Master Services Agreement – Data Research Services

A Note on the Template

This Master Services Agreement (MSA) is a general template under which multiple statements of work can be called off to allow for maximum flexibility by the parties.

Any desired changes to the General Conditions (i.e. the main terms) should be addressed in accordance with the mechanism provided in the MSA Special Conditions (which take precedence over the General Conditions).

**For further details, please refer to the associated MSA Guidance Notes.**

Master Services Agreement – Data Research Services

This Master Services Agreement for Services is made on the Commencement Date between (1) Supplier, and (2) Customer, each a "party" and together the "parties". The Agreement comprises the MSA Special Conditions and the General Conditions, including the Schedules to it (the "Agreement").

Background

(A) Supplier is a member of the Hub, a consortium set up to demonstrate and drive the utility of expert health data science, including through the provision of services for research and innovation.

(B) Supplier is the lead organisation in relation to the Hub, responsible for the management of the Hub and acting as the point of contact in relation to services provided by the Hub.

(C) Customer wishes to receive services from the Hub contracting through the Supplier in accordance with the terms of this Agreement, and as set out more particularly in each SOW.

Operative Provisions – MSA Special Conditions

|  |  |
| --- | --- |
| **MSA Special Conditions** | |
| **Party details** | |
| Supplier | [insert details of Hub lead organisation] |
| Customer | [insert company name], a company incorporated in [insert country] (company number [insert registration number]), with its registered address at [insert address] |
| Hub | [insert (e.g. DATA-CAN)] Health Data Research Hub |
| Supplier Notice Details | For the attention of: [insert name/position]  Address: [insert address]  Email: [insert email address] |
| Customer Notice Details | For the attention of: [insert name/position]  Address: [insert address]  Email: [insert email address] |
| **Commercial terms** | |
| Commencement Date | [insert date] |
| Term | A period of [insert agreed time period] from the Commencement Date |
| Supplier MSA Liability Cap | The greater of:   1. [insert (£insert)]; and 2. a sum equal to [insert (insert%)] of the total Charges paid and/or payable under this Agreement and all SOWs. |
| Customer MSA Liability Cap | [insert details of Customer's liability cap under the Agreement] |
| **Additional terms (if any)** | |
| [insert details of any additional terms that apply (if any) - see the MSA Guidance Notes for example clauses] | |

By signing below, each party confirms that it has read and understood the terms of this Agreement and agrees to be bound by such terms from the Commencement Date.

**Signatories**

|  |  |
| --- | --- |
| Signed by an authorised representative for and on behalf of **Supplier**: | Signed by an authorised representative for and on behalf of **Customer**: |
|  |  |
| *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* | *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |
| *(Sign)* | *(Sign)* |
| *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* | *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |
| *(Print name)* | *(Print name)* |
| *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* | *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |
| *(Position)* | *(Position)* |
| *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* | *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |
| *(Date)* | *(Date)* |

**Operative Provisions – General Conditions**

1. Interpretation

The definitions and rules of interpretation set out in Schedule 1 apply to this Agreement and each SOW.

PART A: TERMS APPLICABLE TO THE MASTER SERVICES AGREEMENT

1. Scope of this Agreement
   1. This Agreement:
      1. governs the overall relationship between Supplier and Customer with respect to the provision of the Services to Customer;
      2. sets out the terms and conditions that shall apply to SOWs entered into pursuant to this Agreement;
      3. sets out the procedure required for agreeing any SOWs under this Agreement; and
      4. sets out the obligations on Supplier and Customer in respect of this Agreement.
   2. If there is a conflict between:
      1. any General Condition; and
      2. any MSA Special Condition,

the terms of the MSA Special Condition will prevail.

1. Statements of Work

**General Approach**

* 1. This clause 3 sets out the process for the parties to agree individual SOWs under which Supplier shall provide or procure the provision of the Services.
  2. Each SOW shall be governed by:
     1. the terms set out in Part B and Part C of this Agreement (including the associated definitions and rules of interpretation in Schedule 1 of this Agreement), and such terms shall be deemed incorporated into each SOW; and
     2. any additional terms set out in that SOW.
  3. If there is a conflict between:
     1. any of the terms of this Agreement; and
     2. any additional terms set out in any SOW,

the terms of this Agreement shall prevail unless the parties have expressly agreed in the relevant SOW that the relevant terms of this Agreement shall not apply.

**Agreement of SOWs**

* 1. If at any time during the Term Customer wishes to procure services from Supplier, it should first notify Supplier in writing of its requirements for such services.
  2. Subject to clause 3.6, the parties shall prepare a draft SOW for those services by utilising the template at Schedule 2.
  3. Supplier may decline to prepare or enter into a SOW at its absolute discretion.
  4. Customer is not obliged to request any additional services from Supplier, nor obliged to enter into any SOW.
  5. Each party may propose such amendments to a draft SOW as it sees fit and shall participate in such negotiations regarding such draft SOW as may be reasonably required.
  6. If Customer wishes to proceed with the purchase of the relevant Services, it shall issue the final version of the SOW (signed on behalf of Customer).
  7. If Supplier:
     1. is willing to accept the final version of the SOW issued under clause 3.9, it shall sign and return the SOW to Customer; or
     2. is not willing to accept the final version of the SOW issued by Customer, it shall notify Customer accordingly.
  8. Each SOW that is agreed and executed by Supplier and Customer in accordance with this clause 3 shall constitute a separate contract for the supply of the applicable Services incorporating the terms set out in clause 3.2.
  9. For the avoidance of doubt, each party shall bear its own costs and expenses in connection with the activities contemplated in clauses 3.4 to 3.10.

1. Duration of Agreement
   1. This Agreement shall come into effect on the Commencement Date and shall continue until the end date specified in the MSA Special Conditions unless it is extended or terminated earlier in accordance with this Agreement (the "Term").
2. Expiry or termination of Agreement

**Rights of termination**

* 1. Without limiting or affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
     1. the other party commits a material breach of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
     2. the other party commits a breach (whether material or otherwise) of clause 15.1; or
     3. a relevant Insolvency Event occurs.
  2. Without limiting or affecting any other right or remedy available to it, Supplier may terminate this Agreement with immediate effect by giving written notice to Customer if Customer or the Customer's ultimate parent company undergoes a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010), unless Supplier has given prior written approval to such change of control.

Consequences of expiry or termination

* 1. The expiry or termination of this Agreement shall not affect the validity of any SOW entered into before the date of expiry or termination of this Agreement, and each SOW shall, unless terminated early in accordance with clause 12 or any additional terms of the relevant SOW, continue in full force and effect until the end date specified in the relevant SOW.
  2. Each party's further rights and obligations under this Agreement (including Customer's right to request further SOWs pursuant to clause 3) shall cease immediately upon the expiry or termination of this Agreement, provided that the expiry or termination of this Agreement for any reason whatsoever:
     1. shall not affect the continued operation of clauses 1, 5.3, 5.4, 14, 15.4, 15.5, 15.6, 15.7, 15.9, 15.10, 15.11, 15.15 and 15.16, and other provisions which are necessary for the interpretation or enforcement of this Agreement; and
     2. shall not affect the accrued rights and obligations of the parties under this Agreement as at the date of expiry or termination.

