

E-BOOK
Customer Agreement

DATE: _____ 2020

CUSTOMER AGREEMENT

PARTIES

(1) **E-book Supplier Limited**, a private company limited by shares incorporated and registered in England & Wales with company number XXXXX having its registered office at XXXXX ("**E-book Supplier**"); and

(2) _____ **University**, a private company (charity) limited by guarantee incorporated and registered in _____ with registration number _____ / or a charity registered in _____ with charity number _____ whose _____ registered _____ office _____ is _____ at _____ ("**Customer**")

AGREED TERMS:

1) Contract Particulars

Customer (full name):	
Contact:	
Phone / email	
Company Number:	
Charity Number:	
Purchase Order Number:	[]
Address:	
Services:	E-book Supplier will provide access to its platform and the various eBooks selected by the Customer. Additional eBooks can be provided to students at any time on request from the Customer subject to agreed pricing / terms.

	The special terms and platform modules that apply to this Agreement are as per those listed in Appendix 1
University Personal Data - Processed in the Delivery of the Services	<p>In some instances, to deliver broader services and reporting, E-book Supplier requires the names and email addresses ('the University Personal Data') of students and academics, where relevant, who are to be provided with the digital course materials as contemplated under this provision in order to deliver the Services.</p> <p>Along with this data E-book Supplier also requires the course and module information they are studying. E-book Supplier will process this information, which will include storing and analysing this data in order to deliver the services, under the data processing clauses contained with this agreement and under the general E-book Supplier Terms of Service and Privacy Policy available from the E-book Supplier website.</p> <p>E-book Supplier will only use the University Personal Data in order to create and administer a personal account for the relevant students/lecturers. This personal account will be created and hosted on the E-book Supplier System and will enable students to access and use the System and the course materials to be provided by E-book Supplier under this Agreement.</p>
Fees	All fees to be charged are as detailed in Appendix 1
Commencement Date:	_____ 2020
End Date:	_____ 202__

Definitions: As used in this Agreement, the following terms have the following meanings:

"Commencement Date" shall have the meaning given to it in the above Contract Particulars.

"Customers Representative" means the individual identified as the Contact in the above Contract Particulars.

“Digital Content” means any books, journals, reports and/or other publications/content of the Publishers made available to the Customer and the End Users through the E-book Supplier Platform and / or able to be read through the E-book Supplier Reader Applications.

“End User” means the Customer’s faculty, students, staff, contractors, academic partners, visiting scholars and patrons that the Customer has reasonably authorised to directly or remotely access the Customer’s systems and the Digital Content; and “End Users” shall be construed accordingly.

“EULA” means the E-book Supplier End User Licence Agreement and standard terms and conditions and Privacy Policy that are available on the E-book Supplier website and are updated from time to time and that each End User has to click acceptance to prior to using the E-book Supplier Platform to access any Digital Content.

“End Date” shall have the meaning given to it in the above Contract Particulars.

“Fees” shall have the meaning given to it in the above Contract Particulars.

“E-book Supplier Platform” refers to the E-book Supplier hosting and learning platform and applications along with various other online sites owned and / or managed by E-book Supplier or linked to or from E-book Supplier.

“E-book Supplier Reader Applications” means The E-book Supplier Web reader and offline reading applications.

“Privacy Policy” means a notice providing individuals with information about the purpose for which and manner in which their personal data will be processed and the organisations that will be undertaking that processing, as set out on the E-book Supplier website.

“Publisher Agreements” means the agreements between the Customer and the Publishers or E-book Supplier and the Publishers for the licensing of the Digital Content owned or managed by the relevant Publishers.

“Publishers” Refers to any individual publisher or publishing body or person or any collection of publishers that have licensed any books, journals, reports and/or other publications/content to E-book Supplier.

“Services” shall have the meaning given to it in the above Contract Particulars.

1) General

All use by the Customer and by any End User of the E-book Supplier Platform is subject to the terms and conditions set forth in (a) in the case of the Customer, this Agreement, (b) in the case

of the End User, the EULA and the Privacy Policy that each End User has to click acceptance to when using the E-book Supplier Platform. Where there is a conflict between the terms of this Agreement and the EULA then the terms of this Agreement will apply.

2) Contract Conditions

These terms along with the attached Appendices, the E-book Supplier Standard Terms and Conditions, the E-book Supplier Privacy Policy and the above Contract Particulars (together “this Agreement”) outline the terms and conditions under which E-book Supplier will provide the Services to the Customer and the End Users.

