systems. Data is simply downloaded from our web portal which is available 24/7.

2.1. 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 	<ul style="list-style-type: none"> Necessary for our legitimate interests (to develop our products/services and grow our business)

- Profile

2.2. 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.

3. Categories of data subject

3.1. 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 D

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 E

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