

## ONLINE USER LICENCE AGREEMENT

Adam Matthew Digital Ltd, Pelham House, London Road, Marlborough, Wiltshire, SN8 2AG, England ("**Licensor**")

On behalf of the Institute (as detailed on form) (hereinafter referred to as the "**Licensee**"), I agree to the following Terms and Conditions:

### 1. Grant of Licence for Licensed Materials and Licence Fee

- 1.1 The material that is the subject of this Agreement is electronic information published or otherwise made available by the Licensor and is described as **FRONTIER LIFE** (hereinafter referred to as the "**Licensed Materials**" (where such term shall include any part of the Licensed Materials, and any data or information extracted from the Licensed Materials)).
- 1.2 The Licensee acknowledges that the Intellectual Property (which for the purposes of this Agreement shall mean copyright, trade marks, design rights, registered designs, database rights, domain names or any other intellectual property rights) subsisting in or relating to the Licensed Materials remains with the Licensor and/or its suppliers. The Licensee shall not have any right, title or interest in the Licensed Materials except as expressly set forth in this Agreement.
- 1.3 The Licensor hereby grants to the Licensee a non-transferable non-exclusive licence to use the Licensed Materials (including the right for the Authorised Users to use the Licensed Materials in accordance with the terms of this Agreement) for the purposes set out in and in accordance with this Agreement.
- 1.4 Save for the rights granted by the Licensee to the Authorised Users, the Licensee shall not grant sub-licences, in whole or in part, of any of the rights granted under this Agreement, or sub-contract any aspects of exploitation of the rights licensed to it, without the Licensor's prior written consent.

### 2. Authorised Use of Licensed Materials

- 2.1 The Licensee may permit Authorised Users to use the Licensed Materials on the terms set out herein and on condition that such Authorised Users do not grant any further sub-licence.
- 2.2 For the purposes of this Agreement "**Authorised Users**" are: (1) Persons Affiliated with the Licensee, namely full and part time students (including students enrolled in distance education programs offered or sponsored by the Licensee) and employees (including faculty, staff, alumni, affiliated researchers and independent contractors) of the Licensee who in all cases need access to the Licensed Materials for the purposes of their research, education or other non-commercial use. Any off-campus access shall be provided only for individuals authenticated as affiliated as members of the Licensee's University, Institution or Organisation as defined as the Licensee herein; and (2) Walk-ins, namely patrons who are not affiliated with the Licensee but who are physically present on the Licensee's premises.
- 2.3 The Licensee may only use the Licensed Materials for the purposes of research, education, teaching or other non-commercial use and subject to the foregoing the Licensee may:

- (1) download unlimited portions of the Licensed Materials;
- (2) store in electronic format in secure electronic data files or print a reasonable portion of the Licensed Materials for use only in connection with specific courses of instruction offered by the Licensee;

Save for video content which is excluded for the purposes of downloading, storing, printing and transmitting.

- 2.4 The Licensee shall comply with all applicable laws in performing its obligations and exercising its rights under this Agreement and in particular the Licensee shall not infringe any moral rights (as defined in Chapter IV of the Copyright, Designs and Patents Act 1988 or if such acts take place outside the UK, in accordance with any equivalent legislation applicable in that territory) that subsist in respect of the Licensed Materials.
- 2.5 Access will only be permitted through an embedded URL behind local authentication.
- 2.6 For the avoidance of doubt, nothing in this Agreement is intended to limit in any way whatsoever the Licensee's rights under the fair dealing provisions set out in the Copyright Designs and Patents Act 1988 (as may be re-enacted or modified) or if such acts take place outside the UK, in accordance with any equivalent legislation applicable in that territory.

### **3. Restrictions on Use of Licensed Materials**

- 3.1 Save as set out in this Agreement, the Licensee shall not:
  - 3.1.1 permit any third party or individual to use the Licensed Materials and the Licensed Materials shall not be distributed to any unauthorised users, third parties, or used for any purpose which is not permitted pursuant to this Agreement (including without limitation any commercial purpose, sale of the Licensed Materials, bulk reproduction or distribution of the Licensed Materials or commercially sponsored research);
  - 3.1.2 modify, change or develop the Licensed Materials in any way or create a derivative work of the Licensed Materials;
  - 3.1.3 remove, obscure or modify any copyright, trade mark or other notices included in the Licensed Materials;
  - 3.1.4 re-publish any items from the Licensed Materials, unless the Licensee has first obtained copyright permission from the appropriate copyright holder or archive. Permission from the original source archive/copyright holder in the case of re-publication of figures, tables and brief excerpts from the Licensed Materials in an Authorised User's own scientific, scholarly and educational works is always necessary and the Licensee should also obtain correct wording for all citations and credits from the original source archive/copyholder; or
  - 3.1.5 remove, bypass, circumvent, neutralise, or modify any of the technological protection measures used for the Licensed Materials.

