Warc Terms & Conditions (Academic Users)

1. INTRODUCTION
1.1. Warc Limited ("Warc") makes a variety of content available in various forms and through a variety of subscription channels (including in print form and online via its website and Apps) which it provides to its clients either individually or bundled as part of a subscription plan.

1.2 These terms and conditions govern the Client’s use of Warc’s website and subscription services as specified in the attached Client Order Form ("COF"). These terms and conditions together with the COF and any Electronic Letter of Agreement ("ELOA") that Warc may issue to agree the renewal of those subscription services, form the agreement (this "Agreement") between Warc and the Client.

1.3 In the event of any conflict or inconsistency between the provisions of these terms and conditions, the COF and the ELOA, the following order of precedence shall apply to the extent necessary to resolve such conflict of inconsistency: (i) the ELOA; (ii) the COF; (iii) these terms and conditions.

2. DEFINITIONS
2.1. The following expressions will have the following meanings when used in this Agreement:-

"Authorised Users" means Institutional Users and Walk-in Users;

"Charges" means the charges payable by the Client for use of the Subscription Services as specified in the COF or the ELOA (as applicable);

"Client" means the subscribing institution named as such in the COF or ELOA (as applicable);

"Institutional Users" means current, full and part time students and employees (including faculty staff and affiliated researchers) of the Client, regardless of the physical location of such persons;

"IPRs" means copyright, database right, patents, design rights, trade marks, and all other industrial, commercial or intellectual property rights existing in any jurisdiction and all applications, and rights to apply for registration of any such rights;

"Item" means an individual item forming part of the Subscription Materials such as, but not limited to, an article, case study, paper, or report;

"Licensed Premises" means such of the Client’s physical premises as are listed in the COF or ELOA (as applicable), subject to any additions and deletions as may be agreed in writing between Warc and the Client from time to time, at which premises the Client provides computer terminals or other electronic devices from which Authorised Users may access the Website;

"Secure Network" means a computer network (whether a standalone network or a virtual network within the Internet) which is only accessible to Authorised Users approved by the Client. A cache server or any server or network which can be accessed by unauthorised users is not a secure network for these purposes;

"Start Date" & "End Date" means the dates specified in the COF or the ELOA (as applicable) (or if specific dates are not specified, the first day of each of the months specified) on which this Agreement comes into force and ends respectively;

"Subscription Materials" means all text, audio-visual or other content available from the Website from time to time as part of the Subscription Service;

"Subscription Services" means Warc’s online information service by which the Subscription Materials are made available from the Website to the Client;

"Subscription Period" means the period during which the Subscription Services shall be accessible by Authorised Users and for which the Client’s subscription to such services is valid and in force;

"Walk-in Users" means individuals who are not affiliated with the Client but who are physically present at the Licensed Premises and are registered with the Client to use its facilities and services; and

"Website" means the website (currently located at www.warc.com) from which the Subscription Service is made available.

2.2. In this Agreement, including the COF or ELOA, unless otherwise specified:-

2.2.1. References to clauses are to clauses, sub-clauses and paragraphs of these terms and conditions;

2.2.2. Any reference to the singular will include reference to the plural and vice versa.

3. AGREEMENT
3.1. Warc will make the Subscription Services available to the Client’s Authorised Users in accordance with these terms and conditions.

3.2. This Agreement will commence or be deemed to commence on the Start Date and will continue in force until the End Date ("Term").

3.3. Any extension of this Agreement beyond the Term will be subject to Warc and the Client signing a new COF or the Client’s electronic acceptance to an ELOA issued by Warc, in each case incorporating these terms and conditions and which will constitute a new agreement between them. If the Subscription Services are renewed under an ELOA, any terms in the COF of the subscription it renews which are not
expressly excluded in the ELOA shall be incorporated into such new agreement. If for any reason the Client continues to have access to the Subscription Services after the End Date but before having signed a new COF or electronically accepted an ELOA, these terms and conditions will continue to apply to the Client’s use of the Subscription Services.

3.4. This Agreement will be subject to early termination only as specified in clause 17 below.

3.5. Warc reserves the right to make improvements, substitutions, modifications or enhancements to the Subscription Services and/or any Subscription Materials and to add or remove elements of them (“Changes”) for legal or regulatory reasons.

