



ERM SAAS  
TERMS AND CONDITIONS

## 1. INTRODUCTION

These terms and conditions apply to Client's subscription to, and use of, the Subscription Services. They may be agreed to by Client through a signed Order Form in which these terms and conditions are referenced or via any other form mutually agreed by the Parties.

## 2. DEFINITIONS AND INTERPRETATION

2.1 The defined terms below have the following meanings, unless the context requires otherwise:

Agreement	the Order Form entered into by the Parties, these SaaS terms and conditions, the Service Level Agreement and the Data Processing Statement.
Anonymous Data	Client Data, Outputs and data generated from the Authorized Users' use of the Subscription Services, that are in anonymized form only and do not contain any Client Confidential Information.
Applicable Law	any applicable law, legislation, instrument, rule, order, regulation, directive, bye-law or decision including the rules and regulations of any Authority, as the same may be amended or varied from time to time.
Authorized Companies	the Client Group companies identified in the Order Form, if any.
Authorized Users	those number of employees, agents and independent contractors at the Client and Authorized Companies (if any) set out in the Order Form, who are authorized by the Client to access and use the Subscription Services and the Documentation.
Authority	any local, national, multinational, governmental or non-governmental authority, statutory undertaking or public or regulatory body or body corporate which has any jurisdiction, control or influence over the obligations of a Party.
Business Day	a day other than a Saturday, Sunday or public holiday in England or such alternative country as specified in the Documentation, or in the case of clause 29.2 only, a day other than a Saturday, Sunday or public holiday in the place of receipt of the relevant notice.
Confidential Information	any information in whatever form of a confidential nature which a Party has obtained or received, directly or indirectly, in connection with the Services or pursuant to the Agreement whether before or after the date of the Agreement including: <ul style="list-style-type: none"> <li>▫ information concerning the business, activities, affairs, finances, employees, operations, facilities, assets, programs, customers, clients or plans, intentions, or market opportunities or third-party service providers of the other Party or its Group companies;</li> <li>▫ any commercially sensitive information, including in the case of ERM, the ERM IP and in the case of Client, the Client Data;</li> </ul>

	<ul style="list-style-type: none"> <li>▫ any information that is developed by the Parties or their Group companies while carrying out their obligations pursuant to the Agreement or the provision of the Services including the Outputs;</li> <li>▫ any information that would be regarded as confidential by a reasonable business person; and</li> <li>▫ the terms of the Order Form.</li> </ul>
Customization Services	services to customize the Software, to be provided by ERM to the Client, as specified in the Order Form (if any).
Client	the client identified in the Order Form.
Client Data	the data inputted by the Authorized Users or ERM on Client's behalf for the purpose of using the Subscription Services or facilitating Client's use of the Subscription Services.
Data Protection Laws	has the meaning given to it in the Data Processing Statement.
Data Processing Statement	the agreement between the Parties in respect of the processing of personal data in connection with the Services, a copy of which is linked to in the Order Form.
De-identified Data	aggregated data created or derived from compiling, combining or incorporating Anonymous Data with other data and information available, derived or obtained from other users of the Subscription Services or otherwise obtained, made available and/or received from third parties in each case that has been anonymized and aggregated.
Documentation	any document made available to Client by ERM online via such web address notified by ERM to the Client from time to time which sets out a description of the Subscription Services (including the Software) and the user instructions for the Subscription Services.
Effective Date	the date noted as such on the Order Form, which is the date the Agreement comes into force.
ERM	the ERM Group company specified in the Order Form, that is entering into the Agreement.
ERM IP	<p>the Intellectual Property Rights:</p> <p>(i) in information, data, reports and materials, including without limitation software code and any materials which embody ERM's know-how, including algorithms, formulae, analytics, models, databases, datasets, methodologies (including for scoring), protocols, schema, processes, data models, graphics, reporting visualizations, structures of data and data relationships which were created by or on behalf of ERM before the Effective Date and enhancements, modifications and amendments to the foregoing, including those created after the Effective Date;</p>