3) Engagement

E-book Supplier will commence providing the Services on the Commencement Date and shall continue until the End Date unless terminated earlier under clause 14 of this Agreement. In the event of termination of this Agreement, the Customer's End Users may continue to access and use the E-book Supplier Platform.

4) Duties and responsibilities

4.1 E-book Supplier will perform the duties and Services set out in this Agreement.

4.2 E-book Supplier warrants and undertakes that it will:

- 4.2.1 perform such duties and Services with a reasonable level of diligence, skill and care in accordance with reasonable industry practice in E-book Supplier's industry, profession or trade;
- 4.2.2 ensure that all personnel involved in the provision of the Services have suitable skills, qualifications and experience to perform the tasks assigned to them;
- 4.2.3 ensure that the Services conform in all respects with this Agreement;
- 4.2.4 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services; and

5) License and Authorised Use of the E-book Supplier Platform

- a) All of the Digital Content is either the property of E-book Supplier or is duly licensed to E-book Supplier and is protected by copyright and other intellectual property laws. Except for the limited rights given to the Customer and the End Users, all rights in the E-book Supplier Platform and the Digital Content are reserved by E-book Supplier and its suppliers and licensors.
- b) Subject to the terms of this Agreement, E-book Supplier hereby grants to the Customer and its End Users, a non-exclusive, worldwide, non-transferable licence to access and use the E-book Supplier Platform and Digital Content under the terms described in this Agreement and its relevant Appendices and the EULA.

6) Use Restrictions.

End Users shall be permitted to display, and subject to individual Publishers' restrictions (which restrictions are set out in the Digital Content or on the E-book Supplier website), download, copy, or print out, for End Users' own personal, scholarly, educational or research

use only, Digital Content from the E-book Supplier Platform accessed by the End Users hereunder always subject to the EULA and Privacy Policy. Neither the Customer nor any End Users may otherwise, transmit, rent, lend, sell or modify any materials or Digital Content from the E-book Supplier Platform or modify or remove any proprietary notices contained therein, or create derivative works based on materials there from. A breach by the Customer of this clause 6 shall be deemed a material breach of this Agreement.

7) Updates, Enhancements and Support

E-book Supplier has the right to revise or update the E-book Supplier Platform at any time subject to such revisions or updates being notified to the Customer in advance. It is acknowledged and agreed by the Customer that support to the Customer and its End Users will be as outlined in **Appendix 2**.

8) Fees, Benefits and Insurance

8.1 E-book Supplier will at all times maintain a policy or policies of insurance for at least £5m (and increase such cover appropriately from time to time) to cover any liability E-book Supplier may have under this Agreement. E-book Supplier shall on request supply to the Customer copies of any such insurance policies.

8.2 For the avoidance of doubt, the Customer shall make payment for the Digital Content to E-book Supplier pursuant to any payment terms agreed.

8.3 Where Customer has a direct Publisher Agreement in place for Digital Content hosted on E-book Supplier Customer can make payment for the Digital Content supplied under those agreements directly to Publisher.

9) Liability

9.1 Nothing in this Agreement shall limit or exclude (a) either party's liability for (i) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors, (ii) fraud or fraudulent misrepresentation, (iii) any other liability which cannot be limited or excluded by law, or (b) E-book Supplier's liability for breach of clause 13

9.2 Subject to clause 9.1 and where E-book Supplier has insurance in place in accordance with clause 8.1, the total liability of E-book Supplier for any claims under this Agreement is limited to the amount paid in fees by Customer in the previous 12 month period for the relevant event.

9.3 Subject to clause 9.1, the total liability of the Customer under this Agreement, whether in contract, delict, breach of statutory duty or otherwise, shall be limited to the fees paid by the Customer to E-book Supplier and / or paid to the Publishers for the Digital Content in the 12 month period prior to the relevant event giving rise to the claim.

10) No Warranties / Limitation of Liability

E-book Supplier makes no guarantees or warranties of any kind, either express or implied, including, but not limited to, implied warranties of fitness for a particular purpose or any warranties as to the accuracy, completeness, correctness, of any Digital Content, which can be accessed via the E-book Supplier Platform whether E-book Supplier hosts such content or provides a link to it. Any content or information obtained through the use of the E-book Supplier Platform is used at the Customer's and the End Users' own discretion and risk.

