

NIELSEN BOOKNET AGREEMENT STANDARD TERMS & CONDITIONS

DEFINITIONS

“Additional Services” means any BookNet Services, other than Network Services, as specified and defined in Schedule B.

“BookNet Service” means any service provided to a Customer by NBSL trading as Nielsen BookNet, as specified for the purposes of this Agreement in the Schedules.

“Contract Year” means a twelve (12) month period running from [date] to [date] or the anniversaries thereof in any successive calendar year.

“Customer Data” means any data owned by or originating with the Customer that forms part of a Transmission.

“End Date” means [date].

“Initial Term” means the period from the Start Date until the End Date.

“Interface Specification” means the specification of a Network Service Interface notified to the Customer by NBSL from time to time.

“ISBN” means International Standard Book Number.

“NBSL Data” means any records or data supplied by NBSL to the Customer under this Agreement and/or any piece of data copied therefrom.

“Network Service Interface” means any point (except for a Network Interconnect – see Schedule A) where Customer Data enters the Network and/or Trading Partner Data intended for the Customer is delivered from the Network.

“Network Service” means a BookNet Service that supports the communication of Customer Data and Trading Partner Data across the Network, as specified and defined in Schedule A.

“Network” means a telecommunications and data processing infrastructure operated by or for NBSL for the purpose of facilitating the electronic communication of data.

“Order” means a Transmission which is an order for a product identified by an ISBN or other suitable unique identifier that is transmitted over a Network Service between the Customer and Trading Partners.

“Order Routing” means a Network Service where NBSL undertakes to route Orders to a distributor of the relevant ordered product.

“Order Routing Database” means a non-exhaustive database of books and other products identified by an ISBN or other suitable unique identifier and their distributors maintained and made available by NBSL for the purpose of Order Routing.

“Payments” means the payments to be made by the Customer to NBSL, in accordance with Clause 4 hereof and the Price List, in consideration of the provision of the BookNet Service(s), and as summarised in Schedule C in respect of the Initial Term.

“Renewal Date” means [date] in each successive calendar year after the Initial Term.

“Software Licence” means a separate licence agreement under which NBSL or a Third Party Supplier licenses a computer program or programs to the Customer.

“Specified Data Format” means a data format that is defined as part of the Interface Specification for a Network Service Interface.

“Start Date” means [date], the date on which the Customer first uses or receives BookNet Service(s) under this Agreement.

“Third Party Network” means a telecommunications network, outside of the Network and operated by a third party, to which NBSL facilitates access through the Network.

“Third Party Service” means a service, outside of the Network and operated by a third party, to which NBSL facilitates access through the Network.

“Third Party Supplier” means a third party contractor of NBSL that supplies any part of the BookNet Services on behalf of NBSL.

“Trading Partner Data” means any data owned by or originating with a Trading Partner that forms part of a Transmission.

“Trading Partner” means any person with whom the Customer communicates data through the Network Service, including Third Party Service providers where applicable.

“Transmission” means a single instance of Customer Data or Trading Partner Data or NBSL Data or any combination thereof transmitted over a Network Service.

1. AGREEMENT

- 1.1. This Agreement (which includes the Schedules hereto) comprises six (6) pages (the “Standard Terms & Conditions”); and XXX Schedules (depending on services provided).

2. TERM

- 2.1. The Agreement shall become effective on the Start Date and, unless otherwise agreed in writing between the Parties, shall, subject to the provisions of subclauses 8.1 and 8.2, remain in force for twelve (12) months and thereafter until terminated by either Party providing the other with not less than three (3) months written notice of termination.

3. BOOKNET SERVICES

- 3.1. Save as expressly provided otherwise herein or agreed otherwise in writing by the Parties, all BookNet Service(s) ordered or requested by the Customer are subject to the terms and conditions of this Agreement.
- 3.2. Subject to the terms and conditions set out herein and in consideration of the Customer making the Payments, NBSL hereby undertakes to provide to the Customer such BookNet Service(s) as the Customer may order or request from time to time.
- 3.3. The BookNet Service(s) will be supplied by NBSL using reasonable care and skill but otherwise, to the maximum extent permitted by law, NBSL excludes all conditions and/or warranties that may be implied by law, statutory or otherwise, including, without limitation, a warranty of fitness for purpose.

