

METRON-EVA® T&Cs

These Terms and Conditions (“T&Cs”) apply to and are incorporated by reference into the offer (the “Offer”) issued by the Service Provider (as identified on the Offer) and the Client (as identified on the Offer) and set forth the terms and conditions under which Service Provider will provide the Client with access to the “Platform” and to certain modules and services as set forth on the Offer (“Services”). The Service Provider and the Client are hereinafter referred to individually as a “Party” and together, the “Parties”.

ARTICLE 1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In the Agreement, the terms listed in appendix have the meanings ascribed to them in such appendix, whether used in the singular or plural.

1.2. Headings for Convenience

Headings are inserted for convenience and do not affect the interpretation of the Agreement.

ARTICLE 2. STRUCTURE OF AGREEMENT

2.1. Structure of Agreement

The Agreement comprises the following documents:

- (i) The Offer (which may also be called “quote” or “proposal”);
- (ii) each of any potential appendix to the Offer or to T&Cs;
- (iii) these T&Cs;
- (iv) any other document which is incorporated into the Agreement by reference.

2.2. Order of Precedence

If the documents comprising the Agreement are inconsistent, then the documents will prevail in the order set out in Article 2.1 to the extent of that inconsistency (unless expressly agreed otherwise in writing).

2.3. Acceptance of the Offer by the Client

If the Client issues a purchase order in response to the Offer from Service Provider, then the issuance of this purchase order by the Client shall constitute an acceptance of the Offer.

ARTICLE 3. SERVICES

3.1. Service Provider Obligations

3.1.1. The Service Provider will provide the Services to the Client in accordance with the terms of the Agreement.

3.1.2. The Platform shall be considered delivered, thereby triggering the Commencement Date, upon fulfilment of the following conditions:

- (i) access to the METRON-EVA® Platform having been provided to the Client; and
- (ii) written acceptance by the Client of the delivered Platform.

3.1.3. The Platform may be suspended occasionally due to maintenance operations necessary for the proper functioning of the servers and/or the Service Provider's Platform. In the event of interruption to the access to the Platform for maintenance, the Service Provider agrees to comply with the operations procedure described hereafter so that the Client is informed of the interruption sufficiently in advance to avoid any disruption to its activity.

3.2. Client Obligations and Acknowledgements

3.2.1. The Client shall provide written notification to the Service Provider of acceptance of the Platform within seven (7) business days of (i) training completion or (ii) the grant of access to the Platform, whichever occurs later. The Client shall provide written notification to the Service Provider of acceptance of the Services within seven (7) business days from the completion of the Services.

3.2.2. The Client must provide all relevant inputs as requested by the Services Provider from time to time and ensure that all such inputs are accurate, complete and fit for purposes.

3.2.3. The Client acknowledges that any failure or delay in providing the relevant Client inputs may impact on the Service Provider's ability to carry out its obligations under the Agreement and result in the Service Provider incurring additional costs, which may be passed on to the Client in the form of increased Service fees, provided these have been notified to the Client in advance.

3.2.4. The Client must notify the Service Provider in writing as soon as possible upon becoming aware that the Documentation, or any part of it, is incomplete or inaccurate in any way.

3.2.5. The Client must give the Service Provider access to any Client sites and other reasonable assistance (which may include space and working facilities at such sites), as reasonably required for the Service Provider to carry out its obligations under the Agreement. The Service Provider will comply with all reasonable site standards and procedures when accessing the Client's sites provided that these have been notified to the Service Provider in advance.

3.2.6. The Client acknowledges and agrees that the Services are being provided on a non-exclusive basis and further agrees to use the Services forming part of the Services for the duration of the Agreement in accordance with the terms of the Agreement.

3.2.7. The Client may only use the Services in accordance with its needs and documentation. In particular, the licence being granted in relation to the Platform is only for the sole purpose of enabling the Client to use the Services, to the exclusion of any other purpose.