	<p>(ii) created by or on behalf of ERM on or after the Effective Date, other than pursuant to the Order Form; and</p> <p>(iii) the Outputs;</p> <p>but excluding, as between the parties any Intellectual Property Rights in Client Data included in the Outputs and any Licensed Materials (if any).</p>
Fees	the fees, payable by Client to ERM, as set out on the Order Form, as may be amended in accordance with the Order Form and these terms and conditions from time to time.
Group	in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a member of the Group.
Implementation Services	those services identified on the Order Form (if any) to be provided by ERM to set up the Client on the Platform which may include configuration, support, training or consulting support (e.g. to aid Client to evaluate and interpret the Outputs).
Indemnified Person	ERM, its holding companies and subsidiaries, and its and their officers, directors, employees, agents, licensors, suppliers and any third-party providers in respect of the Subscription Services
Initial Term	the 12-month period starting from the Subscription Services Start Date.
Intellectual Property Rights	patents, utility models, rights to inventions, copyright and neighboring and related rights, trademarks and service marks, business names and domain names, rights in software, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similarly or equivalent rights, or forms of protection which subsist or will subsist now or in the future in any part of the world.
Licensed Materials	publicly available or third-party source materials that ERM uses in connection with the provision of the Subscription Services.
Subscription Services Start Date	the date identified as such in the Order Form, being the date Client is first given access to the Subscription Services.
Losses	losses, liabilities, claims, demands, damages, costs and expenses (including reasonable legal costs and expenses).
Metrics	the metrics specified in the Order Form, on which the Fees are calculated, which may include for example, number of Authorized Users, Authorized

	Companies, number of Outputs to be produced, specified facilities, mineral types, assets generating a unique assessment within the Subscription Services or departments within the Client/ the Authorized Companies, as these metrics may be amended from time to time in accordance with clause 7.
Normal Business Hours	9:00 to 17:00 on each Business Day.
Order Form	the order form signed by ERM and Client for Client to subscribe to the Subscription Services.
Outputs	the outputs, results, data, information, reports or other materials generated, resulting, or otherwise produced (using ERM IP) by or through the Subscription Services using Client Data inputted into the Subscription Services.
Party	each of ERM and Client.
Platform	the platform from which the Software is made available, accessible via the website notified to Client by ERM from time to time, as more particularly described in the Documentation.
Permitted Disclosees	those third parties identified as such in the Order Form, if any, to which the Outputs may be disclosed pursuant to clause 5.1 (d).
Permitted Purpose	Client's internal business operations only.
Personal Data	has the meaning given to it in the Data Processing Statement.
Renewal Term	has the meaning given to it in clause 17.1.
Service Level Agreement	the agreement identified as such, a copy of which is linked to in the Order Form (if any) that sets out the service levels applicable to the Subscription Services, which forms part of the Agreement as it is amended from time to time by ERM.
Services	the Subscription Services, the Implementation Services, the Customization Services and any other services identified in the Order Form, if any.
Software	the software application, as identified in the Order Form, made accessible by ERM to Client as part of the Subscription Services, including all updates from time to time. To avoid doubt, this does not include any Upgrades.
Subscription Services	the making available of the Software via the Platform, and the Documentation, including hosting the Software, and a standard level of support.

Subscription Year	either the Initial Term or the current Renewal Term, whichever is applicable.
Term	has the meaning given to it in clause 17.1
Upgrade	an upgrade to the Software that creates new functions, tools or features.
Virus	any thing or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
Vulnerability	a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to confidentiality, integrity, or availability.

- 2.2 References to "clauses" (if any) are to the clauses and schedules of these terms and conditions.
- 2.3 Clause and paragraph headings in the Agreement are for ease of reference only and are not to be considered in the interpretation of the clause or paragraph to which they refer.
- 2.4 A reference to a "company" will include any company, corporation, or other body corporate, wherever and however incorporated or established.
- 2.5 Unless the context otherwise requires, words in the singular will include the plural and, in the plural, will include the singular.
- 2.6 The Agreement will be binding on and enure to the benefit of the Parties and their permitted assigns, and reference to a Party will include that Party's permitted assigns.
- 2.7 A reference to a statute or statutory provision: (i) is a reference to it as amended, extended or re-enacted from time to time; and (ii) will include all subordinate legislation made from time to time under that statute or statutory provision.
- 2.8 A reference to "writing" or "written" includes email but does not include fax, SMS or other informal electronic messaging systems.
- 2.9 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 2.10 Any words following the terms "including", "include", "in particular", "for example" or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.

### 3. SERVICES

- 3.1 Subject to Client's payment of the Fees and to the terms of the Agreement, ERM will:
- (a) use reasonable endeavours to carry out the Services, in accordance with the Order Form, as soon as reasonably practicable after the Effective Date including, making available to Client, from the Subscription Services Start Date, access to the Subscription Services and Documentation in accordance with the Service Level Agreement;

- (b) use reasonable endeavours to provide Client with ERM's standard client support services during Normal Business Hours and in accordance with the Service Level Agreement as part of the Subscription Services and at no additional cost to Client (unless otherwise provided for in the Order Form); and
- (c) provide the Services with reasonable skill and care.

