



DATED \_\_\_\_\_ 2019

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## ORDER TERMS AND CONDITIONS FOR NON- COMMERCIAL CLIENTS

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With thanks to:



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# THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8 (LIMITATION OF LIABILITY).

## 1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

### 1.1 Definitions:

<b>Biological Records</b>	means the spatial and temporal data on wildlife species and habitats collected by ERCCIS or CWT for their own habitats or provided by third parties and collated, managed and maintained by ERCCIS or CWT.
<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>Contract</b>	the contract between ERCCIS and the Customer for the supply of Services in accordance with these Terms pursuant to clause 2.2.
<b>Customer</b>	the person or organisation who purchases Services from ERCCIS.
<b>Customer Default</b>	has the meaning set out in clause 4.3.
<b>CWT</b>	Cornwall Trust for Nature Conservation Ltd(The) trading as Cornwall Wildlife Trust registered in England and Wales with company number 00732511 whose registered address Five Acres, Allet, Truro, Cornwall, TR4 9DJ.
<b>Data Protection Legislation</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party. The following terms are as defined in the Data Protection Legislation; controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures.
<b>ERCCIS</b>	the Environmental Records Centre for Cornwall and the Isles of Scilly, a department of CWT.
<b>ERCCIS Information Request Form</b>	The order form available at: <a href="https://erccis.org.uk/requesting-data">https://erccis.org.uk/requesting-data</a> .

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<b>Intellectual Property Rights</b>	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, 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 similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>Order</b>	the Customer's order for Services using the ERCCIS Information Request Form.
<b>Services</b>	the services supplied by ERCCIS to the Customer, including access to the Biological Records..
<b>Terms</b>	these terms and conditions as amended from time to time in accordance with clause 13.

1.2 Interpretation:

- 1.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.3 A reference to **writing** or **written** includes email but not fax.

2. **ORDERS**

- 2.1 The Order constitutes an offer by the Customer to receive Services in consideration for the Customer agreeing to abide by these Terms.
- 2.2 Upon receipt of the ERCCIS Order Form ERCCIS shall provide the Customer with a digital data agreement or data exchange agreement – whichever is applicable (the Contract) which shall include:
  - a) Confirmation of the information requested by the Customer;
  - b) A copy of these Terms; and
  - c) Details of any charges (if applicable).
- 2.3 The Contract must be read, signed and returned to ERCCIS before the Biological Records will be



provided to the Customer.

- 2.4 These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### 3. CUSTOMER'S OBLIGATIONS

#### 3.1 The Customer shall:

- 3.1.1 ensure that the terms of the Order and any information it provides is complete and accurate;
- 3.1.2 co-operate with ERCCIS in all matters relating to the Services;
- 3.1.3 only use the Services for the purposes they were designed for;
- 3.1.4 hereby warrant that they are over the age of 18;
- 3.1.5 use reasonable endeavours to prevent any unauthorised access to, or use of, the Biological Records and notify ERCCIS promptly of any such unauthorised access or use; and
- 3.1.6 ensure that any passwords or other credentials are kept confidential (where applicable).

#### 3.2 The Customer shall not (except where ERCCIS have expressly given permission for the Customer to do so):

- 3.2.1 access all or any part of the Services in order to build a product or service which competes with the Services; or
- 3.2.2 use the Services to provide services to third parties; or
- 3.2.3 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Biological Records available to any third party; or
- 3.2.4 attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 3.

#### 3.3 If ERCCIS grants permission for the Customer to share the Services with a not-for-profit third party (e.g. where the Customer is collaborating with an educational institute or charitable organisation), the third party must be subject to terms similar to, and no less onerous than the provisions of this clause 3.

### 4. ERCCIS OBLIGATIONS

- 4.1 ERCCIS shall supply the Services to the Customer in all material respects and will provide the Services using reasonable care and skill.
- 4.2 ERCCIS reserves the right to amend the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services and ERCCIS shall notify the Customer in any such event.
- 4.3 If ERCCIS's performance of any of its obligations under the Contract is prevented or delayed by

any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- 4.3.1 without limiting or affecting any other right or remedy available to it, ERCCIS shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays ERCCIS's performance of any of its obligations;
- 4.3.2 ERCCIS shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from ERCCIS's failure or delay to perform any of its obligations as set out in this clause 4.3; and
- 4.3.3 the Customer shall reimburse ERCCIS on written demand for any costs or losses sustained or incurred by ERCCIS arising directly or indirectly from the Customer Default.