4. PAYMENTS

- 4.1. The Customer shall pay all applicable fees and charges to NBSL as specified in Schedule C. The fees and charges initially payable by the Customer shall be notified to the Customer on or before the Start Date. NBSL reserves the right from time to time to modify the traffic charges by providing the Customer with at least 30 days written notice (including via e-mail). If a traffic charge modification is unacceptable to the Customer, the Customer may terminate the Agreement by giving notice in writing effective from the date at which the modification comes into effect, and NBSL will refund the unused portion of any periodic subscription charge already paid by the Customer.
- 4.2. NBSL will invoice the Customer in Pounds Sterling (GBP) for such fees and charges in accordance with the due dates stated in the Schedule C. The Customer agrees to pay NBSL within thirty (30) days of the date of invoice or by the due date, whichever is the later.
- 4.3. If the Customer fails to make payment by the due date of any invoice, NBSL (without prejudice to any other rights and remedies available to it) shall be entitled, at its sole discretion, to:
 - (a) disconnect the Customer from any Network Services until full payment is made; and/or
 - (b) charge the Customer interest at 4% above the base lending rate from time to time of National Westminster Bank PLC on the amount of any outstanding invoice until payment in full is made.
- 4.4. Where applicable fees include a periodic subscription charge, such periodic charges are non-refundable, and except as expressly provided herein the Customer shall not be entitled to any repayment in the event of termination of the Agreement before the end of the period to which such charges apply.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1. The Customer accepts that all copyright and other intellectual property rights in NBSL Data and in any specifications, computer programs, manuals and other material written or provided by NBSL for or in connection with BookNet Services shall remain vested in NBSL or its Third Party Suppliers or licensors.
- 5.2. The Customer undertakes to only use the copyrights and intellectual property rights referred to in Clause 5.1 above for the purposes of and in accordance with this Agreement.
- 5.3. NBSL hereby warrants that it:
 - (a) is the owner of; or
 - (b) otherwise has the right to use, in connection with this Agreement, all copyrights and intellectual property rights referred to in Clause 5.1 above.
- 1.4. The Customer will follow all reasonable instructions given by NBSL from time to time with regard to the use of trademarks or other indications of the property and other rights of NBSL or its Third Party Suppliers or licensors.
- 1.5. NBSL shall be entitled to list the Customer as a user of BookNet Services in promotional material relating to BookNet Services and/or in material provided to users of BookNet Services to enable them to establish trading relationships with other users. Subject to the foregoing exception, any material including, without limitation, news releases or other promotional material produced by either Party and mentioning the other Party will be subject to prior agreement between the Parties, such agreement not to be unreasonably withheld or delayed.

6. CHANGES TO BOOKNET SERVICES

- 6.1. NBSL will be entitled to change BookNet Services by:
 - (a) correcting errors therein; or
 - (b) introducing enhanced facilities; or
 - (c) changing any Network Service Interface and/or Interface Specification; or
 - (d) changing the equipment and facilities used by NBSL or its Third Party Suppliers to support BookNet Services;
 provided that such change maintains, or provides an alternative to, existing functionality that is reasonably required by the Customer in order to make effective use of BookNet Services. NBSL will use all reasonable endeavours to give the Customer not less than three (3) months written notice of any change affecting the supply of BookNet Services to the Customer.