3.2 ERM warrants that the Subscription Services will function materially as described in the Documentation.

3.3 ERM's obligations under clause 3.1 (a) and (b) and clause 3.2 will not apply to the extent of any non-conformance which is caused by use of the Subscription Services not in accordance with ERM's instructions or the Documentation, or modification or alteration of the Subscription Services by any party other than ERM or ERM's duly authorized contractors or agents. If the Subscription Services do not conform with the obligations in clause 3.1 (a), (b) or clause 3.2, ERM will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide Client with an alternative means of accomplishing the desired performance in accordance with the Service Level Agreement. Such correction or substitution constitutes Client's sole and exclusive remedy for any breach of ERM's obligations set out in clause 3.1 (a) and (b) and clause 3.2.

#### 4. RIGHT TO USE SUBSCRIPTION SERVICES

4.1 Subject to Client's strict compliance with the Agreement, including the restrictions on use set out at clause 5, ERM hereby grants Client during the Term, the right to permit the Authorized Users in respect of the Metrics only to:

- (a) access the Subscription Services and Documentation in order to use the Subscription Services in accordance with their features and functionality; and
- (b) view and use the Outputs;

solely for the Permitted Purpose.

#### 5. RESTRICTIONS ON USE

5.1 Client will not, and will procure that the Authorized Users will not:

- (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any part of the Subscription Services (including the Software), Documentation or Outputs;
- (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the underlying software to the Software or Platform, except to the extent expressly permitted by law;
- (c) subject to clause 26.1, distribute any part of ERM IP (including in Outputs) in any form or media or by any means other than to an Authorized User, save that it will be entitled to submit copies of the Outputs to Client's professional advisors, to any industry bodies for the purpose of certifying Client's operations and any Permitted Disclosees, provided such Outputs are marked as confidential information and not for use or disclosure other than for the Permitted Purpose;
- (d) access all or any part of the Subscription Services, Documentation or ERM IP in order to build a product or service, or train an algorithm which may compete with the Software or the Subscription Services;
- (e) use the Subscription Services, Documentation or ERM IP to provide services to third parties;
- (f) attempt to obtain, or assist third parties (including Group companies that are not Authorized Companies) to obtain access to any part of the Subscription Services (including any application programming interfaces in the Subscription Services), its related systems or networks, Documentation, or Outputs, other than as provided under the Agreement, including other than in connection with the Metrics;

- (g) except as expressly permitted under the Agreement, create any database of, or other store for the Outputs (or any material part of them) that creates the ability for Client or any third-party to access the Outputs (or any material part of them) without requiring the use of the Subscription Services;
  - (h) introduce or permit the introduction of any Virus or Vulnerability into ERM's network or information systems; or
  - (i) use any robot, spider, scraper, or other automated means to access the Subscription Services for any purpose without ERM's prior written authorisation.
- 5.2 Client will procure that each Authorized User complies with the terms of clause 4.1 and the restrictions on use in this clause 5 and Client acknowledges that it will be liable to ERM for any breach of such terms, as if that breach were a breach by Client.
- 5.3 In the event of any unauthorized access or use of Subscription Services, Documentation, or ERM IP, Client will notify ERM as soon as reasonably practicable and, in any event, within forty-eight (48) hours of becoming aware of such unauthorized access or use.
- 6. AUTHORIZED USERS**
- 6.1 Client acknowledges that as part of the Subscription Services, ERM may permit any Authorized Users to access a list of the other Authorized Users entitled to access the Subscription Services under Client's account.
- 6.2 Client will, promptly after the Effective Date, either notify ERM of the details of the individuals that it wishes to designate as Authorized Users or designate them itself, as permitted by the functionality of the Subscription Services.
- 6.3 Subject to clause 6.4, Client will keep ERM updated of any changes to the Authorized Users, as any such changes are required from time to time.
- 6.4 In relation to the Authorized Users, Client undertakes that:
- (a) it will not allow any account set up for an Authorized User to be used by more than one individual unless it has been reassigned in its entirety to another individual Authorized User subject in each case to Client obtaining ERM's prior written approval, in which case the prior Authorized User will no longer have any right to access the Subscription Services and Documentation;
  - (b) each Authorized User will keep a secure password for their use of the Subscription Services and Documentation, and such password will be changed no less frequently than once every ninety (90) days and each Authorized User will keep their password confidential;
  - (c) it will maintain a written, up to date list of current Authorized Users and provide such list to ERM within five (5) Business Days of ERM's written request at any time;
  - (d) it will procure that the Authorized Users comply with any terms of use or other requirements set out in the Documentation or shown on screen, in connection with use of the Subscription Services;
  - (e) it will permit ERM on a continuing basis to track the number of Authorized Users accessing and using the Subscription Services and each Authorized Users' activity in relation to the Subscription Services; and
  - (f) it will permit ERM or ERM's designated auditor, from time to time, to audit the use by or on behalf of Client of the Subscription Services in order to establish Client's compliance with the Agreement. Each such right to audit will be exercised with reasonable prior notice by ERM, in such a manner as not to substantially interfere with Client's normal conduct of business.
- 6.5 Client will procure that the Authorized Users will not access, store, distribute or transmit any



material during the course of their use of the Subscription Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or is discriminatory, including based on race, gender, colour, religious belief, sexual orientation or disability;
- (b) is not related to the purposes for which the Subscription Services are made available;
- (c) depicts illegal activity, sexual images or promotes violence; or
- (d) is otherwise illegal or causes damage or injury to any person or property.