11) Confidential Information and FOI

- a) Except as authorised or required by law, a court of competent jurisdiction or any governmental or regulatory authority, both the Customer and E-book Supplier shall keep confidential and shall not use or disclose, and shall use best endeavours to prevent the use or disclosure of, any confidential information, which includes (but is not limited to) (i) the terms of this Agreement; (ii) information relating to the other party's organisation, transactions, finances, pricing, technology, processes, specifications, methods, designs, formulae or other activities or affairs; or (iii) information concerning students, clients, staff and/or suppliers of the party.
- b) The provisions of clause 11(a) shall not apply to information that (i) is in the public domain (other than through a breach of this Agreement, (ii) requires to be disclosed to the relevant party's employees, officers, advisers and/or contractors who need to know such information for carrying out such party's obligations under this Agreement provided that such employees, officers, advisers and/or contractors are bound by a duty of confidentiality, (iii) requires to be disclosed to the Publishers, and (iv) requires to be disclosed by law, a court of competent jurisdiction or any governmental or regulatory authority.
- c) Both the Customer and E-book Supplier agree to comply with their obligations under the GDPR regulations, Freedom of Information Act 2000, Human Rights Act 1998 and any codes of practice and best guidance notes issued by the government and appropriate enforcement agencies.
- d) E-book Supplier acknowledges that the Customer is subject to the Freedom of Information Act (and related legislation) ("FOI Law") and that the Customer may need to disclose information however Customer agrees to use reasonable endeavours to exclude commercial in confidence information in any disclosure obtained under FOI regulations and Customer shall and hereby agrees and undertakes to give E-book Supplier reasonable advance notice so that the E-book Supplier may contest the disclosure, or seek a protective order in respect of the same.
- e) If E-book Supplier is required by a government body or court of law to disclose any University Personal Data or the confidential information provided by the Customer, E-book Supplier shall and hereby agrees and undertakes to give the Customer reasonable advance notice so that the Customer may contest the disclosure, or seek a protective order in respect of the same.

12) Data Protection

- a) For the purposes of this clause, the following definitions apply;

- (i) “Data Controller”, “Data Processor” and “Process” have the meanings given to them in the Privacy Laws;
- (ii) ‘Personal data breach’ has the meaning given to it in article 4(12) of the General Data Protection Regulation 2016/679;
- (iii) ‘University Personal Data’ shall mean the personal data as described in the Contract Particulars; and
- (iv) ‘Privacy Laws’ means the Data Protection Act 2018, the General Data Protection Regulation 2016/679 and the Privacy and Electronic Communications Regulations 2003.

(a) With respect to the parties’ rights and obligations under this Agreement, it is acknowledged and agreed that the Customer is the Data Controller and E-book Supplier is the Data Processor in relation to the University Personal Data.

(b) Where E-book Supplier, pursuant to its obligations under this Agreement, processes University Personal Data on behalf of the Customer, E-book Supplier agrees to use all reasonable endeavours to;

- (i) provide the Services in compliance with all relevant Privacy Laws;
- (ii) not do anything (or permit anything to be done) which would put E-book Supplier in breach of its obligations under Privacy Laws;
- (iii) only process the University Personal Data in accordance with the Customer’s instructions and only for the purpose of delivering the Services and not for any other purpose;
- (iv) only process the University Personal Data in such manner as is described in the Contract Particulars above and, in any event, only process the University Personal Data to the extent that is necessary to deliver the Services;
- (v) implement and maintain the appropriate technological and organisational measures under the Privacy Laws to protect the University Personal Data against accidental or unlawful loss, alteration, destruction, or unauthorised disclosure, dissemination or access, or alteration;
- (vi) not disclose or transfer the University Personal Data to any third party (save where disclosure has been specifically authorised by the Customer under this Agreement) and only provide access to the University Personal Data to E-book Supplier’s personnel where such access is necessary for the provision of the Services;
- (vii) take reasonable steps to ensure the reliability of any of E-book Supplier’s personnel who have access to the University Personal Data, ensure that those personnel are aware of their obligations set out in this clause 12 and have undergone adequate training in the care, use and protection of personal data in compliance with the Privacy Laws; and