3.2 Before the Licensee makes available any of the Licensed Materials to the Authorised Users, the Licensee shall require that all Authorised Users accept end user terms and conditions of use of the Licensed Materials that:

- (1) require Authorised Users to comply with all applicable laws in using the Licensed Materials;
- (2) state that the Licensed Materials being supplied are only for the Authorised User's personal use;
- (3) prohibit reproduction or distribution of Licensed Materials that violates applicable law;
- (4) contain a reservation for the Licensor of all Intellectual Property and other rights in the Licensed Materials; and
- (5) Set out the limitations on access and use of the Licensed Materials as set forth in this Agreement,

(collectively, the “**Terms of Use**”). The Licensee shall provide a copy of such Terms of Use to the Licensor should this be requested by the Licensor.

#### **4. Automatic Renewal**

4.1 This Agreement shall automatically renew at the end of the initial term of one year for a successive term of one year, and thereafter for successive terms of one year each, unless in either case either party gives written notice of its intention not to renew at least 60 days before expiry of the relevant current term.

#### **5. Support and Availability**

5.1 The Licensor will provide and maintain help files and other appropriate user documentation in relation to the Licensed Materials.

5.2 The Licensor will use reasonable endeavours to assist the Licensee with the implementation of and use of the Licensed Materials. The Licensor will use reasonable endeavours to make its personnel available by email, phone or fax for feedback, problem-solving, or general questions. The Licensor shall not provide any on site installation in respect of the Licensed Materials or relevant software. The Licensed Materials will make use of standard internet protocols, interfaces and functions, including Help Files.

5.3 The Licensor shall use reasonable efforts to make the Licensed Materials available on a continuous seven (7) days a week basis with an average of at least 98% up-time per month. The allowable down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or services outside the control of the Licensor, including but not limited to public or private telecommunications services or internet nodes or facilities. The down-time also allows for periodic server migrations, updating resources and relevant technologies, as necessary to improve the service consistent with overall standards in the on-line information provision industry. The majority of updates will not involve any server down-time. The allowable down-time does not

include any unavailability which occurs due to a Force Majeure event (see section 19.1).

- 5.4 The Licensor shall provide appropriate advance notice in the event of scheduled maintenance which involves any significant amount of server down-time and the Licensor shall perform scheduled down-time at a time to minimise inconvenience to the Licensee. The Licensor shall provide appropriate notification in the event of unscheduled downtime where possible.

## **6. Modification or withdrawal of the Licensed Materials**

- 6.1 The Licensee hereby acknowledges that from time to time the Licensed Materials may be modified; including additions, revisions, amendments and deletions, by the Licensor and/or that portions of the Licensed Materials may migrate to other formats. This is part of the process of the Licensor ensuring that the Licensed Materials are current and up to date and accordingly such modifications, additions or deletions shall not be grounds for the Licensee to terminate this Agreement for breach.
- 6.2 The Licensor reserves the right to modify or withdraw the Licensed Materials or any part of them where it no longer retains the right to publish such content, or where it has reasonable grounds to believe such content infringes a third party's Intellectual Property, or where such content is inaccurate, defamatory, offensive or otherwise likely to be unlawful or promote illegal or unlawful activity. In the unlikely event of the Licensor needing to withdraw all or a material part of the Licensed Materials, (where a material part of the Licensed Materials shall be over 30% of the Licensed Materials), the Licensor shall give written notice to the Licensee of such withdrawal no later than 30 days following the removal of any item.

## **7. Suspension of access to Authorised Materials**

- 7.1 In the event of any unauthorised use of the Licensed Materials by an Authorised User or the Licensee, the Licensor may suspend or terminate the Licensee's access to the Licensed Materials until the circumstances of unauthorised use are resolved to the Licensor's satisfaction, and/or terminate this Agreement according to Section 11 of this Agreement.
- 7.2 The Licensor may require the Licensee to cease all use of any of the Licensed Materials if it reasonably believes that the Licensee's use of the Licensed Materials (or part thereof) infringes the Intellectual Property of any third party, or breaches any applicable law or regulation. In this instance, the Licensor may, at its option either:
- (1) provide the Licensee with alternative Licensed Materials so as to avoid the infringement; or
  - (2) terminate or modify this Agreement immediately on written notice in respect of the affected Licensed Materials.

