

## SOURCE: STATPRO®

# ENTERPRISE BENCHMARK SERVICE AGREEMENT FOR USE WITH STATPRO REVOLUTION®

This Enterprise Benchmark Service Agreement (this “**Agreement**”) is between StatPro Limited (“**StatPro**”) and Client pursuant to the Enterprise Benchmark Order Form between StatPro and Client (the “**Order Form**”) (each, a “**Party**”, and, collectively, the “**Parties**”), and is subject to the terms of the terms of the StatPro Revolution License Agreement (the “**License Agreement**” and the StatPro Terms of Use (“**Terms of Use**”). Unless otherwise stated, the capitalized terms in this Agreement shall have the same meaning as defined in the Order Form, the License Agreement and the Terms of Use.

## 1. LICENSE GRANT

Subject to the terms and conditions of this Agreement, StatPro hereby grants to Client a temporary, personal, limited, non-transferrable, non-sublicensable and non-exclusive license to use during the Term the StatPro Enterprise Benchmark Service within StatPro Revolution® (the “**Service**”). The Service is comprised of software applications (collectively, the “**Software**”) and grants access to database(s) (the “**Data**”) provided by one or more originating information and data providers (collectively, “**Information Providers**”), as set forth in the Order Form. The Service includes updates and modifications to the Service from time to time that StatPro determines to make available generally to other Service clients (collectively, “**Subscribers**”).

## 2. USAGE RESTRICTIONS; PRECEDENCE OF TERMS

- 2.1 The Service is to be used solely by employees of Client and its Affiliates (each, a “**Permitted Affiliate**”) but only for so long as such entity(s) remains an Affiliate, and that StatPro permits to access and use, and is subject to the terms of, StatPro Revolution. Each Permitted Affiliate shall be deemed a licensee under this Agreement and Client shall be responsible for any breach of this Agreement by the Permitted Affiliate (the Client and the Permitted Affiliates, each a “**Licensee**”).
- 2.2 The Service may be used solely by Licensee’s designated users as set forth in the Order Form. The Service may be used solely in the internal operations of Licensee within StatPro Revolution, and except as set forth in the Order Form may be used only in the asset management operations of Licensee. Licensee may not resell, or otherwise transfer or allow the use of the Service, or any part thereof, either directly or indirectly, by or for the benefit of, any person or entity (including, without limitation, Licensee’s other businesses and Licensee’s present and future Affiliates) without the prior written consent of StatPro, which StatPro may withhold in its sole and absolute discretion. Licensee shall treat the Service as proprietary to StatPro and the Data as proprietary to the Information Providers, and Licensee shall not divulge, disclose or disseminate, nor permit any of its directors, officers, employees, agents or other representatives to divulge, disclose or disseminate any proprietary information (including, without limitation, Data) to any person or entity except as expressly permitted by this Agreement. Licensee shall promptly inform StatPro as to its knowledge or reasonable belief of any actual or suspected unauthorized use, divulgence, disclosure or dissemination of any of the Data, or use of the Data for purposes other than as expressly permitted by this Agreement, or other conduct that violates the terms of this Agreement, and shall take all actions reasonably necessary, appropriate or requested by StatPro, and shall provide reasonable

assistance to StatPro and the Information Providers, to protect the rights of StatPro and the Information Providers in and to the Software and the Data, respectively.

