

By signing the *NBSL Data Supply Service Agreement*, you (the "Customer") agree to accept and abide by the following terms and conditions.

### **Definitions**

"NBSL" means Nielsen Book Services Limited, trading as Nielsen BookData, registered in England and Wales, with company number 00070437, whose registered office is at 3<sup>rd</sup> Floor, Midas House, 62 Goldsworth Road, Woking, Surrey GU21 6LQ, UK.

"Customer" means the company or organisation so named on the *NBSL Data Supply Service Agreement*.

"Party" means either you (the Customer) or NBSL.

"Agreement" means the *NBSL Data Supply Service Agreement* and these *NBSL Data Supply Standard Terms & Conditions*, together.

"Additional Services" means any services provided by NBSL in addition to the Supply Services as detailed in the *NBSL Data Supply Service Agreement*. Additional Services may include BDOL or NBSL Organisation File.

"BDOL" means NBSL's bibliographic BookData Online service or any equivalent replacement product that NBSL may introduce from time to time. BDOL may be provided in either international or UK only versions (see "Additional Services")

"Contract Year" means a twelve (12) month period running from the Start Date or the anniversary of that date.

"Image" means a digitally stored facsimile of the cover or jacket of a book or other publication.

"Initial Term" means the initial period of the duration of the Contract as stated in the *NBSL Data Supply Service Agreement*.

"Internal Purpose" means any purpose related to the internal administration and management of the Customer's business relating to the Permitted Purposes and not any other business of the Customer

"NBD Data" means any Records supplied by NBSL to you under this Agreement and/or any piece of data extracted or copied from those Records. Data that you merge with or add to NBD Data is not NBD Data. Images (if any) supplied under this Agreement are not NBD Data (see Clause 14).

"NBD Record Supply Customer Specification" means the detailed coverage and content specification for the Supply Services, as completed by the Customer.

"NBSL Organisation File" means a file held by NBSL of information relating to publishers and other organisations, and updated from time to time, that may be provided under this Agreement (see "Additional Services").

"Payments" means those payments to be made by you to NBSL under this Agreement.

"Permitted Purposes" are the permitted purposes for which you can use NBD Data defined in the *NBSL Data Supply Service Agreement*.

"Record" means textual and/or numeric data describing a single book or other publication or product.

"Services" means the Supply Services and any Additional Services provided by NBSL as detailed in the *NBSL Data Supply Service Agreement*.

"Supply Services" means the provision of NBD Data by NBSL as detailed in the *NBSL Data Supply Service Agreement*.

"Start Date" means the start of the Initial Term, as stated in the *NBSL Data Supply Service Agreement*.

### **1. Term and Termination:**

This Agreement will run for the Initial Term, and will then automatically renew for successive Contract Years, unless terminated for any of the following reasons.

Either Party may terminate the Agreement:

- (a), to take effect at the end of the Initial Term or on the last day of any subsequent Contract Year, having first given 90 days' written notice;
- (b) on 30 days' written notice, if the other Party is in material breach of any term of the Agreement and the breach has not been remedied within 30 days of the Party in breach being notified of the breach;
- (c) with immediate effect, if the other Party becomes insolvent, is wound-up, or is placed in administration or receivership; or
- (d) under the provisions of Clause 13 (Third Party Data Licence) below.

Also, NBSL may terminate this Agreement on 30 days' written notice in the event of a change of ownership of the Customer which NBSL, in its reasonable opinion, views as adverse to its own business.

Upon termination of the Agreement, unless both Parties agree to the terms of a Perpetual Licence under Clause 3 below, you will cease to use NBD Data, and will destroy all copies which you hold of NBD Data, and will confirm in writing to NBSL within 30 days of the date of termination that you have done so.

Upon termination of the Agreement, unless both Parties agree to the terms of a Perpetual Licence under Clause 3 below, you will have no obligation to make any further Payments, provided all due Payments have been made.