7. EXEMPTIONS AND LIMITATIONS OF LIABILITY

- 7.1. Neither Party shall be liable for delay in performing or failure to perform obligations if the delay or failure results from circumstances beyond the control of the Party including (but not limited to) force majeure, act of God, refusal or revocation on any licence, approval or consent in respect of data communications equipment and/or Transmissions (other than a revocation due to any act or omission by either Party), or other Governmental act, fire, flood, bad weather, explosion, civil commotion, industrial dispute, or impossibility of obtaining materials.
- 7.2. To the maximum extent permitted by law, NBSL shall not be liable to the Customer:
 - (a) under the Agreement; or
 - (b) by reason of any implied warranty, condition or other term; or
 - (c) by reason of any statutory or common law duty,
 for any
 - (i) loss of profit;
 - (ii) loss of revenue;
 - (iii) loss of business;
 - (iv) loss of contracts;
 - (v) loss of anticipated savings;
 - (vi) loss of goodwill;
 - (vii) data loss or corruption; or
 - (viii) indirect, special or consequential loss, damage, cost or expense,
 whether caused by the negligence of NBSL, its servants, contractors, licensors, Third Party Suppliers or agents or otherwise.
- 7.3. NBSL shall have no liability for any loss or damage suffered by the Customer as a result of the non-availability or failure of any telecommunications line of any duly authorised public telecommunications operator, except where such non-availability or failure is caused by act or omission on the part of NBSL.
- 7.4. NBSL shall have no liability for any loss, injury or damage suffered by the Customer caused by any neglect or default by the Customer, its personnel or its agents or any third party; or by any failure by the Customer, its personnel or its agents to follow recommendations which NBSL may give regarding BookNet Services, or to follow good computing or telecommunications practice.
- 7.5. NBSL shall have no liability for any consequences of following any link to a thirdparty website that may be carried anywhere in BookNet Services.
- 7.6. NBSL shall have no liability for any loss, injury or damage suffered by the Customer caused by or from a Third Party Network or a Third Party Service.

- 7.7. In any event, to the maximum extent permitted by law, NBSL's total aggregate liability under the Agreement (whether arising from contract or negligence or otherwise) shall be limited to the sum of Payments paid by the Customer to NBSL in the twelve (12) month period (calculated with reference to the Start Date) in which a default arises. Notwithstanding the foregoing, there shall be no limit upon the liability of NBSL in respect of negligence resulting in the death of or injury to any person.
- 7.8. The Customer undertakes that in case any claim should be available to it against a Third Party Supplier, then the Customer's claim shall be limited by the preceding provisions of this Clause 7 as if such Third Party Supplier were named therein instead of NBSL.

8. TERMINATION

- 8.1. Either Party may terminate the Agreement forthwith by written notice to the other if the other Party is in material breach of its obligations hereunder, and does not remedy the same (if it is capable of remedy) within thirty (30) days of notice of such breach being given by the Party not in default.
- 8.2. The Agreement may be terminated by NBSL forthwith if a bankruptcy petition or receiving order is issued or made against the Customer or the Customer goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction) or suffers the appointment of a receiver of any or all of the property or assets of the Customer or the appointment of an administrator or makes any deed or arrangement with or composition for the benefit of any creditors of the Customer, and if BookNet Services have been supplied but not paid for, the fee shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 8.3. On termination of the Agreement for whatever reason, the Customer will:
- (i) immediately cease to use; and
 - (ii) (unless otherwise specifically instructed in writing by NBSL) destroy, all copies of NBSL Data, computer programs, documentation, papers and other property provided to it by NBSL (or a Third Party Supplier as the case may be) in connection with the Agreement. The Customer shall confirm in writing to NBSL within thirty (30) days of the date of termination that it has done so.
- 8.4. Termination of the Agreement shall not affect any rights or obligations of the Parties hereto in relation to anything done prior to such termination and the provisions herein shall continue to bind the Parties in so far and so long as may be necessary to give effect to such rights and obligations.

