

# CONTENT ONLINE LIMITED — TERMS AND CONDITIONS — NOVEMBER 2007

## 1. DEFINITIONS

"the Dealer" means Content Online Limited incorporated in England and Wales under Company Number 5825237

"Delivery and/or Delivered" means the making of the Product available to the Customer for its use

"the Customer" means COMPANY NAME GOES HERE

"the Fee" means £00000 PLUS TAX

"the Initial Period" means the period of 12 months from the date of Delivery

"the Licence Agreement" means the agreement entered into by the Customer and the Supplier whereby the Supplier agreed to provide the Product

"the Product" means the product(s) specified on the purchase order form attached

"the Services" means training and support services provided by the Dealer to the Customer in connection with the use of the Product

"the Supplier" means The Institute of Electrical and Electronics Engineers Incorporated

## 2. ORDER

Subject to payment of the Fee by the Customer to the Dealer:

2.1 The Supplier will grant to the Customer a non-exclusive licence to use the Product and electronic access to the Product in accordance with the terms of the Licence Agreement for the Initial Period

2.2 The Customer shall make payment of the Fee to the Dealer and the Dealer is authorised to accept payment of the Fee

2.3 The Fee represents payment in respect of the supply of the Product and in respect of the provision of the Services

2.4 Upon receipt of the Fee the Dealer will make such payments to the Supplier as it is contractually obliged pursuant to the terms of a dealer agreement entered into by the Supplier and the Dealer

2.5 The Dealer and the Supplier acknowledge that upon payment of the Fee to the Dealer the Customer shall not be responsible for any further payment in connection with the right to use the Product during the Initial Period

2.6 The Customer has had the opportunity to trial the Product prior to accepting the terms set out herein and has confirmed to the Dealer that the Product is suitable for the purpose intended

2.7 The order for the Product shall constitute an offer by the Customer to the Dealer to purchase the Product and the Services

2.8 Acceptance of the offer by the Dealer will be communicated to the Customer and the Supplier by the Dealer in writing, which shall include e-mail

2.9 Payment of the Fee shall constitute conclusive evidence of the Customer's acceptance of the Product

2.10 Any variation to the provisions set out herein (including any special heads of terms agreed between the parties) shall be inapplicable unless agreed between the parties in writing

## 3. DESCRIPTION

The Customer acknowledges and agrees that any description which is given or applied to the Product:

3.1 is only for the purpose of identifying the Product

3.2 shall not make this Agreement a sale by description and

3.3 is not relied on by the Customer when entering into this Agreement

## 4. SAMPLE

The Customer acknowledges and agrees that where a sample of the Product has been trialed shown and/or inspected by the Customer:

4.1 the sole purpose of so doing was to enable the Customer to judge the quality and usability; and

4.2 does not constitute a sale by sample

## 5. PRICE

The Customer shall pay the Fee as stated on the invoice and not as stated in any quotation estimate documentation or given orally

## 6. PAYMENT

6.1 Payment of the Fee shall be made by the Customer to the Dealer within 30 days of an invoice being raised by the Dealer

6.2 All amounts stated are exclusive of VAT and/or any other applicable taxes, levy, delivery or installation costs which shall be charged in addition at the rate in force at the date any payment is required from the Customer

6.3 If payment is not received by the Dealer within 30 days of the invoice being raised by the Dealer the Dealer shall be entitled:

6.3.1 to charge interest on the outstanding amount at the rate of 8% per annum above the base lending rate of HSBC Bank plc accruing daily; and

6.3.2 to require that the Customer make a payment in advance of any Delivery of the Product not yet made; and

6.3.3 not to make any Delivery; and

6.3.4 to the extent that the Product has been Delivered and payment has not been received by the Dealer within 30 days of the invoice being raised by the Dealer to terminate access to the Product;

6.3.5 to recover on an indemnity basis all costs, losses, expenses and damages occasioned by or resulting from any breach of the terms of this Agreement by the Customer

6.4 The Fee is non-refundable to the extent permitted by law

## 7. DELIVERY

7.1 The Product shall be Delivered to the Customer within 7 days of the Dealer receiving payment of the Fee

7.2 For the avoidance of doubt any date given under this Agreement is no more than an estimate and shall not be of the essence

## 8. PROPERTY

All intellectual property in the Product remains the sole property of the Supplier

## 9. ACKNOWLEDGEMENT OF EXAMINATION

The Customer acknowledges and agrees:

9.1 that the Customer has been given reasonable opportunity to inspect the Product