- 2.3 In addition, and without limiting the foregoing, the Service and the Data shall be subject to the terms, conditions, instructions and restrictions required or imposed by the relevant Information Providers at any time and from time to time, including any fees or charges due or payable to the Information Providers by Licensee with respect to such use. Such terms, conditions, instructions and restrictions are binding on Licensee as any other provisions of this Agreement. Licensee can view restrictions that Data Providers have supplied to StatPro at to <https://source.statpro.net/terms-and-conditions> ("Data Provider Terms Site") or which, in some cases, may be within the relevant Service. StatPro will use commercially reasonable efforts to maintain the Data Provider Term Site with the latest policies of each relevant Data Provider and provide notice to Client prior to such a change becoming effective, but StatPro does not represent, warrant or guarantee that the Data Provider Term Site will be full, complete and up to date, or that StatPro may be able to provide sufficient notice of the effectiveness of such changes. StatPro has the right to comply with any reporting requirements or obligations of Data Providers. Without limiting the foregoing, StatPro may provide Data Providers with details of Licensee's usage of, and any suspected breach of this Agreement relating to, the Data Provider's Data.
- 2.4 Licensee is not granted permission and shall not, without prior written permission in each instance, (i) copy the Service, or any component of the Service, (ii) alter, modify or adapt the Service, or any component of the Service, including, without limitation, translating, reverse engineering, decompiling, disassembling, combining, converting, calculating or creating custom, blended or any other derived data or derivative works, or (iii) make the Service, or make any component of the Service available to any other person or entity, directly or indirectly, for any of the foregoing or for any other use, including, without limitation, by loan, rental service bureau, external time sharing or similar arrangement.
- 2.5 Licensee shall reproduce on all copies of the Data that is authorized by StatPro (all of which is, and shall at all times remain, the sole and exclusive property of the relevant Information Providers or StatPro) all copyright, proprietary rights, attribution, and restrictive legends required from time to time by the relevant Information Providers or StatPro. Licensee shall advise its employees, agents and representatives of its obligations hereunder and to take such further actions as may be required, necessary or appropriate to bind and obligate its employees, agents and representatives to strictly adhere to and comply with such obligations.
- 2.6 Licensee acknowledges and agrees that (i) all components of the Service and the Data constitute copyrighted, trade secret, or proprietary information of substantial value to StatPro and/or the Information Providers, as the case may be, (ii) that Licensee is not granted and receives no proprietary rights whatsoever in and to the Service and the Data, (iii) that title and ownership rights in and to the Service and the Data, and all rights therein and legal protections with respect thereto, are and at all times shall remain sole and exclusively with StatPro and/or the Information Providers, as the case may be, and (iv) subject to any superior rights of any Information Provider in the Data, and the selection, preparation, coordination, compilation, arrangement and format of its Data including through the expenditure of considerable work, time and money, StatPro owns and is exclusively vested in perpetuity with all rights, title and ownership to the Service, including the selection, preparation, coordination, compilation, arrangement and format of the Data furnished via the Service.
- 2.7 Licensee agrees that the Service will be used by the Licensee solely for its own internal business activities and such information or the existence, content, substance, purport, effect or meaning thereof, shall not be retransmitted, sold, furnished, divulged or published to any other person or entity whatsoever, without the prior written consent of StatPro and the relevant Information Providers in each instance in their sole

and absolute discretion. If permitted by the relevant Information Provider(s), the foregoing shall not preclude the Licensee's use of specific Data directly related to particular transaction or particular advisory or management situations occurring in the normal course and conduct of Licensee's business, which use of such specific Data is properly attributed to the applicable Information Provider(s), so long as Licensee does not make any general reproduction, publication, distribution or dissemination of Data provided by StatPro, by electronic or any other means, without the prior written consent of StatPro and the Information Provider(s) in each instance in their sole and absolute discretion.

- 2.8 Licensee acknowledges and agrees that in the event of a breach or attempted breach by Licensee of any of the provisions of this Section 2 of this Agreement, StatPro will suffer irreparable injury and harm that is compensable by money damages for which StatPro will not have an adequate remedy at law and therefore StatPro shall be entitled (in addition to money damages) to seek injunctive relief to prevent or curtail any breach thereof, threatened or actual without the requirement of posting a bond.
- 2.9 Licensee shall access and use the Service and the Data in strict accordance with all applicable laws, including without limitation, in accordance with all applicable export control laws.
- 2.10 If there is any conflict among the relevant documents of agreement, the descending order of precedence, unless otherwise expressly stated, shall be: Order Form, this Agreement, Order Form for the License Agreement, and the License Agreement. Terms in this Agreement in respect of Data Providers and in separate agreements between Licensee and Data Providers take precedence over any conflicting term of the aforementioned documents of agreement.

