

NIELSEN BOOKSCAN STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF BOSS DATA

DEFINITIONS

"BOSS Data" means aggregated book sales data owned and distributed by Nielsen BookScan, specifically as defined in Clause 2 below for the purposes of this Agreement.

"Start Date" means the date on which the Agreement becomes active, as agreed between the Parties and noted at the time of signature.

"Contract Year" means any twelve month period beginning from the Start Date or the anniversary thereof.

"Software" means the business intelligence and data mining software owned by Cognos UK Limited ("*Cognos*") used to access and download BOSS Data through/from the Website;

"User" means those employees of the Client named in Schedule C and as agreed from time to time between the Parties in writing (including by email) who are entitled to access, download and use BOSS Data under this Agreement; and

"Website" means Nielsen BookScan's website (identified by such URL as is notified to the Client by Nielsen BookScan) through which Users may access and download BOSS Data.

1. USE OF BOSS DATA

- 1.1. This Agreement shall apply to all BOSS Data supplied by Nielsen BookScan and accessed, downloaded and/or used by the Client. Copyright of BOSS Data and any other information provided by Nielsen BookScan remains with Nielsen BookScan and acknowledgement of this copyright must be given where appropriate.
- 1.2. The Client may use BOSS Data and any information available or obtained or interpreted from BOSS Data solely for the purpose of the Client's internal business to aid its decision making processes in connection with marketing, sales and production activities. The Website will be configured by BookScan to allow the Client to access Data as set out in Schedule A of this Agreement.
- 1.3. Nielsen BookScan shall allow the Client (specifically its Users) to access the Website for the purpose of accessing and downloading the Data, provided Nielsen BookScan has first validated that the Client has acquired an appropriate Software Licence (as outlined in Clause 2.2 below) for each User. The Client agrees to restrict access to the Website to licensed Users; to take all reasonable care to keep User log-on details private and secure; to notify Nielsen BookScan promptly of any change in named Users.
- 1.4. The Client will ensure that the terms and conditions of this Agreement are observed at all times by itself and all Users.
- 1.5. The Client shall not
 - (a) communicate, sell, reproduce or redistribute BOSS Data or any information available or obtained from BOSS Data to any third party by any means, including machine-readable form, other than with the prior written consent of Nielsen BookScan; and, specifically, display BOSS Data on the Internet without prior approval from Nielsen BookScan; or
 - (b) use BOSS Data or any information available or obtained or interpreted from BOSS Data in any manner, or for any purpose other than is expressly permitted in this Clause 1.
- 1.6. The Client shall be liable, notwithstanding any other remedies Nielsen BookScan may have against the Client, to indemnify Nielsen BookScan for any loss Nielsen BookScan suffers as a consequence of the Client's nonconformance with these terms of use.
- 1.7. The Client acknowledges that use of BOSS Data requires the Client to use its own skill and judgement. The Client warrants that it has the judgement in use of BOSS Data and shall be solely liable for all opinions, recommendations, forecasts or comments made or actions taken in reliance on by reference to BOSS Data.
- 1.8. Nielsen BookScan reserves the right to add, delete or modify items of information contained in BOSS Data at any time, or to alter the format in which the BOSS Data is made available, provided that any changes will not substantially diminish the quality of BOSS Data.

2. LICENCE AND SERVICE PROVIDED

- 2.1. Nielsen BookScan grants, and the Client accepts, a nonexclusive, non-transferable licence to use BOSS Data provided during the term of this Agreement.
- 2.2. BookScan utilizes the Software supplied by Cognos to allow Client's Users to access and download BOSS Data. Each User requires either a Software Licence from BookScan or direct from Cognos.
- 2.3. Nielsen BookScan agrees to the supply to the Client the services and BOSS Data as specified in Schedule A below.
- 2.4. During the term of this Agreement, Nielsen BookScan agrees to provide reasonable technical support to the Client to enable access to BOSS Data.

3. TERM AND TERMINATION

- 3.1. The Agreement shall commence on the Start Date as agreed between the Parties and noted below at the time of signature and shall continue for a minimum period of one year and thereafter until either Party gives the other six months notice of termination in writing. Any termination notice must be acknowledged in writing within 30 days.
- 3.2. Either Party may terminate this Agreement with 30 days written notice if the other Party is in breach of or defaults on any of the terms in this Agreement.
- 3.3. Either Party may terminate this Agreement with 30 days written notice in the event that agreement cannot be reached on the fees payable for the next Contract Year.
- 3.4. Upon termination of this Agreement, howsoever caused, the Client (and its Users) shall have no further right to access the Website or BOSS Data.
- 3.5. In the event of termination of this Agreement under Clause 3.2 where the Client is in breach of the Agreement, the Client must destroy all copies of BOSS Data in its possession within 30 days of termination and give written confirmation to Nielsen BookScan that it has done so.
- 3.6. In the event of termination for any reason other than breach, the Client shall be granted a perpetual, personal, non-exclusive, non-transferable licence to continue to use BOSS Data downloaded during the term of the Agreement for the Permitted Purpose only.

