



# Terms of Supply and Distribution

## 1. Definitions and interpretation

1.1 Unless the context of these Terms of Supply & Distribution ("**Standard Terms**") otherwise provide, the following terms shall have the meaning as set out below:

" <b>Airport/Airline Lounge</b> "	lounges owned by particular airlines (or jointly operated by several carriers) or a generic lounge provided by an airport operator or other supplier;
" <b>Business Days</b> "	any day (other than Saturday or Sunday) on which commercial banks are open for business in the City of London;
" <b>Change in Law</b> "	any change in any Law which impacts on the performance of the Services, generally affecting or relating to the conduct of activities for the supply of services which are the same as, or similar to, the Services;
" <b>Commencement Date</b> "	the date set out in the Commercial Terms or such other date as the parties may agree that the Content Service Provider will first supply the Reading Materials for onward distribution (by DMD) and/or DMD will commence (or has commenced) the provision of the Services;
" <b>Commercial Terms</b> "	the specific commercial terms agreed between the parties;
" <b>Content Service Provider</b> "	the relevant provider of the Reading Materials;
" <b>Contract</b> "	the contract between DMD and the Content Service Provider for the supply (by the Content Service Provider) and the onward distribution (by DMD) of the Reading Materials and/or provision of the Services in accordance with, and incorporating, the Commercial Terms, these Standard Terms, the Delivery Specification and any schedule to it or document in agreed form;
" <b>Currency</b> "	as set out in the Commercial Terms;
" <b>Customer</b> "	DMD's airline customer(s) who has entered into a separate agreement with DMD to receive copies of Reading Materials at an agreed User Location for supply to the respective customers' readers/passengers;
" <b>Delivery Days</b> "	the agreed days of delivery of the Reading Materials as set out in the Commercial Terms;
" <b>Delivery Point</b> "	as set out in the Commercial Terms;
" <b>Delivery Specification</b> "	as set out in the Commercial Terms;
" <b>Delivery Times</b> "	the agreed time window for delivery of the Reading Materials to the Delivery Points on the Delivery Days as set out in the Commercial Terms;
" <b>Distribution Charges</b> "	(subject to annual increases/annual indexation on each anniversary of the Commencement Date on the terms provided) the aggregate sums specified in the Commercial Terms, where applicable to the Services;
" <b>Distribution Services</b> "	the packing, transportation and delivery of the Reading Materials to a Customer;
" <b>Force Majeure Event</b> "	includes but not limited to war, storms, exceptionally adverse weather conditions, earthquakes or other natural occurrences, traffic incidents, power failures, terrorism, other wholly exceptional event(s) outside the control of the parties which could not reasonably have been foreseen or avoided;
" <b>Gate Services</b> "	airlines' boarding gates near which the Customer's readers/passengers may obtain the Reading Materials prior to boarding the aircraft;
" <b>Group</b> "	in relation to a company, that company, its subsidiaries, its holding companies and their subsidiaries;
" <b>Initial Term</b> "	the minimum period (if any) specified in the Commercial Terms;
" <b>Intellectual Property</b> "	all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
" <b>Law</b> "	means: <ol style="list-style-type: none"><li>(a) any statute, regulation, by-law or subordinate legislation in force from time to time to which a party is subject;</li><li>(b) the common law and laws of equity as applicable to the parties from time to time;</li></ol>