### 3. FEES; AUDIT RIGHTS

- 3.1 For the Services and Data provided under this Agreement, Licensee shall pay to StatPro the fees set forth in the Order Form (the "**Service Fees**"). The Service Fees are subject to change by StatPro from time to time upon at least sixty (60) days' prior written notice to Licensee (a "**Service Fee Increase Notice**"). To the extent any increase in the Service Fees set forth in a Service Fee Increase Notice exceeds five percent (5%) in a calendar year, Licensee may terminate this Agreement on the date on which the increase(s) would have become effective, by giving written notice to StatPro. The Service Fees are in addition to any fees imposed on Licensee by the relevant Information Providers in their agreements with Licensee.
- 3.2 Licensee shall pay all applicable taxes however designated or levied, based on the Fees, or otherwise arising out of this Agreement, other than taxes related to StatPro's income.
- 3.3 If Licensee fails to pay the Service Fees by the due date under this Agreement for a period of more than thirty (30) days, in addition and without prejudice to any other rights it may have, StatPro shall have the right to suspend performance of its obligations under this Agreement until Licensee has fulfilled its payment obligations hereunder.
- 3.4 StatPro has the right (either directly by itself or through its representatives) to conduct an audit of the Licensee, on no less than ten (10) business days' prior notice and during normal business hours, to verify and confirm if Licensee is complying with this Agreement. In connection with such audit, StatPro will comply with Licensee's reasonable security, confidentiality and health and safety procedures that are provided to StatPro in writing in advance. StatPro will not audit more than once in every consecutive twelve (12) month period per Licensee location, unless (a) StatPro has cause to suspect, or an audit reveals, that Licensee is not compliant with this Agreement, or (b) where StatPro is required to do so by a Data Provider with respect to its Data. If the audit reveals that Licensee has breached this Agreement, Licensee will promptly pay to StatPro the full amount of any underpayment of charges with respect to the audited

period, and (b) StatPro's costs of conducting the audit if Licensee has underpaid the charges by more than five percent (5%), or where such costs are imposed on StatPro by a Data Provider.

#### 4. TERM AND TERMINATION

- 4.1 The term of this Agreement, including the initial term and renewal term, if any, (collectively the "Term") shall be set forth on the Order Form, and the Term shall in any event be consistent with, and not extend beyond, the term of the applicable StatPro Revolution license. Unless otherwise provided in the Order Form, this Agreement shall automatically renew for successive renewal terms, subject to termination set forth in this Section 4.
- 4.2 This Agreement may be terminated as follows:
- (i) By either StatPro or Licensee, at the expiration of the initial term or the current renewal term, as applicable, upon ninety (90) days' notice prior to the end of the initial term or the current renewal term, as applicable.
  - (ii) By StatPro, at any time following written demand if Licensee fails to pay any amount due hereunder for a period of more than thirty (30) days.
  - (iii) By either StatPro or Licensee, immediately upon written notice to the other Party in the event of any breach (other than a failure to pay) by such other Party of the terms of this Agreement, which breach remains uncured for a period of twenty (20) days following written notice thereof by the non-breaching Party to the other Party.
  - (iv) By StatPro immediately upon written notice to Licensee with respect to Data that is no longer permitted by the relevant Information Provider for license or re-distribution to Licensee.
  - (v) By Licensee as provided in Section 3.1 above.
  - (vi) By either Party upon written notice to the other Party in the event the other Party (a) ceases, threatens to cease, or discontinues its business operation; (b) makes an assignment for the benefit of its creditors or an admission of its inability to pay its obligations as they become due; or (c) files or has filed against it, a petition in bankruptcy or any similar proceeding or files any pleadings seeking any reorganization, liquidation or dissolution under any law, or admits or fails to contest the material allegations of any pleading against it, or is adjudicated as bankrupt or insolvent, or a receiver is appointed for a substantial part of such Party's assets, or the claims of creditors of such Party are abated or subject to a moratorium under any law.
- 4.3 Upon termination of this Agreement for any reason, and subject to any agreement Licensee may otherwise have with the relevant Information Provider(s) with respect to the retention, use or ongoing rights with respect to the Data, Licensee shall immediately cease all use of the Data and shall return to StatPro, or the relevant Information Providers, as the case may be, all copies of the Data in Licensee's possession.
- 4.4 Notwithstanding anything in this Agreement to the contrary, if any payment is not made in full by Licensee in accordance with this Agreement, StatPro may charge interest on the outstanding amount from the due date until full payment is made, at the rate equal to the lower of (a) One Percent (1%) per month, and (b) the maximum amount permitted by applicable law.
- 4.5 Upon StatPro's written request at any time and from time to time (within thirty (30) days of the request therefor), Licensee shall deliver to StatPro (a) a certificate executed by an executive officer or authorized person responsible for monitoring Licensee's compliance with this Agreement, certifying Licensee's compliance with the terms of this Agreement including, without limitation, the use limitations set forth herein, and (b) such other written materials in support thereof as may be reasonably by StatPro (e.g.

