



# Business Licence with TDM extension Terms and Conditions

## Introduction

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### 1. Definitions and interpretation

1.1 In this Licence the following meanings shall apply:

**Affiliated Company:**

any subsidiary or holding company (including any subsidiary of such holding company) located in the United Kingdom where 'subsidiary' and 'holding company' have the meanings set out in s. 1159 Companies Act 2006;

**AI Systems:**

are machine-based systems designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as content, predictions, recommendations, or decisions that can influence physical or virtual environments;

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- ii) for Digital Copies: those individuals in i) above who are permitted by the Licensee to have access to the Licensee's Secure Network, whose identity is authenticated at the time of login and periodically thereafter consistent with current best practice and whose conduct is subject to regulation by the Licensee;

where 'workers' has the meaning given to it by the Employment Rights Act 1996 and 'consultants' means individuals providing consultancy services to the Licensee;

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those works, whether in digital or hard copy form, published by a Participating US Publisher as identified on CLA's website or other electronic means controlled by CLA as being available for scanning and digital use or re-use;

**CLA:**

the Copyright Licensing Agency Ltd;

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- ii) information as periodically amended by CLA, any such amendment taking effect on the next Quarter Day after such amendment is first posted;

**Commencement Date:**

the date entered on the Licence application form for the Licence to take effect or the date from which an indemnity is sought (if an earlier period);

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a statement in the following, or substantially similar, terms: "This document has been supplied under a CLA Licence. It is protected by copyright and, save as may be permitted by law, it may not be further copied, stored or on-copied electronically, even for internal purposes, without the prior permission of the Rightsholder or under the terms of a CLA Licence";

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**Fee:**

the fee to be paid in respect of the Licence each year. Where the Licensee has less than 50 employees, the fee shown on CLA's website for small businesses or, where the Licensee has more than 50 employees, the fee calculated by multiplying the number of Professional Employees of the Licensee by the current rate shown on CLA's website as applicable to businesses or, if greater, the minimum fee, if any, shown on CLA's website. The fee for the first year of the Licence is as notified to the Licensee (to include payment for the indemnity as required) and for subsequent years shall be calculated by multiplying the relevant rate per Professional Employee (as shown on CLA's website prevailing three months prior to the anniversary of the Commencement Date) by the number of Professional Employees of the Licensee as used for the calculation of the fee for the previous year or such number as is determined in accordance with clause 3.5. Notwithstanding the foregoing, a separate fee structure may apply to the TDM Permitted Activities (as defined in this Licence) in accordance with the current rates published on CLA's website from time to time;

**Generative AI Systems:**

foundation models used in AI Systems specifically intended to generate, with varying levels of autonomy, content such as complex text, images, audio, or video;

**Item:**

an individual and complete article, chapter, recipe or equivalent self-contained item of text and integrated still images;

**Licence:**

the licence granted by clause 2;

**Licensed Copies:**

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any and all Material Licensed For Photocopying and Material Licensed For Scanning and Digital Material and for the avoidance of doubt, to the extent for the purpose of TDM Permitted Activities, only the Material Licensed For TDM Permitted Activities;

**Licensee:**

the company and any Affiliated Companies whose Professional Employees have been included in the calculation of the Licence Fee as listed on the application form;

**Licensee Website:**

the universally free-to-access website or online application controlled and operated by the Licensee but excluding at all times any Restricted Website;

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original published editions of books, journals, magazines and other periodicals in which copyright subsists published in hard copy form in the Photocopying Mandate Territories or published by a Participating US Publisher EXCEPT any Excluded Material;

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original published editions of books, journals, magazines and other periodicals in which copyright subsists published in hard copy form in the Scanning Mandate Territories and CCC Electronic-Rights Works and, in both cases, Paper Copies derived there from by the Licensee EXCEPT any Excluded Material;

**Material Licensed For TDM Permitted Activities:**

Licensed Material specifically opted-in by the relevant Rightsholders to permit the text and data mining activities described in clause 2.1.6 of this Licence, as identified on CLA's website or other electronic means controlled by CLA from time to time;