	(c) any binding court order, judgment or decree;
	(d) any applicable industry code, policy or standard; or
	(e) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body, customs or airport authority having jurisdiction over a party or any of that party's assets, resources or business;
<b>"On-Board Aircraft"</b>	the aircraft where Reading Materials are supplied on-board whether on its outbound or inbound journey;
<b>"Price"</b>	the price (if any) of the Reading Materials as determined in accordance with clause 8.1;
<b>"Reading Materials"</b>	printed newspapers, magazines, periodicals, partworks, bookazines and any other reading materials (excluding in each case supplements and other ancillary material therein from time to time) as set out in the Commercial Terms which may be renamed or replaced or as otherwise amended from time to time in accordance with the Standard Terms;
<b>"Services"</b>	the Distribution Services provided by DMD in accordance with the Standard Terms, together with any additional services requested by the Content Service Provider and separately agreed by DMD pursuant to a change control note (CCN);
<b>"Termination Notice Period"</b>	as set out in the Commercial Terms;
<b>"Third Party Supplier Depots"</b>	those depots of the Customer's third party suppliers (such as the Customer's caterer) and such other replacement third party supplier's depots from time to time, which receive Reading Materials for onward distribution to the User Locations as set out in the Commercial Terms;
<b>"User Locations"</b>	as set out in the Commercial Terms; and
<b>"VAT"</b>	value added tax chargeable under English Law for the time being and any similar additional tax.

1.2 In these Standard Terms, unless the context otherwise requires:

- (a) the clause headings are inserted for ease of reference only and shall not affect the construction of these Standard Terms;
- (b) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (c) references to a document in **agreed form** are to that document in the form agreed by the parties and initialled by them or on their behalf for identification;
- (d) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (e) reference to any party shall include that party's personal representatives, successors and permitted assigns;
- (f) reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) references to a "Clause" are to the clauses of these Standard Terms;
- (h) any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms; and
- (i) references to times of the day are to local time in the relevant country unless otherwise stated.

1.3 In the event that any provision of these Standard Terms is inconsistent with any express provision of the Commercial Terms or the Delivery Specification, the order of precedence shall be as follows: (i) the Commercial Terms, (ii) these Standard Terms and (iii) the Delivery Specification.

## 2. Commencement, Duration and Appointment

- 2.1 The Contract shall commence on the Commencement Date and (subject to the provisions for earlier termination) shall last for the Initial Term (if any) and shall continue in force thereafter unless and until either party gives to the other not less than the Termination Notice Period to terminate the Contract on or after the expiry of the Initial Term ("**Term**").
- 2.2 The Content Service Provider appoints DMD, and DMD agrees to act, with effect from the Commencement Date, as its preferred distributor in relation to the sale, supply and distribution of the Reading Materials to the Customer at the User Location, subject to these Standard Terms.
- 2.3 DMD acknowledges that the Content Service Provider shall not be under any obligation to continue publication of any of the Reading Materials in the form current at the date of these Standard Terms or at all, but the Content Service Provider shall give DMD no less than thirty (30) days written notice of its intention to replace or discontinue any of the Reading Materials and these Standard Terms shall continue to apply with regard to the remaining Reading Materials unless otherwise terminated in accordance with its provisions.

## 3. Supply and Delivery

- 3.1 During the Term, the Content Service Provider shall deliver to the Delivery Point such quantities of the Reading Materials at the frequency as specified in the Commercial Terms (or as otherwise agreed in writing between the parties) at or before the Delivery Times. Subject to full and timely delivery into the Delivery Point, DMD will deliver the Reading Materials to the Customer at the User Location in accordance with the delivery schedules agreed between DMD and the Customer.