3.6 This Agreement will prevail over and take the place of any other terms or conditions stipulated, incorporated or referred to or contained in any document of or communication from the Client and will be the entire agreement relating to the Subscription Services in accordance with clause 19.3.

4. ACCESS TO THE SUBSCRIPTION SERVICES AND SUBSCRIPTION MATERIALS

4.1. Warc will enable Authorised Users to access the Subscription Service via the Internet.

4.2. Access to the Subscription Services will be made available on or after the Start Date and as soon as Warc has received a signed copy of this Agreement[, payment of the Charges in full] and the required online registration materials in accordance with clause 7.1.

4.3 WARC will identify and authenticate Authorised Users by either:

4.3.1 using IP addresses and/or ranges of IP addresses provided by the Client to Warc; and/or

4.3.2 using the ‘Athens’ access authentication service; or

4.3.3 by the submission of online log in details to be issued by Warc in accordance with clause 7.1.

4.4 The Client will only grant Walk-in Users access to the Subscription Service via computer terminals located at the Licensed Premises via the Client’s Secure Network.

4.5 The Client will only grant Institutional Users access to the Service either: (i) from computer terminals located at the Licensed Premises via the Client’s Secure Network; or (ii) off site via a link to a valid Internet Protocol (“IP”) address on the Client’s Secure Network.

4.6 WARC reserves the right to introduce appropriate technical protection measures to control access and/or use of the Subscription Services and Subscription Materials in accordance with this Agreement provided that no such measure shall substantially and adversely affect the Client’s rights under this Agreement.

5. AUTHORISED USE OF SUBSCRIPTION MATERIALS

5.1. Subject to clauses 4.3, 4.4 and 4.5, the Client and each Authorised User may access the Subscription Services and use the Subscription Materials in accordance with the permitted uses set out in this clause 5, subject to the restrictions on use set out in clause 6.

5.2. The Client and each Authorised User may access the Subscription Service and use the Subscription Materials for non-commercial, educational and/or research purposes and in the following manner only:-

5.2.1. **View online:** Open and view the Subscription Materials from an electronic device via the Client’s Secure Network;

5.2.2. **Save digital copies:** Save a single copy of an Item for future reference on the Website using the Website’s ‘My Folder’ or similar functionality or locally on the storage medium of an electronic device provided that the Item cannot be accessed or shared by any other user via any electronic network; and

5.2.3. **Make hard copies:** Make hard copies by printing and/or photocopying individual Items for personal reference only.

5.3 In addition to the permitted uses listed under clause 5.2 above, the Client may:

5.3.1 **Internal use:** Display, download or print the Subscription Materials for the purpose of internal marketing, testing or for training Authorised Users;

5.3.2 **Recover copying costs:** Charge a fee to cover the costs of copying or printing an Item(s) at the request of and for Institutional Users.

5.4 In addition to the permitted uses listed under clause 5.2 above, Institutional Users may:

5.4.1 **Share single copies internally:** Share a single copy of an individual Item as a hard copy, PDF file and/or by email with other Authorised Users for their personal reference only; and

5.4.2 **Create course packs:** Incorporate a reasonable amount of Items in course or study packs or other educational materials for use by or for Institutional Users in the course of instruction only. Copies of such Items shall be deleted by the Client when they are no longer required for such purpose. Course packs in non-electronic, non-print perceptible form, such as audio or braille, may also be offered to Institutional Users who, in the reasonable opinion of the Client, are visually impaired;

5.5 Nothing in this Agreement will limit in any way anything that a person may do under any applicable copyright or similar laws relating to fair dealing, fair use or equivalent exceptions to copyright or any such similar laws.

5.6. The Client will ensure (and procure that Authorised Users ensure) that any reproduction of the Subscription Materials (including in any course packs) contains the following notice: “© and database right Warc Limited 20[//]. All warranties and liabilities disclaimed to the fullest extent permitted by law.”