## **2. Non-exclusive licence:**

Subject to the terms and conditions of the Agreement and in consideration of you making the Payments, NBSL hereby grants to you, the Customer, a personal, non-exclusive, non-transferable licence, for the duration of the Agreement, to use, copy, display, distribute and transmit NBD Data for the Permitted Purposes only.

## **3. Perpetual Licence option:**

Upon termination of the Agreement (unless because of material breach by you, or by notice from NBSL arising from your change of ownership or insolvency as specified in Clause 1 above), NBSL may, at its sole discretion, offer you a perpetual, personal, non-exclusive, non-transferable licence ("Perpetual Licence") for the continued use of NBD Data for the Permitted Purposes for a one-off payment, the fee for such licence being as specified in the *NBSL Data Supply Service Agreement*. You must advise NBSL within a period of 30 days from the date of termination, if you wish to take up this option; otherwise you must destroy all copies which you hold of NBD Data.

## **4. Obligations of the Customer:**

You agree that you will not use, copy, display, distribute or transmit NBD Data in any way other than for the Permitted Purposes. You will not supply NBD Data to any third party or seek payment from any third party for use of or access to NBD Data, unless specifically and explicitly authorised to do so in the Permitted Purposes.

You will ensure that the terms and conditions of this Agreement are at all times observed by the Customer, its employees and any contractors and their employees, who have access to NBD Data.

You agree that wherever you display NBD Data and/or supplied Images, such display is protected by a copyright notice in a form agreed with NBSL.

If so requested by NBSL, you will provide NBSL with reasonable access, free of charge, to any of your services or systems that use NBD Data and/or supplied Images, in order for NBSL to verify that your use complies with the provisions of this Agreement.

You will fully indemnify NBSL against any liability to third parties arising out of your use of NBD Data or of a supplied Image in breach of this Agreement.

## **5. Obligations of NBSL:**

Subject to the terms and conditions of the Agreement, NBSL hereby undertakes to provide the Services to you, using reasonable care and skill.

NBSL will use reasonable endeavours to comply with any specified supply or delivery dates but no such dates are guaranteed and, to the maximum extent permissible under law, NBSL excludes liability for any loss (whether direct, consequential or otherwise) resulting from any delay in the supply or delivery of the Services.

NBSL will provide you with reasonable technical advice and support to assist you in using NBD Data and (where applicable) supplied Images, during standard UK business hours.

NBSL will make no modifications or changes to the logical or physical structure of the NBD Data and/or supplied Images or to the field names, data codes or format standards without first providing you with 90 days' written notice, except that NBSL may have to make changes without notice in order to comply with changes to external standards such as *ONIX for Books* (if applicable).

## **6. Supply Services:**

The Supply Services will comprise an initial load and a continuing update service of NBD Data and Images (where applicable). The coverage, selection criteria and data content of the Records will be as specified in the *NBSL Data Supply Service Agreement*, and the *NBD Record Supply Customer Specification*, subject to availability on NBSL's database

The initial load will consist of a single file of Records, and a single file of all available Images (where applicable) relating to those Records, to be supplied by Internet FTP or on optical media. The initial load will be supplied as soon as reasonably possible after the Start Date, once all due Payments have been made and specifications agreed.

Each update will consist of a file of new, amended or deleted Records; and a file of all newly available or updated Images (where applicable) relating to Records that have been supplied. The updates will be supplied at the frequency specified in the *NBSL Data Supply Service Agreement*, by Internet FTP.

## **7. Payments:**

For the Initial Term of this Agreement, you will make Payments to NBSL in the amounts and on the terms set out in the *NBSL Data Supply Service Agreement*. For each year after the Initial Term, Payments will be set by an annual review process to take place by mutual agreement in the 3 months prior to any new Contract Year.

NBSL undertake not to increase annual fees for essentially the same Services by more than 5% from one Contract Year to the next. If the Services do change, then new fees must be negotiated and agreed.

If you are late with Payments, NBSL reserve the right to charge interest on the amount outstanding at the rate of 4% above the Base Rate of HSBC Bank in force at the time for the period from the due date until the date the Payment is received.

