

END USER LICENCE AGREEMENT

1. Definitions

1.1 In this Agreement,

- 'ClickScience' means Kingshurst Multimedia's "ClickScience" product; to include any updates or changes to it that Kingshurst Multimedia may generally makes available from time to time in respect of Online Access.
- 'Commencement Date' means the date of first purchase of an annual licence key by the Customer to Use the Course to which it relates, by payment of the Licence Fee.
- 'Course(s)' means the Course(s) which the Customer has selected, as set out on the Order Pro Forma.
- 'Evaluation Period' means the 30 day period of evaluation which may be granted to the Customer prior to the Commencement Date under clause 2.2, if selected on the Order Pro Forma.
- 'Hard Copy Delivery' means delivery of the Course(s) software to you on a flash drive or compact disc, including a read me file and/or installation guide or in any other form, from time to time.
- 'Installation Fee' means the fee for installation of the Customer's selected Course(s) by Kingshurst Multimedia, if selected on the Order Pro Forma.
- 'Intellectual Property Rights' means all intellectual property rights including but not limited to copyright, trade marks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, get-up, database rights.
- 'Installation' means installation of the Course(s) on the Customer's computer, network or virtual learning environment.
- 'Kingshurst on Demand Platform' means Kingshurst Multimedia's "Kingshurst on Demand Platform" product; to include any updates or changes to it that Kingshurst Multimedia may generally makes available from time to time. in respect of Online Access.
- 'Licence Fee' means the fee set out on the Order Pro Forma.
- 'Licence Key' means for Course(s) delivered by Hard Copy Delivery a licence key to be entered to activate the software for a limited period of time; or for Course(s) delivered by Online Access then provision of a URL link to the Course and a username and password to be entered to access the hosted Course(s).
- 'Media' means the mode by which the Customer has access to the Course(s) be it by Online Access or Hard Copy Delivery, as set out on the Order Pro Forma.
- 'Online Access' means access to Use the Course(s) using the Customer's own web browser and computer equipment to the Course(s) as hosted by Kingshurst Multimedia on the Internet.

'One-Off Product'	means the Kingshurst Multimedia product set out on the Order Pro Forma page one of this Licence Agreement as a One-Off Product.
'Order Pro Forma'	means any order that the Customer has placed with Kingshurst Multimedia for the Course(s) and by whatever means, be it by hardcopy, via the Kingshurst Multimedia websites, or by written or verbal communication.
'Term'	means the duration of the non-transferable non-exclusive licence (be it for a set period or perpetual and as set out on the Order Pro Forma) to Use the Course(s).
'Use'	means you, and if you are an educational institution rather than an individual then also your staff and students within your educational establishment, may access and use the Course(s) for the purposes of teaching and learning.

1.2 References to clauses are to the clauses of this Agreement. Headings are for convenience only and shall be ignored in interpreting this Agreement.

2. **Grant of Licence**

2.1 The Course(s) and the Intellectual Property Rights in the Course(s) shall remain the property of Kingshurst Multimedia. This Agreement does not transfer any ownership in Kingshurst Multimedia's technology or Intellectual Property Rights.

2.2 Upon the date of this Agreement, if the Order Pro Forma states that this Agreement is subject to an Evaluation Period, Kingshurst Multimedia will grant to you a non-transferable non-exclusive licence to Use the Course(s) from the date of this Agreement for 30 days from issuance of the Licence Key under clause 2.3 for the purpose of evaluation of the Course(s) only, subject to the terms and conditions contained in this Agreement.

2.3 On or after the date of this Agreement, if the Order Pro Forma states that this Agreement is subject to an Evaluation Period, Kingshurst Multimedia will provide you with the Media and a Licence Key valid for 30 days for the purpose of evaluation of the Course(s) only, subject to the terms and conditions contained in this Agreement.

2.4 If for whatever reason, you have access to the Course(s) prior to entering into this Agreement, then you will not be eligible to an Evaluation Period, even if your Order Pro Forma, on submission to Kingshurst Multimedia, states that you are eligible.

2.5 If the Order Pro Forma states that this Agreement is subject to an Evaluation Period:

2.5.1 Kingshurst Multimedia will contact you will contact your named contact during or immediately following expiry of the Evaluation Period to (a) obtain your feedback on the evaluation, by telephone, email and/or letter and (b) ascertain whether you would like to continue to Use the Course(s); and

2.5.2 if you would like to continue to Use the Course(s) subject to the payment of the Licence Fee by you (no later than within 14 days of expiry of the Evaluation Period, or on a date otherwise agreed between the Parties) Kingshurst Multimedia will grant to you a non-transferable non-exclusive licence to Use the Course(s) for a Term, subject to the terms and conditions contained in this Agreement. The start date of that Term will be agreed between the Parties.