- 3.2.8. The right of use being granted to the Client pursuant to the licence set out in the Agreement means the right to represent and implement the Services in accordance with their intended purpose, through the Platform, via a connection to an electronic communications network. The Client may not under any circumstances make the Services available to a third party and is strictly prohibited from any other use, in particular, but not limited to, any adaptation, modification, translation, arrangement, distribution, decompilation or reverse engineering.
- 3.2.9. The Client further understands, acknowledges and agrees that the Client's use of the Services is at its sole risk and that the Service Provider is not responsible for ensuring any operational or business outcome from the Client's use of the Services.

ARTICLE 4. TERMS OF USE OF THE SERVICES

4.1 Access to the Services

- 4.1.1 The Service Provider makes the Services available to the Client, accessible on its server by means of the Internet or by any other means determined in the Offer.
- 4.1.2 The network used to access the Services and the Platform is chosen by the Client. The Service Provider does not provide any warranty in relation to any chosen network by the Client. Since the Service Provider cannot be held liable for interruptions to the network, it draws the Client's attention to the importance of choosing the operator's network services and, in particular, of the emergency option which it can offer by setting up a parallel line in the event of network interruption.
- 4.1.3 Only the Client will have the right of access to the Services and the Platform. The Client may log in at any time, except during any period of maintenance as described below.
- 4.1.4 Subject to the access procedures described below, there is no limitation on the number of Users of the Platform.

4.2 Access Procedures

- The following access procedure must be strictly observed by the Client.
- 4.2.1 Platform shall be accessed by the Client using mainly the Client's computers and tablets; and using the Login Details given to the Client.
- 4.2.2 When accessing the Platform, the Client is identified using a Login Name given to each User by the Service Provider and a password sent to the Client by the Service Provider.
- 4.2.3 The Client will use the Login Details every time when logging in to the Platform.
- 4.2.4 The Login Details are intended to reserve access to the Platform under the Agreement to the Client's Users, to protect the integrity and availability of the Platform and the integrity, availability and confidentiality of Client Data, provided by the Users.
- 4.2.5 Login Details are personal and confidential. They may only be changed at the request of the Client or at the initiative of the Service Provider, subject to the Client being given prior notice. The Client agrees to make every effort to keep its Login Details secret and not to disclose them in any form whatsoever. The Client is solely responsible for the use of Login Details and is responsible for the safekeeping of the access codes which it receives.
- 4.2.6 The Client will ensure that no other person not authorised by the Service Provider has access to the Services. In general, the Client assumes responsibility for the security of the individual access points to the Services. In the event that the Client knows that another person is accessing them, the Client will inform the Service Provider without delay and will confirm this by written notice.
- 4.2.7 In the event of the loss or theft of Login Details, the Client will use the procedure set up and notified to it by the Service Provider to receive Login Details again by email.

4.3 Exclusions

- 4.3.1 The Client is aware of the technical risks inherent to the Internet and the interruptions in access which may result. Consequently, the Service Provider will not be held liable for any unavailability or slowdown of the Services.
- 4.3.2 The Service Provider is not able to guarantee the continuity of the Services performed remotely via the Internet, which the Client acknowledges. The Service Provider cannot be held liable for the possible impact of this unavailability on the Client's activities.

4.4 Provision of Hardware as part of Services

- 4.4.1 To the extent any Hardware is provided to the Client by the Service Provider as part of the Services, as may be detailed in the Offer, the Client shall be granted the right to use the Hardware on a temporary rental basis and shall agree to return the Hardware in good working condition at the end of the term of the Agreement at a date and place specified by the Service Provider in writing to the Client.
- 4.4.2 The Client may elect to have the Service Provider install the Hardware at the Client's premises, failing which any installation of Hardware that is carried out by the Client is done so at the Client's own risk and in compliance with all instructions given by the Service Provider.

ARTICLE 5. SERVICE MAINTENANCE

5.1 Service Provider Obligations

- 5.1.1 The Service Provider may perform corrective and ongoing maintenance as part of the Services, according to the Offer.

5.1.2 Except otherwise provided in the Offer, an email support service for dealing with defects is available from Monday to Friday, from 9am to 6pm (Paris, France time zone). Upon receipt of the relevant email from the Client, the Service Provider will then proceed to establish a diagnosis for the defect and then will implement an appropriate correction or turnaround.

