

# DCA FT.com Public Library Access Agreement

## 1. Definitions

In this Agreement words and phrases have the meaning given to them in this clause 1:

“Library Account” means the subscribing library.

“Copyright Policy” means FT’s current copyright policy available by clicking on the “Copyright Policy” link on the bottom of each page of the FT.com.

“Privacy Policy” means FT’s current privacy policy available by clicking on the “Privacy Policy” link on the bottom of each page of the FT.com.

“FT Marks” means the trademarks, service marks, trade names, logos and other branding of FT, whether registered or unregistered.

“Subscription Form” means the order form prepared by DCA for the Library Account.

“Subscriber” means the Library Account that signs an agreement with DCA for access to FT.com in accordance with the terms of this Agreement.

“End User/s” means an authorized member or cardholder or customer of the Subscriber.

“Term” shall mean the period from the Start Date until the termination or expiry of the Agreement.

“Concurrent User Access” means an access method which restricts the maximum number of concurrent users.

“Usage Cap” means the indicative monthly usage level.

“Site” means the FT.com service provided to the subscribing library

“Site Content” means all content made available on the FT.com Site to the Library Account and End Users.

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## 2. License Agreement and Terms of Service

Each Library Account and End User acknowledges and agrees to the terms described herein and in the applicable DCA/FT.com Subscription Form at the subscription level set forth in such Subscription Form and agrees to comply with the Terms of Service set forth in this License Agreement (the “License Agreement” or “Agreement”).

### 2(a) License

Digital Content Associates Ltd. (“DCA”) grants to the institution identified in the applicable Subscription Form (each a “Library Account”) a nontransferable and non-exclusive license (the “License”) to use the FT.com service in accordance with the terms of this License Agreement and in the applicable subscription form (the “Subscription Form”) entered into in connection with the annual subscription purchased by Library Account to receive the FT.com service on the terms described herein and in the applicable FT.com Subscription Form at the subscription level set forth in such Subscription Form. Library Accounts may not reproduce, distribute, display, modify, alter, publish, exploit, transfer or transmit, in any form, or by any means, any portion of the FT.com service, other than in accordance with this License Agreement or for the purpose of marketing the service, without the prior written consent of DCA. All use by Library Account or any of the Library Account’s current employees, representatives, staff, visiting library customers that may be on either a full or temporary membership basis, that the Library Account has reasonably authorised to directly or remotely access the Library Account’s systems and content (each an “End User”) of FT.com, including but not limited to any authorised trial periods and any period for which a fee has been paid, is subject to the terms and conditions set forth in this License. Library Account shall be responsible for ensuring that any End User accessing the FT.com site is notified of, and abide by, the terms of this License.

### 2(b) Ownership of Digital Content and Trademarks

Each Library Account acknowledges that DCA is an agent for FT.com and each Library Account further acknowledges and agrees that it has not acquired, and shall not acquire (whether by operation of law, by this License Agreement, by downloading any content from FT.com, or otherwise), any right, title, interest or ownership in or to FT.com or any content within FT.com.

Each Library Account and End User additionally acknowledges that (a) the FT.com and FT trademark is owned by The Financial Times, (b) all such FT Marks are the property of their respective owners and are used with permission, and (c) nothing in this License Agreement or contained on the FT.com site may be construed as granting, by implication, estoppel, or otherwise, any right or license to use any FT Marks.

Each Library Account shall at all times use the FT Marks in such a manner that their distinctiveness and reputation are maintained and shall not do anything which may bring the FT Marks into disrepute.

## **2(c)Access**

- i. This Agreement allows the Library Account's individual members (End Users) to access FT.com via the unique internet protocol (IP) addresses of the Library Account, or Concurrent User Access, subject to the Library Account and End Users complying with these Terms.
- ii. If a Subscriber's End Users exceed the Usage Cap in any consecutive three-month period, DCA and FT.com will review such usage to determine the reasons behind such excess. After discussion with the Subscriber and in the event that both the Subscriber and DCA agree the usage is authorized and does not represent any breach in these Terms of Service, DCA may offer the Library Account an increased cap to their subscription for the remainder of the Term. An increase to the Usage Cap will incur additional subscription fees. In the event that no increased amount is agreed or approved by the Subscriber, FT.com may terminate the access of the Subscriber and DCA will issue a pro-rata refund to the Library Account in respect of the unexpired period of the relevant subscription.
- iii. Usage Caps are calculated on a counted page view basis and are considered to represent reasonable use for the Library Account based on the population served by the Subscriber. Counted page views are only counted after the End User has remained on one page or article for a length of time. Browsing does not contribute to counted page views. Usage Caps are guidelines only to prevent abuse and unauthorized sharing of access of the FT.com service; they do not activate automatic turnaways.
- iv. DCA may require a Subscriber to move to Concurrent User Access if this access method becomes technically possible during the relevant Subscription Term.

## **2(d) Streaming/Downloading of Site Content.**

- (a) Some Site Content may be available on a streaming basis and/or download basis, as determined by FT.com in its sole discretion from time to time. Depending upon your geographic location, the equipment that you are using to access the Site, the bandwidth available to you and other factors, you may not have access to streaming and/or downloadable Site Content. You are responsible for all charges associated with connecting to the Site, including, without limitation, all Internet access charges, networking and computer equipment costs and any service fees necessary to access the Site.
- (b) The Library Account shall not
  - (i) sell, rent, lease, transfer or otherwise assign any rights to the Site, Site Content or Service to any third party other than the authorized End User;
  - (ii) remove any proprietary notices or labels on the Site or Site Content;
  - (iii) use the Site, Site Content or Service, or any portion thereof, for any purposes which are unlawful in any nation or jurisdiction in the world or for any commercial purpose whatsoever;
  - (iv) use the Site, Site Content or Service in conjunction with any device or service designed to circumvent technological measures employed to control access to, or the rights in, a content file or other work protected by the copyright laws of any jurisdiction;

- (v) use any metatags or any other "hidden text" utilizing FT.com name or FTMarks;
- (vi) interrupt, or attempt to interrupt, the operation of the Site or Service in any way; or
- (vii) permit unauthorized individuals to use or access the Site, Site Content or Service.

## **2(e) Other Restrictions and Limitations.**

i. **Security.** Digital rights management or other copyright protection technologies or mechanisms may be embedded or associated with, or certain technology and/or rules may alter, the Site Content (including, without limitation, the Download Content) in order to protect digital information from access and use (collectively, the "Security Technologies") and the Security Technologies may limit or restrict End User access to and usage of the Site Content in accordance with usage rules established by FT.com from time to time ("Usage Rules"). Library Account agrees to comply with such Usage Rules. Usage Rules may be controlled and monitored by FT.com for compliance purposes, and FT.com reserves the right, in its sole discretion, to modify and/or enforce the Usage Rules with or without notice to subscribers at any time. If the Library Account becomes aware of any unauthorized use of the Site, Site Content or Service by any person or entity, they shall immediately notify DCA and reasonably cooperate with DCA to prevent further unauthorized use. The Subscriber hereby acknowledges that the security technologies enable ft.com to enforce certain restrictions relating to access to and use of the site content (e.g., enforcement of the use period) and that such security technologies may be used by ft.com to enforce such restrictions.

### ii. No Right To Continued Service.

Library Account acknowledges that FT.com and DCA are constantly administering the Site, including, without limitation, to comply with the Usage Rules. FT.com may add, delete, remove, modify, disable, suspend or restrict some or all of the Site, Site Content and/or Service in its sole discretion without notice and Library Account hereby acknowledges that as a result of such actions: (i) End Users may no longer be able to use the Site, Site Content and/or Service to the same extent, or at all, as prior to such actions, and (2) that neither FT.com or DCA shall have no liability to Library Account or any third party(ies) in such case. DCA shall not be liable in any event for the addition, deletion, removal, modification, disabling, suspension or restriction of access to or use of any or all of the Site, Site Content and/or the Service.

### iii. Age Restrictions.

Certain of the Site Content may be appropriate only for persons over the age of eighteen (18) years. Those persons who are younger than 18 years of age, or such other age as may be required in the jurisdiction of Library Account, are referred to herein as "Minors". Not all content on the site may be appropriate for all age groups. Access to the site is not limited by age; monitoring of a minor's use of the collection is the responsibility of the parent/guardian.