- 2.5.3 If upon expiry of the Evaluation Period, you do not want to continue to Use the Course(s) you shall immediately erase any electronic copies of the Course(s), in whole or part, from any of your equipment or storage media on which they are stored and certify in writing to Kingshurst Multimedia within 7 days that they have been destroyed. You shall also return any Hard Copy Delivery to Kingshurst Multimedia within 7 days of expiry of that Evaluation Period.
- 2.6 If the Order Pro Forma states that this Agreement is subject to an Evaluation Period, and should you be unhappy with the Course(s) provided to you during any Evaluation Period for any reason, then, subject to clause 1.1 you may terminate this Agreement by notice in writing to Kingshurst Multimedia sent during or within 14 days of the end of the Evaluation Period, without liability for the payment of the amounts under clause 3.3.
- 2.7 If you have not opted for an Evaluation Period under clause 2.2 or are not eligible under clause 2.4, then subject to payment of the Licence Fee within 14 days of the date of this Agreement Kingshurst Multimedia grants to you a non-transferable non-exclusive licence to Use the Course(s) from the Commencement Date for the Term, subject to the terms and conditions contained in this Agreement.
- 2.8 On receipt of the Licence Fee under clause 2.7, Kingshurst Multimedia will provide you with the Media (if this has not already been provided under clause 2.3) and a Licence Key valid for the Term to enable you to Use the Course(s).
- 2.9 Kingshurst Multimedia will contact your named contact (by telephone, email and/or letter) during and immediately following expiry of the Term to discuss extension of the Agreement.
- 2.10 If pursuant to clause 2.9 you would like to extend the Agreement, then subject to the payment of the agreed Licence Fee by you (which Kingshurst Multimedia may revise from time to time) and no later than within 14 days of expiry of the Term (or on a date otherwise agreed between the Parties) Kingshurst Multimedia will grant to you a renewed non-transferable non-exclusive licence to Use the Course(s) from for a new term, subject to the terms and conditions contained in this Agreement. The start date and length of this new term will be agreed between the Parties.
- 2.11 If upon your request and upon the approval of Kingshurst Multimedia, the Agreement is extended, then on receipt of the Licence Fee under clause 2.10, Kingshurst Multimedia will provide you with a new Licence Key valid for a further agreed term, under clause 2.10) to enable you to Use the Course(s).
- 2.12 Kingshurst Multimedia may change the any Licence Key on reasonable notice to you.
- 2.13 You are responsible for the confidentiality of the Course(s) and Licence Keys and for all activities carried out by persons using them. You must let us know if you are aware of any unauthorised use or if someone else may have obtained access to the Course(s) or Licence Keys.
- 2.14 If you are entering into this Agreement as an individual consumer only, then you have the right to cancel the Agreement at any time up to the end of seven working days after you receive access to the Course(s). A working day is any day other than weekends and bank or other public holidays. To exercise your right of cancellation, you must give written notice to us by hand or post at the address shown above, giving details of the Course(s) ordered. If you exercise your right of cancellation after the Course(s) have been delivered to you by Hard Copy Delivery, you will be responsible for returning the Course(s) to us at your own cost (unless we delivered the Course(s) in error or if the Course(s) are damaged or defective when delivered), the Course(s) must be returned to the address shown above, and you must take all reasonable care to ensure the Course(s) are not damaged in the meantime or in transit. Once you have notified us that you are cancelling the Agreement, we will refund or credit you within 30 days for any sum that has been paid by you or debited from your credit card or other account for the Course(s). If the Order Pro Forma states that this Agreement is subject to an Evaluation Period then your right to cancellation shall run coterminous with the beginning of the Evaluation Period.
- 2.15 You agree not to assign, sub-licence, sell, lease, charge, operate a bureau service or otherwise transfer the Course(s) or any part of the Course(s) or the Licence Keys passwords to any third party, except to the extent of any implied licence necessary to Use the Course(s).

2.16 You agree not to translate, adapt, vary, modify, disassemble, decompile or reverse engineer any part of the Course(s) without Kingshurst Multimedia's prior written consent except to the extent permitted by law.

3. Payment

3.1 If you require Kingshurst Multimedia to install the Course(s) for you, on or prior to the start of the Evaluation Period, the Installation Fee set out on the Order Pro Forma is payable by you within 14 days of the date of this Agreement, and prior to installation.

3.2 If, subject to clause 2.5.2, you require Kingshurst Multimedia to install the Course(s) for you prior to the Commencement Date, then you must pay the agreed Installation Fee to Kingshurst Multimedia prior to installation.