5.1.3 Operations for maintenance services may render the Services temporarily unavailable. In this case, the Service Provider will inform the Client in advance.

5.2 Exclusions

The Service Provider shall not be responsible for any maintenance in the following cases:

- the refusal of the Client to work with the Service Provider to resolve defects and, in particular, to answer questions and requests for information;
- the use of the Services by the Client in a manner inconsistent with their intended purpose or the Documentation, if any;
- if there has been any unauthorised modification of the Services by the Client or by a third party;
- the Client has failed to fulfil its obligations under, or is in breach of the Agreement;
- the failure of any electronic communication networks;
- any voluntary act of degradation, malice, sabotage by the Client or by a third party due to the Client's failure to fulfil its obligations or breach of the Agreement;
- deterioration due to a Force Majeure Event as stipulated in Article 10.

5.3 Client Acknowledgement

The Client acknowledges and agrees that it shall benefit from updates and functional upgrades of the Services. The nature of the updates and upgrades, as well as their date, is determined by the Service Provider and is not subject to the authorisation or notification of the Client.

ARTICLE 6. DATA PROTECTION AND PRIVACY

6.1 Personal Data

If the Data transmitted for use as part of the Services includes personal Data, the Client warrants to the Service Provider that it has fulfilled all the obligations incumbent upon it under the terms of all applicable data protection and privacy laws and that it has informed the natural persons concerned of the use made of the aforementioned personal Data. As such, the Client indemnifies the Service Provider against any recourse, complaint or claim from a natural person whose personal data is reproduced and hosted via the Services.

6.2 Use and Ownership of Data

6.2.1 The Client is solely responsible for the quality, legality and relevance of the Data and content it communicates for the use of the Services. It further guarantees that it holds the Intellectual Property Rights allowing it to use the Data and content. Consequently, the Service Provider excludes all liability in the event of any non-compliance with laws, regulations, guidance or public orders, in respect of any Data handling, processing or controlling.

6.2.2 The Client is solely responsible for the content and messages disseminated and/or downloaded via the Services.

6.2.3 The Client shall remain the sole owner of the Data constituting the content of the Services, including any rights of the client relating to databases that may have been built from the Client's Data or use of it via the Services.

6.3 Data Security

6.3.1 Each Party agrees to implement the appropriate technical means to ensure the security of all Data.

6.4.3 Subject to Article 9, the Service Provider agrees to preserve the integrity and confidentiality of the Data contained in the Services. The Service Provider will implement technical and organisational measures to prevent any fraudulent access or use of the Data and to prevent any loss, alteration or destruction of the Data.

ARTICLE 7. PROPRIETARY RIGHTS

7.1 Client Intellectual Property Rights

7.1.1 The Client will own all Intellectual Property Rights in and to the Client IP and each Party must do all things reasonably required to confirm that ownership.

7.1.2 The Client grants the Service Provider a non-exclusive, non-transferable, royalty free, personal licence during the Term to use the Client IP (and authorise any subcontractors to do the same) solely to the extent directly necessary for the purpose of providing the Services and performing its other obligations under the Agreement.

7.2 Service Provider Intellectual Property Rights

7.2.1 The Service Provider will own all Intellectual Property Rights in and to the Service Provider IP and each Party must do all things reasonably required to confirm that ownership.

7.2.2 The Service Provider grants the Client a non-exclusive, non-transferable, royalty free, personal licence during the Term to use the Service Provider IP and the Platform solely to the extent directly necessary for the purposes of receiving the Services and performing its obligations under the Agreement.

7.2.3 The Agreement does not confer any rights of ownership to the Platform or to the deliverables resulting from the Services, if any. The temporary provision of the Services under the terms of the Agreement cannot be considered as the transfer of any Intellectual Property Right to the benefit of the Client.

7.2.4 The Client is prohibited from reproducing any element of the Service Provider IP, or any documentation concerning it, by any means whatsoever, in any form whatsoever and on any medium whatsoever.

7.2.5 The Client acknowledges that the methods, models, algorithms and know-how developed by the Service Provider are and shall remain the exclusive ownership of the Supplier.