6.6 ERM reserves the right, without liability or prejudice to its other rights to Client, to disable Client's access to any material that breaches the provisions of clause 6.5.

## 7. METRICS

7.1 Client acknowledges that access to the Subscription Services has been granted and priced based strictly on the Metrics. Accordingly, Client undertakes that subject to clause 6.4 (a)(a), the Metrics will not exceed in number or differ from those specified in the Order Form or that it has additionally purchased in accordance with this clause 7.

7.2 Client may, from time to time, during the Term, request to gain access to the Subscription Services in respect of additional metrics (in excess of the Metrics set out in the Order Form) or to purchase an additional number of Outputs. As soon as reasonably practical after receipt of such request, ERM will consider the request and if approved will notify Client of the additional fees payable.

7.3 Where Client agrees to pay such fees, by confirmation in writing to ERM, ERM will use reasonable endeavours to activate the additional Metrics within five Business Days following such confirmation and access to, and use of, the Subscription Services and the Documentation for such additional Metrics, will be granted in accordance with the provisions of the Agreement.

7.4 Client will, within thirty (30) days of the date of ERM's invoice, pay to ERM the relevant additional Fees for such additional Metrics and, if such additional Metrics are purchased by Client part way through a Subscription Year, such additional Fees will be pro-rated from the date of activation by ERM for the remainder of the current Subscription Year. For the avoidance of doubt, Client cannot reduce the number of Metrics for which the Subscription Services apply during the Term.

7.5 If any unauthorized use is made of the Subscription Services in breach of clause 7.1, without prejudice to ERM's other rights and remedies, Client will immediately be liable to pay ERM and ERM will be entitled to submit an invoice for an amount equal to the fees that ERM would have charged, had it authorized the unauthorized use together with interest at the rate provided for in clause 10.4 (b) from the date of that unauthorized use to the date of payment.

## 8. SUBSCRIPTION SERVICES, DATA CHANGES AND UPDATES

8.1 ERM:

(a) does not warrant that:

- (i) Client's use of the Subscription Services will be uninterrupted or error-free; or
- (ii) the Software and/or the Subscription Services will be free from Vulnerabilities or Viruses; and

(b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and Client acknowledges that the Subscription Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

8.2 Client acknowledges that access to all or any part of the Subscription Services may be restricted from time to time to allow for repairs, maintenance or updating or for any other reason.

Nevertheless, ERM will use reasonable endeavours to:

- (a) provide Client and its Authorized Users with reasonable notice of any scheduled downtime;
- (b) ensure that any scheduled downtime will occur outside of Normal Business Hours, except where there is a material system incident, in which case ERM will notify Client; and
- (c) manage any migrations of services from one ERM service provider to another, so as to ensure that disruption of the Subscription Services is kept to a reasonable minimum.

8.3 Over the course of the Agreement ERM may, in its sole discretion, update existing features, functionality and software of the Subscription Services or the type of metrics on which it bases its Fees; provided that such updates will be at no cost to Client for the Subscription Year and will not materially degrade existing features and functionality or its purchased access.

8.4 Unless otherwise agreed in the Order Form, Client acknowledges its responsibility to retain a copy of the Client Data and Outputs and acknowledges that ERM will not be required to restore, rebuild or otherwise recover or recreate the Client Data or Outputs should it be lost or damaged. In the event of any loss or damage to Client Data, Client's sole and exclusive remedy is to resubmit the Client Data to the Platform for the purpose of using the Subscription Services.

## 9. CLIENT'S OBLIGATIONS

9.1 Client will:

- (a) provide ERM with:
  - (i) all necessary co-operation in relation to the Agreement; and
  - (ii) all necessary access to such information as may be required by ERM, including Client Data and security access information;in order to enable ERM to provide the Services;
- (b) without affecting its other obligations under the Agreement, comply with Applicable Law with respect to its activities under the Agreement;
- (c) carry out all other Client obligations and responsibilities set out in the Agreement or otherwise agreed with Client in the course of providing the Services, in a timely and efficient manner. In the event of any delays in Client's provision of such assistance as agreed by the parties, ERM may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorized Users use the Subscription Services and Documentation in accordance with the Agreement and any instructions given by ERM to Client or Authorized Users and will be responsible for any Authorized User's breach of the same;
- (e) obtain and will maintain all necessary licenses, consents, and permissions necessary for ERM (including its contractors and agents) to perform its obligations under the Agreement;
- (f) ensure that its network and systems comply with the relevant specifications provided by ERM from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in the Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Platform (including ERM's data centres) and for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Client's network connections or telecommunications links or caused by the internet.