PART B: TERMS APPLICABLE TO AND INCORPORATED INTO EACH SOW

1. Duration of each SOW
   1. The term of each SOW commences on the relevant SOW Commencement Date and shall continue until the end date specified in the relevant SOW unless extended or terminated earlier in accordance with the relevant SOW (the "SOW Term").
2. Supply of Services (including Deliverables)
   1. Supplier shall perform the Services and provide the Deliverables to Customer in accordance with the terms of this Agreement and the applicable SOW.
   2. Supplier shall use reasonable endeavours to meet any performance and/or delivery dates for the Services specified in the applicable SOW, but any such dates shall be estimates only and time shall not be of the essence in relation to any of those performance and/or delivery dates.
   3. In performing the Services and providing the Deliverables, Supplier shall:
      1. perform the Services with reasonable care and skill in accordance with good industry practice in Supplier's industry;
      2. obtain and at all times maintain during the relevant SOW Term, all licences and consents which may be required for the provision of the Services;
      3. ensure that all Supplier personnel involved in the provision of the Services have suitable skills and experience to enable them to perform the tasks assigned to them;
      4. perform its obligations in accordance with the HDR UK Development Principles; and
      5. comply with all Applicable Laws which may apply from time to time to the provision of the Services.
3. Changes to the Services (including Deliverables)
   1. The parties agree that the scope, specification and execution of the Services and the Deliverables under each SOW may be clarified or changed at any time. If a party wishes to propose such a clarification or change, it shall submit details of the requested change to the other in writing and the following provisions of this clause 8 shall apply.
   2. If either party requests a clarification or change pursuant to clause 8.1 above, Supplier shall, within a reasonable time, provide a written estimate to Customer of:
      1. the likely time required to prepare for acting on the clarification or change;
      2. any variations to the Charges arising from the clarification or change;
      3. the likely effect of the change on any timeframes or dates stated in the applicable SOW or otherwise discussed or agreed between the parties; and
      4. any other impact of the clarification or change on the terms of the applicable SOW.
   3. If Supplier requests a clarification or change pursuant to clause 8.1 above, Customer shall not unreasonably withhold or delay consent to it.
   4. If Customer wishes Supplier to proceed with a clarification or change, Supplier shall have no obligation to do so unless and until the parties have agreed in writing on the necessary variations to the Charges, the scope, specification and execution of the Services and Deliverables, and any other relevant terms of the applicable SOW to take account of the clarification or change.
4. Customer's Obligations
   1. Customer shall:
      1. co-operate with Supplier in all matters relating to the Services;
      2. provide in a timely manner such access to Customer's systems and such software and other facilities as is reasonably requested by Supplier for the purpose of providing the Services;
      3. provide and perform in a timely manner the Customer Dependencies and such necessary information and instructions for the provision of the Services as Supplier may request, and ensure that such information is accurate and such instructions are comprehensive and capable of being interpreted and performed by Supplier;
      4. comply with, and perform its obligations under the applicable SOW in accordance with, the HDR UK Development Principles and all Applicable Laws;
      5. be responsible (at its own cost) for obtaining all licences (including software licences), consents, permissions, services and facilities required for Customer to utilise the Deliverables and receive the benefit of the Services in accordance with each applicable SOW; and
      6. not act in relation to the Target Datasets in any manner that may bring the reputation of Supplier, the Hub or any aspect of its business into disrepute or cause any damage to Supplier's or the Hub's reputation.
   2. If Supplier's performance of its obligations under a SOW is prevented or delayed by any act or omission of Customer or Customer's employees, agents or subcontractors (including any failure by Customer to comply with clause 9.1):
      1. Supplier shall be given an extension of time for the performance of its obligations under the SOW equal to the total duration of the aggregate delay, and the applicable SOW Term shall be deemed extended to the same extent; and
      2. Supplier shall be entitled to increase the Charges as required to compensate Supplier for any additional charges and all other Losses sustained or incurred by Supplier for the period of delay caused by Customer, subject to Supplier confirming such Losses to Customer in writing in advance.
   3. Customer shall not, without the prior written consent of Supplier, at any time from the Commencement Date to the expiry of six (6) months after the end of each applicable SOW, solicit or entice away from Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, contractor or agent of Supplier who has been involved in the provision of the Services, except that Customer shall not be in breach of this clause 9.3 if it hires such employee, contractor or agent of Supplier as a result of a recruitment campaign not specifically targeted to any such individual.
5. Charges and Payment
   1. In consideration of the provision of the Services by Supplier, Customer shall pay the Charges to Supplier.
   2. Supplier shall invoice Customer as set out in the applicable SOW. Each invoice shall include such supporting information reasonably required by Customer to verify the accuracy of the invoice.
   3. Unless stated otherwise in the applicable SOW, the Charges shall exclude the cost of reasonable travel expenses (including accommodation, subsistence, and travel costs, in each case, as applicable) and any other ancillary expenses reasonably incurred by Supplier or its personnel in connection with the Services or the Deliverables, and the cost of any materials or services reasonably and properly provided by third parties required by Supplier or any subcontractor for the supply of the Services.
   4. Subject to clause 10.6, Customer shall pay each invoice submitted to it by Supplier within thirty (30) days of receipt of a correctly rendered invoice to a bank account nominated in writing by Supplier.
   5. Without prejudice to any other right or remedy that Supplier may have, if Customer fails to pay Supplier any sum due under a SOW by the due date, Supplier may:
      1. charge interest on the overdue amount at the rate of three percent (3%) per annum above Bank of England's base rate from time to time (but at 3% per annum for any period when that base rate is below 0%). Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. Customer shall pay any such interest together with the overdue amount; and
      2. immediately suspend performance of the Services until payment has been made in full.
   6. If there is a good faith dispute about whether any amount is payable to Supplier under a SOW, Customer may withhold the amount in dispute until the dispute is resolved. If Customer disputes a payment in good faith, then:
      1. the interest payable under clause 10.5(a) is only payable after the dispute is resolved, on sums found or agreed to be due, within the agreed period of days (or in default of which, seven (7) days) after the dispute is resolved until payment; and
      2. Supplier's right to suspend performance of the Services under clause 10.5(b) only arises after the dispute is resolved, if payment is not made within the agreed period of days (or in default of which, seven (7) days) after the dispute is resolved.
   7. Notwithstanding any other provision of the applicable SOW, all sums invoiced by Supplier under each SOW shall become due immediately on termination of that SOW. This condition is without prejudice to any right to claim for interest under the law, or any such right under each applicable SOW.
   8. All amounts due under each SOW shall be paid by Customer to Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
   9. Supplier may at any time, without notice to Customer, set off any liability of Supplier to Customer against any liability of Customer to Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under any SOW and/or otherwise in relation to this Agreement. Any exercise by Supplier of its rights under this clause 10.9 shall not limit or affect any other rights or remedies available to it under any SOW, this Agreement or otherwise.
6. Intellectual Property Rights

**Background IPRs**

* 1. Each party and/or its third party licensors retains ownership of all rights, title and interest in its Background IPR and nothing in this Agreement or any SOW shall operate to transfer the ownership of any Background IPR of one party to the other party.
  2. Customer grants to Supplier a fully paid-up, non-exclusive, royalty-free licence to use, copy and modify any Customer Background IPRs during the relevant SOW Term including the right to grant sub-licenses to approved subcontractors (including the Agreed Subcontractors), but only to the extent necessary for Supplier to perform its obligations under the applicable SOW (including provision of the Services and Deliverables).

**Deliverables**

* 1. Customer shall own all rights, title and interest, including Intellectual Property Rights, in and to any Deliverables produced in the course of the provision of the Services, with the exception of any Supplier Background IPR contained therein.
  2. To the extent that any such rights, title and interest do not vest in Customer by operation of law or otherwise, Supplier hereby assigns to Customer by way of present and future assignment all of its rights, title and interest (including all Intellectual Property Rights, except any Supplier Background IPR) in and to any such Deliverable. Where applicable as part of this process, Supplier shall ensure that a waiver of applicable moral rights is obtained from the author of any relevant copyright work forming part of any Deliverable.
  3. Supplier grants to Customer, with effect from the date of delivery of the Deliverable within which relevant Supplier Background IPR is contained, a fully paid-up, non-exclusive, royalty-free licence to use the Supplier Background IPR contained within such Deliverable (but excluding any Target Dataset IPRs relating to excerpts of any Target Datasets contained within such Deliverables) solely as necessary for Customer to use such Deliverable for its internal business purposes. Any licensing terms relating to use of Target Datasets (or excerpts thereof) and Target Dataset IPRs shall be set out in the relevant SOW.
  4. Customer grants to Supplier a fully paid-up, perpetual, irrevocable, non-exclusive, royalty-free, licence to use, copy and modify any Deliverables (including any Intellectual Property Rights contained therein) for research, academic and other non-commercial purposes across the Hub and for the benefit of healthcare and research generally across the UK, including the right to grant sub-licenses.
  5. At the request of Supplier, Customer shall grant to one or more organisations who form part of the United Kingdom’s National Health Service a non-exclusive, sub-licensable right to use, copy and modify any Deliverables (including any Intellectual Property Rights contained therein) in the normal course of their operations. The grant of said licence shall be subject to payment by the licensee(s) of a fair and reasonable royalty or other fee.

**Derivative Works**

* 1. The parties acknowledge that Customer's use of the Deliverables and Target Datasets may enable Customer to create (using its own manipulation or analysis) derivative works of the data, results, information and materials included in the Deliverables ("Derivative Works").
  2. Customer shall notify Supplier without delay upon the development of a Derivative Work and provide any further information in relation to such Derivative Work as may be requested by Supplier.
  3. Customer grants to Supplier, with effect from the Derivative Work Licence Date, a fully paid-up, perpetual, irrevocable, non-exclusive, royalty-free, licence to use, copy and modify any such Derivative Work for research, academic and other non-commercial purposes across the Hub and for the benefit of healthcare and research generally across the UK, including the right to grant sub-licences.
  4. At the request of Supplier, Customer shall grant to one or more organisations who form part of the United Kingdom’s National Health Service a non-exclusive, sub-licensable right to use, copy and modify any Deliverables (including any Intellectual Property Rights contained therein) in the normal course of their operations. The grant of said licence shall be subject to payment by the licensee(s) of a fair and reasonable royalty or other fee.

Commercialisation

* 1. In consideration of the assignment set out in clause 11.4, Customer shall pay Supplier the Royalty Payments as set out in the SOW. Royalty Payments shall be paid in pounds sterling to the credit of a bank account to be designated in writing by Supplier.
  2. At least five (5) Business Days before a Royalty Payment becomes due and payable by Customer, Customer shall submit to Supplier an accurate and complete statement setting out:
     1. the number of Deliverables or Derivative Works sold or otherwise supplied during the period to which the Royalty Payment relates;
     2. the Net Sales Price of each Deliverable or Derivative Work sold or otherwise supplied during the period to which the Royalty Payment relates;
     3. the amount of the Royalty Payment due and payable in accordance with clause 11.12;
     4. where relevant, the rate of any exchange used;
     5. the amount of any withholding or other income taxes deductible or due to be deducted from the amount of Royalty Payments due and payable; and
     6. any other information Supplier may reasonably require.
  3. Customer shall keep proper records and books of account showing the description and price of any Deliverables or Derivative Works sold, supplied or put into use ("Records"), and such Records must be open and available during normal business hours for inspection and audit by Supplier (or its authorised representative), who shall be entitled to take copies of or extracts from them. Customer shall provide such information and explanations as Supplier (or its representative) may require to verify any statements required to be provided by Customer under clause 11.13 and to satisfy Supplier that the calculation and payment of the Royalty Payment by Customer is being undertaken and performed in accordance with the terms of this Agreement.
  4. Royalty Payments payable under clause 11.12 are exclusive of VAT (or similar tax) which shall be charged by Supplier and payable by Customer in addition in accordance with the relevant regulations in force at the time the relevant taxable supply is made.
  5. Notwithstanding any other provision of this Agreement or any SOW, Supplier may only commercialise a Deliverable or Derivative Work (or part of a Deliverable or a Derivative Work), including any Intellectual Property Rights therein, provided that:
     1. such commercialisation can be demonstrated to be for patient benefit; and
     2. such commercialisation would not result in a breach of the data protection or licensing terms relevant to the Target Datasets set out in the applicable SOW (including any Appendix to such SOW).
  6. This clause 11 shall survive expiry or termination or expiry of the SOW for any reason.

1. Expiry or termination of SOW

**Rights of termination**

* 1. Without limiting or affecting any other right or remedy available to it, either party may terminate any SOW with immediate effect by giving written notice to the other party if:
     1. the other party commits a material breach of the SOW or a series of persistent minor breaches of the SOW which, when taken together, amount to a material breach and (i) which breach is irremediable or (ii) if such breach is remediable, fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
     2. the other party commits a breach (whether material or otherwise) of clause 15.1; or
     3. a relevant Insolvency Event occurs.
  2. Without limiting or affecting any other right or remedy available to it, Supplier may terminate the relevant SOW by notice to Customer if:
     1. Customer utilises any Target Datasets in breach of relevant licensing or Data Protection Provisions in the SOW;
     2. Customer is in breach (whether material or otherwise) of clause 9.1(f);
     3. Customer or the Customer's ultimate parent company undergoes a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010), unless Supplier has given prior written approval to such change of control; or
     4. Customer fails to pay an amount which is:
        1. due and payable under the relevant SOW;
        2. not the subject of a good faith dispute;
        3. overdue for a period of at least thirty (30) days ("**Overdue Period**"); and
        4. not paid by Customer within fifteen (15) days after Supplier gives a notice of non-payment (such notice not to be given before the end of the Overdue Period).

Consequences of expiry or termination

* 1. The expiry or termination of any SOW shall not affect any other SOWs or the Agreement.
  2. On expiry or termination of the relevant SOW:
     1. all sums invoiced by Supplier under this SOW shall become immediately due; and
     2. each party shall return or, if specifically requested to do so in writing, destroy all Confidential Information of the other party which such party has in its control or possession and, in the case of destruction of Confidential Information, certify that such destruction has taken place.
  3. Each party's further rights and obligations under the relevant SOW shall cease immediately upon the expiry or termination of the SOW, provided that the expiry or termination of the SOW for any reason whatsoever:
     1. shall not affect the continued operation of:
        1. clauses 1, 9.3, 11, 12.3 to 12.5, 14, 15.4, 15.5, 15.6, 15.7, 15.9, 15.10, 15.11, 15.15 and 15.16;
        2. any terms in a SOW that are stated to survive termination or expiry of the SOW; and
        3. any other provisions which are necessary for the interpretation or enforcement of the SOW; and
     2. shall not affect the accrued rights and obligations of the parties under the applicable SOW as at the date of expiry or termination.

PART C – TERMS APPLICABLE TO BOTH THE MASTER SERVICES AGREEMENT AND EACH SOW

1. Data Protection
   1. The parties acknowledge personal data relating to their respective personnel shall be shared under this Agreement and in relation to each SOW ("Business Contact Details").
   2. To the extent that either party processes any Business Contact Details provided by or on behalf of the other party in the course of the performance of this Agreement or the applicable SOW:
      1. it is the understanding of the parties that each shall act as independent controllers in relation to such personal data and each party shall comply with its respective obligations under applicable Data Protection Legislation in relation thereto;
      2. each party shall promptly provide the other party such reasonable cooperation, information and assistance as required from time to time to enable such other party to comply with its obligations under applicable Data Protection Legislation (including reasonable assistance as required to enable a party to respond to any complaint, allegation or request by a supervisory authority or a data subject relating to such personal data); and
      3. each party shall not knowingly perform their obligations under this clause 13.2 in such a way as to cause the other party to breach any of its obligations under applicable Data Protection Legislation.
2. Limitation of liability
   1. Nothing in this Agreement or any SOW shall operate so as to exclude or limit the liability of either party to the other for fraud or fraudulent misrepresentation, death or personal injury arising out of that party's negligence or any other liability which cannot be excluded or limited by law.
   2. Subject to clause 14.1, the total aggregate liability of Supplier to Customer:
      1. under or in relation to this Agreement and all SOWs, including liability for breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence) and breach of statutory duty, shall not exceed the Supplier MSA Liability Cap;
      2. subject to clause 14.2(a) and (c), under or in relation to each applicable SOW, including liability for breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence) and breach of statutory duty, shall not exceed the applicable Supplier SOW Liability Cap; and
      3. under or in relation to the indemnity in clause 14.5 in each applicable SOW, shall not exceed the applicable Supplier SOW Data Protection Liability Cap.
   3. Subject to clause 14.1, the total aggregate liability of Customer to Supplier:
      1. under or in relation to this Agreement and all SOWs, including liability for breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence) and breach of statutory duty, shall not exceed the Customer MSA Liability Cap;
      2. subject to clause 14.3(a) and (c), under or in relation to the applicable SOW, including liability for breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence) and breach of statutory duty, shall not exceed the applicable Customer SOW Liability Cap; and
      3. under or in relation to the indemnity in clause 14.5 in each applicable SOW, shall not exceed the applicable Customer SOW Data Protection Liability Cap.
   4. Subject to clause 14.1, Supplier shall not be liable to Customer whether in tort (including for negligence), breach of statutory duty, contract, misrepresentation (whether innocent or negligent), restitution or otherwise for:
      1. any loss of profits, loss of business, loss of savings, depletion of goodwill and/or similar losses, or pure economic loss (regardless of whether these types of loss or damage are direct, indirect or consequential); or
      2. any indirect or consequential loss whatsoever,

in each case however arising under or in connection with this Agreement or the relevant SOW, even if Supplier was aware of the possibility that such loss or damage might be incurred.

* 1. Subject to clauses 14.2(c) and 14.3(c), each party (the "Indemnifying Party") shall indemnify the other party (the "Indemnified Party") from and against any Losses suffered or incurred by the Indemnified Party arising out of or in connection with any breach by the Indemnifying Party of the Data Protection Provisions, provided that the Indemnified Party:
     1. as soon as reasonably practicable, give written notice of any Losses or third-party claim arising from a breach of the Data Protection Provisions to the Indemnifying Party, specifying the nature of the Losses or claim in reasonable detail; and
     2. takes reasonable steps to mitigate any such Losses.
  2. No party shall make a claim in respect of the same Losses or cause of action under more than one of this Agreement or any SOW.

1. General
   1. Anti-bribery and anti-corruption
      1. Each party shall:
         1. comply with all Applicable Laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010 ("**Relevant Requirements**");
         2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
         3. have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and clause 15.1(a)(ii), and will enforce them where appropriate;
         4. notify the other party (in writing) if it becomes aware of any breach of clause 15.1(a)(i) or clause 15.1(a)(ii), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with the performance of this Agreement; and
         5. upon reasonable request, certify to the other party in writing signed by an officer of the party, compliance with this clause 15.1 by the party and all persons associated with it. The party shall provide such supporting evidence of compliance as the other party may reasonably request.
   2. Force majeure.
      1. If a Force Majeure Event occurs that prevents, hinders or delays a party (the "**Affected Party**") from performing any of its obligations under this Agreement or the relevant SOW, the Affected Party will not be liable to the other party and will be released from its obligation to perform the relevant obligations to the extent that its ability to perform those obligations has been directly affected by the Force Majeure Event, provided that the Affected Party:
         1. as soon as reasonably practicable after the start of the Force Majeure Event, notifies the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
         2. uses all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
      2. Either party may terminate this Agreement and/or any SOW immediately upon written notice to the other party if the occurrence of a Force Majeure Event results in Supplier materially failing to perform the Services under any one (1) or more SOW for more than sixty (60) consecutive days provided that such Force Majeure Event is still continuing at the time of such notice.
   3. Assignment and other dealings.
      1. Neither party shall assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with this Agreement or any SOW, or with any of its rights or obligations under this Agreement or any SOW, without the prior written consent of the other party (not to be unreasonably withheld or delayed).
      2. Subject to clause 15.3(c) below, the Supplier shall not subcontract or delegate the performance of any of its obligations under this Agreement or any SOW without the Customer's prior written consent (not to be unreasonably withheld or delayed).
      3. Supplier shall be entitled to subcontract or delegate the performance of any of its obligations under a SOW to the Agreed Subcontractors.
      4. The grant of approval by Customer under this clause 15.3 does not relieve Supplier from any liability under this Agreement or any SOW. Supplier shall remain fully responsible for the actions, inactions, and performance of all obligations performed by any subcontractors to the same extent as if such actions, inactions or obligations were made or performed by Supplier.
   4. Confidentiality.
      1. The Recipient shall:
         1. keep all Confidential Information secret and confidential and prevent its unauthorised disclosure; and
         2. not disclose Confidential Information to any person except with the prior written consent of the Disclosing Party or in accordance with clauses 15.4(b) or 15.4(c) below.
      2. The Recipient may disclose the Disclosing Party's Confidential Information:
         1. to its employees, officers, representatives, subcontractors (including the Agreed Subcontractors) or advisers who need to know such information for the purposes of carrying out the Recipient's obligations under this Agreement or the relevant SOW. The Recipient shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the Disclosing Party's Confidential Information comply with this clause 15.4; and
         2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority In such circumstances, the Recipient shall (provided that it is practical and lawful to do so) notify the Disclosing Party in writing as soon as practicable before the disclosure referred to in this clause 15.4(b)(ii).
      3. Subject to terms of confidentiality no less stringent than the terms of this Agreement, Supplier may disclose Confidential Information (including the terms of this Agreement and/or the relevant SOW) to the extent necessary in order to allow for effective patient and public involvement as part of its (and its subcontractors) activities and/or otherwise in relation to the Target Datasets.
      4. The Recipient shall not use the Disclosing Party's Confidential Information for any purpose other than to perform its obligations under this Agreement or the relevant SOW.
   5. Publicity.
      1. Subject to clause 15.5(b) below, Customer shall not issue any press release or other public document, or make any public statement, relating to the execution or subject matter of this Agreement or any SOW without Supplier's prior written consent (including as to the form, content and timing of the release, document or statement).
      2. In the event that a public statement is agreed and consent given pursuant to clause 15.5(a) above, either party may subsequently publish such public statement without needing to secure any further prior written consent of the other party.
      3. Customer shall not use Supplier's or the Hub's name or brand in any promotion or marketing materials without Supplier's prior written consent (including as to the manner of any such use).
   6. No exclusivity. Customer acknowledges that nothing shall restrict Supplier or another member of the Hub from providing services equivalent or related to the Services to any other customer, including in relation to the Target Datasets, or from further developing the Target Datasets outside the scope of this Agreement or the relevant SOW.
   7. Entire agreement.
      1. This Agreement or the relevant SOW (as applicable) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its respective subject matter.
      2. Each party agrees that it has not relied on, and shall have no remedies in respect, of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement or the relevant SOW (as applicable). Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement or the relevant SOW (as applicable).
   8. Variation. Except as set out in this Agreement or the relevant SOW, no variation of this Agreement or the relevant SOW shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
   9. Waiver. A waiver of any right or remedy under this Agreement or the relevant SOW or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under this Agreement or the relevant SOW or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or the relevant SOW or by law shall prevent or restrict the further exercise of that or any other right or remedy.
   10. Severance.
       1. If any provision or part-provision of this Agreement or the relevant SOW is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 15.10 shall not affect the validity and enforceability of the rest of this Agreement or the relevant SOW.
       2. If any provision or part-provision of this Agreement or the relevant SOW is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
   11. Notices.
       1. Any notice or other communication given to a party under or in connection with this Agreement or the relevant SOW shall be in writing and shall be delivered by hand, by email or by pre-paid first-class post or other next working day delivery service at its postal or email address (as applicable) as set out in the MSA Special Conditions (in respect of notices under the Agreement) or the applicable SOW (in respect of notice under that SOW), or such other address as may have been notified by that party for such purposes.
       2. A notice or other communication shall be deemed to have been received: (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; (ii) if sent by email, at the time and date of transmission shown on the saved sent copy kept by the sender (or if delivery is not in business hours, at 9.00am on the first Business Day following delivery); and (iii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting. In this clause 15.11(b),business hours means 9.00am to 5.00pm on a Business Day.
       3. This clause 15.11 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
   12. No partnership or agency. Nothing in this Agreement or the relevant SOW is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other.
   13. Third party rights.
       1. Except as set out in this Agreement or the relevant SOW, a person who is not a party to this Agreement or the relevant SOW may not enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999.
       2. The rights of the parties to vary this Agreement or the relevant SOW are not subject to the consent of any other person.
   14. Execution and Counterparts.
       1. This Agreement and each SOW may be entered into by the parties in any number of counterparts. Each counterpart shall, when executed and delivered, be regarded as an original, and all the counterparts shall together constitute one and the same instrument. This Agreement and each SOW shall not take effect until it has been executed by both parties.
       2. Each party agrees that this Agreement and any SOW may be signed by electronic signature (whatever form the electronic signature takes) and that such method of signature is as conclusive of the parties' intention to be bound by this Agreement and any such SOW as if signed by each party's manuscript signature.
   15. Governing law. This Agreement and each SOW, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement and each SOW or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
   16. Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement and each SOW or its subject matter or formation.

**Schedule 1 – Definitions and Interpretation**

1. Definitions:
   1. The following definitions apply in the Agreement:
2. Agreed Subcontractors: means the approved subcontractors specified in the relevant SOW.
3. Applicable Laws: all applicable laws, statutes, regulations, guidelines and codes from time to time in force.
4. **Background IPR**: means Customer Background IPR or Supplier Background IPR as applicable.
5. Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
6. Charges: the charges payable by Customer for the supply of the Services in accordance with clause 10, as detailed in each SOW.
7. Commencement Date: means the commencement date specified in the MSA Special Conditions.
8. Confidential Information: means in relation to a party (the "Disclosing Party") all confidential information (however recorded, preserved or disclosed and whether or not marked as "confidential") which relates to the Disclosing Party, or to its employees, officers, customers or suppliers and which is directly or indirectly disclosed by or on behalf of the Disclosing Party to the other party (the "Recipient") under or in connection with this Agreement and/or the relevant SOW (or which is learnt or acquired by the Recipient in connection with this Agreement and/or the relevant SOW), whether before or after the Commencement Date, including:
9. (a) the terms of this Agreement and/or the relevant SOW; and

(b) any information that would be regarded as confidential by a reasonable business person which may include information relating to: (i) the business, affairs, customers, clients, suppliers, plans, intentions, or commercial, financial or market opportunities of the Disclosing Party; and (ii) the operations, processes, product information and specifications, know-how, designs, trade secrets or software of the Disclosing Party;

1. but not including any information that:

(a) is or becomes generally available to the public other than as a result of its disclosure by the Recipient in breach of this Agreement or the relevant SOW or of any other undertaking of confidentiality addressed to the Disclosing Party;

(b) was lawfully in the possession of the Recipient before the information was disclosed to it by the Disclosing Party;

(c) information which the Recipient can show by its written records was developed or created independently by or on behalf of the Recipient; or

1. (d) the parties agree in writing is not confidential.
2. Customer: the customer identified in the MSA Special Conditions.
3. Customer Background IPR: means all Intellectual Property Rights owned by or licensed to Customer before the SOW Commencement Date and/or Intellectual Property Rights created by Customer independently of the relevant SOW.
4. Customer Dependencies: means the Customer responsibilities and dependencies set out in the applicable SOW.
5. Customer MSA Liability Cap: means Customer's liability cap under the MSA as set out in the MSA Special Conditions.
6. Customer SOW Liability Cap: means Customer's liability cap under the applicable SOW as set out in the relevant SOW.
7. Customer SOW Data Protection Liability Cap: means Customer's liability cap in relation to the indemnity given pursuant to clause 14.5 under the applicable SOW, as set out in the relevant SOW.
8. Dataset Personal Data: means personal data comprised in or derived from Target Datasets.
9. Data Protection Legislation: means the GDPR, the UK Data Protection Act 2018, Directive 2002/58/EC and any legislation and/or regulation implementing or made pursuant to them, or which amends, replaces, re-enacts or consolidates any of them, and all other Applicable Laws relating to processing of personal data and privacy that may exist in any relevant jurisdiction, including, where applicable, the guidance and codes of practice issued by supervisory authorities. "**Controller**", "**Processor**", "**Data Subject**", "**Personal Data**", "**Processing**" and "**Appropriate Technical and Organisational Measures**" shall be interpreted in accordance with applicable Data Protection Legislation in the relevant jurisdiction.
10. Data Protection Provisions: means the data protection provisions relevant to this Agreement or the applicable SOW, including clause 13 and any data protection provisions set out in the applicable SOW (including any Appendix to such SOW).
11. Deliverables: all documents, products and materials developed by Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts), including as specified in the applicable SOW.
12. Derivative Work Licence Date: means the date specified in the relevant SOW.
13. Disclosing Party: has the meaning given in the definition of 'Confidential Information'.
14. Force Majeure Event: means any cause or circumstance not within a party’s reasonable control.
15. GDPR: means, in each case to the extent applicable to the processing activities: (i) Regulation (EU) 2016/679; and (ii) any legislation equivalent to, or replacing, Regulation (EU) 2016/679 as a result of any legislation arising out of the withdrawal of the UK from the European Union.
16. General Conditions: means clauses 1 to 15 and the Schedules of the MSA.
17. HDR UK Development Principles: the Health Data Research UK Development Principles and Principles of Participation published by Health Data Research UK from time to time, currently available at <https://www.hdruk.ac.uk/about/governance/policies/development-principles/>.
18. Hub: the Health Data Research Hub identified in the MSA Special Conditions.
19. Insolvency Event: means in respect of each party (and in the case of Supplier, in respect of itself and/or its Agreed Subcontractors): (a) that party becomes unable to pay its debts (within the meaning of sections 123(1)(a) or 123(2) of the Insolvency Act 1986), admits its inability to pay its debts or becomes insolvent; (b) a petition is presented, an order made or a resolution passed for the liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), administration, bankruptcy or dissolution of that party; (c) an administrative or other receiver, manager, trustee, liquidator, administrator or similar person or officer is appointed to that party and/or over all or any part of the assets of that party; (d) that party enters into or proposes any composition or arrangement concerning its debts with its creditors (or any class of its creditors) generally, provided that any winding up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 30 days of commencement shall not be included in the above, and Insolvency Event shall be construed accordingly; or (e) anything equivalent to any of the events or circumstances stated in (a) to (d) inclusive occurs in any applicable jurisdiction.
20. Intellectual Property Rights or IPRs: (a) patents, rights to inventions, designs, copyright and related rights, database rights, trade marks and trade names, rights in get-up and related goodwill and the right to sue for passing off or unfair competition (in each case whether registered, registerable or unregistered); (b) proprietary rights in domain names; (c) rights to use, and protect the confidentiality of, trade secrets, know-how and Confidential Information; (d) applications, and rights to apply for and be granted registrations, including extensions and renewals of, such rights; and (e) all other rights of a similar nature or having an equivalent effect anywhere in the world.
21. **Losses**: means any loss, damage, liability, charge, fine, penalty, expense, outgoing or cost (including all legal and other professional costs on a full indemnity basis) of any nature or kind;
22. **MSA Special Conditions**: means the special conditions identified at the start of the MSA.
23. **Net Sales Price:** the actual price invoiced by Customer to a customer for the sale or supply of a Deliverable or Derivative Work, less (to the extent identified on an invoice) any costs of packaging, insurance, transport, delivery, VAT, duties or levies to the extent charged by Customer to the relevant customer, but not including any commission, cash discounts, rebates or other allowances.
24. **Recipient**: has the meaning given in the definition of 'Confidential Information'.
25. Royalty Payments: the royalty payments payable by Customer in accordance with clause 11, as detailed in each SOW.
26. **SOW**: a statement of work under this Agreement, as agreed by the parties in accordance with clause 3.
27. SOW Commencement Date: means the SOW commencement date specified in the applicable SOW.
28. SOW Term: has the meaning given to it in clause 6.1.
29. Services: the services, including any Deliverables, to be provided by Supplier under this Agreement, as detailed in the applicable SOW.
30. Supplier: the supplier identified in the MSA Special Conditions.
31. Supplier Background IPR: means (i) all Intellectual Property Rights owned by or licensed to Supplier before the SOW Commencement Date including any Target Dataset IPRs, (ii) all Intellectual Property Rights created by Supplier independently of the relevant SOW, and (iii) all Intellectual Property Rights created by Supplier or its subcontractors in relation to the provision of the Services including methods of data curation and analysis.
32. Supplier MSA Liability Cap: means Supplier's liability cap under the MSA as set out in the MSA Special Conditions.
33. Supplier SOW Liability Cap: means Supplier's liability cap under the applicable SOW as set out in the relevant SOW.
34. Supplier SOW Data Protection Liability Cap: means Supplier's liability cap in relation to the indemnity given pursuant to clause 14.5 under the applicable SOW as set out in the relevant SOW.
35. Target Datasets: means the target datasets identified in the applicable SOW.
36. Target Dataset IPRs: means any IPRs subsisting in Target Datasets or any parts thereof.
37. Term: has the meaning given to it in clause 4.1.
38. Interpretation
    1. The following rules of interpretation shall apply in this Agreement and each applicable SOW:
       1. The clause, paragraph and Schedule headings are for convenience only and shall not affect the interpretation of this Agreement and each applicable SOW.
       2. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
       3. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
       4. Unless the context otherwise requires: (a) words in the singular shall include the plural and in the plural include the singular; and (b) a reference to one gender shall include a reference to the other genders.
       5. A reference to **writing** or **written** includes e-mail.
       6. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
       7. Any phrase introduced by the expressions **including**, **includes**, **in particular** or any similar expression shall be construed as illustrative only and shall not limit the sense of the words preceding those terms.

**Schedule 2 – Template Statement of Work**

This Statement of Work is made on the SOW Commencement Date between (1) Supplier, and (2) Customer, each a "party" and together the "parties".

1. Structure of this SOW
   1. This is a Statement of Work ("**SOW**") referred to in the Master Services Agreement dated.
   2. This SOW sets out the Services to be provided by Supplier, together with the pricing, performance standards and related issues.
   3. This SOW is governed by:
      1. the terms set out in Part B and Part C of the Master Services Agreement which shall be deemed incorporated into each SOW (including the associated definitions and rules of interpretation in Schedule 1 of the Master Services Agreement); and
      2. any additional terms set out in that SOW, including the agreed terms set out in paragraph 2 ("**SOW** **Specific Terms**").
   4. Except as otherwise defined in this SOW, or as the context may otherwise require, the terms defined in the Master Services Agreement (including Schedule 1) will have the same meaning when used in this SOW.
   5. If there is a conflict between:
      1. any of the terms of the Master Services Agreement; and
      2. any of the terms of this SOW,

the terms of the Master Services Agreement will prevail unless the parties have expressly agreed in this SOW that the relevant terms of the Master Services Agreement will not apply.

1. SOW Specific Terms
   1. The parties agree the following specific terms with respect to this SOW:

|  |  |  |
| --- | --- | --- |
| **SOW Specific Terms** | | |
| **Party details** | | |
| Supplier | | [insert details of Hub lead organisation] |
| Customer | | [insert company name], a company incorporated in [insert country] (company number [insert registration number]), with its registered address at [insert address] |
| Supplier Notice Details | | For the attention of: [insert name/position]  Address: [insert address]  Email: [insert email address] |
| Customer Notice Details | | For the attention of: [insert name/position]  Address: [insert address]  Email: [insert email address] |
| Master Services Agreement | | As between the parties dated [insert date] |
| **Commercial terms** | | |
| SOW Commencement Date | | [insert date] |
| SOW Term | | From the SOW Commencement Date until [expiry of [insert time period] / completion of the Services] |
| Derivative Work Licence Date | | [insert time period / Immediately] following creation of the Derivative Work |
| Royalty Payment | | A [insert frequency e.g. monthly / quarterly / annually] royalty equal to [insert percentage (x)%] of the Net Sales Price of each Deliverable or Derivative Work that is sold or otherwise supplied by or on behalf of Customer to any person.  The Royalty Payment shall be paid within thirty (30) calendar days of [insert frequency for payment e.g. the end of each month], based on the Deliverables or Derivative Works sold or otherwise supplied by or on behalf of Customer within that period. |
| Charges | | [insert details of (i) the Charges payable for the Services (inclusive of VAT), (ii) details of any expenses other expenses that may also be payable; and (ii) invoicing requirements (including when Supplier is entitled to raise an invoice] |
| Supplier SOW Liability Cap | | The greater of:   1. [insert (£insert)]; and 2. a sum equal to [insert (insert%)] of the total Charges paid and/or payable under this SOW. |
| Supplier SOW Data Protection Liability Cap | | [insert details of Supplier's liability cap under the data protection indemnity relevant to this SOW – insert value] |
| Customer SOW Liability Cap | | [insert details of Customer's liability cap under the SOW – insert value] |
| Customer SOW Data Protection Liability Cap | | [insert details of Customer's liability cap under the data protection indemnity relevant to this SOW – insert value] |
| Agreed Subcontractors | | [insert details of agreed subcontractors (clause 15.3(c) – this should include the data custodian and Hub service provider as applicable **or** N/A] |
| **Services Description** | | |
| Services | | [insert details of the Services to be provided, including (i) any Deliverables to be provided, and any specifications for the Deliverables, and (ii) any performance and/or delivery dates] |
| Target Datasets | | [insert details of the Target Datasets] |
| Customer Dependencies | | [insert details of Customer responsibilities] |
| **Additional Terms** | | |
| Target Dataset licensing terms  (Select relevant Scenario A, B or C by deleting the two Scenarios that are not relevant – see MSA Guidance Notes) | **SCENARIO A**: The parties agree that Customer shall not be provided with any access to Target Datasets under this SOW except to the extent limited excerpts (which shall not contain Dataset Personal Data) form a necessary part of any Deliverables. The provisions of Appendix 1 shall apply to any such excerpts.  **SCENARIO B**: The parties agree that Customer shall not be provided with any access to Target Datasets under this SOW, except to the extent limited excerpts (which shall not contain Dataset Personal Data) form a necessary part of any Deliverables. The provisions of Appendix 1 shall apply to any such excerpts.  **SCENARIO C**: The provisions in Appendix 1 shall apply. The Permitted Use under Appendix 1 shall be:   * [insert details of the limited purpose for which the target data set is being provided, e.g. for a specific project or to achieve a specific end goal – the more specific this is the narrower the customer's rights will be] | |
| Customer User Restrictions (if any)  (See MSA Guidance Notes) | [insert details of any restrictions applicable to Customer's use of the Data (if any)] | |
| Additional Licence Terms (if any)  (See MSA Guidance Notes) | [insert details of any additional licence terms and restrictions required by a third-party licensor (if any) of the Target Dataset] | |
| Data protection  (Select relevant Scenario A, B or C by deleting the two Scenarios that are not relevant – see MSA Guidance Notes) | **SCENARIO A**: Within the scope of this SOW, it is the understanding of the parties that Customer has not determined or participated in the determination of the means and purposes of the processing of Dataset Personal Data, and thus does not qualify as a controller of such processing. Accordingly, Supplier shall not, and shall not be requested or required to, (i) share Dataset Personal Data with Customer or its designees, (ii) facilitate access to such data by Customer or its designees, or (iii) have to agree any aspects of the processing of such data with Customer or its designees. As between the Parties, Supplier shall have sole responsibility to make appropriate arrangements for Dataset Personal Data processing (involving such third parties as Supplier deems appropriate). Should the Customer require access to the Target Datasets, in order for the parties to comply with Applicable Law, the Customer shall only be granted such access if prior to such access, the Customer enters into a separate data sharing agreement as required by Supplier (either with Supplier or such third party as notified by Supplier).  **SCENARIO B**: Within the scope of this SOW, it is the understanding of the parties that Customer’s influence over the determination of the means and purposes of processing of Dataset Personal Data qualifies it as a data controller in respect of such processing. The provisions in Appendix 2 shall apply to such processing.  **SCENARIO C**: Within the scope of this SOW, it is the understanding of the parties that Customer’s influence over the determination of the means and purposes of processing of Dataset Personal Data qualifies it as a data controller in respect of such processing. The provisions in Appendix 2 shall apply to such processing. | |
| Additional terms (if any)  (See MSA Guidance Notes) | [insert details of any additional terms that apply (if any)] | |

By signing below, each party confirms that it has read and understood the terms of this SOW and agrees to be bound by such terms from the SOW Commencement Date.

**Signatories**

|  |  |
| --- | --- |
| Signed by an authorised representative for and on behalf of **Supplier**: | Signed by an authorised representative for and on behalf of **Customer**: |
|  |  |
| *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* | *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |
| *(Sign)* | *(Sign)* |
| *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* | *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |
| *(Print name)* | *(Print name)* |
| *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* | *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |
| *(Position)* | *(Position)* |
| *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* | *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |
| *(Date)* | *(Date)* |

**Appendix 1 - Target Dataset Licensing Terms**

1. Applicability of this Appendix 1
   1. The terms of this Appendix 1 (*Target Dataset Licensing Terms*) shall apply to the provision to Customer of a Target Dataset under this SOW, or to any excepts from a Target Dataset incorporated into Deliverables provided under this SOW.
2. Additional Definitions for Appendix 1
   1. References to "Services" in this Appendix 1 are to those Services supplied under this SOW which grant Customer access to the relevant Target Dataset or excerpts thereof.
   2. The following definitions shall apply to this Appendix 1 in addition to the definitions contained in the Agreement and this SOW:

**Additional Licence Terms:** the additional terms (if any) required by a third party licensor of the Target Dataset set out in the SOW Specific Terms.

**Customer Licence:** the licence granted in paragraph 3 of this Appendix 1.

**Customer System**: any information technology system or systems owned or operated by Customer from which Data is received in accordance with this SOW.

**Customer User**: any employee of Customer authorised by Customer to access and use the Services (wholly or in part), using their own unique identifier provided by Supplier.

**Customer User Restrictions**: the Customer user restrictions (if any) set out in the SOW Specific Terms.

**Data**: the data making up a Target Dataset, in whatever form including images, still and moving, and sound recordings, the provision of which comprises the Services under this SOW (wholly or in part).

**Derived Data**: any Data (wholly or in part) Manipulated to such a degree that it:

* + 1. cannot be identified as originating or deriving directly from the Data or the Services and cannot be reverse-engineered such that it can be so identified; and
    2. is not capable of use substantially as a substitute for the Data or the Services under this SOW.

**Distribute**: to make Data accessible (including the provision of access through a database or other application populated with the Data, reselling, sub-licensing, transferring or disclosing the Data) by any means, including any electronic means, to any Customer User.

**Target Dataset Information:** information present in the Target Dataset or any part thereof.

**Manipulate**: to combine or aggregate the Data (wholly or in part) with other data or information or to adapt the Data (wholly or in part).

**Manipulated Data**: any Data which has been Manipulated (including any Derived Data).

**Permitted Use**: internal business use for the purpose of Customer enjoying the Services or undertaking the permitted use of the Target Dataset set out in this SOW (which shall not, in either case include the use of the Data by, or for the benefit of, any person other than the Customer or its employees).

**Representatives**: in respect of Customer, Customer's employees, officers, representatives or advisers involved in the receipt of the Services who need to know the confidential information in question.

1. Customer Licence
   1. In consideration of the Charges payable under this SOW, Supplier grants to Customer a non-exclusive, non-transferable, revocable, licence for the Permitted Use of the Data and Target Dataset IPRs only during the SOW Term, subject to any Customer User Restrictions and/or Additional Licence Terms, to:
      1. access, view and Manipulate Data and create Derived Data;
      2. store the Data and Manipulated Data on the Customer System;
      3. Distribute the Data and Manipulated Data to Customer Users on the Customer System; and
      4. use the Data in such manner for any additional purpose as may be set out in the SOW Specific Terms.
   2. Customer shall observe any Customer User Restrictions and Additional Licence Terms.
2. Prohibited use of Data and Manipulated Data
   1. Customer shall not:
      1. use the Data or Manipulated Data for any purpose contrary to any law or regulation or any regulatory code, guidance or request;
      2. extract, reutilise, use, exploit, redistribute, redisseminate, copy or store the Data or Manipulated Data for any purpose other than the Permitted Use; and
      3. do anything which may damage the reputation of Supplier, the Data or the Services, including by way of using the Data or Manipulated Data (wholly or in part) in any manner which is pornographic, racist or that incites religious hatred or violence.
3. Ownership of Intellectual Property Rights in Data
   1. Customer acknowledges that:
      1. all Intellectual Property Rights in the Data are the property of Supplier or its licensors, as the case may be;
      2. it shall have no rights in or to the Data other than the right to use them in accordance with the express terms of this Appendix 1; and
      3. Supplier or its licensors has or have made and will continue to make substantial investment in the obtaining, verification, selection, co-ordination, development, presentation and supply of the Data.
   2. Customer hereby assigns to the Supplier by way of present and future assignment all Intellectual Property Rights in any Manipulated Data it may create.
   3. Customer shall, and shall use all reasonable endeavours to procure that any necessary third party shall, at the Supplier's cost, promptly execute such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this paragraph 5.
   4. The Intellectual Property Rights assigned to Supplier under paragraph 5.2 shall be deemed to be included in the Customer Licence from the date when such rights arise.
4. Confidentiality of Target Dataset Information
   1. The provisions of this paragraph 6 shall replace clause 15.4 of the Agreement in relation to Target Dataset Information.
   2. Save as provided by paragraphs 6.3 and/or 6.4 below, Customer shall keep the Target Dataset Information secret and confidential and shall:
      1. not access or use any Target Dataset Information except for the purpose of exercising or performing its rights and obligations under this SOW; or
      2. not disclose any Target Dataset Information in whole or in part to any third party, except as expressly permitted by this Appendix 1.
   3. The restrictions contained in paragraph 6.2 above shall not apply to any Target Dataset Information that:
      1. is or becomes generally available to the public (other than as a result of its disclosure by Customer in breach of this paragraph 6);
      2. was available to Customer on a non-confidential basis before disclosure by Supplier;
      3. was, is, or becomes, available to Customer on a non-confidential basis from a person who, to Supplier’s knowledge, is not bound by a confidentiality agreement with Supplier or otherwise prohibited from disclosing the information to Customer;
      4. was known to Customer before the information was disclosed to it by Supplier; or
      5. Supplier agrees in writing is not confidential or may be disclosed by Customer.
   4. Customer may disclose Target Dataset Information:
      1. to its Representatives, provided that Customer shall ensure that its Representatives to whom it discloses Target Dataset Information comply with this paragraph; and
      2. to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives Supplier as much notice of the disclosure in writing as possible.
   5. Supplier reserves all rights in the Target Dataset Information. No rights or obligations in respect of Target Dataset Information, other than those expressly stated in this Appendix 1, are granted to Supplier, or are to be implied from the Agreement or this SOW.
5. Security and passwords
   1. In addition to any security measures which may apply to Customer in relation to Dataset Personal Data received by Customer, Customer shall in any event ensure that the Data are kept secure and in an encrypted form, and shall use the best available security practices and systems applicable to the use of the Data to prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Data.
   2. In addition to any personal data breach notification obligations which may apply to Customer in relation to Dataset Personal Data received by Customer, if Customer becomes aware of any misuse of any Data, or any security breach that could compromise the security or integrity of the Data or otherwise adversely affect Supplier, Customer shall, at Customer's expense, promptly notify Supplier and fully co-operate with Supplier to remedy the issue as soon as reasonably practicable.
   3. Customer agrees to co-operate with Supplier's reasonable security investigations.
6. Warranties
   1. Supplier warrants that it has the right to license the receipt and use of Data as specified under this SOW.
   2. Except as expressly stated in this Appendix 1, all other warranties, conditions and terms, relating to the Data whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.
   3. Without limiting the effect of paragraph 8.2, Supplier does not warrant that:
      1. the supply of the Data will be free from interruption;
      2. the Data is accurate, complete, reliable, secure, useful, fit for purpose or timely; or
      3. the Data has been tested for use by Customer or any third party or that the Data will be suitable for or be capable of being used by the Customer or any third party.
7. Audit
   1. Customer shall keep, in paper and electronic form, at its normal place of business detailed, accurate and up-to-date records ("**Records**") that are sufficient to enable Supplier to verify Customer's compliance with its obligations under this Appendix 1.
   2. Customer shall permit Supplier and its third party representatives (including its designated auditor), on reasonable notice during Customer’s normal business hours, to:
      1. gain (physical and remote electronic) access to, and take copies of, the Records and any other information held at Customer's premises or on the Customer System; and
      2. inspect all Records and Customer Systems relating to the use, Distribution, permissioning and control of the Data under this SOW,

for the purpose of auditing Customer's compliance with its obligations under this Appendix 1. Such audit rights shall continue for three years after termination or expiry of this SOW. Customer shall give all necessary assistance to the conduct of such audits during the SOW Term and for a period of three years after termination or expiry of the SOW Term.

1. Consequences of termination
   1. On any termination of this SOW for any reason, or expiry of the SOW Term:
      1. Customer shall as soon as reasonably practicable return, delete or destroy (as directed in writing by Supplier) all data, information, software, and other materials provided to it by Supplier in connection with this SOW including all materials containing or based on Supplier's Confidential Information , except for one copy that it may use for audit purposes only, and subject to the confidentiality obligations in paragraph 6; and
      2. without limiting the effect of clause 12.4(b), Customer shall as soon as reasonably practicable ensure that all Data and Manipulated Data (excluding any Derived Data) is deleted from the Customer System,

and any electronic data shall be considered deleted, for the purpose of this paragraph, where Customer has put it beyond use.

* 1. The provisions of paragraphs 6, 9 and 10 shall continue to apply after termination or expiry of this SOW.