ARTICLE 8. CONFIDENTIALITY

8.1 Treatment of Confidential Information

Each Party:

- 8.1.1** acknowledges that the Confidential Information of the other Party is valuable to the other Party; and
- 8.1.2** undertakes to keep the Confidential Information of the other Party secret and to protect and preserve the confidential nature and secrecy of the Confidential Information of the other Party to at least the same standard that it protects its own Confidential Information.

8.2 Use of Confidential Information

The recipient may only use the Confidential Information of the discloser for the purposes of performing the recipient's obligations or exercising the recipient's rights under the Agreement.

8.3 Disclosure of Confidential Information

A recipient may not disclose Confidential Information of the discloser to any person except:

- 8.3.1** with the prior written consent of the discloser;
- 8.3.2** to personnel of the recipient who require it for the purposes of the recipient performing its obligations or exercising its rights under the Agreement;
- 8.3.3** to the extent necessary to satisfy the requirements of any government agency, to comply with any law or court order, to comply with the listing rules of any stock exchange where the Party's securities are listed or quoted, or to obtain professional advice in relation to matters arising under or in connection with the Agreement.

8.4 Disclosure by Recipient

If a recipient discloses information under Article 8.3.1 or 8.3.2 then it must ensure that persons receiving Confidential Information from it are aware it is the other Party's Confidential Information and do not disclose the information except in the circumstances permitted in Article 8.3.

8.5 Return of Confidential Information

- 8.5.1** On the discloser's request, the recipient must immediately deliver to the discloser or destroy (at the discloser's sole discretion) all documents or other materials containing or referring to the discloser's Confidential Information which are in the recipient's possession, power or control; or in the possession, power or control of persons who have received Confidential Information from the recipient under Article 8.3(a) or 8.3(b), except to the extent that the Confidential Information is required for the recipient to perform its obligations under the Agreement; or contained in the internal board papers of the recipient or required to be retained by the recipient under its backup or archiving policies or law or to comply with its obligations under the Agreement.
- 8.5.3** On completion of its obligations under Article 8.5.1 the recipient must promptly certify in writing to the Discloser that the Recipient has done so.

8.6 Equitable Remedies

The Parties acknowledge that damages may not be a sufficient remedy for any breach of this Article and either Party is entitled to seek specific performance or injunctive relief (as appropriate) as a remedy for breach or threatened breach by the other Party, in addition to any other remedies available at law or in equity.

ARTICLE 9. LIABILITY

9.1 Limitations of Liability

- 9.1.1** Each Party assumes liability for the consequences of its mistakes, errors or omissions, as well as for any errors, omissions or omissions of its subcontractors and which cause direct damage to the other Party.
- 9.1.2** In addition, and in the event of a proven fault by the Client, the Service Provider shall only be liable for compensation for the pecuniary consequences of the direct and foreseeable damages resulting from the performance of the Services. Accordingly, under no circumstances shall the Service Provider incur liability for indirect, consequential or unforeseeable losses or damages of the Client or third parties, which includes any commercial loss, loss of revenue or profit, loss of customer base, loss of opportunity, cost of obtaining a substitute product, service or technology in relation to or resulting from the non-performance or improper performance of Services.
- 9.1.3** In all cases, the amount of the liability of the Service Provider is strictly limited to the reimbursement of the amount of the sums actually paid by the Client on the date of occurrence of the event giving rise to liability.
- 9.1.4** The Service Provider cannot, in addition, be held liable for the accidental destruction of the Data by the Client or a third party having accessed the Services by means of the Login Details given to the Client.

9.2 Exclusion of Implied terms

- 9.2.1** To the maximum extent permitted by law, except as expressly set out in the Agreement, the Service Provider excludes all conditions, representations, warranties and statutory guarantees, whether expressed or implied and including any implied warranties or guarantees regarding merchantability, fitness for purpose or the achievement of any result or outcome, in relation to the Services and the other subject matter of the Agreement.
- 9.2.2** If a condition, representation, warranty or statutory guarantee cannot, by law, be excluded in accordance with Article 9.2.1, then to the extent permitted by law, the Service Provider limits its liability in relation to that condition, representation, warranty or statutory guarantee to, in relation to goods, the repair or replacement of those goods or the cost of repair or replacement; and, in relation to Services, the resupply of those Services or the cost of resupply.

