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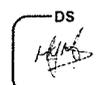
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10.3 All amounts due under the Agreement must be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10.4 If the Publisher has not received payment before the payment due date set out in this Agreement, and without prejudice to any other rights and remedies of the Publisher:

10.4.1 the Publisher may, without liability to the Licensee, disable the Licensee's and the Authorised User's passwords, and access to all or part of the Online Services and the Licensed Materials, and the Publisher shall be under no obligation to provide any or all of the Online Services or the Licensed Materials while the invoice(s) concerned remain unpaid; and

10.4.2 the Publisher will be entitled to charge interest on such due amounts, which shall accrue at an annual rate equal to 3% over the then current base lending rate of Barclays Bank plc at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.

10.5 All amounts and Fees stated or referred to in this Agreement:

10.5.1 shall be payable in the currency indicated on the invoice or as specified in the Order Form or the Confirmation Email, as applicable;

10.5.2 subject to clauses 8.2, 11.3 and 16.3.2, are non-cancellable and non-refundable; and

10.5.3 are exclusive of value added tax, which, if applicable, shall be added to the Publisher's invoice(s) at the appropriate rate.

## 11 ECOMMERCE TERMS

11.1 The terms and conditions in this clause 11 will apply in addition to the other terms and conditions of this Agreement where Perpetual Licensed Materials are ordered through the Website as permitted below.

11.2 This online ordering service is only available if the Licensee is an existing customer of the Publisher's Licensed Materials and has access to the Online Services. In such cases, the

Licensee may place an order for Perpetual Licensed Materials through the Website by logging into the Licensee's online account on the Website using its valid account log in details. Each such order is an offer by the Licensee to purchase a licence of the Perpetual Licensed Materials specified in the order and is subject to the following provisions of this clause 11 and the other terms and conditions of this Agreement.

- 11.3 The Licensee is responsible for checking its order carefully and for ensuring that its order is complete and accurate before submitting it through the Website. If an error is made, the Licensee shall be entitled to a refund or credit of the affected Perpetual Licensed Material within 14 days of purchase, provided that the Perpetual Licensed Material has not been accessed or downloaded by the Licensee. If the Licensee has accessed or downloaded the Perpetual Licensed Material, no refund shall be available.
- 11.4 If the Publisher accepts the order, it will send the Licensee a Confirmation Email which will include details of the Perpetual Licensed Materials and the Fee payable by the Licensee acknowledging that the order has been received. A binding contract between the parties will come into effect once the Confirmation Email is sent to the Licensee and will allow access only to the Perpetual Licensed Materials confirmed in the Confirmation Email.
- 11.5 If the Publisher is unable to supply the Perpetual Licensed Materials confirmed in the Confirmation Email, for any reason, the Publisher will inform the Licensee of this by email and will not process the order. If the Licensee has already paid the Fee for the Perpetual Licensed Materials, the Publisher shall refund the full amount of the Fee paid for the unavailable Perpetual Licensed Materials. Subject to clause 11.3 above, the Licensee may not cancel the order after access to the Perpetual Licensed Materials has been granted.
- 11.6 Any descriptions or illustrations on the Website are published for the sole purpose of giving an approximate idea of the services and/or products described in them and do not form part of the contract between the parties or have any contractual force. The Publisher reserves the right to amend the specification of the Perpetual Licensed Materials if required by any applicable statutory or regulatory requirement or if the amendment will not materially affect the nature or quality of the Perpetual Licensed Materials. Subject to the foregoing, the Publisher will supply the Perpetual Licensed Materials to the Licensee in accordance with the specification for the Perpetual Licensed Materials appearing on the Website at the date of the Confirmation Email in all material respects.
- 11.7 In consideration of the Publisher providing access to the Perpetual Licensed Materials, the Licensee must pay the Fee as quoted on the Confirmation Email in accordance with this Agreement. When ordering online in accordance with this clause 11, the Licensee may elect either to:
  - 11.7.1 pay the Fee online using a debit card or credit card in advance of access being granted to the Perpetual Licensed Materials; or
  - 11.7.2 use the "pay later" option on the Website, in which case the Fee shall be payable as per clause 10 above.
- 11.8 When a credit card is used to pay the Fee, the Publisher may obtain a pre-approval from the credit card company for an amount up to the amount of the order. Billing to the credit card occurs at the time of online payment of the order, or shortly thereafter. Processing of credit card details may take place by a 3<sup>rd</sup> party supplier. Notwithstanding the foregoing, the provisions of clause 10.4 shall apply in respect of any subsequently declined, reversed or disputed card payment.