9. OBLIGATIONS OF THE CUSTOMER

- 9.1. The Customer shall have available, at its expense, on its side of any Network Service Interface all such equipment and communication lines, magnetic or optical media, programs, personnel and other things as are necessary for sending and receiving Transmissions to/from the Network Service and, where applicable, for deleting stored Transmissions therefrom. The Customer shall interface to a Network Service only hardware and software that conform to the appropriate Interface Specification. NBSL reserves the right at its sole discretion to disconnect without notice any Customer whose equipment and facilities do not meet this requirement. Hardware and software products supplied by, or approved in writing by NBSL, may be presumed to conform to the Interface Specification for the Network Service Interface(s) for which they have been approved.
- 9.2. The Customer shall be responsible:
- (a) for the accuracy and correct formatting of Customer Data;
 - (b) save where using Order Routing, for correctly addressing Transmissions sent into any Network Service; and
 - (c) for the proper use of all passwords allocated to it in connection with this Agreement.
- 9.3. The Customer shall keep all Network Service log-on details (including passwords, user IDs and trading IDs) private, secure and confidential, and undertakes that such log-on-details will only be used by the Customer and/or its employees and that they will not be passed to any third parties.
- 9.4. The Customer shall retain a copy of all Transmissions sent to any Network Service, or shall otherwise retain the ability to reconstitute such Transmissions, until their correctness and safe delivery shall have been established, so that NBSL shall be able to perform its obligations at Clause 10.3 and under Schedule A (if applicable), below.
- 9.5. The Customer shall inform NBSL of any changes of hardware or software used by the Customer to interface with any Network Service. In the event that NBSL is required to verify that such hardware or software conforms to the applicable Interface Specification, NBSL reserves the right to charge the Customer a reasonable fee for undertaking such verification.
- 9.6. The Customer shall use the Network Service(s) in accordance with all applicable telecommunications and other laws, licences and regulations.
- 9.7. The Customer agrees to comply with all reasonable requests of NBSL and the Third Party Supplier(s) in relation to use of the Network Service(s).
- 9.8. The Customer shall take all reasonable precautions to ensure that no computer virus or other such contaminant is introduced into the Network or into NBSL's software or systems or the software or systems of the Third Party Supplier(s).

10. OBLIGATIONS OF NBSL

- 10.1. NBSL will deliver Network Services in accordance with the applicable Interface Specifications, subject to the payment of the appropriate applicable fees and charges to NBSL by the Customer in accordance with Clause 4.1 above.
- 10.2. NBSL will use all reasonable efforts to ensure that, with the exception of downtime for maintenance, Network Services are available for use twenty four (24) hours a day, seven (7) days a week, and will endeavour to give the Customer advance notice by e-mail or other appropriate means of any scheduled downtime.
- 10.3. If any Transmission sent by the Customer to any Network Service is, through the fault of NBSL or of its Third Party Suppliers, incorrectly transmitted or stored, NBSL will re-transmit such Transmission at NBSL's expense, provided that the Customer shall have fulfilled its obligation at Clause 9.4 above.
- 10.4. Before the Customer uses a specified Network Service, NBSL will provide such installation support and training as are reasonably needed to enable the Customer to use said Network Service. NBSL reserves the right to charge the Customer for additional training provided thereafter at the Customer's request.
- 10.5. NBSL undertakes to provide reasonable technical advice and support to assist the Customer in using Network Services, on request, in the form of online help notes and help desk support (telephone and email) on Mondays to Fridays between the hours of 8.30 am and 5.30 pm UK time, except for UK public holidays when no service is available, and the period 27 December to 31 December (inclusive) each year, when a reduced hours service will operate. NBSL may also provide further support through Additional Services as specified in Schedule B.
- 10.6. NBSL acknowledges that all Customer Data remains the property of the Customer. NBSL will take all reasonable steps to ensure that Customer Data is not lost or corrupted within the Network. NBSL will keep all Customer Data strictly confidential and will not disclose it to any third party save:
 - (a) the Trading Partner(s) to which it is addressed by the Customer,
 - (b) a relevant Third Party Supplier,
 - (c) as required by law, or
 - (d) as permitted otherwise hereunder.
- 10.7. NBSL will procure that its Third Party Suppliers shall keep all Customer Data confidential and not disclose it to any third party, save as permitted hereunder, or as required by law.

11. CONFIDENTIALITY

- 11.1. NBSL acknowledges that, under this Agreement, it may learn:
 - (a) confidential information of the Customer; or
 - (b) confidential information proprietary to the Customer's clients or project partners.
- 11.2. NBSL agrees at all times to keep confidential any such information revealed by the Customer save where:
 - (a) the information is made public by the Customer (or the Customer's client or project partner as the case may be); or
 - (b) the information was already legally in the possession of NBSL without restriction as to disclosure; or
 - (c) the information enters the public domain other than by breach by NBSL of this Clause 11.2; or
 - (d) the information is required to be disclosed by law; or
 - (e) it is necessary, in the reasonable opinion of NBSL, to disclose the information to a Third Party Supplier in order to fulfil the purpose of this Agreement, in which case NBSL will procure that said Third Party Supplier keeps the information confidential subject to the terms of this Clause 11.2.
- 11.3. The Customer acknowledges that, under this Agreement, it may learn:
 - (a) confidential information of NBSL; or
 - (b) confidential information proprietary to NBSL's clients or project partners; or
 - (c) confidential information proprietary to a Third Party Supplier.
- 11.4. The Customer agrees at all times to keep confidential any such information revealed by NBSL (or a Third Party Supplier as the case may be) save where:
 - (a) the information is made public by NBSL (or NBSL's client, project partner or relevant Third Party Supplier as the case may be); or
 - (b) the information was already legally in the possession of the Customer without restriction as to disclosure; or
 - (c) the information enters the public domain other than by breach by the Customer of this sub-clause 11.4; or
 - (d) the information is required to be disclosed by law.

