

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE ACCESSING THE PICKER TOOL

Licence - Terms of use of Picker Tools provided for use via the Picker website

This licence (**Licence**) sets out the terms on which you may access and use the Picker Tool. Please read the terms of this Licence carefully. If you wish to access and use the Picker Tool you will need to indicate your agreement to these terms by clicking on the box below.

1 Definitions

- 1.1 The definitions and rules of interpretation in this clause apply in this Licence.
 - 1.1.1 **Intellectual Property Rights** means all copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets), patents, utility models, rights to inventions and any other intellectual property rights, including all applications for (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.
 - 1.1.2 **Licensee** means the person or entity which accesses the Picker Tool via the Picker Website.
 - 1.1.3 **Picker** means Picker Institute Europe, a company limited by guarantee and registered charity. Incorporated and registered in England and Wales with company number 03908160 and registered charity number 1081688 whose registered office is at Buxton Court, 3 West Way, Oxford, Oxfordshire OX2 0JB.
 - 1.1.4 **Picker Website** means the website operated by Picker at <http://www.pickereurope.org/> and any replacement website to which users may be redirected to for the purposes of accessing the Picker Tool.
 - 1.1.5 **Picker Tool** means the relevant Picker survey as accessed by the Licensee from the Picker Website and the guidance documents, if any, provided by Picker in connection with such survey.
- 1.2 In this Licence:
 - 1.2.1 references to clauses are to the clauses and of this Licence and clause headings shall not affect the interpretation of this Licence;
 - 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 reference to a **person** includes a natural person, company and that person's personal representatives, successors and permitted assigns;
 - 1.2.4 reference to a **company** includes any body corporate or unincorporated body or association or partnership (whether or not having separate legal personality);
 - 1.2.5 reference to the Licensee includes reference to the Licensee's officers, agents, consultants and employees and any person or entity which may be engaged by the Licensee to conduct any survey or carry out statistical analysis or other services in connection with the Picker Tool.

2 Licence and use of Picker Tool

- 2.1 Picker hereby grants to the Licensee a personal, non-exclusive, licence to use the Picker Tool for so long as Picker owns all Intellectual Property Rights in the Picker Tool.
- 2.2 This Licence of the Picker Tool is on an as is basis on the date that the Picker Tool is accessed by the Licensee and Picker shall have no obligation for updating or modifying the Picker Tool at any time including on account of any reported defect in the Picker Tool.

- 2.3 The Licensee undertakes to Picker that it shall:
- 2.3.1 ensure that the Picker Tool is only used in accordance with the instructions provided with it;
 - 2.3.2 be responsible for verifying the results of all analysis conducted using the Picker Tool;
 - 2.3.3 be responsible for complying with all applicable laws in conducting any survey using the Picker Tool including, but without limitation complying with the Data Protection Act 1998 (as may be amended from time to time);
 - 2.3.4 ensure that to the extent that it engages third parties to conduct any survey carried out using the Picker Tool, such third party is reputable with the appropriate level of skill and knowledge to carry out the relevant survey and statistical analysis in accordance with industry standards;
 - 2.3.5 in using the Picker Tool, apply all due skill, care and diligence and in accordance with good industry practice; and
 - 2.3.6 not copy or otherwise to adapt or modify any part of the Picker Tool.
- 2.4 The Licensee hereby acknowledges and agrees that:
- 2.4.1 all Intellectual Property Rights in the Picker Tool belong to Picker including all such rights in the content, methodology, techniques and analytical processes comprised within the Picker Tool;
 - 2.4.2 it shall have no rights in or to the Picker Tool other than the right to use it in accordance with the terms of this Licence;
 - 2.4.3 it shall not take any action or permit any third party to take any action which may impair or damage Picker's rights in the Picker Tool in any way or which in any way damage the reputation or goodwill of Picker;
 - 2.4.4 in any published document which includes data or findings produced using the Picker Tool, it shall at all times acknowledge Picker as the owner and developer of the Picker Tool and that the Licensee has collated the data or findings using the Picker Tool under licence from Picker;
 - 2.4.5 it shall not remove any copyright notice, logo or reference to Picker which may be included on the Picker Tool or any materials provided by Picker to the Licensee; and
 - 2.4.6 save as specifically provided for in this Licence, it shall have no right to use the Picker name or any trade mark or logo owned by Picker in connection with any survey conducted by it or for any other purpose.