- (viii) E-book Supplier shall maintain complete, accurate and up to date written records of all categories of processing activities carried out on behalf of the Customer, containing such information as required under Privacy Laws.
- (c) The Customer or its authorised agents may, upon reasonable request, inspect E-book Supplier's premises, data processing activities and systems, and/or have access to, and be provided with copies of any information (including without limitation the University Personal Data) to enable the Customer to satisfy itself that E-book Supplier is complying with its obligations under this clause 12.
- (d) E-book Supplier reserves the right to subcontract the Services subject to obtaining the prior written consent of the Customer, but where E-book Supplier does subcontract it agrees to impose binding legal obligation on the sub-contractor to comply with the requirements in this clause 12 of this Agreement where that subcontractor has access to, or will be otherwise processing, the University Personal Data. For the avoidance of doubt, any such subcontract shall not relieve E-book Supplier of its obligation to comply fully with this clause 12.
- (e) E-book Supplier will not transfer any University Personal Data processed under or pursuant to this Agreement (a) outside of the European Economic Area, or (b) outside of its group company, E-book Supplier Canada Ltd, located in Canada (subject to and for so long as Canada is approved by the European Commission as being a country having an adequate level of data protection), without the Customer's prior written authorisation ("Approved Area"). Where the Customer authorises the transfer of University Personal Data outside of the Approved Area, E-book Supplier agrees to comply with any instructions the Customer issues which is necessary to achieve compliance with the Privacy Laws.
- (f) Except for data concerning End Users who continue to access and use the E-book Supplier Platform and Services all University Personal Data and confidential information disclosed by the Customer to E-book Supplier in relation to this Agreement will, on expiry or termination of this Agreement or on request by the Customer, either be returned to the Customer or securely shredded in accordance with the Customer's information security policies, and electronic copies shall be deleted beyond recovery. E-book Supplier shall inform the Customer once this has been done.
- (g) E-book Supplier will notify the Customer as soon as practical, and in any event within 48 hours, if E-book Supplier receives:
 - (i) a request from an individual to access their University Personal Data or to exercise the rights of individuals under Privacy Laws including the rights of rectification, restriction, blocking, data portability and/or erasure of their University Personal Data;
 - (ii) a complaint relating to the processing of University Personal Data under this Agreement;
 - (iii) notification that an individual wishes to withdraw their consent, or otherwise objects, to the processing of their University Personal Data under this Agreement; or
 - (iv) any communication from the Information Commissioner or any regulatory authority in connection with the University Personal Data.

- (h) E-book Supplier agrees to comply with the Customer's instructions regarding the response to and handling of a complaint, request, notification or communication described in clause 12(vii) and provide such reasonable assistance to the Customer as is required to ensure that it can comply with its obligations under the Privacy Laws.
- (i) E-book Supplier will notify the Customer promptly, and within 24 hours, in the event of a known actual or suspected personal data breach involving the University Personal Data processed under this Agreement. E-book Supplier agrees to co-operate with the Customer fully to investigate such a breach by furnishing the Customer with information as it may reasonably require about the breach and E-book Supplier's processing activities and by complying with the Customer's reasonable instructions regarding the management of and response to the breach and any steps necessary to prevent an equivalent breach in the future.
- (j) E-book Supplier will comply with the Customer's instructions as to the period for which the University Personal Data shall be retained and regarding secure destruction or return of the data to the Customer following expiry of such period. This clause shall not apply in relation to data concerning End Users who continue to access and use the E-book Supplier Platform and Services after the period in question.
- (k) E-book Supplier will indemnify the Customer and keep the Customer indemnified against all claims, demands, actions, proceedings, charges, costs and expenses (including legal costs and expenses) which may be brought against the Customer in respect of or in any way arising out of or in connection with E-book Supplier's breach of its obligations in this clause 12.

13) Intellectual Property Rights

- a) All pre-existing intellectual property rights owned by the Customer shall remain the property of Customer.
- b) All pre-existing intellectual property rights owned by E-book Supplier shall remain the property of E-book Supplier.
- c) E-book Supplier warrants that the Services will not infringe the intellectual property rights of any third party and E-book Supplier will indemnify the Customer against any claims, costs or expenses relating to the infringement of intellectual property rights in connection with E-book Supplier's provision of the Services to the Customer. For the avoidance of doubt this precludes any and all claims in relation to intellectual property rights related to the Digital Content.