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a publisher participating in the agreement between the Copyright Clearance Center (CCC) and CLA as identified on CLA's website or other electronic means controlled by CLA;

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**Prescribed Rate:**

the rate of interest prescribed from time to time pursuant to The Late Payment of Commercial Debts (Interest) Act 1998;

**Professional Employee:**

as defined in the CLA Rate Card for businesses shown on CLA's website;

**Quarter Day:**

1st January, 1st April, 1st July or 1st October;

**Rightsholder:**

any person owning or controlling the copyright in any Licensed Material;

**Restricted Website:**

any website or online application that primarily offers news, magazine, periodical or literary content or which CLA considers to be materially associated with: i) political or religious campaigns; ii) content which is sexually explicit, violent or militaristic, discriminatory, illegal or unlawful; or iii) activities which would cause detriment to the reputation of CLA or a relevant Rightsholder.

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**Secure Network:**

a network operated or controlled by the Licensee (whether a stand-alone network or a virtual network within the Internet) which is accessible only by Authorised Persons; and

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- 1.2 All references to the singular in this Licence may include the plural and vice versa as the context so requires and references to any gender shall include both genders.
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- 2.1 CLA grants to the Licensee and, as appropriate, Authorised Persons the non-exclusive, non-transferable, non-sublicensable and revocable right, subject to the terms and conditions set out in the following clauses, to:
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    - 2.1.4 make copies of Paper Copies;
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    - 2.1.6 carry out or perform computational analysis and classification of the Material Licensed For TDM Permitted Activities for the purpose only of identifying patterns and trends in accordance with the purposes described in Schedule A to this Licence, and the following activities, subject always to the conditions set out in clauses 6.3 and 8:
      - 2.1.6.1 create, download, extract from and format using computational means and store Digital Copies on the Licensee's computer servers (including cloud-based servers); and/or
      - 2.1.6.2 create a central repository of the Digital Copies, including retaining metadata of the Materials Licensed For TDM Permitted Activities used solely to enable use of such Materials Licensed For TDM Permitted Activities in accordance with this clause 2.1.6;
- (all together the "TDM Permitted Activities").

- 2.2** All the rights and permissions granted by clause 2.1 (other than in clauses 2.1.3 ii) and 2.1.5) must be exercised:
- 2.2.1** for the Licensee's internal information purposes only (but without prejudice to clauses 2.1.3 ii) and 2.1.5);
  - 2.2.2** within the United Kingdom only, provided that any Authorised Person located outside of the United Kingdom and any user of the Licensee Website (whether located inside or outside of the United Kingdom) may access and view, but not print out, Digital Copies; and
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- 3.1** The Licence shall commence on the Commencement Date and continue annually from year to year, if renewed by the Licensee and CLA, unless and until terminated in accordance with clause 12.
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- 5.6.3** the Licensee shall be fully responsible for any acts or omissions of its subcontractors with respect to Licensed Material made available to such subcontractors to the extent that such acts or omissions would breach the Licence if they were acts or omissions of the Licensee; and
- 5.6.4** the use of a sub-contractor located outside of the United Kingdom shall be deemed not to be a breach of clause 2.
- 5.7** For the avoidance of doubt, nothing in this Licence shall operate to limit any rights which the Licensee may have in relation to the use of material supplied to the Licensee in electronic form under the terms and conditions of that supply. This Licence is without prejudice to any acts which the Licensee is permitted to carry out by the terms of the Copyright, Designs and Patents Act 1988 (as the same may be subsequently re-enacted or amended), it being recognised that such permitted acts must be construed in accordance with the principles set out in Article 9(2) of the Berne Convention, as already reflected in the legislation applicable in the United Kingdom.