- 11.9 The Publisher takes all reasonable care to ensure that the Fees stated for the Perpetual Licensed Materials are correct at the time when the relevant information was entered into the system. However, it is possible that, despite the Publisher's reasonable efforts, some of the Perpetual Licensed Materials on the Website may be incorrectly priced. Where the correct Fee for the Perpetual Licensed Materials is less than the price stated on the Website, the Publisher will charge the lower value. If the correct fee for the Perpetual Licensed Materials is higher than the fee stated on the Website, and if the Licensee does not wish to pay the higher fee, the order will be treated as cancelled and the Licensee will be notified of the cancellation.
- 11.10 The Fees are exclusive of VAT. Where VAT is payable in respect of some or all of the Perpetual Licensed Materials, the Licensee must pay the Publisher such additional amounts in respect of VAT, at the applicable rate, with the Fee. VAT will be calculated on the Licensee's billing address provided at the time of ordering.

## 12 CONFIDENTIALITY

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- 12.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
  - 12.1.2 was in the receiving party's lawful possession before the disclosure;
  - 12.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - 12.1.4 is independently developed by the receiving party, which independent development can be shown by documented evidence; or
  - 12.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 12.2 Each party shall hold the other party's Confidential Information in confidence and, unless required by law, not make the other party's Confidential Information available to any third party, or use the other party's Confidential Information for any purpose other than the implementation of this Agreement.
- 12.3 Each party shall take all reasonable steps to ensure that the other party's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 12.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party, other than as a result of a breach of the terms of this clause 12 by the receiving party, in which case the receiving party shall remain liable..
- 12.5 The Licensee acknowledges that details of the Online Services, and the results of any performance tests of the Online Services, constitute the Publisher's Confidential Information.
- 12.6 The Publisher acknowledges that the Licensee Data is the Confidential Information of the Licensee.

## 13 DATA PROTECTION

13.1 For the purposes of this clause 13, the following terms shall have the following meanings:

**Data Protection Law:** the Regulation and the Directive, as amended or replaced from time to time, and all other national, international or other laws related to data protection and privacy that are applicable to any territory where the Publisher or the Licensee processes personal data or is established.

**Directive:** the European Privacy and Electronic Communications Directive (Directive 2002/58/EC).

**Regulation:** the General Data Protection Regulation (Regulation (EU) 2016/679).

The terms **personal data**, **controller**, **processor**, **processing**, **data subject**, **personal data breach** and **supervisory authority** shall have the meanings ascribed to them under the Regulation.

13.2 For the purposes of this Agreement and either party's processing of personal data in connection with this Agreement, the parties agree that each party acts as a data controller.

13.3 Each party shall (i) only process personal data in compliance with, and shall not cause itself or the other party to be in breach of, Data Protection Law, and (ii) act reasonably in providing such information and assistance as the other party may reasonably request to enable the other party to comply with its obligations under Data Protection Law.

13.4 If either party becomes aware of a personal data breach relating to the processing of personal data in connection with this Agreement, it shall (i) provide the other party with reasonable details of such personal data breach without undue delay, and (ii) act reasonably in co-operating with the other party in respect of any communications or notifications to be issued to any data subjects and/or supervisory authorities in respect of the personal data breach.

13.5 If either party receives any communication from any supervisory authority relating to the processing of personal data in connection with this Agreement, it shall (i) provide the other party with reasonable details of such communication, and (ii) act reasonably in co-operating with the other party in respect of any response to the same.