3.3 The Licence Fee is payable on the Commencement Date. If the Term is agreed to be extended, then further payments will be due prior to each anniversary of the Commencement Date. The fee payable for each extended year of Use shall be the fee published on Kingshurst Multimedia website 45 days prior to the relevant anniversary of the Commencement Date; or as otherwise agreed with you in advance.

3.4 You may pay the amounts due under this clause 3 by cheque or BACS or by any other method of payment accepted by Kingshurst Multimedia from time to time as published on Kingshurst Multimedia website (or otherwise advised) on the due date for payment.

3.5 All fees and other charges are payable together with any applicable VAT.

3.6 If you are overdue in paying invoices, Kingshurst Multimedia can (i) charge interest at the rate of 2% per year above Barclays Bank Plc base rate calculated from the date when payment of the invoice becomes due up to and including the date of actual payment; and/or (ii) suspend your licence to Use the Course(s) without prejudice to your liability to pay the Licence Fee or any other amount under this Agreement.

4. Confidentiality

4.1 You agree to keep all Proprietary Information (meaning information disclosed by Kingshurst Multimedia which is not in the public domain and which has value by virtue of not being generally known, including without limitation all technical information, data, website URLs, software and Licence Keys) secret and use it only to Use the Course(s) and shall not without the prior written consent of Kingshurst Multimedia or as otherwise permitted by this Agreement disclose Proprietary Information to any third party.

4.2 You will return, destroy or surrender to Kingshurst Multimedia all Proprietary Information and all copies at the request of Kingshurst Multimedia.

5. Third Party Materials

5.1 The Course(s) may provide, or third parties may provide, links to other websites or on-line resources. Kingshurst Multimedia has no control over, or responsibility for, such external websites or resources. The links are not an endorsement of the contents on such websites or resources. Kingshurst Multimedia shall not have any liability to you for the content or accuracy of materials on such websites or resources or any loss or damage you may suffer as a result of use of, or reliance on, such websites or resources.

5.2 Kingshurst Multimedia is not responsible or liable for the content created by external users. Any files created by users, whether they are globally accessible throughout the Course(s) or not, are the sole responsibility of the user who created them, including any availability, accuracy and/or copyright issues.

6. **Support**

- 6.1 Kingshurst Multimedia may provide support through FAQs on the Kingshurst Multimedia website(s) at www.kingshurstmultimedia.com and www.clickscience.com or through any product guides that Kingshurst Multimedia may provide to you from time to time.-
- 6.2 In the event of a technical problem with installation, access to any URL, or use of the Licence Keys or other technical problems with the Course(s), then you should contact Kingshurst Multimedia via its website or in the event of a major problem requiring emergency support via info@kingshurstmultimedia.com.
- 6.3 If any Installation Fee is set out on the Order Pro Form, and upon payment of the Installation Fee, Kingshurst Multimedia will provide an installation questionnaire. You agree to complete and return the installation questionnaire to Kingshurst Multimedia as directed, following receipt of which Kingshurst Multimedia will notify you of any system requirements (as set out in the relevant installation guide for the Course(s)) which need to be implemented by you prior to installation and agree a date for installation. Kingshurst Multimedia reserves the right to change the installation date and will notify you accordingly. Subject to the implementation by you of any system requirements, Kingshurst Multimedia will either (and as agreed):
- 6.3.1 conduct installation of the Course(s) remotely. You will need to ensure that you download the remote access software identified by Kingshurst Multimedia and that your designated and competent technical contact is logged into the system and to provide all necessary access to the system through remote access and help and guidance for Kingshurst Multimedia to complete the installation; or
- 6.3.2 conduct installation of the Course(s) on-site at the agreed premises location, PROVIDED, that all of Kingshurst Multimedia's requirements (including that of health and safety) which Kingshurst Multimedia may notify you of from time to time, have been complied with prior to the date of installation. In the event of non-compliance of those requirements, Kingshurst Multimedia reserves the right not to conduct the installation on the agreed date of installation. You will provide all necessary access to your premises and system and help and guidance for Kingshurst Multimedia to complete the installation; and
- 6.3.3 you will confirm that the installation has been successfully completed after Kingshurst Multimedia has notified completion, and all issues must be raised within 14 days of notified completion of installation.
- 6.3.4 For the avoidance of doubt, prior to any installation of the Course(s) whether by you (or by Kingshurst Multimedia under clauses 6.3.1 and 6.3.2) it is your responsibility to ensure that your hardware and software meets the minimum system requirements notified to you by Kingshurst Multimedia.