examples of Data usage by Licensee). Further, Licensee shall promptly response to any questions that StatPro may have concerning such certificate and such other written materials provided by Licensee.

## **5. DISCLAIMER; LIMITATION ON LIABILITY**

- 5.1 THE SERVICE IS PROVIDED TO LICENSEE ON AN “AS IS” BASIS AND LICENSEE’S USE IS AT LICENSEE’S RISK. NEITHER STATPRO NOR THE INFORMATION PROVIDERS WARRANT THAT THE SERVICE OR THE DATA WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SERVICE OR THE DATA ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. NEITHER STATPRO NOR ANY OTHER PERSON OR ENTITY MAKES ANY REPRESENTATIONS OR WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE OR THE DATA (OR THE RESULTS TO BE OBTAINED BY THE USE THEREOF), AND STATPRO EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF ORIGINALITY, ACCURACY, TIMELINESS, COMPLETENESS, RELIABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSEE ASSUMES THE ENTIRE RISK OF ANY USE LICENSEE MAY MAKE OF THE SERVICE AND THE DATA, AND ACKNOWLEDGES THAT DATA FIELDS MAY NOT BE CONSISTENT THROUGHOUT THE DATA. IN NO EVENT SHALL STATPRO OR ANY OTHER PARTY, BE LIABLE TO LICENSEE OR ANY OTHER PERSON OR ENTITY FOR ANY DIRECT OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS, LOST SAVINGS, LOSS OF DATA, LOSS OF USE OR OTHER SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE INABILITY OF LICENSEE TO USE THE SERVICE, REGARDLESS OF THE FORM OF ACTION, EVEN IF STATPRO HAS BEEN ADVISED OF OR OTHERWISE MIGHT HAVE ANTICIPATED THE POSSIBILITY OF SUCH DAMAGES. NO INFORMATION PROVIDER MAKES ANY WARRANTY, EXPRESS OR IMPLIED, ON THE SERVICE OR ANY OF THE DATA TRANSMITTED VIA THE SERVICE AND THE INFORMATION PROVIDERS EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL STATPRO OR THE INFORMATION PROVIDERS HAVE ANY LIABILITY TO LICENSEE OR ANY OTHER PERSON FOR ANY MATTER ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER BASED UPON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE IN EXCESS OF THE FEES ACTUALLY PAID BY LICENSEE TO STATPRO FOR THE AFFECTED PORTION OF THE SERVICE OR DATA FOR THE PERIOD OF TIME AFFECTED, WHICH SHALL NOT EXCEED TWELVE (12) MONTHS. WITHOUT LIMITING THE FOREGOING, WHERE STATPRO’S INDEMNITY OBLIGATION ARISES FROM DATA OR INFORMATION OBTAINED FROM A DATA PROVIDER, STATPRO’S MONETARY LIABILITY TO LICENSEE WILL BE LIMITED TO THE AMOUNT STATPRO RECOVERS FROM THE RELEVANT DATA PROVIDER, DIVIDED BY THE NUMBER OF OTHER ACTUAL OR POTENTIAL CLAIMS BY STATPRO CUSTOMERS (INCLUDING LICENSEE) AGAINST STATPRO ARISING FROM THAT DATA OR INFORMATION.
- 5.2 In particular and without limiting the generality of the foregoing, no Information Provider warrants the truth or accuracy, timeliness or completeness of any information or Data provider via the Service. In no event shall any Information Provider, or any of their respective affiliates, employees, directors, officers, agents and representatives, be liable in any way for any loss or damage, direct or indirect, including, without limitation, loss of use, revenues, profits or savings even if such person knew or should have known of the possibility of such damages. Notwithstanding anything herein to the contrary, nothing herein shall limit StatPro’s liability for death or personal injury caused by its negligence, or where to do so would be contrary to any applicable law.
- 5.3 StatPro shall have no liability to Licensee for claims that are made by Licensee more than two (2) years after the date of expiration or other termination of this Agreement.

5.4 Licensee acknowledges that StatPro has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the parties. To the extent permitted by applicable law, StatPro's maximum aggregate liability in respect of all claims made against StatPro arising out of or in connection with this Agreement shall not exceed the amount set forth in the last sentence of Section 5.1 above.

## 6. INDEMNIFICATION

- 6.1 Licensee agrees to indemnify and hold harmless StatPro and the Information Providers, and their respective Affiliates, directors, officers, employees, agents and representatives from and against any claims, losses, damages, liabilities, costs and expenses, including reasonable attorney's fees, as incurred, (collectively, "**Claims**") arising in any manner out of Licensee's use, or inability to use, all of any part of the Service or any breach by Licensee of any provision contained in this Agreement including, without limitation, third party claims arising out of such use or breach.
- 6.2 StatPro agrees to indemnify and hold harmless Licensee and its Affiliates, directors, officers, employees, agents and representatives from and against any Claims that StatPro does not possess all right necessary to make the Service and Data available to Licensee. StatPro may remedy any alleged or anticipated infringement of a third party's intellectual property rights by: (a) procuring the right of Licensee to continue to use the Service and Data in accordance with this Agreement; (b) replacing affected Data with replacements that do not alter the fundamental nature of the relevant Service; or (c) terminating the Service, in whole or in part.

## 7. ENTIRE AGREEMENT

This Agreement supersedes all prior oral or written negotiations and discussions of the Parties and constitutes the entire agreement between the Parties with respect to the subject matter hereof. StatPro may modify, amend, supplement or waiver of any of the provisions hereof which shall be binding upon either Party hereto unless made in writing and signed by a duly authorized officers of the parties hereto. This Agreement may be modified, amended or supplemented by StatPro at any time and from time to time on thirty (30) days' prior notice from StatPro to Licensee. If Licensee does not agree to such changes, it may terminate this Agreement on notice without cause or penalty, provided such termination notice is given by Licensee to StatPro within thirty (30) days of Licensee's receipt of notice from StatPro of such change. If Licensee timely gives StatPro such notice, Licensee shall receive back from StatPro a pro rata portion of any advance payment of Service Fees made by Licensee to StatPro prior to such termination for the period subsequent to the termination date. Such repayment to Licensee shall be Licensee's sole and exclusive remedy for such termination.

## 8. ASSIGNMENT

This Agreement may not be assigned by Licensee without StatPro's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. This Agreement shall be binding upon and inure to the benefit of the Parties and the relevant Information Providers and their respective successors and permitted assigns.





## **9. NO PARTNERSHIP; THIRD-PARTY BENEFICIARY**

This Agreement does not create a partnership, joint venture or agency relationship between StatPro and Licensee. Neither StatPro nor the Licensee shall have any power to obligate or bind the other Party in any manner. Except for the Information Providers which are intended third-party beneficiaries of this Agreement with respect to the provisions relating to the use and ownership of the Data and related disclaimers, no other person or entity is intended, or shall be deemed to be a beneficiary of this Agreement, or any provisions hereof. Licensee expressly acknowledges that the terms of this Agreement including, without limitation, provisions regarding use restrictions and proprietary information, are intended to, and do, benefit the Information Providers, and the Information Providers may, in the event of a breach by Licensee, institute and maintain a separate action, suit or proceeding in the name and for the benefit of the Information Provider to enforce the terms of this Agreement or recover damages or both.

## **10. ENFORCEABILITY**

If any provision hereof shall for any reason be declared to be void or illegal, the enforceability of this Agreement or any other provision hereof shall not be affected. In addition, the Parties agree that such void or illegal provision shall be construed in a manner designated to effectuate its purpose to the fullest extent enforceable under applicable law. All remedies set forth in this Agreement are cumulative and in addition to and not in lieu of any other remedy available at law or in equity.

## **11. FORCE MAJEURE**

Without limiting any disclaimer or limitation of liability, StatPro will not be responsible for any failure to perform due to causes beyond its reasonable control including, without limitation, acts of God, acts of terrorism, sabotage, hacking, war, revolution, rebellion, riot or other civil disturbance embargoes, power failures, floods, epidemics, third party systems, facilities, hardware, software and equipment failures, or telecommunications failures, acts of civil or military authorities, national disasters, strikes and the like.

## **12. GOVERNING LAW**

This Agreement is written in English only and will be governed by and construed in accordance with the laws of England and Wales, without regard to its conflicts of laws or principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Licensee and StatPro submit to the exclusive jurisdiction of the courts of England for the adjudication and resolution of all claims and disputes under or arising out of this Agreement. Licensee and StatPro waive all objections to such jurisdiction including, without limitation, on grounds of inconvenient forum.

## **13. INDEMNIFICATION**

- 13.1 Each of Licensee and StatPro undertake to the other: (a) to treat and keep confidential all proprietary and confidential information of the other Party supplied to it under this Agreement and shall not use such information for any purpose other than as required or permitted by this Agreement; and (b) that if any law, regulation or order of a competent authority requires either Party to disclose information covered by its confidentiality obligations in this Agreement, then the relevant Party may make any such disclosure so required. The Party under the disclosure obligation will provide the other Party with prompt notice of any such requirement and, to the extent practicable and without requiring it to fail to comply with any such requirement, cooperate with the other Party, at the other Party's expense, in responding to it. Either Party may further make disclosures to their legal advisers.
- 13.2 Confidential information for the purposes of this Section shall not extend to: (a) information which was rightfully in the possession of the receiving Party prior to its disclosure in connection with this Agreement and is not subject to an earlier confidentiality undertaking between the Parties; or (b) information which is already public knowledge or is in the public domain or becomes so at a future date (otherwise than as a result of the breach of this Agreement); or (c) information available to a Party from third parties without any non-disclosure obligation to the other Party which is known to the receiving Party; or (d) information which the receiving Party can demonstrate was independently developed by it without reference to the other Party's confidential information.

#### **14. PUBLICITY; TRADEMARKS; REFERENCES**

- 14.1 Neither Party may issue press releases or announcements regarding any matter relating to this Agreement until the other Party has agreed in writing to the wording and intended distribution of such press release and information.
- 14.2 Except as necessary for the provision of the Service, neither Party may use the other Party's or its Affiliates' names, logos, trademarks, service marks, or other proprietary marks without such Party's prior written consent in its sole and absolute discretion.
- 14.3 Licensee agrees that it will, at StatPro's reasonable request, act as a reference site for other potential clients of StatPro considering subscribing to StatPro's Enterprise Benchmark Service. Licensee further agrees that it will, at StatPro's reasonable request and expense, participate in case studies organized by StatPro relating to StatPro's Enterprise Benchmark Service.

#### **15. COUNTERPARTS/EXECUTION**

This Agreement and the Order Form may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. StatPro and Licensee agree to the use of electronic signatures.

#### **16. SURVIVAL**

The following Sections shall survive termination of this Agreement: 2.6, 2.8, and 2.10; 3; 5-16.