## **8. Protection of the Licensed Materials**

- 8.1 The Licensee shall use the best available practices and systems applicable with regard to the use of the Licensed Materials to:
- (1) enforce the territorial and use restrictions of this Agreement; and

- (2) prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Licensed Materials.
- 8.2 If the Licensee becomes aware of any potential or actual infringement or misuse of any Licensed Materials, or any security breach in connection with this Agreement that could compromise the security or integrity of the Licensed Materials or otherwise adversely affect the Licensor, the Licensee shall, at the Licensee's expense, promptly notify the Licensor and fully co-operate with the Licensor to remedy the issue as soon as reasonably practicable. The Licensor may suspend the Licensee's rights under this Agreement until the infringement, misuse or security breach is remedied.

## 9. Confidentiality and Privacy

- 9.1 For the purposes of this section, "**Confidential Information**" shall mean the existence and terms of this Agreement, and any information or data (whether in written, oral, visual or electronic form, or on tape or disk, or howsoever) disclosed by one party to another which is not publicly available including without limitation: (1) any data relating to the usage of the Licensed Materials by the Licensee and its Authorised Users, (2) the Data, and (3) know-how and information about design, development, specifications, manuals, instructions, customer lists, sales, marketing, promotion, distribution, business plans, forecasts, and technical or other expertise.
- 9.2 Each party undertakes that it shall not at any time during this Agreement, nor for a period of five (5) years after termination or expiry of this Agreement, disclose to any person any Confidential Information except as permitted by this section.
- 9.3 Each party may disclose the other party's Confidential Information:
  - (1) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause; and
  - (2) as may be required by law, court order or any governmental or regulatory authority;
  - (3) in respect of data relating to the usage of the Licensed Materials by the Licensee and its Authorised Users, such data may be provided to third parties in aggregate form.
- 9.4 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under this Agreement.
- 9.5 The obligations set out in this section 9 shall not apply, or shall cease to apply, to Confidential Information which: (1) is, or becomes generally available to the public other than as a direct or indirect result of the information being disclosed in breach of this agreement, or (2) which was already lawfully known to the recipient of the information before it was disclosed by the provider of the information.
- 9.6 The Licensor recognises the importance of protecting the information it collects in the operation of access to the Licensed Materials and will take all reasonable steps to maintain the security, and privacy of this information. The Licensor will ensure that any information it collects will be relevant and not excessive for purposes of

operating the Licensed Materials and will be deleted when no longer needed. The Licensor will only disclose to third parties navigational and transactional information in the form of anonymous, aggregate usage statistics and demographics in forms that do not reveal an Authorised User's or the Licensee's identity or confidential information. Further information regarding privacy can be found in the Licensor's Privacy Policy, posted on the Licensor's website <http://www.amdigital.co.uk/About-Us/Privacy-Policy.aspx>.

## 10. Early Termination

- 10.1 Either party (the Terminating Party) may by written notice to the other party (the Other Party) terminate this Agreement immediately if:
- 10.2 the Other Party ceases, or threatens to cease, to carry on business; or
- 10.2 any of the following events occur (or any event analogous to any of the following occurs in a jurisdiction other than England and Wales) in relation to the Other Party:
- (1) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986, or a proposal is made for any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
  - (2) a shareholders' meeting is convened to consider a resolution that it be wound up, or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
  - (3) a petition is presented for its winding-up, or an application is made for the appointment of a provisional liquidator (in each case, which is not dismissed within 14 days of its service), or a creditors' meeting is convened under section 98 of the Insolvency Act 1986; or
  - (4) a receiver, administrative receiver or similar officer is appointed over the whole, or any part, of its business or assets; or
  - (5) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
  - (6) it is, or becomes, insolvent within the meaning of section 123 of the Insolvency Act 1986.

## 11. Consequences of termination

- 11.1 Any expiry or termination of this Agreement all rights and authorisations granted by the Licensor to the Licensee under this Agreement shall automatically terminate and immediately revert to the Licensor; and on-line access to the Licensed Materials by the Licensee and Authorised Users shall be immediately terminated.