- 3.2 If the Reading Materials arrive after the Delivery Time or such other agreed time window for delivery, DMD will (if it is able to) distribute the Reading Materials impacted by the delay as soon as reasonably practicable thereafter, having regard to its contractual obligations with the Customer, and subject to reimbursement by the Content Service Provider of any additional charges incurred by DMD as a result of the delay. If DMD is unable to distribute Reading Materials that arrive late, it shall nevertheless be entitled to charge the Content Service Provider a sum equivalent to the Distribution Charges that would otherwise have been levied.
- 3.3 If a Customer informs DMD that it no longer requires Reading Materials (at all or for any particular order), DMD shall inform the Content Service Provider as soon as practicable after it receives such notice from the Customer ("**Cancelled Order**") and in these circumstances, DMD shall use its reasonable endeavours to make arrangements for distribution of the Cancelled Order to another of its customers. For the avoidance of doubt, DMD shall not charge the Content Service Provider the Distribution Charge for any Cancelled Order that DMD is unable to distribute to another customer before the sooner of i) the next available issue of that Reading Material or ii) sixty (60) days and DMD shall not be liable to pay the Price (if any) of any Cancelled Order nor be held liable in any way for any such cancellation.
- 3.4 Each delivery of Reading Materials shall be complete on its timely arrival and successful unloading at the Delivery Point.
- 3.5 The Content Service Provider shall ensure that each delivery of Reading Materials is accompanied by a delivery note ("**the Delivery Note**") (showing the delivery details, type and volume of Reading Materials included in the delivery, Delivery Date and all relevant Content Service Provider and DMD reference numbers). DMD reserves the right to reject an order of Reading Materials if the Content Service Provider makes delivery without a Delivery Note but shall nevertheless be entitled to charge the Content Service Provider a sum equivalent to the Distribution Charges that would otherwise have been levied had the delivery of the Reading Materials been complete.
- 3.6 Claims for shortages or damaged Reading Materials shall be notified to the Content Service Provider within three (3) Business Days of the Delivery Date. For the avoidance of doubt, a delivery shortage is when the quantity of Reading Materials supplied does not match the Delivery Note and damaged Reading Materials shall include where a copy is ripped, torn, defaced or water damaged. In the case of both shortages and damaged Reading Materials, DMD shall not be liable to pay for the shortfall amount of Reading Materials not supplied or damaged Reading Materials where it has notified the Content Service Provider of such shortage or damaged Reading Materials within three (3) Business Days, any claims made after this time will not be honoured.
- 3.7 The Content Service Provider shall comply strictly with the terms of the Delivery Specification.

#### **4. DMD's Obligations**

- 4.1 In consideration (where applicable) of the Distribution Charges, DMD undertakes and agrees with the Content Service Provider at all times during the Term to:
- 4.1.1 deliver the Reading Materials to the Customer at the User Locations;
  - 4.1.2 provide the Services with reasonable care, skill and diligence in line with best industry practice;
  - 4.1.3 appoint a representative who will be responsible for liaison with the Content Service Provider and give notice in writing to the Content Service Provider of any change in the identity, address and telephone numbers of the person appointed as representative;
  - 4.1.4 obtain and maintain any licences, registrations, permits and approvals necessary for the performance of the Services;
  - 4.1.5 inform the Content Service Provider promptly of any material complaint received by DMD concerning any of the Reading Materials; and
  - 4.1.6 comply with any reasonable and genuine requests for information from the Content Service Provider in order for the Content Service Provider to adhere to the Audit Bureau of Circulations reporting standards.
- 4.2 DMD reserves the right to refuse to perform the Services in respect of any Reading Materials which do not adhere to its guidelines on pornographic material or which, in the reasonable opinion of DMD and its legal advisors, contains articles which are libellous or in any way illegal. In any such case, DMD will advise the Content Service Provider immediately and will, where requested, provide copies of any relevant legal advice for the Content Service Provider's comments.
- 4.3 In the event that any Reading Materials offend or may be likely to offend the passengers of the Customer (such as where the publication may contain articles or express views that may offend common decency, religious beliefs or discriminate against sections of society), DMD shall inform the Content Service Provider and shall use its reasonable endeavours to distribute the offending Reading Materials to another of its customers but DMD shall not be liable to the Content Service Provider for any failure to do so.
- 4.4 DMD may refuse to provide the Services if: (and, for the avoidance of doubt, this list being not exhaustive): i) the Content Service Provider is in breach of any term of the Contract or of any other contract between it and DMD; or ii) DMD has reasonable grounds to believe the Content Service Provider is or is likely to become unable to pay its debts as they fall due.