6. RESTRICTIONS ON USE OF SUBSCRIPTION MATERIALS

6.1. The Client and Authorised Users will not use the Subscription Materials in any way which is not expressly permitted in clause 5, unless otherwise agreed in writing. In particular, but without limitation the following uses are prohibited:
6.1. re-distributing any Item and/or part or all of the Subscription Materials in any form, by any manner or for any purpose (whether commercial or non-commercial) to any person who is not an Institutional User;

6.1.2. including the Subscription Materials on any intranet, extranet or other web-based product or service operated by or for the Client which do not form part of its Secure Network or are not expressly permitted under this Agreement;

6.1.3. any use which involves an Authorised User acting as a central distributor of Items and/or of part or all of the Subscription Materials within the Client and/or to other Authorised Users, whether located at the Licensed Premises or otherwise;

6.1.4. using the Subscription Materials to compile a database of, or re-creating the whole or substantial part of the Subscription Materials by making repeated and systematic copies of insubstantial parts of, any the Subscription Materials;

6.1.5. the removal or alteration of the authors' names or Warc's copyright notices or other acknowledgements or means of identification and/or any disclaimers as they appear on the Subscription Materials;

6.1.6. sub-licensing any of the rights granted under this Agreement.

6.2. Warc reserves the right to monitor usage of the Subscription Services to ensure the Client and Authorised Users are acting within the terms of clauses 5 and 6 and may contact the Client to verify usage should it have reasonable grounds for suspecting a breach of this Agreement may have occurred.

6.3. The Client will make each Authorised User aware of the rights and restrictions governing the access and use of the Subscription Materials as contained in this Agreement and will [be responsible for ensuring] that all Authorised Users comply with them.

7. WARC PERFORMANCE OBLIGATIONS

7.1. Availability of Subscription Services: Warc will make the Subscription Services available to the Client and Authorised Users upon receipt of the online registration materials and this Agreement, duly signed by an authorised signatory. Such registration materials include the Client's IP addresses or range of IP addresses for its Secure Network and the Client's and Authorised Users' institutional contact information, including name, address and telephone number and any other information as Warc may require from time to time. Any personal data provided to Warc in connection with this Agreement will be processed by Warc in accordance with its standard data and privacy policies as may be amended by Warc from time to time.

7.2. Accessibility: Warc will use its reasonable endeavours to ensure that its server has adequate capacity and bandwidth to support the usage of the Subscription Services by the Client at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web and via email (as applicable), as such standards evolve from time to time over the Term of this Agreement.

7.3. Performance: Warc will use its reasonable endeavours to make the Subscription Service available to Authorised Users at all times, save for routine maintenance, and to restore access to the Service as soon as possible in the event of an interruption or suspension of the Subscription Service (unless such interruption or suspension arises due to an act or omission by the Client and/or its Authorised Users.). If the Subscription Service remains unavailable for more than 48 hours then, provided that the unavailability is not a force majeure event in accordance with clause 16 or for the purposes of carrying out routine maintenance, the Subscription Period shall be extended for a period of time equal to the period of unavailability. If such extension is provided by Warc, such unavailability shall not constitute a breach of this Agreement and any such extension shall be the Client's sole remedy in respect of any interruption or suspension to the Service.

7.4. Notification of modifications of Subscription Materials: The Client understands that from time to time the Subscription Materials may be added to, modified, or deleted by Warc and/or that portions of the Subscription Materials may migrate to other formats.

7.5. Withdrawal of Subscription Materials: Notwithstanding the provisions under clause 3.5, Warc reserves the right to withdraw from the Subscription Materials any Item or part of an Item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or data protection law or is defamatory, obscene, unlawful or otherwise objectionable. The withdrawal of any Subscription Materials by Warc under this clause 7.5 shall not constitute a breach of this Agreement by Warc.

8. CLIENT OBLIGATIONS

8.1. Provision of notice of licence terms to Authorised Users: The Client will inform Authorised Users of the terms and conditions under which access to the Subscription Materials is granted under this Agreement including, in particular, any limitations on access or use of the Subscription Materials as set forth in this Agreement.

8.2 Monitoring of Authorised Users: The Client will use its best efforts to monitor compliance of its Authorised Users with the terms of this Agreement and immediately on becoming aware of any unauthorised use or other breach, inform Warc and take all reasonable steps, including appropriate disciplinary action, both to ensure that such activity ceases and to prevent any recurrence.