9.3 Liability that is not Limited or Excluded

Nothing in the Agreement operates to limit or exclude the liability that cannot by law be limited or excluded; the liability of either Party in respect of death, injury, disease or illness (including mental illness); the liability of either Party in respect of real or tangible property loss or damage; the liability of either Party in respect of any breach of Article 8; the liability of either Party for any fraudulent act or omission; and the liability of the Client to pay the Service fees.

9.4 Duty to Mitigate

Each Party will use all reasonable endeavours to mitigate loss and damage it suffers under or in connection with the Agreement.

ARTICLE 10. FORCE MAJEURE

10.1 Force Majeure Events

Neither Party will be liable to the other for any delay or non-performance of its obligations under the Agreement to the extent to which such delay or non-performance arises from any Force Majeure Event.

10.2 Mitigation

Each Party must take all reasonable precautions and implement reasonable alternative measures in accordance with recognised industry practice to avoid or mitigate the effects of any Force Majeure Event.

10.3 Procedure

A Party affected by a Force Majeure Event must promptly notify the other Party in writing of the Force Majeure Event and the cause and the likely duration (if known) of any consequential delay or non-performance of its obligations.

10.4 Termination

If a Force Majeure Event continues or is reasonably likely to continue for more than thirty (30) consecutive days and has a material adverse effect on the ability of a Party to perform its obligations under the Agreement, then both Parties agree to contact each other to review the consequences of the situation created and to agree, where appropriate on a credit note to be established by the Service Provider, for an amount to be calculated pro rata based on the Client's system usage, it being understood that the other Party may terminate the Agreement upon written notice to the first Party.

ARTICLE 11. GENERAL

11.1 Entire Agreement

The Agreement constitutes the entire agreement of the Parties about its subject matter and replaces, cancels and supersedes any previous understandings of agreements on that subject matter.

11.2 Severability of Provisions

If any part or provision of the Agreement is judged invalid or unenforceable in a jurisdiction it is severed for that jurisdiction and the remainder of the Agreement will continue to operate.

11.3 Variation and Waiver

A provision of the Agreement or a right created under it, may not be waived or varied except in writing, signed by the Party or Parties to be bound.

11.4 Publicity

The Service Provider may issue a press release or other public statement or announcement with respect to the Agreement provided that it has obtained the Client's prior approval (such approval not to be unreasonably withheld or delayed). The Client grants the Service Provider the right to use the Client's name and logo on its website and other marketing materials for the purposes of referring to the relationship of the parties under the Agreement.

11.5 Relationship

Nothing in the Agreement is intended to create a partnership, joint venture or agency relationship between the Parties, and each Party agrees that it is entering into the Agreement only as an independent contractor.

11.6 Applicable Law and Jurisdiction

The Agreement is subject to the laws of France, and each Party submits to the exclusive jurisdiction of the courts of Paris, France.

11.7 Counterparts

The Agreement may be executed in multiple counterparts in the English language, each of which shall be deemed an original but which, taken together, shall constitute one and the same instrument. Should any conflict arise between the English language version of the Agreement and any translation hereof, the English language version shall be controlling.

11.8 Third Party Rights

Unless expressly stated otherwise, the Agreement is made for the benefit of the Parties only and is not intended to confer a right on any third party or be enforceable by any third party.

11.9 Assignment and Subcontracting

A Party must not assign, transfer, novate, encumber or otherwise deal with all or part of its rights or obligations under the Agreement without the other Party's prior written consent (such consent not to be unreasonably withheld or delayed). The Service Provider may subcontract the provision of some or all of its obligations under the Agreement, provided that the Service Provider will remain responsible for the performance of those obligations and will be liable for the acts and omissions of the subcontractor in connection with the Agreement as if they were the Service Provider's own acts or omissions.

Appendix – Definitions

Agreement: means any signed and executed document (Offer, offer, proposal,...) between both Service Provider and Client relating on Services and referencing the present T&Cs (and other documents), including agreements, Offers and offers entered into by means of agreed electronic contract conclusion procedures provided by or on behalf of the Service Provider. The agreement is further defined in Article 2 of the T&Cs.