## 10. FEES AND PAYMENT

10.1 Client acknowledges that the Subscription Services are made available, based on a periodic

subscription Fee, which varies depending on the Metrics.

- 10.2 Unless otherwise set out in the Order Form, ERM will invoice Client: (i) on the Effective Date for the Fees for the Subscription Services and the other Services; and (ii) on the anniversary of the Subscription Services Start Date for the Fees for the Subscription Services for any Renewal Term.
- 10.3 Client will pay invoices:
- (a) within thirty (30) days of receipt of the invoice; and
  - (b) in full and cleared funds to the bank account nominated in writing by ERM.
- 10.4 If ERM has not received payment within thirty (30) days after the due date, and without prejudice to any other rights and remedies of ERM:
- (a) ERM may, without liability to Client, disable Authorized Users' password, Client's account and access to all or part of the Subscription Services and ERM will be under no obligation to provide any or all of the Subscription Services while the invoice(s) concerned remain unpaid; and
  - (b) interest will accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Barclays Bank plc (or any successor to such bank) in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 10.5 All amounts and Fees stated or referred to in the Agreement:
- (a) will be payable in the currency set out in the Order Form;
  - (b) are non-cancellable and non-refundable;
  - (c) are exclusive of value added tax or equivalent sales tax, which will be added to ERM's invoice at the appropriate rate (if applicable); and
  - (d) are payable without any set-off, counterclaim or any deduction.
- 10.6 If any deduction or withholding is required by law, Client will pay to ERM such additional sum as may be required in order that the net amount actually received and retained by ERM (after such deduction or withholding has been made) will be equal to the full amount that would have been received and retained by ERM had no such deduction or withholding been required to be made.
- 10.7 ERM may change the Fees for the Subscription Services, by giving Client no less than forty-five (45) days prior written notice, provided that the Fee for the current Subscription Year will not change until the expiration of that Subscription Year.

## 11. DATA PROTECTION

- 11.1 Client acknowledges that the only Personal Data that ERM will process during use of the Subscription Services shall be the professional email addresses, names and usernames of the Authorized Users. Client agrees that ERM will process such Personal Data in accordance with the Data Processing Statement. Client agrees that the Data Processing Statement reflects the Parties' agreement with respect to the processing of Personal Data by ERM on the Client's behalf and that Client shall not upload any other Personal Data to the Subscription Services.

## 12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 Client acknowledges and agrees that as between the Parties, ERM and/or its licensors own all Intellectual Property Rights in the Subscription Services (including the Software and Documentation) and ERM IP.
- 12.2 Except as expressly stated provided in the Agreement, Client will not, by virtue of the Agreement, obtain or claim any right, title or interest in or to any of the Intellectual Property Rights in the Subscription Services (including the Software and Documentation) and ERM IP.
- 12.3 If, notwithstanding clause 12.2, Client derives any right, title or interest in or to any of the

Intellectual Property Rights in Subscription Services (including the Software and Documentation) or ERM IP Client will promptly and at no cost to ERM assign all such right, title or interest to ERM with full title guarantee and will execute all documents and perform all acts required by ERM to vest such Intellectual Property Rights in ERM absolutely and free from encumbrances.

- 12.4 ERM acknowledges that as between the parties, Client owns and will retain ownership of all Intellectual Property Rights in Client Data and is solely responsible for:
- (i) the legality, reliability, integrity, accuracy and quality of the same; and
  - (ii) ensuring that its use in connection with the Subscription Services, does not infringe or misappropriate a third-party's Intellectual Property Rights or other rights.
- 12.5 To the extent that the Outputs comprise ERM IP, subject to payment of all Fees, ERM hereby grants to Client a non-exclusive, royalty-free, perpetual, worldwide license to use the ERM IP in such Outputs (but only in in those Outputs and not separately to them) and only for the Permitted Purpose and as otherwise agreed between the Parties in writing. Client acknowledges and agrees that all Outputs will be available on the Platform during the Term and that it is incumbent upon Client to ensure that it accesses and downloads such Outputs during the Term and that ERM will not be required to store or reproduce any such Outputs, which cease to be accessible from the Platform, after the Term.
- 12.6 Client hereby grants to ERM a non-exclusive, royalty free, worldwide license during the Term to use Client Data for the purposes of providing the Subscription Services to Client under the Agreement.
- 12.7 Client hereby grants to ERM a non-exclusive, royalty-free, irrevocable, perpetual, worldwide license to use the Anonymous Data for the purposes of (i) creating the De-identified Data and using the De-identified Data to improve and enhance the Subscription Services, (ii) developing new services, products and functionalities, and/or (iii) benchmarking against services delivered to other clients; provided Client, the Authorized Users, any sites, facilities or departments that make up the Metrics cannot be identified as a source of the Anonymous Data or it be possible to reverse engineer De-identified Data to determine the source.
- 12.8 The trademarks and service marks of ERM, including ERM and the ERM logo, are owned by ERM and its licensors. Client may not use any of these marks without the express written consent of ERM.