9.2 that the Customer has inspected the Product

9.3 that the Customer has satisfied itself as to the condition and usability of the Product

9.4 that the Customer has not been given nor has it relied upon any warranty or condition as to the quality or fitness for any purpose of the Product

9.5 that all conditions or warranties express or implied (whether by statute or otherwise) are expressly excluded

9.6 that Delivery shall be conclusive evidence that the Customer has examined the Product and that the Product is of satisfactory quality and fit for any purpose to which it may be required

9.7 that the Customer will comply with all obligations and conditions of use as specified in the Licence Agreement

## 10. LIMITATION OF LIABILITIES

10.1 To the extent that the Dealer has any liability to the Customer in relation to the provision of the Product and/or Services purchased by the Customer the Dealer's entire liability shall be limited to the Fee.

10.2 The Dealer shall not be liable for any indirect economic or consequential loss damage detention or injury or loss of profit or loss of business or anything analogous thereto howsoever arising and shall have no liability in relation to defects which arise from neglect of the Customer or that of a third party for whom the Dealer is not responsible. This clause does not limit or exclude the Dealer's liability for any death or personal injury arising from its negligence

## 12. TERMINATION

Without prejudice to any right or remedy it might have either party may terminate this Agreement at any time by notice in writing to the other party such notice to take effect as specified in the notice:

12.1 if the Customer is in breach of this Agreement and in the case of a breach capable of remedy within 7 days the breach is not remedied within 7 days of the Customer receiving notice specifying the breach and requiring it to be remedied and

12.2 if the Customer becomes insolvent or if an order is made or a resolution passed for the winding up of the Customer (other than voluntarily for the purpose of solvent amalgamation or reconstruction) or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Customer's assets or business or if the Customer makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt and the Customer shall not be entitled to any refund of the Fee

## 13. GENERAL

### 13.1 Force majeure

Neither Party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 6 months either Party may terminate this Agreement by written notice to the other Party and the Customer shall not be entitled to any refund of the Fee

### 13.2 Amendments

This Agreement may only be amended in writing signed by duly authorised representatives of the Parties

### 13.3 Assignment

The Customer may not assign delegate sub-contract mortgage charge or otherwise transfer any or all of its rights and obligations under this Agreement

### 13.4 Representation

The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement excludes liability for fraud

### 13.5 Waiver

No failure or delay by the Dealer in exercising any right power or privilege under this Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right power or privilege preclude any further exercise of the same or the exercise of any other right power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law

### 13.6 Agency partnership etc

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

### 13.7 Further assurance

Each party to this Agreement shall at the request and expense of the other or any of them execute and do any deeds and other things reasonably necessary to carry out the provisions of this Agreement or to make it easier to enforce

### 13.8 Severance

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful void or unenforceable the provision shall to the extent required be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this agreement and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement

### 13.9 Announcements

No Party shall issue or make any public announcement or disclose any information regarding this Agreement

### 13.10 Notices

13.10.1 Any notice to be given under this Agreement shall be in writing and shall be sent by first class mail or air mail or by facsimile or e-mail (confirmed by first class mail or air mail) to the address of the relevant party set out at the head of this Agreement or such other address or facsimile number as that party may from time to time notify to the other Party in accordance with this clause

13.10.2 Notices sent as above shall be deemed to have been received three working days after the day of posting (in the case of inland first class mail) or seven working days after the date of posting (in the case of air mail) or on the next working day after transmission (in the case of facsimile messages but only if a transmission report is generated by the sender's facsimile machine recording a message from the recipient's facsimile machine confirming that the facsimile was sent to the number allocated above and confirming that all pages were successfully transmitted)

13.10.3 In proving the giving of a notice it shall be sufficient to prove that the notice was left or that the envelope containing the notice was properly addressed and posted or that the applicable means of telecommunication was addressed and dispatched and dispatch of the transmission was confirmed and/or acknowledged as the case may be

### 13.11 Interpretation

In this Agreement unless the context otherwise requires:

13.11.1 words importing any gender include every gender

13.11.2 words importing the singular number include the plural number and vice versa

13.11.3 words importing persons include firms companies and corporations and vice versa

13.11.4 references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement

13.11.5 any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done

13.11.6 the headings to the clauses schedules and paragraphs of this Agreement are not to affect the interpretation

13.11.7 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment

13.11.8 where the word "including" is used in this Agreement it shall be understood as meaning "including without limitation"

### 13.12 Law and jurisdiction

The validity construction and performance of this Agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Customer and the Dealer submit

### 13.13 Third parties

For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of this Agreement this Agreement is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions