Special Module Terms – metaphactory

The following terms and conditions shall apply as relevant to the Products we have agreed to provide to you as set out in the Order Form.

1. Scope of rights

1.1 In consideration for the Fees, we hereby grant to you, during the Term (if included, and subject to any limits specified, in the Order Form), a non-exclusive, non-transferable, non-sublicensable right and license:

(a) to install and run (or to have installed and run by us) the metaphactory Software, and/or related knowledge management software tools, and to permit their use by End Users, for your own internal purposes in accordance with the Documentation. For the avoidance of doubt, nothing in this Agreement requires us to make available any source code of any Product or grants any rights to access, use, adapt, edit or otherwise use the same. You undertake not to alter or adapt or edit any Product beyond the settings available in the configuration file. You shall only install (or have installed by us) the number and type of instances, as specified in the Order Form on systems owned and controlled by you. You shall identify installations of the metaphactory Software as proprietary to us, and at a minimum keep a "metaphacts" or "metaphactory" logo in either the header or footer of every page powered by the metaphactory Software; and/or

(b) in the case of web-based solutions, to permit the End Users to access and use the agreed versions, dashboards and/or other components, as may be configured for you, for your own internal purposes in accordance with the Documentation; and/or

(c) to use such of our ontologies as are set out in the Order Form for your own internal purposes as may be agreed. If you have opted for any "metaphacts Data Services", we will provide you with access to the specified content via the agreed delivery method and in the format set out in the Order Form. All usage must be in accordance with applicable guidelines, solely for your own internal purposes during the Term.

1.2 You shall be responsible for obtaining and maintaining licenses for any Third Party Products that you choose to be managed through, interface with or integrate into any Product, including any third party software we may source on your behalf or third party data that is made available to you via the Product, the terms of which you shall comply with at all times. You acknowledge that the Products may be packaged or otherwise compiled with Third Party Products ("**Integrated Third Party Products**") whose license terms are included or referenced in the license files, documentation or other materials made available to you. You shall only use the Integrated Third Party Products as part of, and subject to the same terms as, the Products, and as otherwise may be required to comply with their respective license terms. Without prejudice to any warranties given by the owner, any Third Party Products (as between you and us) are used and made available "as is".

2. Support and Additional Services

2.1 We will provide you with the Support Services and access to the on-line training and support resources we generally make available to other customers of the Product from time to time, and such other enhanced support services as may be specified in the Order Form. Save as specified in the Order Form, you are responsible for the installation and operation of the metaphactory Software, including integrations of any chosen Third Party Products.

2.2 You will designate one (1) named End User (and an alternate) to be a single authorized point of contact with us regarding the Product and we will only accept enquiries and requests relating thereto from that authorized point of contact. You may re-designate the single authorized point of contact (or alternate) at any time by notice to us in writing. The authorized point of contact (and alternate) will be responsible for the internal provision of 1st Level Support vis-à-vis your End Users and should only escalate queries as part of the Support Services that it is unable to resolve.

2.3 From time to time during the Term, we may release New Versions for installation and use at your discretion, provided you shall not make any claim against us that could have been avoided by the installation and use of the latest New Version. Use of any New Functionality available via a New Version may be subject to additional Fees (to be agreed with you), provided that if you choose not to use the New Functionality, we will take steps to ensure that your use of the existing functionality of the Product will not be prejudiced. Upon installation of a New Version, the rights to use the previous version shall expire.

3. Customer Materials

3.1 Nothing in this agreement shall operate to transfer ownership of any Intellectual Property Rights in Customer Materials to us. You hereby grant to us (or shall procure the grant to us of) a non-exclusive licence to use the Customer Materials to the extent reasonably necessary for us to perform our obligations under the Agreement. We will have no obligation to review or monitor the content of any Customer Materials. You will ensure that we are authorised and otherwise free to lawfully host and process the Customer Materials as envisaged by this agreement and that no part thereof contains any Prohibited Content. We shall take measures to protect and maintain the security and confidentiality of the Customer Materials in accordance with good industry practice, details of such systems, processes and measures, we shall provide (on a confidential basis) upon request from time to time so that you can review their adequacy.

4. Effects of Termination

Upon termination or expiry of this Agreement, all rights to use the Product shall cease and you undertake to stop using (and permitting the use of) the Product and, as applicable, to uninstall any copies from your systems (which you shall immediately delete) and in case you have subscribed to a web-based version of the metaphactory platform, a copy of Customer Materials stored on that platform will be made available to you for up to 30 days following termination or alternatively (at our discretion) provided to you in a standard format.

5. Additional definitions

Customer Materials: include the Content that you or End Users upload, import or submit to the Product, or which is uploaded, imported or submitted on your behalf.

Defect: a reproducible deviation from the descriptions in the Documentation not resulting from hardware defects, third party software, bad or inconsistent data, improper use or unauthorized changes or from any other cause attributable to circumstances outside of our responsibility or control.

Documentation: all manuals, user documentation, and other related materials relating to the Product, which are made available to you by us pursuant to this agreement.

End User: if you are an educational organization, “End Users” shall be limited to your full-time and part-time students, faculty residents, fellows, researchers and employees; otherwise “End Users” shall be limited to your employees and named contractors who have authorized access to your systems (provided use by such contractors will be limited to the purposes of their contracted work for you using those systems); in either case, subject to any limits set out in the Order Form.

metaphactory Software: the executable code version of the metaphactory software, including any Update or Upgrades and other new versions, updates, enhancements or modifications thereto made available to you, and including any related documentation (as the context permits) for use during the Term.

New Functionality: new features and/or functionality that do not serve the same purpose as legacy features or functionality that cease or have ceased to be available as a result of any Upgrade; and access to or use of the new features or functionality is chargeable to our customers using the Product generally.

New Version: Updates and Upgrades of the metaphactory Software.

Support Services: the services described in sections 3 and 4 of Annex A.

Third Party Products: any third party data, products, software, library and/or services, including any Open Source Software.

Update: a release of the metaphactory Software that may include error corrections, bug fixes and patches and/or result in changes the appearance and/or functionality of the Product.

Upgrade: a release of the metaphactory Software that provides additional features and/or functionalities.

Annex A

Support Services

1. General Scope of Support

Support Services will be provided during the Term and only within the license scope, i.e. for the number and kind of Platform Instances that have been both licensed and paid for by Customer.

Support Services do not cover, and will not be provided with respect to: (i) the operation of third-party software and components of the Product (including open source software) or modifications to the Product made by or on behalf of Customer; (ii) debugging any system or platform, or associated interfaces, into which the Metaphactory Software has been integrated; (iii) components or features that have been provided for no fee, for testing or experimental purposes or on a beta basis; or (iv) any non-current version of the Product except for the previous point release of the current major version, or the last released point release of the previous major version, provided in either case they are not more than twelve (12) months old.

We will provide the Support Services within normal business hours between 9:00 a.m. and 5:00 p.m. Central European Time (CET), Monday through Friday, excluding public holidays in Germany ("Business Hours").

Support Services will be initiated, if made during Business Hours, from when we receive requests from Customer for support by an agreed support channel (e.g. telephone or e-mail, see further details below) specifying, in reasonable detail, the nature of the assistance requested or of the problem encountered. For requests made outside Business Hours, Support Services will be initiated the next business day.

Unless agreed otherwise, all Support Services will be rendered remotely, e.g., by phone, e-mail or remote access. Customer shall make available the technical pre-requisites for the remote access possibility. Support Services rendered at Customer's Site upon Customer's request will be subject to separate compensation on a time and material basis.

2. Availability

All parts of the metaphactory Software that we host shall have Service Availability of at least 95% (or such other level as may be specified in the relevant Order Form) over each calendar year (the “Application”), “Service Availability” is defined as all time periods other than continuous periods of ten (10) minutes or more during which time the customer is unable to communicate with and use the Application (“Downtime”) excluding any unavailability caused by (i) a Force Majeure Event; (ii) a breach of the Agreement by customer or any actions or inactions of customer or any third party; (iii) Customer’s equipment, data, software, or other technology and/or third party equipment, software or other technology (other than third party equipment within our direct control); (iv) and planned upgrades and maintenance carried outside normal working hours.

For the avoidance of doubt, we are not responsible for the availability of metaphactory Software that is hosted on Customer-owned, -chosen or -controlled environments, such as managed instances.

3. Provision of Support Services

Telephone and e-mail Support. We will provide a telephone support hotline for reporting Defects and for requesting operating assistance (English language). Customer may also contact us to request assistance or to report Defects by sending an e-mail to support@metaphacts.com and specifying in the e-mail, in reasonable detail, the nature of the assistance requested or of the problem encountered.

Defect Correction. We will respond to Customer’s notice of a Defect by opening a support ticket using our tracking system and assigning an appropriate technical resource, experienced with the Product, within the timeframes defined in section 3 below according to the severity level of the Defect. We may remedy Defects within a reasonable period of time, by means at our sole discretion, including by providing workarounds, reasonable options to Customer on how to avoid the effects of the Defect or Updates.

Premium Support. Premium Support is only available, and provided subject to the limits, as specified in the Order Form. Premium Support cover tasks outside of scope of the basic Support Services, such as ontology modelling, application building and configuration support.

4. Response and Solution Times (SLA)

We will assign the severity level and prioritize Defects reported by Customer in our sole discretion according to the following severity classes.

Defect severity classes are defined as follows:

- Severity 1 – Severe Defect: Defect that renders the Product completely inoperable or occurs with sufficient frequency that the Product is effectively rendered inoperable. (Examples: system down; data production loss; data unavailable)
- Severity 2 – Major functionality impact: Defect that renders material major functionality of the Product inoperable. (Examples: major system function is unavailable or degraded; Defect will create intolerable delays if not addressed)
- Severity 3 – Issue has or will affect system productivity: Business processes are impacted or impaired, but its primary production system still functions. (Examples: failure in software component that is noncritical; failure of redundant component.)
- Severity 4 – Minor impact: No material operational impact on business processes. (Examples: documentation issues.)

We will use commercially reasonable efforts to respond to and resolve each Defect in a time and manner commensurate with the Severity Level for such Defect, subject to our commercially reasonable limitations and any applicable support limit:

- Severity 1 – Requires continued work within the Business Hours defined in section 3 until there is a work around or remedy.
- Severity 2 – Requires continued work within the Business Hours defined in section 3 until there is a work around or remedy.
- Severity 3 – Does not require immediate action.
- Severity 4 – Does not require immediate response and is typically corrected by putting a fix into the next New Version.

5. Responsibility of Customer

Customer will comply with the following requirements and procedures: (i) Customer will report all Defects by e-mail or online support mechanisms except Severity 1 Defects, which Customer may report via the online support mechanism or telephone; (ii) Customer will provide sufficient information needed to reproduce and resolve Defects, including relevant code, data, and log files, and stack traces sufficient to demonstrate and document reported problems; (iii) Customer will provide all documentation and other information as we may reasonably request in order to perform the services; (iv) Customer will reduce each reported issue to a minimal procedure that will enable us to reproduce the Defect in our control environment; (v) Customer agrees to provide access to any queries, workloads, data sets, and other information that may be necessary to reproduce the Defect and provide such other documentation and information as we may reasonably request. If Customer cannot provide a suitable minimal procedure or other information required to reproduce the Defect, or if we are unable to reproduce a reported Defect using a suitable minimal procedure and information provided by Customer, then we will not be required to provide further Support Services with respect to such Defect.

Customer shall allow access to its hardware and software to the extent required to provide the Services. Customer shall ensure that third-party products (hardware, software, databases, etc.) required for its use of the Product are available and duly licensed. Customer is responsible for ensuring the proper operation and availability of the third-party products (including access and modification rights for us, if required), if necessary, by entering license and maintenance agreements with the third-party producers or suppliers.

Customer shall cooperate with us in a timely manner, properly and fully and contribute to the provision of services in any other way needed for proper contract performance. This cooperation will be free of charge and shall be deemed a material contract duty of Customer. Customer shall ensure that its responsible contact persons possess the necessary skills, training and experience and are sufficiently skilled and trained in the operation of products such as the Product.

Customer will not submit an issue or otherwise use the Support Services hereunder with respect to any part or license of the Product Software for which it has not paid for support hereunder.