#### **5. Content Service Provider's Obligations**

- 5.1 The Content Service Provider undertakes and agrees with DMD at all times during the Term to:
- 5.1.1 deliver the Reading Materials in line with the Commercial Terms and Delivery Specification or as otherwise agreed between the parties;
  - 5.1.2 cooperate with DMD in all matters relating to the Services;
  - 5.1.3 ensure that the Reading Materials conform to all relevant Law and ensure that the same do not infringe or breach any rights of Intellectual Property of any third party wherever located or registered in the World;
  - 5.1.4 pay DMD the Distribution Charges in accordance with the terms of the Contract;
  - 5.1.5 provide DMD and its employees, agents or subcontractors with access (at no charge) to such information as is necessary or reasonably required for the performance of the Services;

- 5.1.6 provide DMD with a publishing calendar six (6) months in advance of intended publication of the Reading Materials, setting out type/title of publication(s) and printing/distribution schedule(s) and any amendments thereof; and
- 5.1.7 not materially alter the print run or delivery timings of any of the Reading Materials (nor implement new print runs or timings) without the approval of DMD, such approval not to be unreasonably withheld or delayed in circumstances where the Content Service Provider indemnifies DMD in full against all losses, liabilities, fines, damages, awards, costs and expenses (including any employment costs and expenses) which may be suffered or incurred in order to accommodate the requested changes.

## **6. Indemnity**

- 6.1 In the event of any dispute over the content of any Reading Material, the Content Service Provider will, in accordance with industry practice, discuss and agree the action required by DMD. Where agreed, the Content Service Provider shall provide DMD with an indemnity in full for any losses, liabilities, fines, damages, awards costs and expenses suffered or incurred by DMD as a result of any legal action.
- 6.2 The Content Service Provider shall indemnify and hold DMD harmless from and against all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, DMD, as a result of or in connection with:
  - 6.2.1 any alleged or actual infringement, whether or not under English law, or any third party's Intellectual Property rights or other rights arising out of the possession, use or supply of the Reading Materials; or
  - 6.2.2 any claim, fine, demand, penalty action, investigation or award made against DMD by a third party or regulatory authority in respect of any actual or alleged liability, loss, damage or injury to property or person to the extent that the same was caused by, relates to or arises from the possession, use or supply of the Reading Materials, any defect of any cover mounted gift or promotional material or as a consequence of a direct or indirect breach of negligent performance or failure or delay in performance of the Contract by the Content Service Provider; or
  - 6.2.3 any claim, fine or award made against DMD on the grounds of any Reading Material containing or being alleged to contain any malicious falsehood, unlawful, defamatory, libellous, private or infringing or hazardous material therein; or
  - 6.2.4 the termination by DMD of the employment of any of the Content Service Provider's employees or those of any contractor or other persons engaged by the Content Service Provider whose contract transfers or is alleged to transfer to DMD by operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**TUPE**") in respect of the provision of the Services, together with:
    - 6.2.4.1 the cost of employing the same up until the date of termination of their contract;
    - 6.2.4.2 any act or omission by the Content Service Provider or of any contractor or other person engaged by the Content Service Provider in respect of the employment or termination of employment of the Content Service Provider's employees or those of any contractor or other person engaged by the Content Service Provider, whether arising before or after the date of transfer; and
    - 6.2.4.3 any breach of TUPE arising out of an act or omission of the Content Service Provider or of any contractor or other person engaged by the Content Service Provider.

## **7. Title, Risk and Insurance**

- 7.1 Risk, title and ownership in the Reading Materials shall pass to DMD immediately upon the moment that such Reading Materials have been delivered to the Delivery Point by or on behalf of the Content Service Provider.
- 7.2 Each party, at its own expense, shall procure from reputable insurance companies such appropriate insurances, and will maintain the same in force during the Term, as to cover all potential liabilities of itself and those of its sub-contractors in connection with all liabilities that may arise under the Contract, including public liability insurance with a limit of indemnity of not less than £40 million per claim.
- 7.3 The Content Service Provider shall at its own expense, maintain product liability insurance with a limit of at least £40 million per annum.