## **8. Warranty:**

NBSL uses all reasonable efforts to ensure the accuracy of NBD Data and to keep NBD Data up-to-date, but does not warrant that NBD Data is accurate, complete or up-to-date and, to the maximum extent permissible under law, does not accept responsibility or liability for the consequences of NBD Data not being accurate, complete or up-to-date.

NBSL warrants that it holds all necessary rights to supply NBD Data to you to be used for the Permitted Purposes, and that the grant of the licence in Clause 2 above will not violate any copyright or other proprietary right of any third party. Subject to Clause 9 below, NBSL agrees to indemnify, defend and hold you harmless from any breach by NBSL of this warranty, on condition that you allow NBSL to have sole control of the defence and settlement of any such claim, and give all reasonable assistance to NBSL in the defence of such claim.

Except as expressly set out in this Agreement all conditions or warranties, express or implied, statutory or otherwise (including, without limitation, fitness for purpose) are hereby expressly excluded to the maximum extent permitted by law.

**9. Limitation of Liability:**

NBSL shall not be liable to you, in any event, for any loss of profit, revenue, business, goodwill or contracts or for any indirect, special or consequential loss, damage, cost or expense, whether caused by the negligence of NBSL, its servants or agents or otherwise and whether or not such loss, damage, cost or expense was foreseeable.

NBSL shall not be liable or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of NBSL's obligations if the delay or failure was due to any cause beyond NBSL's reasonable control.

NBSL'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 NBSL's option, to either (a) the sum of Payments paid by you to NBSL in the Contract Year in which a default arises; or (b) the replacement of the defective data or services as the case may be.

Nothing shall limit either Party's liability for death or personal injury caused by its proven negligence.

**10. Intellectual property rights:**

You acknowledge and agree that NBD Data is owned by NBSL or (where relevant) NBSL's third-party suppliers and is protected by United Kingdom database rights, copyright laws, international treaty provisions and all other applicable national, European and/or international laws. All rights in NBD Data remain the property of NBSL or its third-party suppliers and no rights therein pass to you under this Agreement save for the licence as set out above.

NBSL shall have the right to require you, by written notice, to cease using any part of the NBD Data if such data infringes intellectual property rights or infringes any law or regulations. If NBSL gives such notice and you fail to comply with it, NBSL shall have no liability to you in the event of any action against you relating to your use of the data concerned.

**11. Confidentiality:**

Each Party acknowledges that it may learn confidential information of the other Party. Both Parties agree at all times to keep confidential any such information revealed by the other which is disclosed under this Agreement, unless the information: is made public by the supplying Party or enters the public domain; was already legally in the possession of the receiving Party without restriction as to disclosure; was obtained from a third party who is lawfully authorised to disclose it, or is required to be disclosed by law.

**12. Marketing and promotion:**

NBSL will have the right to list you as a customer of NBSL in any public context where NBSL lists other customers. You will have the right to list NBSL as a data supplier in any public context where you list other service providers. Otherwise, any public or promotional material produced by either Party and mentioning the other Party will be subject to agreement between the Parties.

**13. Third Party Licence:**

If so selected and specified by you, NBSL will supply you with NBD Data derived from "Third Party Data", that is, data that is supplied and/or licensed to NBSL by a third party data provider (the "Third Party Data Provider") to be used and/or sub-licensed by NBSL under the terms of an agreement between NBSL and the Third Party Data Provider (the "Third Party Data Licence").

In the event that, during the term of this Agreement, the Third Party Data Licence or the supply of Third Party Data to NBSL is terminated, NBSL shall, without incurring any liability under the Agreement, immediately cease supplying any NBD Data derived from the Third Party Data. NBSL shall promptly notify you in writing of this, and the Parties agree to negotiate, on a reasonable basis, either (i) to agree on a mutually acceptable alternative source to replace the Third Party Data together with a revised fee if applicable; or (ii) to agree the appropriate level of Payments for the continued supply of NBD Data (without anything derived from the Third Party Data). In the event that the Parties fail to reach agreement on either option within 90 days, then either Party shall have the right to terminate the Agreement on not less than 30 days' written notice to the other.