Client IP: all Intellectual Property Rights in and to the Client Materials;

Client Materials: all Materials provided or made available to the Service Provider by or on behalf of the Client under the Agreement, together with any modifications and enhancements to those Materials;

Commencement Date: the date of delivery of the METRON-EVA® platform to the Client which shall be the date on which the actions set out in Article 3.1.2 are fulfilled and confirmed in writing by the Client or, in case of specific Services, the date determined in the Offer;

Confidential Information: the terms of the Agreement and all information disclosed to the recipient (or any of its personnel) by or on behalf of the discloser (or any of its personnel) under or in connection with the Agreement including:

(a) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of the Service Provider;

(b) information delivered partly or wholly from the information relating to or developed in connection with the business technology or other affairs of the discloser, the Deliverables, the Services, any systems, technology, ideas, concept, know-how, designs Intellectual Property Rights owned or used by, or licensed to the discloser;

(c) trade secrets and information which is capable of protection at law or equity as confidential information;

Data: information, publications and, in general, data from the database of Client data, or which is inputted by the Client, the use of which is the subject of the Agreement, which can only be accessed by Users;

Documentation: the document(s) made available to the Client by the Service Provider online via such web address notified by the Service Provider to the Client from time to time which sets out a description of the Services and the user instructions for the Services and which also includes any proposals or quotations;

Force Majeure Event: any event outside the reasonable control of the affected Party, including:

(a) an act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought, meteor or other natural disaster;

(b) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;

(c) an act of public enemy, sabotage, malicious damage, terrorism or civil unrest;

(d) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority;

(e) a labour dispute other than a labour dispute that only involves the Party's personnel;

(f) collapse of buildings or accident;

(g) pandemic and its potential consequences due to an order of any government or government authority;

(h) any problems, non-availability, failures or technical malfunctions of any telephone lines or networks, computer online systems, servers or providers, computer equipment, hardware, software, or any other object or material;

(i) Internet or Intranet down-time; or

(j) interruption or failure of utility service;

Hardware: the hardware comprising any physical elements supplied by the Service Provider to the Client for the purposes of data processing in connection with the Services, which is owned by the Service Provider;

Term: the period specified in the Offer or, failing which, the period of one calendar year commencing on the Commencement Date;

Intellectual Property Rights: all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, know-how, confidential information, patents, software code, algorithm, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967;

Internet: the set of interconnected networks, which are located in all regions of the world;

Intranet: the computer network specific to a company or organisation, using TCP/IP protocols and, more generally, internet technologies and which can be connected to the Internet;

Login Details: the login and password to be used by the User, which are provided by the Service Provider when registering for the Services;

Materials: software, firmware, tools, documentation, reports, data, diagrams, procedures, plans, methods, models, algorithms, know-how and other materials developed by the Service Provider;

Platform: the energy management software solution, services and processes of the Service Provider known as "METRON-EVA®", as modified, updated, revised and replaced from time to time (including all future versions made available by the Service Provider to the Client from time to time), further described in the Offer;

Service Provider IP: all Intellectual Property Rights in and to the Service Provider Materials;

Service Provider Materials: all deliverables and any other Materials provided or made available to the Client by or on behalf of the Service Provider under the Agreement, together with any modifications and enhancements to those Materials, including but not limited to, any element of the Services made available to the Client and, more generally, to the IT infrastructure (software and hardware) implemented or developed by the Service Provider within the framework of the Agreement;

Services: the services provided by the Service Provider to the Client under the Agreement, as more particularly described in the Offer, the T&Cs and in the Documentation and which may include data hosting, support, training, hardware rental, installation and maintenance services;

Software: any software provided by the Service Provider to the Client, on a subscription basis, particularly in respect of the Platform and the Services;

User: means the person under the Client's responsibility (agent, employee, representative, etc.) and who has authorised access to, and use of, the Services and the Platform and the Documentation in accordance with the Agreement on his/her computer by virtue of the user licence entered into by the Client.