## **6. Further conditions applying to the use of CCC electronic-rights works**

- 6.1** Notwithstanding clause 2.1.2, the Licensee may only scan, or permit the scanning of, hard copies of a CCC Electronic-Rights Work under the Licence where the same is not reasonably available in digital form for the Licensee to purchase whether by subscription or otherwise.
- 6.2** The use of CCC Electronic-Rights Works is subject to such special limitations or other terms (if any) as are applicable to any individual work as identified on CLA's website.
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- 7.1** The Licensee may store Digital Copies on the Secure Network; such stored Digital Copies may be indexed and searchable but may not be stored on a server, or systematically indexed, with the intention of creating an electronic library or similar corporate information resource.
- 7.2** On termination of this Licence the Licensee shall:
- 7.2.1** i) immediately cease to make available any Digital Copies on the Licensee Website; and ii) permanently delete, as soon as practicable, from the hard drives of all its central and local servers and those of any third party subcontractor any and all Digital Copies which may be stored there (save for those Digital Copies the retention of which is required by law), but;
- 7.2.2** shall be entitled, except where such termination is by CLA for cause, to retain Digital Copies stored pursuant to clause 7.1 for record purposes and shall be entitled to access such Digital Copies only to prove that such Digital Copies were a necessary part of the product or project for which they were originally identified as being stored.

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- 7.4** If so requested in writing by CLA, the Licensee shall certify that it has ceased to make available and deleted Digital Copies in compliance with this clause 7. The provisions of this clause 7 are without prejudice to, and are subject to the provisions of, clause 4.5.

## **8. Further conditions applying to TDM Permitted Activities**

- 8.1** The Licensee shall not be entitled to carry out or perform TDM Permitted Activities in relation to any Licensed Material for the purposes of training algorithms, or developing datasets which may be used to train algorithms, including, without limitation, use for any foundational and large language models or for machine learning, biometric technology use or use for any form of Generative AI Systems. For the avoidance of doubt, the Licensee shall not be permitted to use consumer-facing or B2B tools that permit third parties to input, generate outputs or extract information from machine learning or any Generative AI System.
- 8.2** The Licensee shall not be entitled to use the Licensed Material or any outputs from the TDM Permitted Activities as inputs (whether training or production data) to any Generative AI Systems.
- 8.3** The Licensee shall be restricted from use of the Licensed Materials and any outputs of the TDM Permitted Activities to create a product or service that may conflict with the normal exploitation of any Licensed Material, or may reasonably prejudice the legitimate interests of, any Rightsholder.
- 8.4** The right to create a central repository under TDM Permitted Activities shall be subject to the Licensee implementing such appropriate time limitations and technical and organisational measures in accordance with good industry practice to protect against unauthorised or unlawful access and to preserve the security, integrity and confidentiality of the repository contents.
- 8.5** Further, the rights under TDM Permitted Activities shall be subject to the limits of the fee structure set out in clause 3.
- 8.6** The Licensee shall not interfere with, modify or otherwise remove or strip out any copyright notices, disclaimers or metadata from any of the Materials Licensed for TDM Permitted Activities, unless technically required.
- 8.7** The Licensee shall not interfere with, override or bypass any encryption or other technical protection measures in relation to the Licensed Materials, other than as permitted by the individual Rightsholder.
- 8.8** The Licensee shall not make any adaption or otherwise modify the Licensed Materials in any way, manipulate, or change the Licensed Materials in any way (other than as expressly permitted under this Licence) in a way that undermines the integrity, accuracy or original meaning or presentation of any original work within the Licensed Materials.
- 8.9** Notwithstanding clause 5.6 above, the Licensee shall only be entitled to sub-contract the performance of TDM Permitted Activities subject to the Licensee remaining fully responsible and liable to CLA for the any non-compliance by a sub-contractor with the terms of this Licence.
- 8.10** The Licensee agrees to provide CLA (or its representatives) with appropriate access to its records and systems, upon reasonable prior written notice by CLA to the Licensee, in order for CLA to carry out an audit (no more than twice a year) on the compliance by the Licensee with the terms of this Licence, with the reasonable costs of such audit to be borne by the Licensee.
- 8.11** For the avoidance of doubt, the Licensee acknowledges that the CLA provides no indemnity in respect of any complaint by a third party (other than the Rightsholder) that the use of TDM Permitted Activities may infringe (or has infringed) a third party's copyright and/or database rights.
- 8.12** Save as expressly set out in this Licence, CLA reserves, on behalf of its Rightsholders, all rights in relation to the use of the Licensed Materials.
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## **9. Other obligations**