### 13. CONFIDENTIALITY

- 13.1 Each Party may be given access to Confidential Information from the other Party to perform its obligations under the Agreement. A Party's Confidential Information will not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving Party;
  - (b) was in the other Party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving Party by a third-party without restriction on disclosure; or
  - (d) is independently developed by the receiving Party, which independent development can be shown by written evidence.
- 13.2 Subject to clause 13.4, each Party will hold the other Party's Confidential Information in confidence and not make the other Party's Confidential Information available to any third party or use the other Party's Confidential Information for any purpose other than the implementation of the Agreement.
- 13.3 Each Party will take all reasonable steps to ensure that the other Party's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in breach of the Agreement and will apply no less than the same measures to protect the other Party's Confidential

Information as it does with its own Confidential Information.

- 13.4 Subject to clause 5.1 (d), a Party may disclose the other Party's Confidential Information to:
- (a) its holding companies, employees, representatives and advisers who need to know such information for the purposes of exercising the Party's rights or the carrying out of its obligations in each case under or in connection with the Agreement, provided that each Party will procure that persons to whom it discloses the other Party's Confidential Information in accordance with this clause 13.4 (a)(a), comply with this clause 13; or
  - (b) the extent such Confidential Information is required to be disclosed 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 the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 13.4, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure; and
- 13.5 ERM may disclose Client's Confidential Information to a prospective purchaser of, or subscriber for, shares or other securities in ERM or a prospective investor or lender to ERM or any holding company of ERM provided that ERM will procure such person to whom it discloses Client's Confidential Information complies with this clause 13.
- 13.6 No Party will make, or permit any person to make, any public announcement concerning the Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

## 14. WARRANTIES

- 14.1 Each Party represents and warrants to the other that it has the requisite power, right and authority to enter into and perform its obligations under the Agreement, and that the Agreement when executed will constitute valid, lawful and binding obligations on it, enforceable in accordance with its terms.
- 14.2 ERM warrants that it has and will maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under the Agreement.
- 14.3 Client acknowledges that the Subscription Services may make use of Licensed Materials to generate Outputs. Without prejudice to clause 16.1(b)1.1(b), in respect of any Outputs that include reference to Licensed Materials, Client acknowledges that over time, providers of Licensed Materials may change their content and location of the same and ERM is not responsible for maintaining updates to the Licensed Materials. Accordingly, Client acknowledges that such Outputs reflect a point-in-time assessment only.
- 14.4 The provisions of the Agreement are in place of all warranties, representations, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded by ERM to the maximum extent permitted by law.

## 15. INDEMNITY

- 15.1 Client will indemnify the Indemnified Person and hold harmless the Indemnified Person from and against all Losses suffered or incurred by the Indemnified Person arising out of or in connection with:
- (a) Client's unauthorized use of the Subscription Services or the Outputs;
  - (b) any third-party claim against ERM alleging that Client Data or the Indemnified Person's use of Client Data or any data uploaded pursuant to clause 6.5, infringes that third-party's Intellectual Property Rights; and
  - (c) Client's breach or negligent performance or non-performance of the Agreement.
- 15.2 Subject to clauses 15.3, 15.4, 16.3 and 16.4 and subject always to Client's strict compliance

with the Agreement, ERM undertakes at its own expense to defend Client or, at ERM's option, settle any claim by a third-party that Client's use of the Documentation or Services (save in respect of Client Data (including any Client Data included in the Outputs) and save in respect of the Licensed Materials) infringes that third-party's Intellectual Property Rights and will be responsible for any reasonable damages, costs and expenses awarded against Client as a result of or in connection with any such Claim.