8.3. Protection from unauthorised use: In the event of any unauthorised use of the Subscription Materials by an Authorised User or as a result of a breach of the terms of this Agreement by an Authorised User, (a) Warc may terminate and/or suspend such Authorised User's access to the Subscription Materials; and/or (b) the Client will terminate such Authorised User's access to the Subscription Materials upon Warc's request.

8.4. Maintaining confidentiality of access passwords: If the Subscription Service is to be accessed in accordance with clause 4.3.3, Warc will issue user names and passwords to each Authorised User. The Client will be responsible for any unauthorised access to the Subscription Service and/or Subscription Materials arising from Authorised Users' negligence or misconduct (including but not limited any such access resulting from an Authorised User leaving their access device unattended whilst logged in to the Subscription Service). The Client will use its best efforts to ensure that Authorised Users do not divulge their numbers and passwords to any third party. The Client will also maintain the confidentiality of any institutional passwords provided by Warc.

8.5 Accurate record keeping: The Client will keep full and up-to-date records of its IP addresses and/or range of IP addresses. If appropriate the Client shall keep Warc with periodic lists of additions, deletions or other alterations to such records as agreed between the parties from time to time.
9. CHARGES

9.1. The Client will pay the Charges in advance and within 30 days of its receipt of a validly constituted invoice from Warc. Warc reserves the right to terminate or suspend the Client's access to the Subscription Services should payment of the Charges fail to be made by the due date. If the Client's access to the Subscription Services is suspended or terminated due to failure to pay the Charges the Client shall continue to be liable to pay the Charges.

9.2. Interest on any late payment of the Charges will be payable from the due date until the date of actual payment at an annual rate of 2% above the base lending rate of the Bank of England from time to time in effect during such period.

9.3. All sums payable by the Client under this Agreement will be paid free and clear of any deductions, withholdings, set offs or counterclaims, except any deduction or withholding which may be required by law in relation to any tax.

9.4. All sums payable under or pursuant to this Agreement are exclusive of VAT and any similar additional tax (or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction). Accordingly, the payer of any such sum will, subject only to the presentation of a valid VAT invoice, pay such VAT in addition to the sum which would otherwise be due.

10. AUDIT

10.1. During the term of this Agreement the Client will allow a named, authorised Warc representative to have access to the Licensed Premises (and other of the Client's premises at which it keeps records relating to Authorised Users' use of the Subscription Service) in order to verify that the Client and the Authorised Users are accessing and using the Subscription Materials through the Service in compliance with this Agreement. This right will only be exercisable on reasonable prior written notice once a year unless Warc has reasonable grounds for believing that the Client is in breach of this Agreement.

11. WARRANTY

11.1. Warc warrants to the Client that it has the right to grant to the Client the rights to use the Subscription Materials in accordance with the provisions of this Agreement.

11.2 The Client warrants to Warc that all IP addresses and/or ranges that it supplies to Warc to enable access to the Subscription Materials are exclusively owned, used and controlled by the Client and not shared by or disclosed to any third party.

12. EXCLUSIONS & LIMITATIONS OF LIABILITY

12.1. SUBJECT TO CLAUSE 12.4, THE WARRANTY CONTAINED IN CLAUSE 11.1 IS IN PLACE OF ALL WARRANTIES, REPRESENTATIONS OR CONDITIONS IMPLIED BY LAW.

12.2. WARC EXCLUDES ALL LIABILITY ARISING UNDER ANY EXPRESS (AND, IF ANY, IMPLIED) TERM OR CONDITION OF THIS AGREEMENT FOR ANY FAILURE OR INABILITY OF THE CLIENT AND ITS AUTHORISED USERS TO ACCESS OR USE THE SUBSCRIPTION MATERIALS THROUGH THE SUBSCRIPTION SERVICES THAT RELATE TO ANY FAILURE OR OMISSION ON WARCS PART OR WHICH RESULT FROM ANY FAILURE OF, OR INTERRUPTION TO, THE CLIENT'S COMPUTER SYSTEMS OR EQUIPMENT OR IN THE ELECTRONIC COMMUNICATIONS SERVICE USED BY AUTHORISED USERS TO ACCESS THE SUBSCRIPTION SERVICES.