## 12. Warranties

- 12.1 Each party warrants to the other that it has full power and authority to enter into and perform its obligations under this Agreement;
- 12.2 The Licensor warrants that it has the right to licence the rights granted under this Agreement to use the Licensed Materials, that it has obtained any and all necessary permissions from third parties to licence the Licensed Materials, and that so far as it is aware, use of the Licensed Materials by the Licensee in accordance with the terms of this Agreement shall not infringe the copyright of any third party; and

- 12.3 The Licensee warrants that it will not knowingly use the Licensed Materials:
- (1) so as to infringe any third party's copyright;
  - (2) in a manner which is defamatory, libellous, obscene, or otherwise unlawful; or
  - (3) in a manner which will violate any applicable law, statute or subordinate legislation;

### **13. Intellectual Property Infringement**

- 13.1 Each party shall promptly notify the other of any actual or suspected infringement of the Licensed Materials that comes to its attention (“**Infringement**”).
- 13.2 The Licensee shall co-operate fully with the Licensor by taking all steps required by the Licensor (in its sole discretion) in connection with any Infringement, including, without limitation, legal proceedings in the name of the Licensor or in the joint names of the parties. The Licensor shall be responsible for the cost of any legal proceedings it requires, and is entitled to any damages, account of profits and/or awards of costs recovered. The Licensee shall use its best endeavours to assist the Licensor in any legal proceedings relating to any Infringement. The Licensee shall not take any steps relating to any Infringement unless the Licensor has requested that the Licensee does so.
- 13.3 The Licensee shall indemnify the Licensor against all claims, liabilities, losses and expenses arising out of any infringement of any rights of the Licensor or the Licensor’s licensors by any breach of this Agreement by the Licensee.

### **14 Limitations**

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT:

- 14.1 NOTHING IN THIS AGREEMENT SHALL LIMIT EITHER PARTY’S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE.
- 14.2 SAVE WHERE EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL CONDITIONS, WARRANTIES, COVENANTS, REPRESENTATIONS AND UNDERTAKINGS WHICH MAY BE IMPLIED, WHETHER STATUTORY OR OTHERWISE, IN RESPECT OF THE PERFORMANCE BY EITHER PARTY OF ITS OBLIGATIONS HEREUNDER ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW.
- 14.3 NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE HOWSOEVER ARISING, OR FOR ANY LOSS (WHETHER DIRECT OR INDIRECT OR CONSEQUENTIAL) OF PROFITS, USE, ANTICIPATED SAVINGS, GOODWILL OR CONTRACTS OR FOR ANY LOSS ARISING FROM DAMAGED, CORRUPTED OR LOST DATA.
- 14.4 THE AGGREGATE LIABILITY OF EACH PARTY IN RELATION TO THIS AGREEMENT SHALL NOT IN TOTAL EXCEED THE GREATER OF ONE MILLION POUNDS (£1,000,000) OR THE AMOUNT EQUAL TO THE CHARGES PAID UNDER THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT, MISREPRESENTATION, BREACH OF DUTY OR OTHERWISE.

### **15. Legal Disputes and Governing Law**

- 15.1 If any dispute arises in connection with this Agreement, the directors or other senior representatives of the parties with authority to settle the dispute will, within seven (7) days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 15.2 If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (ADR notice) to the other party to the dispute requesting mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than thirty (30) days after the date of the ADR notice.
- 15.3 No party may commence any court proceedings or arbitration in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
- 15.4 Save as set out above, 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 Agreement or its subject matter or formation.
- 15.5 This Agreement shall be interpreted and construed according to, and governed by, the laws of England and Wales.

## **16. Notices**

- 16.1 Any notice required to be given under this Agreement, or in connection with the matters contemplated by it, shall (except where specifically provided otherwise) be in writing and shall be delivered personally, or sent by pre-paid first-class (or airmail) post or recorded delivery or by commercial courier or fax or email, to the party required to receive the notice at the address provided by it for this purpose from time to time (such address to include a named representative responsible for receiving it).
- 16.2 Any notice shall be deemed to have been received:
- (1) if delivered personally, when left at the address and for the contact identified by the party;
  - (2) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day after posting;
  - (3) if sent by airmail, at 9.00 am on the fifth business day after posting;
  - (4) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed;
  - (5) if sent by fax, at the time of transmission;
  - (6) if sent by email, at 9am on the first business day after transmission.

## **17. General**

- 17.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or



failure result from events, circumstances or causes beyond its reasonable control, and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for four (4) weeks, the party not affected may terminate this Agreement by giving fourteen (14) days' written notice to other party.

- 17.2 This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.
- 17.3 No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by Authorised representatives of the Licensor and the Licensee.
- 17.4 If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 17.5 Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.
- 17.6 A person who is not a party to this Agreement shall not have any rights under or in connection with it.
- 17.7 Nothing in this Agreement shall be deemed to constitute a partnership between the parties nor, except as expressly set out in this Agreement, constitute either party the agent of the other party for any purpose.
- 17.8 The Licensor may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this Agreement.