## 14 MERGING INSTITUTIONS

14.1 If the Licensee merges with or acquires any interest or shares of a third party or any third party merges with or acquires such an interest in any Licensee ("**Transfer**"), the Licensee shall promptly notify the Publisher in writing of such Transfer and:

14.1.1 this Agreement will remain in full force and effect; and

14.1.2 the Publisher shall be entitled to revise the Fee based on, amongst other things, the enlarged size and number of additional Authorised Users of the Licensee following the Transfer ("**Extension Fee**"); and

14.1.3 unless and until Licensee pays to Publisher the Extension Fee, Licensee acknowledges and agrees (and Licensee shall ensure as a principal obligation) that none of the employees, students, contractors or other personnel of the relevant third party entity, institution or corporate body with which Licensee merges, acquires or is acquired by shall have access to or use the Licensed Materials or shall be deemed to be Authorised User(s) under this Agreement.

14.2 For the avoidance of doubt, without prejudice to any other right or remedy available to the Publisher, the Licensee acknowledges and agrees that any breach of clause 14.1 shall be deemed to be a material breach of Licensee's obligations under this Agreement. Further, the Licensee shall indemnify the Publisher and keep the Publisher fully indemnified against any claims, losses, damages, costs, expenses (including reasonable legal expenses) or other liability incurred by the Publisher in respect of the Licensee's breach of clause 14.1.

## 15 LIABILITY AND INDEMNITIES

15.1 Subject to the Licensee using the Licensed Materials as permitted under this Agreement and the Licensee's compliance with this clause 15.1, the Publisher shall indemnify and hold the Licensee harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any legal action against the Licensee, claiming that the Licensee's use of the Licensed Materials and/or the Online Services infringe a third party's Intellectual Property Rights, provided that:

15.1.1 the use of the Licensed Materials by the Licensee (including any Authorised Users or third parties) was strictly in accordance with the terms of this Agreement;

15.1.2 the Licensee has not amended the Licensed Materials in any way not permitted by this Agreement;

15.1.3 the Publisher is given prompt notice of any such claim;

15.1.4 the Licensee provides reasonable co-operation to the Publisher in the defence and settlement of such claim, at the Publisher's expense; and

15.1.5 the Publisher is given sole authority to defend or settle the claim.

15.2 In no event shall the Publisher, its employees, agents and sub-contractors be liable to the Licensee under clause 15.1 to the extent that the actual or alleged infringement is based on:

15.2.1 a modification of the Licensed Materials by anyone other than the Publisher; or

15.2.2 the Licensee's or any Authorised User's use of the Online Services or Licensed Materials in contravention of the terms of this Agreement.

15.3 Nothing in this Agreement shall exclude either party's liability for:

15.3.1 death or personal injury caused by the either party's negligence; or

15.3.2 for fraud or fraudulent misrepresentation.

15.4 Under no circumstances shall the Publisher be liable to the Licensee or any other person, including but not limited to Authorised Users, for any special, exemplary, incidental or consequential loss, costs, damages, charges or expenses of any character arising out of the inability to use, or the use of, the Licensed Materials and/or the Online Services including, but not limited to loss of profit, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss.

15.5 Irrespective of the cause or form of action, the Publisher's total aggregate liability for any claims, damages, losses, costs, expenses or liabilities arising out of or in connection with this Agreement shall in no circumstances exceed the Fee paid or due to be paid by Licensee, for the preceding year of the date that the action giving rise to such claim occurred, to the Publisher under this Agreement. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies.