14) Termination

- a) This Agreement will terminate on the End Date
- b) Without affecting its other rights under this Agreement, either party can terminate this Agreement forthwith by written notice to the other if any of the following applies to the other:

- (i) it commits a material breach of this Agreement and, where such breach is remediable, fails to remedy that breach within 21 days after being notified in writing or email to do so; or
 - (ii) a petition is filed, or an order made in respect of its winding up, it becomes insolvent or ceases or threatens to cease to trade; or
 - (iii) if an administrator or receiver is appointed over the other party or its assets; or
 - (iv) it is in breach of the applicable laws, statutes, regulations and codes relating to anti-bribery, anti-corruption and anti-modern slavery including but not limited to the Bribery Act 2010, Modern Slavery Act 2015 and Criminal Finances Act 2017.
- c) Where E-book Supplier receives notice from a Publisher it may discontinue access to any individual title(s) or content provided under this Agreement to the Customer and the End Users on at least 24 hours written notice to the Customer.
- d) In the event that this Agreement is terminated by the Customer due to any of the events in clause 14(b) applying to E-book Supplier, then the licence granted by E-book Supplier pursuant to clause 5 shall continue for a further period of 6 months from the date of termination.

15) Relationship of the parties

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.

16) Entire agreement

This Agreement constitutes the entire Agreement and understanding between the parties at the date of the Agreement on the matters covered by it. All previous and collateral agreements and representations are excluded. No variation of this agreement or oral promise or commitment related to it shall be valid unless made in writing and signed by or on behalf of both parties.

17) Waiver

If either party waives a breach of any provision of this Agreement, that will not be treated as a waiver of any subsequent breach of the same or any other provision of this Agreement.

18) Severance

If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or indication to that effect is received by either of the parties from any competent authority the parties shall amend that provision in such a reasonable manner as achieves the intention of the parties.

19) Force Majeure

If either party is delayed in carrying out an obligation under this Agreement by reason of a circumstance beyond the party's reasonable control and it gives written notice to the other party within 7 days of the circumstance and the anticipated delay the time for performing the obligation will be extended for such period as is reasonable.

20) Notice

Any notice to be given in this Agreement shall be in writing and shall be addressed to the address of the party concerned set out in this Agreement or to such other address as that party shall have previously notified to the other party.

Any such notice under this Agreement shall be deemed to have arrived, unless the contrary is proved, and will be deemed to have been served if delivered at the time of delivery and if sent by first class post, 2 working days after posting.

This clause does not apply to the service of any proceedings or any documents in any legal action or other method of dispute resolution.

21) The Contracts (Rights of Third Parties) Act 1999

Nothing in this Agreement confers or is intended to confer any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to this Agreement and the rights of any third party under the said Act are hereby expressly excluded.

22) Interpretation

This Agreement shall be governed by and construed in accordance with the Laws of England and Wales and the parties irrevocably agree to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising under this Agreement.

This Agreement has been entered into on the date shown at the beginning of it.

SIGNED for and on behalf of _____ (Customer)

..... **Date 2020**

Name:

Position:

SIGNED for and on behalf of E-book Supplier Limited:

..... Date 2020

Name:

Position:

Appendix 1

E-book Supplier Product Performance - SLA

1. Customer service (minimum requirements) for online availability to be 99.5%+ outside of planned downtime
2. Maintenance programme and planned downtimes to be advised to Customer and, as necessary, End Users.
3. Release programme to be advised to Customer and, as necessary, End Users.
4. End Users can contact E-book Supplier directly through the Platform or through the E-book Supplier Customer End User ticketing system as advised by Customer
5. Issue escalation and resolution process and timelines:

Priority	Description	Response time	Target resolution time
Priority 1	The entire Product/platform/app is "down" and inaccessible.	Within two Normal Business Hours.	Four Normal Business Hours. Continuous effort after initial response and with Customer co-operation.
Priority 2	Operation of the product, platform or app is severely degraded, or major components of the product, platform or app are not operational, and work cannot reasonably continue.	Within four Normal Business Hours.	Within two Business Days after initial response.
Priority 3	Certain non-essential features of the product, platform or app are impaired while most major components of the product, platform or app remain functional.	Within 12 Normal Business Hours.	Within seven Business Days after initial response.
Priority 4	Errors that are non disabling or cosmetic and clearly have little or no impact on the normal operation of the product, platform or app.	Within 24 Normal Business Hours.	Next key update release of Software.