- 15.3 In the defense or settlement of any claim, ERM may procure the right for Client to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to Client without any additional liability or obligation to pay liquidated damages or other additional costs to Client.
- 15.4 In no event shall ERM, its employees, agents and sub-contractors be liable to Client under clause 15.2 to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than ERM or its authorized contractors; or
  - (b) Client's use of the Services or Documentation in a manner contrary to the instructions given to Client by ERM; or
  - (c) Client's use of the Services or Documentation after notice of the alleged or actual infringement from ERM or any appropriate authority; or
  - (d) Client's breach of the Agreement.
- 15.5 The foregoing state Client's sole and exclusive rights and remedies, and ERM (including its agents' and sub-contractors') entire obligations and liability, for infringement of any Intellectual Property Rights.
- 15.5.1 If any third-party makes a claim as referred to in clause 15.1 or 15.2, or a Party (the Indemnified Party) notifies an intention to make such a claim against the other Party (Indemnifying Party), the Indemnified Party will:
- (a) as soon as reasonably practicable, give written notice of the claim to the Indemnifying Party, specifying the nature of the claim in reasonable detail;
  - (b) not make an admission of liability, agreement or compromise in relation to the claim without the prior written consent of the Indemnifying Party (such consent not to be unreasonably conditioned, withheld or delayed);
  - (c) give the Indemnifying Party and its professional advisers prompt and reasonable access to any relevant documents and records within the Indemnified Party's power or control to examine and take copies of them for the purpose of assessing, defending and/or settling the claim; and
  - (d) take such action as the Indemnifying Party may reasonably requested to avoid, dispute, compromise or defend the claim.

## 16. LIMITATION OF LIABILITY

- 16.1 Except as expressly and specifically provided in the Agreement:
- (a) Client assumes sole responsibility for results obtained from use of the Outputs and the Subscription Services and for the conclusions it draws from them;
  - (b) Client acknowledges and agrees that the information provided (whether by ERM or as Licensed Materials) as part of the Subscription Services, including the Outputs is provided on an as-is and as-available basis, and ERM makes no representations or warranties, or provides any guarantee of any kind concerning such information, whether express, implied, statutory or otherwise. This includes warranties of title, merchantability, fitness for a particular purpose, non-infringement, absence of latent or other defects, accuracy, completeness, currency or the presence or absence of errors, delays or interruptions. Such

information is not intended to be a definitive or complete statement on any given subject and does not constitute advice of any kind, whether legal, financial or otherwise; and

- (c) ERM will have no liability for any losses caused by errors or omissions in any information, instructions or scripts provided to ERM by Client in connection with the Services, or any actions taken by ERM at Client's direction.

16.2 Nothing in the Agreement will limit either Party's liability in respect of any claims:

- (a) for death or personal injury caused by the negligence of such Party;
- (b) resulting from any fraud including fraudulent misrepresentation made by such Party;
- (c) resulting from the wilful default of such Party; or
- (d) for which liability may not otherwise lawfully be limited or excluded.

16.3 Subject to clause 16.2 and otherwise to the maximum extent permitted by law, neither Party will be liable to the other Party (whether in contract, tort including negligence or otherwise) for any:

- (a) loss of profits or revenue (whether direct or indirect);
- (b) loss of opportunity or anticipated savings (whether direct or indirect);
- (c) loss of goodwill or reputation (whether direct or indirect);
- (d) loss or corruption of data (whether direct or indirect); or
- (e) punitive, special, indirect or consequential loss or damage,

suffered by that other party.

16.4 Subject to clause 16.2 and clause 16.3, ERM's maximum aggregate liability to Client under or in connection with the Agreement (whether in contract, tort including negligence or otherwise) will not exceed two times the total amount of fees paid or payable by Client under the Agreement in the Subscription Year in which the event giving rise to the claim arises, or if no Fees have been paid in the year in which the event giving rise to the claim arises, then two times the total amount of Fees that were paid in the last Subscription Year during which Fees were paid or payable.

## 17. TERM AND RENEWAL

17.1 Subject to earlier termination in accordance with the Agreement, the Agreement will commence on the Effective Date and, unless otherwise provided in the Order Form, will continue for:

- (a) the Initial Term; and
- (b) thereafter will automatically renew for successive periods of twelve (12) months from the Subscription Services Start Date (each a "**Renewal Term**");

unless either Party gives the other Party notice of termination of the Agreement, in writing, at least thirty (30) days before the end of the Subscription Year, in which case the Agreement will terminate on the expiry of that Subscription Year (the "**Term**").

## 18. TERMINATION

18.1 Without affecting any other right or remedy available to it, either Party may terminate the Agreement with immediate effect by giving written notice to the other Party if:

- (a) the other Party commits a material breach of any provision of the Agreement which is incapable of remedy or if such breach is capable of remedy, fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so; or
- (b) the other Party becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), admits its inability to pay its debts or becomes insolvent, or (ii) 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, or (iii) an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer is appointed to that Party or over all or any part of the assets of that Party, or (iv) that Party enters into or proposes any composition or arrangement with its creditors (or any class of its creditors) generally, or (v) anything equivalent to any of the events or circumstances stated in (i) to (iv) inclusive occurs in any applicable jurisdiction.