## 16 TERM AND TERMINATION

- 16.1 In respect of Perpetual Licensed Material, the Agreement will commence on the Access Date (as defined in the Order Form or the Confirmation Email, as applicable) and will continue in full force and effect, unless terminated by either party in accordance with clause 16.3 below.
- 16.2 In respect of Subscription Products, the Agreement shall continue for the Subscription Period indicated in the Order Form, or if no period is stipulated, for a period of 12 months from the Order Date, after which it shall automatically expire. The Agreement may be renewed for successive periods of 12 months (each a "Renewal Period") where the Licensee requests a renewal from the Publisher, in writing, at least sixty (60) days before the end of the Subscription Period or any Renewal Period, and the Publisher consents to such renewal request, in which case this Licence shall be issued with an updated Order Form reflecting the updated Term and Fee.
- 16.3 Without prejudice to any other rights to which the parties may be entitled, this Agreement may be terminated:
- 16.3.1 subject to clause 16.3.3 below, by each party if the other party commits a material or persistent breach of any term of this Agreement and such party fails to remedy the breach (if capable of remedy) within sixty (60) days of notification in writing by the initial party;
- 16.3.2 by the Publisher in the event that it, in its sole discretion, is no longer able to provide the Online Services or the Licensed Materials to the Licensee, in accordance with clause 8.2 above;
- 16.3.3 by the Publisher if the Licensee commits a material, wilful and/or persistent breach of any term of this Agreement, including but not limited to a breach of the Publisher's copyright or other Intellectual Property Rights or of any of the Restrictions, even if such breach is remediable;
- 16.3.4 by either party if a resolution is passed for the winding up of the other party (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect;
- 16.3.5 by either party if the other party becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors;
- 16.3.6 by either party if the other party has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; or
- 16.3.7 by either party if the other party ceases, or threatens to cease, to carry on business.
- 16.4 The following clauses shall survive the termination or expiry of this Agreement: clauses 3.1, 3.3, 4.4, 5, 6, 7, 12, and 15 to 18 (inclusive).

## 17 CONSEQUENCES OF TERMINATION

- 17.1 On termination of this Agreement for any reason:
- 17.1.1 all licences granted to the Licensee and the Authorised Users under this Agreement shall immediately terminate;

- 17.1.2 the Publisher shall immediately cease providing access to, and the Licensee shall and shall procure that the Authorised Users immediately cease from accessing, the Online Services and/or the Licensed Materials.
- 17.1.3 the Licensee shall, and shall procure that all Authorised Users shall, immediately return to the Publisher or destroy all Licensed Materials locally downloaded or stored;
- 17.1.4 each party shall return and make no further use of any Licensed Materials or equipment, property, and other items (and all copies of them) belonging to the other party;
- 17.1.5 the Publisher may destroy or otherwise dispose of any of the Licensee Data in its possession unless the Publisher receives, no later than ten (10) days after the effective date of the termination of this Agreement, a written request for the delivery to the Licensee of the then most recent back-up of the Licensee Data. The Publisher shall use reasonable commercial endeavours to deliver the back-up to the Licensee within thirty (30) days of its receipt of such a written request, provided that the Licensee has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Licensee shall pay all reasonable expenses incurred by the Publisher in returning or disposing of Licensee Data; and
- 17.1.6 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination shall not be affected or prejudiced.

## 18 GENERAL

- 18.1 With the exception of any applicable Publisher's website terms and conditions, this Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter of this Agreement, whether oral or written.
- 18.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 18.3 Alterations to this Agreement are only valid if they are agreed to in writing in advance by both parties.
- 18.4 This Agreement may not be assigned by the Licensee to any other person or organisation, nor may either party sub-contract any of its obligations, except as provided in this Agreement in respect of management and operation of any server, without the prior written consent of the other party. The Publisher shall be entitled to assign, sublicense, subcontract or otherwise dispose of its rights and obligations under this Agreement to any other person or company.
- 18.5 Any notices to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the addressee as set out in this Agreement or to such other address as notified by either party to the other as its address for service of notices. All such notices shall be deemed to have been received within two (2) days of posting.
- 18.6 Neither party's delay or failure to perform any provision of this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its control (including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the either party or any third party), failure of a utility service or transport or power or telecommunications network or internet failures or damage to or destruction of any network

facilities, act of God, riot, civil commotion, malicious damage, war, strikes, floods, governmental restrictions) shall be deemed to be, or to give rise to, a breach of this Agreement.

- 18.7 The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation or enforceability of the remainder of this Agreement.
- 18.8 Either party's waiver or failure to require performance by the other of any provision of this Agreement will not affect its full right to require such performance at any subsequent time, or be taken or held to be a waiver of the provision itself.
- 18.9 This Agreement shall be governed by and construed in accordance with English law. The parties irrevocably agree that any dispute arising out of, or in connection with, this Agreement will be subject to, and within, the jurisdiction of the courts of England.

04 August 2020 | 13:41 BST

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Mark Majurey

Commercial Director & VP, Digital