12.3. SUBJECT TO CLAUSE 12.4, NEITHER PARTY WILL BE LIABLE (WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION, NEGLIGENCE, PRE-CONTRACT OR OTHER REPRESENTATIONS) OR OTHERWISE) FOR ANY OF THE FOLLOWING LOSSES SUFFERED OR INCURRED BY THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT (WHETHER OR NOT THOSE LOSSES WERE WITHIN THE CONTEMPLATION OF THE PARTIES AT THE START DATE): (I) ANY LOSS OF OR FAILURE TO REALISE: EXPECTED PROFIT; REVENUE; SAVINGS; OR ANY OTHER FORM OF PURE ECONOMIC LOSS, IN EACH CASE WHETHER ANY SUCH LOSS IS DIRECT OR INDIRECT; OR (II) ANY FORM OF INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGES.

12.4. NOTHING IN THIS AGREEMENT WILL OPERATE TO EXCLUDE OR LIMIT: (I) EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE OR FOR FRAUD OR FRAUDULENT MISREPRESENTATION; OR (II) THE CLIENT'S LIABILITY FOR ANY AND ALL LOSSES SUFFERED OR INCURRED BY WARCS ARISING FROM A BREACH OF WARCS IPS AS A RESULT OF A BREACH OF THE TERMS OF THIS AGREEMENT BY THE CLIENT OR ANY AUTHORISED USERS.

12.5 THE PARTIES ACKNOWLEDGE THAT THE SUBSCRIPTION SERVICES AND SUBSCRIPTION MATERIALS MAY INCLUDE LINKS TO THIRD PARTY WEBSITES. WARC DOES NOT REVIEW THESE THIRD PARTY WEBSITES NOR HAS ANY CONTROL OVER THEM AND SHALL NOT BE RESPONSIBLE FOR THESE WEBSITES OR THEIR CONTENT OR AVAILABILITY. WARC DOES NOT ENDORSE OR MAKE ANY REPRESENTATIONS ABOUT SUCH WEBSITES, OR ANY CONTENT FOUND THERE, OR ANY RESULTS THAT MAY BE OBTAINED FROM USING THEM.

12.6 IN ORDER TO USE THE SUBSCRIPTION SERVICES, AUTHORISED USERS MAY REQUIRE THIRD PARTY SOFTWARE OR TECHNOLOGY AND THE CLIENT AND/OR AUTHORISED USERS MAY HAVE TO ACCEPT THE TERMS OF A LICENCE AGREEMENT WITH SUCH THIRD PARTIES. THE CLIENT ACKNOWLEDGES THAT WARC HAS NO RESPONSIBILITY OR CONTROL OVER SUCH THIRD PARTY SOFTWARE.

12.7. SUBJECT TO CLAUSES 12.4 AND 12.8, THE MAXIMUM LIABILITY OF WARC TO THE CLIENT FOR ANY AND ALL CLAIMS ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED AN AMOUNT EQUAL TO 150% OF ALL CHARGES PAID OR PAYABLE BY THE CLIENT TO WARC UNDER THIS AGREEMENT.

12.8. WARC'S MAXIMUM LIABILITY IN CONNECTION WITH OR ARISING OUT OF ANY AND ALL CLAIMS MADE UNDER CLAUSE 14.1 (AND/OR UNDER ANY SIMILAR CLAUSE IN PREVIOUS AND/OR SUBSEQUENT AGREEMENTS ENTERED INTO BETWEEN THE PARTIES IN ACCORDANCE WITH CLAUSE 3.3) WILL IN NO CIRCUMSTANCES EXCEED IN AGGREGATE AN AMOUNT EQUIVALENT TO £1,000,000 (ONE MILLION POUNDS).

13. INTELLECTUAL PROPERTY RIGHTS

13.1. The Client acknowledges that Warc is the owner or licensee of the copyright and other IPRs (and the owner of the database rights) in the Subscription Materials and Subscription Services.
13.2. The Client will not dispute or challenge the validity of Warc’s IPRs (including copyright and database right) in the Subscription Materials and Subscription Services.

13.3. Warc reserves all its IPRs in the Subscription Materials and/or Subscription Services and in the data and other material they contain subject to the express rights granted to the Client under, and for the term of, this Agreement.

