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COMMERCIAL TERMS

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- (d) take all reasonable steps and appropriate steps (including, without limitation, taking disciplinary action), to promptly cease any unauthorised use of the Licensed Materials and ensure it does not recur.

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- 9.1. Each party warrants to the other that it has full power and authority to enter into and perform its obligations under this Agreement.
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- (d) gives the Publisher all information and assistance it may reasonably require.

9.4. The Publisher shall not be liable to the Licensee or to any other person, including but not limited to Authorised Users, for any special, exemplary, indirect or consequential loss, costs, damages, charges or other expenses of any kind (including loss of profits or revenues, loss of business, depletion of goodwill, loss of anticipated savings, loss of contract or business interruption) arising under or in connection with this Agreement, in particular arising out of the inability to use, or the use of, the Licensed Materials.

9.5. Subject to (i) clause 9.6; and (ii) in respect of the Publisher's indemnity under clause 9.2 for which aggregate liability shall be limited to £3 million; the Publisher's aggregate liability for all claims, losses or damages arising under or in connection with this Agreement or any other agreement between the parties shall be limited to an amount equivalent to the Fee(s) received by the Publisher from the Licensee in respect of the calendar year during which such claim, loss or damage occurred.

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- (b) the Licensee commits a material breach or commits persistent breaches of the Agreement and fails to remedy such breach or persistent breaches within thirty (30) days of being notified by the Publisher of such breach or breaches;
- (c) the Licensee becomes insolvent or becomes subject to bankruptcy, receivership, liquidation or administration.

10.2. The Licensee may terminate this Agreement by notice in writing if:

- (a) the Publisher commits a material or persistent breach of any term of this Agreement and fails to remedy the breach (if capable of remedy) within thirty (30) days of notification in writing by the Licensee; or
- (b) the Publisher becomes insolvent or becomes subject to bankruptcy, receivership, liquidation or administration.

10.3. In the event of termination by the Publisher pursuant to clause 10.1:



- (a) any right of perpetual access to the Licensed Materials pursuant to clause 2.5, shall immediately cease;
- (b) the Licensee shall cease to provide Authorised Users with access to the Licensed Materials via the Secure Network; and
- (c) the Licensee shall destroy copies of any Licensed Materials in its possession or control and promptly provide to Publisher such evidence as it may reasonably require of Licensee's compliance with this requirement.
- 10.4. In the event of termination by Licensee pursuant to clause 10.2 (a) the Publisher shall refund a proportion of any Fee that represents the paid for but un-expired part of any relevant Subscription Period.
- 10.5. In the event of termination by Licensee pursuant to clause 10.2 (b), Licensee shall be able to access paid for Licensed Materials via the archive(s) referred to in clause 6.2 in perpetuity where such access has been granted in this Agreement (in the Commercial Terms and as referred to in clause 2.5).
- 10.6. Either party's delay or failure to perform any provision of this Licence, as a result of circumstances beyond its control (including, without limitation, acts of third parties, terrorism, war, strikes, floods, governmental restrictions, power, telecommunications or internet failures, or damage to or destruction of any network facilities) (a **Force Majeure Event**) shall not constitute a breach of this Licence and neither party shall have any liability or responsibility for failure to fulfil any obligation under this Licence so long as and to the extent to which the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event.
11. **GENERAL**
- 11.1. This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings, representations and agreements relating to the subject matter of this Agreement, whether oral or written.
- 11.2. Any variations to this Agreement are only valid if they are recorded in writing.
- 11.3. This Agreement may not be assigned by the Licensee to any other person or organisation without the prior written consent of the Publisher.
- 11.4. Any notices to be served in writing on either of the parties by the other shall be sent by first class post and email to the address of the addressee as set out in this Agreement or to such other address as notified by either party in writing to the other as its address for service of notices. Notices shall be deemed served 24 hours after being sent by email and, if no sooner response is received, be deemed received within 7 days of posting.
- 11.5. If any provision of this Agreement (or part of any provision) is found by any court or other competent authority to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any illegal, invalid or un-enforceable provision would be valid, enforceable and legal if some part of it were deleted or modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties in the original provision.
- 11.6. 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.
- 11.7. No term of this Licence shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Licence, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
- 11.8. Unless otherwise stated in the Commercial Terms, this Agreement 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 laws of England and the parties submit to the non-exclusive jurisdiction of the Courts of England.