- 9.1** The Licensee shall:
- 9.1.1** notify Authorised Persons of, and ensure their compliance with, the provisions of the Licence;
- 9.1.2** use reasonable endeavours to display adjacent to every copying machine used to make Paper Copies, and every scanner used to produce Digital Copies, any Licensee support material which CLA may periodically supply, or make available on CLA's website, to the Licensee.
- 9.2** In exercising its rights under the Licence, the Licensee shall be responsible for complying with all applicable laws of any kind including (without limitation) moral rights, data protection, the obtaining of any consents which may be required from any person, firm or company (other than those consents relating solely to copyright and/or database right), privacy or personality rights of any kind, defamation or obscenity.
- 9.3** CLA shall have the right on giving reasonable notice to the Licensee to enter any of the Licensee's premises to monitor and to verify the observance by the Licensee of its obligations under the Licence.

## **10. Print disabled persons.**

- 10.1** The provisions of this clause shall only apply where an Authorised Person is a Print Disabled Person in accordance with clause 9.3.
- 10.2** Notwithstanding the provisions of clause 4.2 the Licensee, and as appropriate Authorised Persons, may make and supply a copy of part or the whole of any work within Licensed Material in an alternative manner or form that gives a Print Disabled Person access to the work including allowing for the Print Disabled Person to have access as feasibly and comfortably as a person without a visual impairment or any of the disabilities referred to in clause 10.3 (an "Accessible Format Copy") but must respect the integrity of the work and not include any changes to the work which are not necessary in order to make an Accessible Format Copy for the exclusive use of the Print Disabled Person for whom it is intended on, and subject to, the following conditions:
- 10.2.1** the Licensee must have lawful access to an original copy of any work from which it makes an Accessible Format Copy;
- 10.2.2** each Accessible Format Copy that exceeds the limits set out in clause 4.2 shall contain:
- i) a statement that it is a copy of the original work made under a CLA Licence for the personal use of a Print Disabled Person and that it may not be further copied (including any electronic copying or transmission) or dealt with without permission or save as may be permitted by law; and
- ii) the title, as well as the name of the author and publisher, of the original work and the published edition from which it is copied.
- 10.2.3** the Licensee may only charge for the supply of an Accessible Format Copy an amount which does not exceed the cost of making and supplying it;

- 10.2.4** that the Accessible Format Copy is only for the personal use of a Print Disabled Person (or a person acting on behalf of a Print Disabled Person) who is an Authorised Person; and
- 10.2.5** Accessible Format Copies may only be distributed in the United Kingdom except that Accessible Copies of works published within the United Kingdom may be distributed in any member state of the European Union and any other country that is a party to the Marrakesh Treaty 2013.
- 10.3** An Authorised Person is to be regarded as a "Print Disabled Person" for the purposes of this clause if he or she is a person who:
- 10.3.1** is blind;
  - 10.3.2** has a visual impairment which cannot be improved so as to give that person visual function substantially equivalent to that of a person who has no such impairment;
  - 10.3.3** has a perceptual or reading disability, including dyslexia, and is, as a result, unable to read printed works to substantially the same degree as a person without an impairment or disability;
  - 10.3.4** is otherwise unable, due to physical disability, to hold or manipulate a book or to focus or move their eyes to the extent that would be normally acceptable for reading; or
  - 10.3.5** would otherwise be regarded as having a disability in accordance with s.6 of the Equality Act 2010.
- 10.4** This clause is without prejudice to and does not purport to prevent or restrict the doing of any act which by virtue of and in accordance with the Copyright, Designs and Patents Act 1988 would not infringe copyright.