13.4. “Warc”, “World Advertising Research Center”, “Admap”, “Warc Plus”, their respective logos and any other trade marks identified as such within the Subscription Services and/or Subscription Materials are trade marks of Warc and no permission is given in respect of the use of any of these marks other than expressly provided for in this Agreement.

14. INDEMNITIES

14.1. Subject to clause 12.8, Warc hereby indemnifies the Client against any losses, costs, damages, liabilities, claims, demands and expenses suffered or incurred by the Client during the Term, including legal expenses reasonably and properly incurred, arising out of or connected with the Client’s use by any third party against the Client that the use of the Subscription Materials infringes the IPRs of such third party provided that such indemnity will not apply to any use of the Subscription Materials which is in breach of any of the terms and conditions of this Agreement.

14.2. The Client hereby indemnifies Warc against any losses, costs, damages, liabilities, claims, demands and expenses suffered or incurred by Warc, including legal expenses reasonably and properly incurred, arising out of any misuse or unauthorised use of the Subscription Services and/or Subscription Materials by the Client and/or by Authorised Users and/or arising from breach of the warranty under clause 11.2 of this Agreement by the Client.

14.3. The indemnified party will promptly notify the indemnifying party of any and all such claims and will allow the indemnifying party at the indemnifying party’s sole cost and expense to defend any proceedings in respect of any such claim in the indemnifying party’s name, including, subject to clause 14.4, the right to compromise any such other proceedings after prior consultation with the indemnified party.

14.4. The indemnifying party shall not settle any claim without the indemnified party’s prior written consent if the settlement:

14.4.1. require the indemnified party to make any payment to a third party or any admission of liability (or otherwise obligate the indemnified party) and/or require it to encumber its rights or property in any way; and/or

14.4.2. potentially give rise to adverse publicity for the indemnified party.

15. CONFIDENTIALITY

15.1. Each party undertakes that it will not at any time hereafter use, divulge or communicate to any person, except to its professional representatives or advisers or as may be required by law or any legal or regulatory authority, any confidential information concerning the business or affairs of the other party which it may have or which may in future come to its knowledge. Each of the parties will use its reasonable endeavours to prevent the publication or disclosure of any confidential information concerning such matters.

15.2. Clause 15.1 shall not extend to any information which the receiving party (“Recipient”) can demonstrate: (i) is already in the public domain at the time when it is disclosed to the Recipient or subsequently became part of the public domain (in each case except as a result of a breach of the provisions of this Agreement); (ii) is disclosed to the Recipient by a third party having the lawful right to disclose such information; or (iii) is conceived by the Recipient independently of the confidential information supplied to it by the disclosing party.

16. FORCE MAJEURE

16.1. Except in respect of the Client’s payment obligations under clause 9, if by reason of labour dispute, strikes, inability to obtain labour or materials, default of suppliers or subcontractors, fire or other action of the elements, accidents, governmental restrictions or appropriation or other causes beyond the control of a party, such party is unable to perform in whole or in part its obligations set forth in this Agreement, then, such party will be relieved of those obligations to the extent it is thereby unable to perform, and such inability to perform will not make such party liable to any other party. The party subject to an event of force majeure will use good faith efforts to comply as closely as possible with the provisions of this Agreement and to avoid the effects of such event to the extent possible.

17. TERMINATION

17.1. Either party may forthwith terminate this Agreement by notice in writing if: (a) the other party is in breach of any of its obligations under this Agreement and, in the case of a breach capable of remedy, it will not have been remedied by the defaulting party within fourteen days of written notice specifying the breach and requiring its remedy; or (b) if any order is made or resolution passed for the winding up of the other party or if the other party has a receiver appointed over the whole or any part its assets.

17.2. Warc may terminate this Agreement forthwith by notice in writing if it ceases to provide the Subscription Services or, for any reason, ceases to include all or substantially all of the Subscription Materials in the Subscription Services.

17.3. Upon termination of this Agreement (for whatever cause):

17.3.1. the Client’s rights to use the Subscription Materials will immediately cease and it will forthwith remove from its computer systems all files (including all databases and other compilations) which contain any of the Subscription Materials;

17.3.2. clauses 12, 13, 14 and 15 will remain in full force and effect.