18.2 ERM will be entitled (without prejudice to its other rights) to terminate the Agreement by written notice to Client if:

- (a) Client fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment; or
- (b) Client challenges the validity or subsistence of any intellectual property licensed to it by ERM under the Agreement.

## 19. EFFECT OF TERMINATION

19.1 On termination or expiry of the Agreement:

- (a) the rights granted by ERM to Client in clause 4.1 will immediately terminate and Client will immediately cease all use of the Subscription Services and the Documentation and ERM will be entitled to disable access to the same;
- (b) ERM will have no obligation to maintain or provide Client with any of Client Data or Outputs and may, save to the extent it is legally prohibited from doing so, delete the same;
- (c) any provision of the Agreement that expressly or by implication is intended to come into or continue in force or after termination or expiry of the Agreement will remain in full force and effect, including: clause 2 (Definitions and Interpretation), clause 5 (Restrictions on use), clause 10 (Fees and Payment), clauses 12.3, 12.5 and 12.7 (Intellectual Property Rights), but in respect of clause 12.5, only provided the Agreement is not terminated for the Client's breach, clause 13 (Confidentiality), clause 15 (Indemnity) 16 (Limitation of Liability), clauses 21 to 25, and clauses 27 to 30 (Governing law and Jurisdiction); and
- (d) any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination will not be affected or prejudiced.

## 20. FORCE MAJEURE

20.1 ERM will have no liability to Client under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of ERM or any other Party), failure of a utility service or transport or telecommunications network, acts of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that Client is notified of such an event and its expected duration. If any of the foregoing occurs and ERM continues to be prevented or delayed in its performance of the Agreement for a period of 4 weeks or more, Client may terminate the Agreement by giving written notice to ERM.

## 21. VARIATION

21.1 No variation of the Agreement will be effective unless it is in writing and signed by the Parties (or their authorized representatives).

## 22. WAIVER

22.1 No failure or delay by a Party to exercise any right or remedy provided under the Agreement or



by law will constitute a waiver of that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy will prevent or restrict the further exercise of that or any other right or remedy.

## 23. SEVERANCE

- 23.1 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it will be deemed deleted, but that will not affect the validity and enforceability of the rest of the Agreement.
- 23.2 If any provision or part-provision of the Agreement is deemed deleted under clause 23.1 the Parties will negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## 24. PRIORITY

- 24.1 If there is any conflict or inconsistency between the Order Form, these terms and conditions, the Service Level Agreement and the Data Processing Statement, this following order of priority (with a document higher in the list below prevailing over one lower in the list) will apply to the extent of the conflict or inconsistency:
- (a) the Order Form
  - (b) the Data Processing Statement;
  - (c) these terms and conditions; and
  - (d) the Service Level Agreement.

## 25. ENTIRE AGREEMENT

- 25.1 The Agreement constitutes the entire agreement between the Parties relating to its subject matter and supersedes any previous agreements or arrangements between them relating to the same. Each Party agrees that it has not entered into the Agreement in reliance on any representation, covenant, warranty or undertaking made or given by or on behalf of the other Party except as expressly set out in the Agreement.

## 26. ASSIGNMENT

- 26.1 Client will not, without the prior written consent of ERM, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.
- 26.2 ERM may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

## 27. NO PARTNERSHIP OR AGENCY

- 27.1 Nothing in the Agreement is intended to or will operate to create a partnership between the Parties, or authorize either Party to act as agent for the other, and neither Party will have the authority to act in the name or on behalf of or otherwise to bind the other Party in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## 28. THIRD PARTY RIGHTS

- 28.1 The Agreement does not confer any rights on any person or Party (other than the Parties to the same and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

## 29. NOTICES

- 29.1 Any notice required to be given under the Agreement will be in writing and will be delivered: (i) by hand; (ii) by pre-paid first-class post; (iii) recorded delivery post; or (iv) by reputable courier; to the other Party at its address set out in the Order Form, or such other address as may have

been notified by that Party in writing for such purposes.

- 29.2 A notice delivered by hand will be deemed to have been received when actually delivered (or if delivery is not in usual business hours in the country of receipt, at 08:30am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post will be deemed to have been received five (5) days after posting. A correctly addressed notice sent by reputable courier will be deemed to have been received five (5) days from the day the sender has deposited the notice with the courier.

### 30. GOVERNING LAW AND JURISDICTION

- 30.1 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the law of England and Wales. Each Party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).