## **8. Terms of Payment**

- 8.1 The Price (if any) for the Reading Materials together with the Distribution Charges payable for the Services shall be as set out in the Commercial Terms. In addition, the Content Service Provider shall pay a sum equal to any existing, new or increase in taxes, levies and duties applicable to the country in which the User Locations are located and which is imposed from time to time on the Distribution Charges payable for the Services such that where any payment due from the Content Service Provider under this paragraph is subject to tax, levies or duties (whether by direct assessment or withholding at its source), DMD shall be entitled to receive from the Content Service Provider such amounts as shall ensure that the net receipt, after tax, to DMD in respect of the payment is the same as it would have been were the payment not subject to such tax, levies or duties.
- 8.2 DMD shall be permitted to review and amend the Distribution Charges on or after each twelve (12) month anniversary from the Commencement Date and at all other times as a result of a Change in Law. Any variation to the Distribution Charges will only be applied once the Content Service Provider has been given not less than thirty (30) days' prior written notice of the proposed change. If such increase is not acceptable to the Content Service Provider, it may within 14 days of such notice being received terminate the Contract by giving 14 days' written notice to DMD and, in the absence thereof, the Content Service Provider shall be deemed to have accepted the notified change in Distribution Charges.
- 8.3 In each calendar month, DMD shall invoice the Content Service Provider for the Distribution Charges and the Content Service Provider shall invoice DMD the Price (if any) for the Reading Materials delivered.
- 8.4 Each party shall pay the other's invoices within thirty (30) days of the date of receipt of invoice. Such payments are to be made in cleared funds directly into a party's nominated bank account in the agreed Currency.

- 8.5 Time of payment for the Distribution Charges shall be of the essence.
- 8.6 If either party fails to make timely payment by the due date for payment ("**Due Date**"), the late paying party shall pay interest on the overdue amount at the rate of 4% per annum above the base rate for the time being of National Westminster Bank PLC. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgement.
- 8.7 If either party acting reasonably and in good faith disputes any invoice or other statement of monies due, it shall notify the other party in writing within seven (7) days of invoice receipt. The parties shall negotiate in good faith in an attempt to resolve the dispute promptly. The party receiving the disputed invoice shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the parties have not resolved the dispute within thirty (30) days of the party giving notice of such disputed invoice, the dispute shall be resolved in accordance with clause 14. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date for payment.
- 8.8 The Content Service Provider shall pay all amounts due in full without any deduction or withholding except as required by Law and the Content Service Provider shall not be entitled to assert any credit, set-off or counterclaim against DMD in order to justify withholding payment of any such amount in whole or in part. DMD may, without limiting its other rights or remedies, set off any amount owing to it by the Content Service Provider against any amount payable by DMD to the Content Service Provider.
- 8.9 Without prejudice to any other rights or remedies available to it, if an amount payable by the Content Service Provider under the Contract is not paid by the Due Date, DMD shall have the right to i) suspend the Services (in whole or in part) until payment in full is otherwise received and ii) destroy the Reading Materials if it has requested the Content Service Provider to collect such Reading Materials and the Content Service Provider has failed to do so within sixty (60) days of such request.
- 8.10 All payments payable to DMD or the Content Service Provider under the Contract shall become due immediately on its termination. This clause 8.10 is without prejudice to any right to claim interest under Law or pursuant to the Contract.

## 9. **Limitation of Liability**

- 9.1 This clause sets out the entire financial liability of DMD (including any liability for the acts or omissions of its employees, agents and subcontractors) for:
- (a) any breach of the Contract howsoever arising; and
  - (b) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 9.2 Nothing in these Standard Terms shall limit or exclude the liability of either party for death or personal injury resulting from negligence; fraud or fraudulent misrepresentation; or any other matter which it would be illegal to exclude.
- 9.3 Subject to clause 9.2, DMD shall not under any circumstances whatsoever be liable to the Content Service Provider, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any loss of: profit; goodwill; business; business opportunity; anticipated savings; or corruption of data or information suffered by the Content Service Provider that arises under or in connection with the Contract. DMD shall also not be liable to the Content Service Provider for any special, indirect or consequential damages.
- 9.4 DMD shall not under any circumstances be held liable for the content of the Reading Materials distributed.
- 9.5 DMD's total liability to the Content Service Provider in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the total amount invoiced by DMD for the distribution of the Reading Materials in the twelve (12) months preceding the date of the alleged claim or series of alleged connected claims.