## 5. **SEARCH AREA AND RESULTS**

- 5.1 The Customer must select a search area in the Order and provide sufficient information to enable ERCCIS to pin point the relevant geographical area submitted with the Order.
- 5.2 ERCCIS will aim to provide the results within 20 Business Days of the Order being placed by the Customer. If there is a delay for any reason, ERCCIS will whenever possible aim to contact the Customer with an updated timescale for providing the results.
- 5.3 The Customer hereby acknowledges that the information available from ERCCIS is collated by a number of third parties and therefore ERCCIS cannot guarantee that:
  - 5.3.1 the Biological Records are complete and/or accurate;
  - 5.3.2 the species detailed in the Biological Records continue to be present in the area recorded; and
  - 5.3.3 the lack of a species being present in a Biological Record correlates with there being a low biodiversity value or absence of the species in the relevant geographical area.

## 6. **INTELLECTUAL PROPERTY RIGHTS**

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by ERCCIS or its licensors.
- 6.2 ERCCIS grants to the Customer, or shall procure the direct grant to the Customer of, a licence during the term of the Contract to copy and modify any materials (excluding materials provided by the Customer) for the purpose of receiving and using the Services.
- 6.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.
- 6.4 The Customer grants ERCCIS a fully paid-up, irrevocable, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials (including Biological Records) provided by the Customer to ERCCIS.

## 7. DATA PROTECTION

- 7.1 All data will be handled in accordance with ERCCIS's Privacy Policy <https://erccis.org.uk/AboutUs/Policies>

## 8. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 8.1 Nothing in these Terms limits any liability which cannot legally be limited, including, but not limited to, liability for:
- 8.1.1 death or personal injury caused by negligence; and
  - 8.1.2 fraud or fraudulent misrepresentation.
- 8.2 Subject to clause 8.1, ERCCIS shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with these Terms for any indirect or consequential loss, including but not limited to loss of profits, sales or business, agreements or contracts, anticipated savings, use or corruption of software, data or information, and damage to goodwill.
- 8.3 Subject to clauses 8.1 and 8.2, ERCCIS's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with these Terms shall be limited to £500,000.
- 8.4 This clause 8 shall survive termination of the Contract.

## 9. TERMINATION

- 9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if the other party:
- 9.1.1 commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 20 Business Days of that party being notified in writing to do so;
  - 9.1.2 takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 9.1.3 suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - 9.1.4 suffers a deterioration in their financial position to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.2 Without affecting any other right or remedy available to it, ERCCIS may suspend or terminate the

supply of Services under the Contract if an investigation is required into alleged misuse of the Services in contravention of these Terms.

## 10. CONSEQUENCES OF TERMINATION

- 10.1 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 10.2 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## 11. FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

## 12. CONFIDENTIALITY

- 12.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.
- 12.2 Each party may disclose the other party's confidential information:
- 12.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
  - 12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## 13. VARIATION

Except as set out in these Terms, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## 14. SEVERANCE

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 14 shall not affect the validity and enforceability of the rest of the Contract.

## 15. ENTIRE AGREEMENT AND VARIATION

- 15.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- 15.2 Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that its only liability in respect of those representations and warranties that are set out in this Contract (whether made innocently or negligently) shall be for breach of contract.
- 15.3 No variation of this Contract shall be effective unless it is in writing and signed by each of the parties (or their authorised representatives).

## 16. NO WAIVER

- 16.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 16.2 No single or partial exercise of any right or remedy provided under this Contract or by law shall preclude or restrict the further exercise of that or any other right or remedy.

## 17. ASSIGNMENT

Except as otherwise provided in this Contract, no party may assign, sub-contract or deal in any way with, any of its rights or obligations under this Contract or any document referred to in it.

## 18. NOTICES

- 18.1 A notice given to a party under or in connection with this Contract shall be in writing and sent to the party at the address given in this Contract or as otherwise notified in writing to the other party.
- 18.2 The following table sets out methods by which a notice may be sent and its corresponding deemed delivery date and time:



Delivery method	Deemed delivery date and time
Delivery by hand or courier to the registered office or director of a party.	On signature of a delivery receipt or at the time the notice is left at the address.
Pre-paid first class post or other next working day delivery service providing proof of postage to the address provided upon registering the Account.	Midday on the second Business Day after posting or at the time recorded by the delivery service – whichever is earlier.
Email to an address detailed upon registering the Account.	At the time of transmission if on a Business Day, otherwise at 10:00 on the next Business Day after transmission.

18.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 19. **NO PARTNERSHIP**

Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

## 20. **THIRD PARTY RIGHTS**

A person who is not a party to this Contract shall not have any rights under or in connection with it.

## 21. **GOVERNING LAW AND JURISDICTION**

The validity, construction and performance of the Contract shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.