**14. Use and ownership of Images (if applicable):**

You acknowledge that NBSL does not claim to hold any intellectual property rights in the Images supplied, and that nothing in the Agreement grants any intellectual property rights in the Images to you or any licence to you to use the Images for a particular purpose.

You acknowledge that copyright in the supplied Images is, in all cases, retained by the original copyright owner (or its assignee as the case may be), that no copyright will pass to you under the Agreement and that you are solely responsible to the copyright owner for any use which you make of the supplied Images. You agree to fully indemnify NBSL against any claim brought against NBSL on the basis that your use of a supplied Image has infringed the rights of the copyright owner.

NBSL uses all reasonable efforts to ensure the accuracy and quality of the Images supplied, but does not warrant that supplied Images will be accurate, complete or up to date and does not accept responsibility or liability for the consequences of any Image not being accurate, complete or up to date.

In order to support appropriate use of supplied Images, you agree:

- (a) that you will not hold out to be the owner of the supplied Images;
- (b) that you will not alter, modify or distort a supplied Image in any way (except by changing size or storage format as required);
- (c) that whenever you display a supplied Image, it is accompanied by information reasonably identifying the product to which it relates; and
- (d) in the event that NBSL notifies you that a specified supplied Image must be withdrawn on the insistence of the copyright owner, you will promptly delete the specified Image and any copies of it from your displays, records and systems and will make no further use of it..

Upon termination of the Agreement by reason of material breach by you, or by notice from NBSL arising from your change of ownership or insolvency as specified in Clause 1 above, you will cease to use the supplied Images, and will destroy all copies of them, and will confirm in writing to NBSL within 30 days of the date of termination that you have done so. Upon termination of the Agreement for any other reason, you may continue to use the supplied Images, subject to the terms and conditions of this Clause 14 and the other surviving terms and conditions of the Agreement.

**15. Additional Services (if applicable):**

If requested and agreed, NBSL will supply you with access to BDOL for the duration of this Agreement (the version, number of users and applicable fee will be as specified in the *NBSL Data Supply Service Agreement*).

Upon termination of the Agreement, the subscription to BDOL may be continued by mutual agreement, but fees will be at the standard rate. You agree to use BDOL only in accordance with the applicable standard terms and conditions issued separately by NBSL.

If requested and agreed, NBSL will supply you with a copy of the NBSL Organisation File (frequency and applicable fee will be as specified in the *NBSL Data Supply Service Agreement*).

For the avoidance of doubt, the contents of NBSL Organisation File are NBD Data, and as such are subject to all terms and conditions in this Agreement, concerning the use of NBD Data by the Customer.

Furthermore, and in particular, the NBSL Organisation File is provided on strict condition that you may not allow it to be used to compile a competing database of organisations in the book trade, and also may not allow it to be used for direct mailing or any other marketing purposes, whether by you or by any third party.

**16. Miscellaneous:**

The terms and conditions relating to confidentiality, liability and intellectual property rights shall continue in full force and effect despite termination of this Agreement for whatever reason.

Failure or neglect by either Party to enforce at any time any of the provisions of this 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 this Agreement nor prejudice its rights to take subsequent action.

Termination of this Agreement shall be without prejudice to any other rights or remedies either Party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either Party.

Unless 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.

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 the *NBSL Data Supply Service Agreement*.

Neither Party may assign this Agreement without the consent of the other Party, which consent will not be unreasonably refused or delayed, except that NBSL shall be free to assign any or all of its rights and obligations under this Agreement to another company within its group of companies.

This Agreement constitutes the entire understanding between the Parties in respect of the subject matter and supersedes all prior agreements, negotiations and discussions between the Parties relating to it. No alteration or amendment will be binding unless it has been agreed in writing by authorised representatives of both Parties. All headings used in this Agreement are for convenience only and shall be disregarded for the purpose of any interpretation of this Agreement.

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 not to have been part of this Agreement.

This Agreement will be interpreted in accordance with the laws of England. The Parties irrevocably submit to the exclusive jurisdiction of the English Courts.