## 10. **Assignment**

- 10.1 The Content Service Provider shall not assign or transfer any of its rights, benefits or obligations under the Contract without the prior written consent of DMD.

## 11. **Confidentiality**

- 11.1 Each party undertakes that it shall not at any time disclose to any person any confidential information disclosed to it by the other party concerning the business and affairs of the other party or any member of its Group, including but not limited to information relating to a party's operations, processes, plans, product information, charges paid, know-how, designs, trade secrets, market opportunities and customers ("**Confidential Information**"), except as permitted by clause 11.2.
- 11.2 Each party may disclose the other party's Confidential Information:
- (a) to its employees, officers, agents, consultants or sub-contractors ("**Representatives**") who need to know such information for the purposes of carrying out the party's obligations, providing that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 11 as though they were party to the Contract. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and
  - (b) as may be required by law, court order or any governmental or regulatory authority.
- 11.3 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this clause are granted to the other party or to be implied from the Contract. In particular, no licence is hereby

granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.

## **12. Termination**

12.1 DMD shall be entitled to terminate the Contract with immediate effect at any time by giving written notice to the Content Service Provider:

- (a) if the Content Service Provider fails to pay any amount due under the Contract on the Due Date and remains in default not less than seven (7) days after being notified in writing to make such payment; or
- (b) upon the termination for any reason of DMD's arrangements with its Customer in respect of such Reading Materials.

12.2 Either party shall be entitled to terminate the Contract with immediate effect at any time by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after receipt of notice in writing requiring it to do so; or
- (b) the other party commits a series of persistent minor breaches which when taken together amount to a material breach; or
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party; or
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days; or
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
- (h) the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business; or there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010) or;
- (i) any Force Majeure Event prevents the other party from performing its obligations under the Contract for any continuous period of three (3) months.

12.3 Where a party is terminating the Contract for a material breach pursuant to clause 12.2(a) above, it may rely on a single material breach or on a number of breaches of the same or different terms that, taken together, constitute a material breach.

12.4 The parties acknowledge and agree that any breach or series of breaches of the Contract by a party which has or have a serious impact (whether permanent or temporary) on the whole or any part of the other party's business, but which may be less than a repudiatory breach in law, will be (without limitation) a material breach for the purpose of clause 12.2(a).

12.5 On termination of the Contract:

- (a) any sums owing by one party to the other will become immediately due and payable;
- (b) DMD shall fulfill any scheduled deliveries of Reading Materials it has accepted prior to the date of termination of the Contract in accordance with the terms of the Contract;
- (c) DMD shall within thirty (30) days of the expiry or termination of the Contract submit its final invoice to the Content Service Provider setting out the total amounts due to DMD pursuant to the Contract and the Content Service Provider shall pay the same no later than fifteen (15) days from the date of DMD's last invoice; and
- (d) DMD shall destroy any uncollected Reading Materials upon giving the Content Service Provider not less than sixty (60) days' notice of the same.

## **13. Intellectual Property**

13.1 Both parties acknowledge and agree that all title, interest and right to Intellectual Property of the Reading Materials remains with the Content Service Provider at all times.

13.2 DMD is only permitted to use the Intellectual Property for the purposes of performing its obligations under the Contract during the Term and only as authorised by the Content Service Provider hereunder and it shall have no right to use or to allow others to use the Intellectual Property or any part of it.

13.3 DMD shall not amend, deface or add to the contents of the Reading Materials.

13.4 DMD shall promptly notify the Content Service Provider of any actual, threatened or suspected infringement of any of the Intellectual Property of which DMD becomes aware.