7. **Warranty and Liability**

- 7.1 Kingshurst Multimedia warrants that, as far as it is aware, the Use of the Course(s) will not infringe any valid Intellectual Property Rights of any third party. Such warranty excludes, and Kingshurst Multimedia will not be liable for any defect or problem with the Course(s) if (i) used in a way which is not in accordance with Kingshurst Multimedia's recommended instructions and procedure; (ii) alterations are made to the Course(s) by persons who are not authorised by Kingshurst Multimedia; (iii) you are in material breach of this Agreement; or (iv) any third party products or software are connected to or operated with the Course(s) unless approved by Kingshurst Multimedia. Such warranty excludes and Kingshurst Multimedia will not be liable for, and you will indemnify Kingshurst Multimedia against, any liability for the consequences of your or your end user's use of the Course(s). If Kingshurst Multimedia receives written notice from you of any breach of this warranty then Kingshurst Multimedia shall at its own expense either procure a licence from the third party or amend the Course(s) so that it is non-infringing.
- 7.2 You agree that apart from the warranty above, your Use of the Course(s) is at your own risk and is on an "as is" and "as available" basis, and, to the extent permitted by law, Kingshurst Multimedia:
- 7.2.1 disclaims all other warranties with respect to the Course(s), including their installation, either express or implied, including but not limited to any implied warranties relating to quality, fitness for any particular purpose or ability to achieve a particular result;

7.2.2 makes no warranty that the Course(s) is error free or that their use will be uninterrupted and you acknowledge and agree that the existence of such errors shall not constitute a breach of this Agreement;

7.2.3 Apart from any statutory rights of any consumer, any personal injury or death arising as a direct result of Kingshurst Multimedia's negligence, or Kingshurst Multimedia's fraudulent misrepresentation, Kingshurst Multimedia shall not be liable for any loss injury or damage however it arises and whether direct indirect or consequential suffered by you whether resulting from Use or inability to Use the Course(s) or their installation or consequences of installation or arising in any other way; and Kingshurst Multimedia's aggregate liability in respect of all causes of action arising out of or in connection with this Agreement will be limited to the amounts paid by you in any calendar year under clause 3.

8. **Termination**

8.1 This Agreement (unless terminated earlier under the provisions of this Agreement) shall last from the date of the Agreement until either of:

8.1.1 expiry of any Evaluation Period, should you choose not to continue to Use the Course(s) under clause 2.5.3; or

8.1.2 upon expiry of the Term, unless the Term is extended under clause 2.11 for a further term and by written agreement signed by each Party.

8.2 Kingshurst Multimedia may terminate this Agreement forthwith on giving notice in writing to you if you (i) commit any serious breach of any provision of this Agreement (which for the avoidance of doubt includes non-payment of any sum properly due under this Agreement) and if capable of remedy don't remedy the breach within 7 days of our written notice to you of the breach or if you commit the same breach twice within 6 months; (ii) are unable to pay your debts or enter into compulsory or voluntary liquidation or compound with or convene a meeting of your creditors or has a receiver or manager or an administrator appointed or cease for any reason to carry on business or takes or suffers any similar action which means that you may be unable to pay your debts.

8.3 On termination, you shall immediately erase any electronic copies of the Course(s), in whole or part, from any of your equipment or storage media on which they are stored and certify in writing to Kingshurst Multimedia within 7 days that they have been destroyed. You shall also return any Hard Copy Delivery to Kingshurst Multimedia within 7 days of expiry of that Evaluation Period.

8.4 Any termination of this Agreement shall not affect any accrued rights or liabilities of either party or the continuance in force of any provision in this Agreement which is expressly or by implication intended to continue in force on or after such termination.

8.5 Any prepayment you have made of the Licence Fee is not refundable and any instalment of the Licence Fee which is unpaid at termination (save in respect of termination under clauses 1.1 and 2.14) will become immediately due and payable.

9. **General**

9.1 Any notice given under this Agreement shall be deemed well served if it is sent by first class recorded delivery addressed to the address above. The day of service shall (unless the contrary is proved) be deemed to be two days after the date of posting.

9.2 Notwithstanding that any provision of this Agreement may prove to be illegal or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

9.3 This Agreement constitutes the entire understanding between the parties relating to the subject matter and supersedes all prior arrangements or promises in relation thereto only and may only be varied with the prior written agreement of each party.

- 9.4 This Agreement does not create any partnership or agency relationship between the parties.
- 9.5 Neither party will be liable for any delay in performing its obligations under this Agreement if that delay is caused by circumstances beyond its reasonable control and the party affected will be entitled to a reasonable extension of time for the performance of its obligations.
- 9.6 Save as otherwise expressly agreed in this Agreement nothing in this Agreement confers or is intended to confer on any person who is not a party to this Agreement any right and/or benefit pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 9.7 No indulgence or forbearance by either party shall constitute a waiver under this Agreement.
- 9.8 Kingshurst Multimedia shall be entitled to assign or transfer or sub-contract this Agreement, and any rights or obligations of this Agreement.
- 9.9 This Agreement shall be governed by and construed in all aspects in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.