

THE EARNEST ANALYTICS COMPANY
Product Terms & Conditions

These Product Terms and Conditions (“Terms and Conditions”) constitute the agreement (the “Agreement”) between you (“Client” or “you”) and The Earnest Analytics Company (“Earnest”) in connection with your use of data products prepared by Earnest (collectively with any other information or content distributed by Earnest to you, the “Products”). **Notwithstanding the foregoing, if you have entered into a written License Agreement with Earnest, such written agreement will govern and the below terms shall have no force or effect.**

1. Restrictions; Subsidiaries and Affiliates.

1.1 As a condition of your use of the Products, you may not:

- (a) reverse-engineer, disassemble, or decompile any portion of the Products;
- (b) distribute any database which includes any portion of the Products to any third party;
- (c) utilize any Product (or any portion thereof) to attempt to extract information regarding, or to otherwise identify, any particular individual person or consumer-facing financial institution, including by combining any Product (or any portion thereof) with any other data or information to which you have access, nor may you attempt to contact any data subject if you are aware that such data subject’s records appear in the Products;
- (d) disclose or distribute, or permit to be disclosed or distributed, any Product or any information or data contained in or derived from any Product to any person in any form, written, oral or otherwise, except as expressly permitted pursuant to these Terms and Conditions; or
- (e) copy or use all or any portion of a Product except as expressly permitted in accordance with these Terms and Conditions

This Agreement grants no right to sublicense, rent or loan any Product, nor does it grant any right to create a derivative work based upon any Product except as otherwise expressly provided herein. Earnest shall not be liable or responsible for any conflicts of equipment or software that may arise from your use of any of the Products. Each Product provided to you is proprietary and confidential to Earnest, and you and your employees shall protect each Product as a trade secret.

1.2 You shall be responsible for any breaches by you, any of your subsidiaries or affiliates or any of your or their respective shareholders, partners, members, directors and employees, agents, consultants, contractors or other persons who gain access (authorized or unauthorized) to the Products through you or any such persons or entities and you shall assist Earnest to enjoin and otherwise redress such conduct.

2. Product Revisions; Limitations of Warranty; Reliability of Products.

2.1 Earnest shall have the right, in its sole discretion, to (i) discontinue any Product or (ii) add, delete or modify the data and information contained in the Products.

2.2 Except for statements that are expressly identified in these Terms and Conditions as representations or warranties, Earnest makes no written, oral, statutory, express or implied warranties, conditions or representations concerning the Products or their content. Earnest expressly disclaims any implied warranties, including, without limitation, conditions of satisfactory quality, merchantability or fitness for a particular purpose, whether implied by law or otherwise. Earnest does not know the purpose for which you are using the Products and therefore does not warrant or represent that the Products or other content are sufficient or appropriate for such purpose or your requirements.

2.3 Earnest makes no representations or warranties about the accuracy or completeness of the information contained in the Products. Earnest does not represent or warrant that the Products are free from errors, and except as expressly set forth in these Terms and Conditions, Earnest does not represent or warrant in any way any information provided by any third party. You acknowledge and agree that the data and information contained in the Products is subject to constant change and that Earnest and its independent data providers cannot and do not guarantee the content or accuracy of such information, data or data files transmitted, processed, disseminated or distributed hereunder, or the timeliness or availability of such information. Accordingly, except for Earnest’s willful misconduct or gross negligence, or as otherwise set forth in these Terms and Conditions, you agree that Earnest and its independent data providers shall not have any liability or obligation to you or any third party (whether directly or indirectly), relating to or arising out of the Products, third-party information or any portion thereof, including (i) the transmission, delivery or distribution of such information and (ii) the accuracy, validity or completeness of such information, including errors or omissions of such information of any Product.

3. Confidentiality.

3.1 You acknowledge that all of the Products and all information contained therein and all information concerning Earnest’s business methods, business plans, methodologies, internal policies and procedures, pricing terms, test results, code, inventions, analyses, and financial information are proprietary and confidential information of Earnest (the “Confidential Information”). You agree that the Confidential Information will be held confidential under the same safeguards as you treat your own confidential information (but in no event less than a reasonable level of care) and that you will not use, copy or disclose the Confidential Information. You acknowledge and agree that nothing contained herein shall restrict Earnest in

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any respect from distributing any of its data or products to third parties, including clients of Earnest.

- 3.2 Subject to the limitations in these Terms and Conditions, Client agrees to indemnify and hold harmless Earnest, its affiliates, and owners, shareholders, directors, employees, agents and subcontractors (including independent data providers) of Earnest and its affiliates (each, an “Earnest Indemnified Party”), against any and all third-party claims, actions, suits, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies (including, without limitation, interest, penalties and reasonable attorneys’ and experts’ fees and expenses and costs of settlement suffered, incurred or sustained by the applicable Earnest Indemnified Party) arising out of or resulting from any breach of (i) Section 1.1 of these Terms and Conditions or (ii) the confidentiality obligations set forth in these Terms and Conditions.

4. Limitations of Liability.

- 4.1 UNDER NO CIRCUMSTANCES SHALL EARNEST OR ITS AFFILIATES, OWNERS, SHAREHOLDERS, DIRECTORS, EMPLOYEES, INDEPENDENT DATA PROVIDERS OR VENDORS BE LIABLE FOR:

(a) SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES OR LOSS;

(b) DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOSS; OR

(c) LOSS OF BUSINESS, REVENUE, GOODWILL, PROFITS, CONTRACTS OR ANTICIPATED SAVINGS (WHETHER SUCH LOSS IS DIRECT OR INDIRECT, FORESEEABLE OR OTHERWISE),

IN ANY SUCH CASE ARISING FROM OR IN CONNECTION WITH OR OTHERWISE RELATING TO THE PRODUCTS OR THE AGREEMENT WHETHER ON THE BASIS OF NEGLIGENCE, TORT, BREACH OF CONTRACT, MISREPRESENTATION OR OTHERWISE.