17.4. If this Agreement is terminated as a result of the Client’s breach, the Client will not be entitled to any refund of the Charges for the unexpired portion of the Subscription Period. If however, this Agreement is terminated pursuant to clause 17.2, Warc will make a pro rata refund of the Charges to the Client, taking into account the remaining unexpired portion of the Subscription Period.

17.5. Termination will not affect or prejudice any right to damages or other remedy which the terminating party may have in respect of the
event giving rise to the termination or any other right to damages or other remedy which any party may have in respect of any breach of this Agreement which existed at or before the date of termination.

18. ASSIGNMENT

18.1. Neither party may assign its rights under this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed, except in the case of an assignment which forms part of the sale of all, or substantially all of the assets of the assigning party, in which event no such prior consent will be required.

19. GENERAL

19.1. Neither party intends that any term of this Agreement will be by virtue of the Contracts (Rights of Third Parties) Act 1999 enforceable by any person who is not a party to this Agreement.

19.2. A failure or delay by either party to exercise any right or remedy under this Agreement will not be construed or operate as a waiver of that right or remedy nor will any single or partial exercise of any right or remedy preclude the further exercise of that right or remedy.

19.3. This Agreement represents the entire terms agreed between the parties in relation to its subject matter and supersedes and extinguishes all previous contracts or arrangements of any kind between the parties relating to its subject matter. Each party acknowledges that in entering into this Agreement it has not relied and is not relying on any representations or warranties (whether implied or otherwise) other than those expressly set out in this Agreement and the parties irrevocably and unconditionally waive any right they may have to any remedy in respect of any other such representation or warranty except in the case of fraud.

19.4. This Agreement may only be amended, superseded, or cancelled (or any of its terms and conditions waived) if in writing signed by or on behalf of Warc and the Client or, in the case of waiver, of the party waiving compliance.

19.5. Each of the provisions contained in this Agreement will be construed as independent of every other such provision, so that if any provision of this Agreement will be determined by any court or competent authority to be illegal, invalid and/or unenforceable then such determination will not affect any other provision of this Agreement, all of which other provisions will remain in full force and effect.

20. DISPUTE RESOLUTION

20.1. This Agreement will be governed by English law.

[20.2. The courts of England and Wales (or, at Warc’s sole option, those of the jurisdiction in which the Client is incorporated or constituted) will have exclusive jurisdiction over any disputes arising under this Agreement.]

OR

[20.2. In the event of any dispute or controversy arising out of or relating to this Agreement, the parties’ nominated representatives (“Representatives”) will meet to resolve disputes within 5 working days of a written request by either party.

20.3 If the Representatives are unable to resolve the dispute within 5 working days of request, the dispute will be escalated to the managing directors of the respective parties who will endeavour to resolve the dispute in good faith.

20.4 If the managing directors are unable to resolve the dispute within 15 working days of escalation, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by a single arbitrator appointed in accordance with the said Rules. The seat, or legal place, of arbitration shall be London, England. Any arbitration hearings and meetings shall be conducted in [London, England] and in the English language. The parties agree that the arbitrator shall, in his/her sole discretion, decide on any matters of arbitrability in respect of any dispute relating to this Agreement.]

20.6 Nothing in this clause 20 will prevent either party from applying to the court of any jurisdiction for such provisional or protective measures as are available under the laws of that jurisdiction.

21. NOTICES

21.1. All notices, requests consents and other communications which are required or permitted under this Agreement will be in writing and will be deemed to be given (i) when delivered in person to the recipient’s address (as specified in this Agreement) at the time of such delivery; (ii) when sent by first class post, 7 days after it was posted; or (iii) when sent by fax then at the date and time of transmission as shown in a confirmed receipt of transmission. However, any notices declaring a breach of or terminating this Agreement will be given only in person or by recorded delivery post or by courier delivery to the address specified this Agreement. Notice of change of address will be given in the same manner as other communications.

21.2 The Client shall give written notice of any claim it makes against Warc arising from this Agreement on or before the second anniversary of the date of the event giving rise to that claim. Such claim will be deemed to have been irrevocably withdrawn and lapsed unless proceedings in respect of that claim have been issued and served on Warc not later than the expiry of the period of 12 months after the date of that notice.

Warc's contact details are as follows: Warc Limited, 85 Newman Street, London, W1T 3EX