**Appendix 2 – Data Protection**

**To be DELETED where Scenario A applies**

**To be INCLUDED where Scenario B applies**

**To be INCLUDED where Scenario C applies**

1. Applicability of this Appendix 2
   1. The terms of this Appendix 2 (*Data Protection*) apply to the processing of Dataset Personal Data for the SOW to which these terms are appended (the “**Relevant Processing**”).
2. Obligations applicable to a party processing Dataset Personal Data
   1. If Dataset Personal Data is to be made available to Customer, the Supplier shall exercise reasonable efforts to ensure the removal of direct or indirect identifiers from such Dataset Personal Data before it is made available to Customer, unless this is inconsistent with the nature of the Services. Customer shall not attempt to re-identify and / or obtain or identify further details about the data subjects to whom the Dataset Personal Data relates in any manner.
   2. Save as otherwise agreed by the Supplier (at its sole discretion), Customer may not transfer (including make available) Dataset Personal Data to recipients in another country or an international organisation unless such transfer is covered by an “adequacy decision” under GDPR Article 45 or equivalents under other applicable Data Protection Legislation.
   3. Without prejudice to the generality of other provisions of this Appendix 2, in respect of the processing of Dataset Personal Data by a party or by its processors, that party shall, to the extent required by the Data Protection Legislation:
      1. maintain "records of processing";
      2. comply with "data minimisation", "privacy by design" and "privacy by default" obligations;
      3. select, contract with and control its processors;
      4. use appropriate technical and organizational measures (including at least the security measures specified in Exhibit 1 to this Appendix 2, (Security Measures));
      5. conduct data protection "impact assessments" and prior consultations of supervisory authorities; and
      6. appoint a Data Protection Officer.
   4. Without prejudice to the generality of other provisions of this Appendix 2, each party shall, and shall ensure that all persons acting under their responsibility, shall in the event of a personal data breach relating to the Relevant Processing:
      1. exercise all reasonable efforts to investigate, remediate, and mitigate the effects of that personal data breach;
      2. promptly notify the other party of that personal data breach; and
      3. provide full cooperation to the other party's own efforts and/or obligations (if any) to (i) investigate, remediate, and mitigate the effects of that personal data breach, and (ii) notify affected data subjects and relevant authorities.
3. Mutual assistance; provision of notices; and interactions with data subjects and supervisory authorities
   1. Each party shall without undue delay provide to another party (the “**Requesting Party**”), upon reasonable request, such assistance as is necessary for the Requesting Party (or other controllers of the Dataset Personal Data) to meet its obligations under the Data Protection Legislation including (as applicable) with respect to (i) the provision of processing-related information (e.g. privacy notices) to data subjects; (ii) the obtaining of their consents; (iii) data protection impact assessment; and (iv) recordkeeping.
   2. Without prejudice to the generality of paragraph 3.1, each party shall exercise reasonable efforts to:
      1. make available to the other party all information required to demonstrate and verify compliance with the other party’s obligations under this Agreement and Applicable Laws; and
      2. promptly notify and consult with the other party following any request, enquiry or service of legal process (“**Communication**”) by supervisory authorities and/or individuals relating to the processing of the Dataset Personal Data,

and where Customer has received a Communication pursuant to paragraph 3.2(b) above, the Customer shall where possible respect the wishes or recommendations of Supplier with respect to how Customer should deal with such Communication.

* 1. The parties’ obligations under this paragraph 3 shall also include exercising reasonable efforts to ensure that if necessary, persons acting under the responsibility of that party provide the assistance mentioned in those paragraphs.

1. Indemnity
   1. Any third party controller of the Dataset Personal Data shall constitute an "Indemnified Party" for the purposes of clause 14.5 of the Agreement and the indemnity shall be given for the benefit of any such third party controller of the Dataset Personal Data.
2. Third party rights
   1. Customer's obligations under this Appendix 2 are performed for the benefit of all controllers of the Dataset Personal Data.
   2. Any Losses incurred by a controller of the Dataset Personal Data under or in connection with this SOW shall be deemed to have been suffered by Supplier (and shall be recoverable by Supplier in accordance with the terms of this SOW as if they had been suffered by Supplier).
   3. Any Losses of a controller of the Dataset Personal Data which Supplier seeks to recover under paragraph 5.2 above shall not be deemed to be indirect or consequential loss or damage for the purposes of clause 14.4(b) if they would not otherwise be regarded as indirect or consequential were they to be claimed by the relevant controller of the Dataset Personal Data directly under paragraph 5.4 below.
   4. Where applicable law would prevent any Losses incurred by any controller of the Dataset Personal Data being fully recovered by Supplier in accordance with paragraph 5.2 above, the applicable controller of the Dataset Personal Data may enforce the benefits conferred on it under this Appendix 2 in order to recover such Losses itself in accordance with the Contracts (Rights of Third Parties) Act 1999.
   5. Any claims (whether in contract, tort or otherwise) brought by any controller of the Dataset Personal Data pursuant to paragraph 5.4 above shall be subject to the terms of this Agreement. In particular, but without limitation:
      1. the exclusions and limitations set out in this Agreement shall apply to all claims regardless of whether such claims are brought by Supplier or any controller of the Dataset Personal Data; and
      2. any such claims brought by any controller of the Dataset Personal Data shall be taken into account when calculating the remaining portion of any and all Customer aggregate liability caps under this Agreement.
   6. The parties agree that nothing in this Agreement is intended to allow Supplier and any controller of the Dataset Personal Data to claim more than their combined actual Losses.

**Exhibit 1 to Appendix 2**

**To be DELETED where Scenario A applies**

**To be INCLUDED where Scenario B applies**

**To be INCLUDED where Scenario C applies**

Security Measures

[Appropriate security measures to be inserted. These could simply reference out to an external standard such as ISO/IEC 27001 or the NHS DSP Toolkit. The below provisions to apply in default.]

1. Access control to premises and facilities

Measures must be taken to prevent unauthorized physical access to premises and facilities holding personal data, such as:

* Access control system
* ID reader, magnetic card, chip card
* Keys
* Door locking (electric door openers etc.)
* Surveillance facilities
* Alarm system, video/CCTV monitor
* Logging of facility exits/entries

1. Access control to systems

Measures must be taken to prevent unauthorized access to IT systems. These must include the following technical and organizational measures for user identification and authentication:

* Password procedures (incl. special characters, minimum length, forced change of password)
* No access for guest users or anonymous accounts
* Central management of system access
* Access to IT systems subject to approval from HR management and system owners

1. Access control to data

Measures must be taken to prevent authorized users from accessing data beyond their authorized access rights and prevent the unauthorised input, reading, copying, removal, modification or disclosure of data. These measures shall include:

* Differentiated access rights
* Access rights defined according to duty access requirements
* Automated log of user access via IT systems processing clinical data
* Measures to prevent the use of automated data-processing systems by unauthorised persons using data communication equipment

1. Disclosure control

Measures must be taken to prevent the unauthorized access, alteration or removal of data during transfer, and to ensure that all transfers are secure and are logged. These measures shall include:

* Encryption using a VPN for remote access,
* Encryption and other secure methods (e.g. SFTP) for transport and communication of data.
* Measures for controlling portable media use
* Creating an audit trail of all data transfers related to the Services

1. Input control

Measures must be put in place to ensure all data management and maintenance is logged, and an audit trail of whether data has been entered, changed or removed (deleted) and by whom must be maintained. Measures should include:

* Logging user activities
* Ensure that it is possible to verify and establish to which persons any personal data has been or may be transmitted or made available using data communication equipment
* Ensure that it is possible to verify and establish which personal data has been input into automated data-processing systems and when and by whom the data has been input;

1. Availability control

Measures should be put in place to ensure that data are protected against accidental destruction or loss. These measures must include:

* Business Continuity procedures, including ensuring that installed systems may, in the case of interruption, be restored
* Ensure systems are functioning, and that faults are reported
* Ensure stored personal data cannot be corrupted by means of a malfunctioning of the system
* Uninterruptible power supply (UPS)
* Remote storage
* Anti-virus/firewall systems

1. Segregation control

Measures should be put in place to allow data collected for different purposes to be processed separately. These should include:

* Restriction of access to data stored for different purposes according to staff duties.
* Segregation of business IT systems
* Segregation of IT testing and production environments