- 4.2 The Products and the information therein do not include, nor shall they be construed as including, advice, guidance or recommendations from Earnest to take, or not to take, any actions or decisions in relation to any matter. Should you take any such action or decision based on information in a Product, you do so entirely at your own risk and Earnest shall have no liability whatsoever for any loss, damage, costs or expenses incurred or suffered by you as a result.

5. Proprietary Rights.

- 5.1 At all times, Earnest or its independent data providers shall retain all right and title to, and ownership of, all

intellectual property rights in the Products and all data and information contained therein. You shall have no rights in any of the foregoing except as expressly granted by these Terms and Conditions or the Agreement.

- 5.2 You shall not alter, obscure, remove, interfere with or add to any of the trademarks, trade names, markings or notices affixed to or contained in the Products and shall ensure that all those trademarks, trade names, markings and notices are reproduced completely and legibly on all copies of the Products made by you.

- 5.3 To the extent that Client, its employees, or agents provide suggestions, comments, proposals, ideas, recommendations or other feedback regarding the Products, other Earnest services or offerings, or the use thereof (“Feedback”), Client grants to Earnest all of the intellectual property rights that may be necessary to commercialize the Feedback and Earnest shall be free to use, reproduce, modify, create derivative works, disclose, distribute, and otherwise exploit the Feedback without restriction for any and all purposes with no obligation to Client.

- 5.4 You acknowledge that Earnest may collect information and other analytics pertaining to Client’s access to or use of the Products, including but not limited to Products selected or activities taken by Client, its employees, or agents (“Usage Data”). Usage Data may be aggregated, analyzed, and used to create and inform trend data, insights, and statistics, reflecting, for instance, frequency of use and access to content. You acknowledge that Earnest may use, disclose, or modify such Usage Data, in anonymized, aggregated form only, for any purpose including the creation of derivative works and the improvement of the Products and other Earnest services and offerings.

6. Termination of Access to Products.

- 6.1 Earnest may terminate this Agreement, immediately, without credit or refund upon written notice to you.

- 6.2 Upon termination of this Agreement pursuant to Section 6.1 or upon the expiry of the Term or other termination of this Agreement, (a) your right to access and use the Products shall terminate forthwith and you shall make no further use of such whatsoever, (b) you shall immediately destroy any copies of any Products and any document or electronic file that contains data and other information (howsoever recorded and stored) extracted, exported or reproduced from any such Product held by you (and you shall certify to Earnest in writing signed by an appropriate officer that you have complied with this subclause (b)) provided that you may retain such copies of the Products and any document or electronic file that contains data and other information (howsoever recorded and stored) extracted, exported or reproduced from any such Product as are necessary solely for archival or recordkeeping purposes, (c) you shall pay Earnest any amounts due

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under this Agreement through and including the date of termination, and (d) Earnest shall be relieved of any future obligation regarding your access to any Product.

- 6.3 The expiry or termination of this Agreement shall not affect any rights or obligations of either party which have accrued prior to the date of termination. All provisions which, expressly or by implication, survive the termination of this Agreement shall remain in full force and effect including, without limitation, Sections 2 – 5, 6.2, 6.3, and 8 – 12.
7. **Priority; Severability.** In the event of any inconsistency between these Terms and Conditions and a written License Agreement between the parties, the written License Agreement shall control. If any provision, clause or application of these Terms and Conditions to any party or circumstance is held invalid and unenforceable, this shall not affect any other provision, clause or application of these Terms and Conditions.
8. **Injunctive Relief.** You agree that there may be no adequate remedy at law for any breach of its obligations hereunder regarding the use, copying and distribution of Confidential Information; and that Earnest, in addition to whatever other remedies it might have at law or in equity, may be deemed to have suffered irreparable harm, and shall be entitled to seek appropriate equitable relief to prevent the disclosure or use of any Confidential Information in breach of this Agreement or the unauthorized copying or distribution of any Confidential Information or portion thereof. Earnest shall, during the then current Term and after the termination or expiration of this Agreement, have the right to take such steps at law or in equity as are necessary to prevent any actual or threatened unauthorized use or disclosure of any of its Confidential Information, including petitioning a court of competent jurisdiction for a temporary restraining order, a preliminary or permanent injunction, and/or a decree

for specific performance, in each case without being required to prove actual damages or furnish a bond or other security.

9. **Waivers.** None of the provisions of this Agreement can be waived by Earnest except in a writing signed by Earnest. No failure by Earnest to exercise any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any right preclude any other or further exercise of that right or the exercise of any other rights. The waiver by Earnest of any breach of this Agreement shall not be deemed a waiver of any prior or subsequent breach. All remedies of Earnest shall be cumulative and the pursuit of one remedy shall not be deemed a waiver of any other remedy.
10. **Client Representations and Warranties; Acknowledgement.** You represent, warrant and covenant that (a) you are an investment or financial services firm or a corporation performing internal business analysis, and you are using the Products for your internal business purposes; (b) your use of any portion of the Products shall be restricted pursuant to this Agreement; (c) your use of the Products shall in all cases comply in all material respects with all federal, state and local laws, statutes, rules, regulations and ordinances, and (d) you shall not attempt to replicate the Products or assemble, create or maintain a database from or using the Products or any data or information contained therein.
11. **Governing Law; Jurisdiction.** These Terms and Conditions shall be governed by and interpreted in accordance with the laws of the State of New York.
12. **Force Majeure.** Earnest shall not be responsible for any cessation or delay in the performance of its obligations under this Agreement due to causes beyond its reasonable control.