4. FEES

- 4.1. The Client agrees to make the payments to Nielsen BookScan in consideration for the provision of BOSS Data and the licence as specified in Clause 2 above, as specified in Schedule B below, or as agreed between the Parties in subsequent Contract Years, for the duration of the Agreement. Nielsen BookScan reserves the right to withhold the supply of BOSS Data, until the date of payment, in the event that any annual subscription fee or any additional charge payable by the Client under this Agreement is not paid on the due date.
- 4.2. The fees for subsequent Contract Years are to be agreed between the Parties on a reasonable basis, at least one month before the commencement of that Contract Year. In the event that no agreement can be reached, either Party may terminate the Agreement under the provisions of Clause 3.3 above

5. WARRANTIES AND LIMITATION OF LIABILITY

- 5.1. Nielsen BookScan warrants that the use of the Software and BOSS Data permitted in the Agreement does not infringe the intellectual property rights of any third party. Nielsen BookScan uses all reasonable efforts to ensure the accuracy of BOSS Data, but does not warrant that BOSS Data is error-free, accurate, or complete and, to the maximum extent permissible under law, does not accept responsibility or liability for the consequences of any such error, inaccuracy or incompleteness.
- 5.2. In any event, Nielsen BookScan shall not be liable to the Customer under this Agreement, for any loss of profit, revenue, business, goodwill, or contracts, or for any indirect, special or consequential loss, damage, cost or expense.
- 5.3. Nielsen BookScan's total liability under this Agreement in any one Contract Year shall, in any event (to the maximum extent permissible under law) be limited, at Nielsen BookScan's option, to either (a) the sum of Payments paid by the Customer to Nielsen BookScan in the Contract Year in which a default arises; or (b) the replacement of the defective data or services as the case may be.
- 5.4. Neither Party shall be liable for, and is excused from, any failure to deliver or perform or for delay in delivery or performance (including, without limitation, availability of the Website) due to causes beyond its reasonable control (force majeure).

6. ACCESS TO THE DATA

- 6.1. Nielsen BookScan does not warrant and specifically disclaims any responsibility for continued compatibility between the Client's equipment and software and the Website, BOSS Data or the Software. The Client assumes all liability arising from or in connection with the use of the Client's equipment and software, including interface software, and the actions of the Client's IT staff or technical consultants.
- 6.2. Nielsen BookScan may at any time require the Client (or any User) to disconnect its equipment, software or any part of them from accessing the Website and/or BOSS Data if, in the reasonable opinion of Nielsen BookScan, such equipment or software is or has been the cause or is likely to be the cause of failures, interruptions, errors or defects in the Website and/or BOSS Data. If the Client is required to disconnect, Nielsen BookScan will, as soon as possible thereafter, advise the Client of the changes that are required to such equipment or software to enable the Client to access the Website and BOSS Data, subject to such further charges as Nielsen BookScan shall determine.
- 6.3. Any breach of clause 6.2 by the Client (or any User) will entitle Nielsen BookScan in addition to any other remedy it may have, to immediately terminate the Client's (and all Users') right to access the Data and/or terminate this Agreement as a whole; in which case the conditions of Clause 3.5 above will apply.
- 6.4. The Client shall ensure that any equipment or other software used by it for accessing the Website, using the Software and/or accessing or using the Data in accordance with this Agreement, is used in such a manner so as not to corrupt the Website, BOSS Data, the Software or any other software which may be used by Nielsen BookScan; nor shall it be used to access or retrieve any data which is not part of BOSS Data subscribed to by the Client under this Agreement, as defined in Schedule A.
- 6.5. The Client acknowledges that the Website will, from time to time, be off-line due to maintenance work and provision of database updates by Nielsen BookScan.

7. MISCELLANEOUS

- 7.1. No waiver by Nielsen BookScan or the Client shall be construed as a waiver of any preceding or succeeding breach of any provision and shall not prejudice Nielsen BookScan's or the Client's rights to take subsequent action.
- 7.2. Save as expressly provided otherwise, 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 other third party who is not a party to this Agreement may enforce any of its terms or rely on any exclusion or limitation contained in it.
- 7.3. If any term or provision 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 term or provision shall be deemed, ab initio, not to have been part of this Agreement.
- 7.4. All headings used in this Agreement are for convenience only and shall be disregarded for the purpose of any interpretation of this Agreement.
- 7.5. 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.
- 7.6. This Agreement shall be governed by the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the English courts.