## 14. Dispute Resolution

- 14.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (“Dispute”) then, except as expressly provided in the Contract, the parties shall adhere to the following dispute resolution procedure:
- (a) either party shall give to the other written notice of the Dispute, setting out the nature and full particulars (“Dispute Notice”), together with relevant supporting documentation. On service of the Dispute Notice, DMD’s manager and the Content Service Provider’s manager (together the “Dispute Resolution Managers”) shall attempt in good faith to resolve the Dispute;
  - (b) if the Dispute Resolution Managers are for any reason unable to resolve the dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be escalated to a senior officer of each DMD and the Content Service Provider who shall attempt in good faith to resolve it; and
  - (c) if the senior officers are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure.
- 14.2 Nothing in clause 14.1 shall prevent either party from commencing legal proceedings.

## 15. Change in Circumstances

- 15.1 In the event that there is a material change in the Content Service Provider’s business arrangements, the nature of the Reading Materials or the trading requirements of the Customer for the Reading Materials and/or the scope of the Services which may result in a change to its or their respective commercial or operational requirements (including, but not limited to, changes in publication mix, changes to process requirements or changes in any of the number, description or volume of the Reading Materials) (each a “Business Profile Change”), DMD may re-evaluate its service offering and/or Commercial Terms and/or renegotiate all or part of the Contract in order to acknowledge the Business Profile Change. The parties agree that they will provide full co-operation to each other in order to conclude such review and negotiations within ninety (90) days. Any renegotiated commercial terms shall be backdated to the date that the Business Profile Change commenced. However, in the event that no agreement is reached between the parties within ninety (90) days of those changes being proposed, the Contract will become capable of termination by DMD without incurring liability subject to seven (7) days written notice or the remaining term of the Contract whichever is the lesser.

## 16. General

- 16.1 Nothing in the Contract will be held to constitute a partnership between the parties, nor the relationship between them of principal and agent, nor will a party have any authority to bind the other.
- 16.2 Neither party shall be deemed in violation of the Contract in case it is prevented or delayed from performing any of its obligations under the Contract in whole or in part as the result of circumstances beyond its control or a Force Majeure Event.
- 16.3 All warranties, conditions and other terms implied by statute (including under the Supply of Goods and Services Act 1982) or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 16.4 No variation to the Contract shall be valid or effective unless it is in writing and signed for and on behalf of each of the parties and refers specifically to the Contract. Both Parties may agree to add, delete or amend the details listed in the Commercial Terms or any schedule of the Contract by mutual consent.
- 16.5 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of shall not be affected.
- 16.6 The Contract may be executed in any number of counterparts and by the parties on separate counterparts, each of which is an original but all of which together constitute one and the same instrument. No counterpart shall be effective until each party has executed at least one counterpart.
- 16.7 A person who is not a party to the Contract shall not have any rights under or in connection to it.
- 16.8 Any notices sent pursuant to the Contract must be in writing and may be served by personal delivery or by sending the notice by ordinary UK post or electronic data transmission at the address given in the Commercial Terms or at such other address as the relevant party may give for the purpose of service of notices under the Contract and every such notice shall be deemed to have been served upon delivery if served by hand or at the expiration of three (3) Business Days after dispatch of the same or at 10.00 hours local time of the recipient on the next Business Day following dispatch if sent by electronic data transmission.

## 17. Governing Law and Jurisdiction

- 17.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, English law.
- 17.2 Any dispute or difference which the parties cannot resolve by agreement shall, at the request of either party, be referred to arbitration before a single arbitrator appointed by agreement in writing between the parties or (if DMD is unable to agree on the identity of the arbitrator within seven (7) days of the request that the dispute be referred to arbitration) appointed by the London Court of International Arbitration (“LCIA”) on the application of either party. Any arbitration shall be conducted in London, England in the English language and in accordance with the rules of the LCIA in force at the Commencement Date.