12. INDEMNITIES

- 12.1. The Customer shall fully indemnify NBSL against all liability, losses, damages, costs and expenses (including legal costs) incurred by NBSL as a result of:

- (a) any unauthorised use of a BookNet Service by the Customer;
- (b) any breach or non-performance by the Customer of any of its obligations under the Agreement; or
- (c) the Customer transmitting data through the Network unlawfully or for any unlawful purpose.

13. DATA PROTECTION

- 13.1. Each Party warrants that it will comply with all applicable data protection legislation including, but not limited to, the Data Protection Act 1998.

14. SUPPLY OF COMPUTER PROGRAMS

- 14.1. For the avoidance of doubt, any computer program supplied by NBSL or one of its Third Party Suppliers, whether as part of a Network Service or otherwise, is subject to the terms of the applicable Software Licence and not the terms of the Agreement.

15. ASSIGNMENT

- 15.1. NBSL shall be entitled to sub-contract, novate or assign all or any of its obligations hereunder but the Customer shall not assign, sub-contract or otherwise dispose of the Agreement or any part hereof or any benefit hereunder without the prior written consent of NBSL.

16. MISCELLANEOUS

- 16.1. No employer or employee relationship will be deemed to exist between the Parties for the duration of the Agreement, during which term NBSL shall be an independent contractor and not the servant of the Customer.
- 16.2. The Agreement shall be governed by the laws of England, and the English Courts shall have exclusive jurisdiction to settle all disputes arising in connection therewith.
- 16.3. Unless otherwise expressly stated herein, all notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient as set out in this Agreement or such other address as the recipient may designate by written notice to the other Party. Any such notice may be delivered personally or by pre-paid letter, e-mail, or facsimile transmission, provided that if delivered by e-mail or facsimile transmission a copy shall be posted or sent by hand within twenty-four hours of transmission. Notice sent by post shall be deemed to be delivered forty-eight (48) hours after posting.
- 16.4. The clause headings herein are for convenience only and shall not affect construction.
- 16.5. The Agreement contains the entire understanding between the Parties with respect to the subject matter hereof and supersedes all previous agreements between the Parties with respect thereto.
- 16.6. NBSL reserves the right to make changes to the terms and conditions of the Agreement at any time by providing the Customer with at least 3 months written notice. If a change is unacceptable to the Customer, the Customer may terminate the Agreement by notice in writing effective from the date at which the change comes into effect, and NBSL will refund the unused portion of any periodic subscription charge already paid by the Customer.
- 16.7. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the remaining terms or provisions shall remain in full force and effect and such invalid, illegal or unenforceable terms and provisions shall be deemed, ab initio, not to have been part of this Agreement.
- 16.8. The provisions as to confidentiality, liability and intellectual property rights shall continue in full force and effect despite termination of this Agreement for whatever reason.
- 16.9. Failure or neglect by either Party to enforce at any time any of the provisions of the Agreement shall not be construed to be a waiver of its rights hereunder nor in any way affect the validity of the whole or any part of the Agreement nor prejudice its rights to take subsequent action.
- 16.10. Each Third Party Supplier shall be entitled, without limitation, to enforce subclause 7.8 of this Agreement. Subject to the above and save as otherwise specifically stated herein this Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 which are enforceable by any person who is not a party to it and no person who is not a party to this Agreement may enforce any of its terms or rely on any exclusion or limitation contained in it.

These Standard Terms & Conditions are supplemented by Schedules relating to the specific Services provided to the Customer.