3 Warranties

- 3.1 Picker gives no representation or warranty in relation to the Picker Tool, including in relation to its suitability for any purpose or as to Picker's right or title to the Picker Tool or that it does not infringe third party's Intellectual Property Rights, which is provided on an as is basis.
- 3.2 All conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the fullest extent permitted by law, including any implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

4 Liability and indemnity

- 4.1 The Licensee acknowledges and agrees that the Picker Tool is provided to the Licensee by Picker without charge and that:
 - 4.1.1 the Picker Tool is provided on an as is basis and has not been developed by Picker for any particular project or use of the Licensee;
 - 4.1.2 the Licensee shall be wholly responsible for its use of the Picker Tool and the data, findings and results produced by it in using the Picker Tool; and

- 4.1.3 subject to clause 4.1, Picker shall have no liability to the Licensee, whether in contract, tort (including negligence) or otherwise, for any loss or damage suffered or incurred by the Licensee as a consequence of its use of the Picker Tool (and including any special loss or damage (even if Picker was aware of the circumstances in which such special damage could arise) or any loss of profits, loss of anticipated savings, loss of business opportunity, loss of goodwill and/or loss or corruption of data) and whether the same are suffered directly or indirectly or are immediate or consequential.
- 4.2 The provisions of clause 4.1 shall not apply to exclude liability for death or personal injury caused by Picker's negligence, fraud or fraudulent misrepresentation or breach or any other liability which may not be excluded by law.
- 4.3 The Licensee shall indemnify Picker against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Picker arising out of or in connection with:
 - 4.3.1 any claim made against Picker by a third party on account of the Licensee's use of the Picker Tool; and
 - 4.3.2 the Licensee's breach of any of the terms of this Licence provided that this indemnity shall not apply to the extent that a claim under it results from the Picker Tool infringing the Intellectual Property Rights of any third party.

5 General provisions

- 5.1 The Licensee shall not:
 - 5.1.1 sub-license, assign or novate the benefit or burden of this Licence in whole or in part;
 - 5.1.2 deal in any other manner with any or all of its rights and obligations under this Licence, without the prior written consent of Picker and it being acknowledged that this Licence is personal to the Licensee and accordingly Picker may withhold its consent to any of the foregoing whether such withholding of consent is considered reasonable or not and without giving any reason for withholding its consent.
- 5.2 Picker may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this Licence.
- 5.3 No failure or delay by Picker to exercise any right or remedy provided under this Licence or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy by Picker shall prevent or restrict the further exercise of that or any other right or remedy.
- 5.4 Except as expressly provided in this Licence, the rights and remedies provided under this Licence are in addition to, and not exclusive of, any rights or remedies provided by law.
- 5.5 This Licence contains the whole agreement and understanding between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter. The Licensee agrees that, in entering into this Licence, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Licence or (if it did rely on any representations, whether written or oral, not expressly set out in this Licence) that it shall have no remedy in respect of such representations and (in either case) Picker shall have no liability in any circumstances otherwise than in accordance with the express terms of this Licence in respect of which the Licensee's only remedy shall be damages for breach of contract and provided that nothing in this clause shall exclude Picker's liability on account of fraud or any fraudulent misrepresentation.
- 5.6 No variation of this Licence shall be effective unless it is in writing and signed by both parties (or their authorised representatives).

- 5.7 If any provision or part-provision of this Licence 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 shall not affect the validity and enforceability of the rest of this Licence.
- 5.8 If any provision or part-provision of this Licence is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended result of the original provision.
- 5.9 A person who is not a party to this Licence shall not have any rights under this Licence.
- 5.10 Nothing in this Licence 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, or authorise any party to make or enter into any commitments for or on behalf of any other party.

6 Governing law and jurisdiction

- 6.1 This Licence and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 6.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Licence or its subject matter or formation (including non-contractual disputes or claims).

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