## **11. Indemnity**

- 11.1** In this clause 'Qualifying Claim' shall mean any complaint made in writing that the Licensee acting in pursuance of the Licence has infringed copyright and/or database rights in any Licensed Material or in the typographical arrangement of the published edition in which Licensed Material is contained.
- 11.2** In the case of any Qualifying Claim, CLA shall indemnify the Licensee in respect of all reasonable legal costs, expenses and damages awarded against or incurred by the Licensee including any ex gratia payments made with the prior written consent of CLA, provided that the Licensee has complied with the terms of this Licence and has given CLA notice of any Qualifying Claim within 10 working days or, in the case of a Claim Form, within 5 working days of the same having been received by the Licensee.
- 11.3** The indemnity conferred by this clause shall not apply:
- 11.3.1** if the Licensee is in material breach of any term of the Licence; or
  - 11.3.2** during any period, or in respect of matters arising during such period, while the Licence is in suspense pursuant to clause 11.
- 11.4** CLA shall take over responsibility for any negotiations for the settlement of any Qualifying Claim and if such Qualifying Claim cannot be resolved by negotiation CLA shall assume full responsibility for the conduct of the defence of such Qualifying Claim. The Licensee shall co-operate with CLA in this respect where reasonably requested by CLA to do so.
- 11.5** The Licensee shall ensure that no admission or offer of payment or indemnity shall be made or given by or on its behalf or on behalf of CLA without CLA's written consent and shall ensure that all correspondence received in connection with a Qualifying Claim is promptly passed to CLA.
- 11.6** The Licensee shall indemnify CLA in respect of all reasonable expenses, damages and legal costs awarded against or incurred by CLA in respect of any claim arising out of the Licensee's breach of any term of the Licence.

## **12. Termination and breach**

- 12.1** Either party may terminate the Licence upon giving to the other at least 30 days written notice to expire on the first or any subsequent anniversary of the Commencement Date.
- 12.2** If the Licensee commits any material breach of any of the provisions of the Licence and remains in breach 14 days after receiving notice to remedy such breach (where the breach is remediable) then CLA, without prejudice to any of its other rights, may by notice either terminate the Licence or suspend the Licence until CLA shall be satisfied such breaches will not recur.
- 12.3** Either party may terminate the Licence by notice in writing to the other if and when a supervisor, administrator, receiver, administrative receiver or other encumbrancer takes possession of, or is appointed over, the whole or any substantial part of the other party's assets or if and when the other party enters into any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement under the Insolvency Act 1986) or if and when a petition is presented for the purpose of the making of an administration order or the winding-up of the other party which is not discharged within 7 days of the presentation of such a petition or if the other party is placed into liquidation or administration or if the other party is dissolved or if a resolution for the winding up of the other party is passed (other than a voluntary liquidation for the purpose of reconstruction in which all creditors' claims will be discharged in full) or if a bankruptcy petition is presented against the other party which is not discharged within 7 days of its presentation.

## **13. Data collection**

- 13.1** CLA may, no more than once in each year, require the Licensee to participate in a data collection exercise to identify the type of photocopying and scanning of Licensed Material and the use or re-use of Digital Material under the Licence which will assist CLA in distributing the Fee to authors, artists and publishers.
- 13.2** The data collection exercise may, without limitation, take the form of a survey or record keeping or online reporting exercise, or any combination of these, including the recording of the creation of Digital Copies, in accordance with any guidelines on data collection on CLA's website.
- 13.3** If selected, the Licensee shall co-operate with CLA in conducting the data collection exercise and undertakes to ensure that its employees comply with its obligations under this clause.

**13.4** CLA undertakes not to disclose any information obtained as a result of any data collection exercise except:

**13.4.1** as required by a court or other authority of competent jurisdiction; or

**13.4.2** in aggregated form from which the identity of the Licensee cannot be identified.

**14. General**

**14.1** All notices given under the Licence shall be in writing by electronic mail. In the case of there being no valid electronic contact, notices shall be sent by first class post, in the case of the Licensee to the address on the application form or otherwise notified to CLA, and shall be deemed to have been served on the second working day (which shall exclude weekends and English public holidays) following the date of posting. The terms of the Licence may only be varied if such variance is acknowledged in writing on behalf of a duly authorised officer both of CLA and of the Licensee.

**14.2** The Licence is personal to the Licensee and may not be assigned or otherwise disposed of in whole or in part.

**14.3** The Licence shall be governed by English law and the parties agree to submit to the non-exclusive jurisdiction of the English courts as regards any claim or matter arising in relation to the Licence.

**14.4** The parties do not intend that any term of the Licence shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to the Licence.