## **2(f) Links; Third party communications**

### **i. Links to the Site.**

Library Account may not link to the Site from any pornographic, obscene, profane, defamatory, libelous, threatening, unlawful or other website or material which could constitute or encourage unlawful conduct that would be considered a criminal offense, give rise to civil liability, or otherwise violate any law or regulation. Notwithstanding the fact that DCA, FT.com or other parties involved in creating, producing, or delivering the Site may monitor or review any links to the Site, FT.com, DCA and such parties assume no responsibility or liability which may arise from the content thereof.

### **ii. Links to Third Party Sites.**

Although the Site may link to other websites (“External Sites”), DCA is not, directly or indirectly, implying any approval, association, sponsorship, endorsement, or affiliation with any External Site, unless otherwise specifically stated herein. By entering the Site, Library Account acknowledges and agrees that DCA has not reviewed the External Sites and is not responsible for the content contained on any External Site. Library Account and End User access and use of any External Site is at their own risk.

## **2(g) Technical Support Services**

DCA agrees to provide technical support services by email and phone to each Library Account, including but not limited to reasonable efforts to assist such Library Account in providing primary support. Each Library Account and End User acknowledges that errors in the FT.com service shall not be a breach of this License Agreement.

## **2(h) Disclaimer of Warranty, Limitation of Liability and Indemnity**

Neither FT nor any third-party provider of information endorses nor guarantees the accuracy, completeness, or usefulness of any content in the Subscription, nor their merchantability or fitness for any particular purpose nor that the delivery will be error-free or at a particular time.

Neither party shall be held responsible or liable for any losses arising out of any delay or non-performance of any part of this Agreement due to any cause beyond the reasonable control of the party delayed or unable to perform any part of this Agreement. When a party’s delay or non-performance continues for a period of at least fifteen days, the other party may terminate this Agreement.

Each library account agrees to indemnify and hold harmless DCA and its officers, employees, agents, business partners, licensors, and licensees from any damages, liabilities, costs, and expenses (including reasonable attorneys’ fees) on account of any claim, suit, action, demand, or proceeding made or brought against any such party, or on account of the investigation, defense, or settlement thereof, arising in connection with the use of the ft.com service by the end user of such library account.

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

This agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English courts, provided that for the exclusive benefit of FT, FT retains the right to bring proceedings against Service Provider in the applicable courts of Service Provider's place of business.

## **2(i) Confidentiality**

Each Library Account agrees that, without the prior consent of DCA such Library Account will not disclose, divulge, reveal, report, or use, for any purpose, any confidential information with respect to the business of DCA that such Library Account has obtained. Such confidential information may include FT.com service pricing, service terms, technical specifications and service level agreements. This obligation will survive indefinitely upon termination of this License Agreement.

## **2(j) Privacy Policy and Terms of Use**

The FT.com privacy policy, as in effect from time to time and available at the link on the bottom of each page of the FT.com site, is expressly incorporated herein by reference and made a part of this License Agreement.

## **2(k) Term and Termination**

The term for each Library Account's access to the FT.com service shall be for a period of twelve (12) months, unless otherwise agreed by DCA and such Library Account. Such Library Account obtains certain rights and access to use the FT.com service for the term of its agreement with DCA. The License granted to such Library Account shall be terminated at the end of such term, unless renewed or extended by the mutual agreement of DCA and such Library Account, along with such Library Account's access to the FT.com service and any and all content therein, and such Library Account and/or its End Users shall make no further use of all or any part of the content and the FT.com service.

In the event of a breach of any of its obligations, including but not limited to non-payment or late payment for services, each Library Account shall have thirty (30) days from the receipt of written notice of such breach from DCA to cure such breach. If the Library Account fails to remedy such breach within such 30-day period, DCA may, at its option and in its sole discretion, terminate its agreement with such Library Account upon written notice to such Library Account and/or temporarily or permanently suspend such Library Account's access to the FT.com service.

## **2(l) General Provisions**

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this License Agreement. In the event that a court of competent jurisdiction determines that any portion of this License Agreement is unenforceable, void, invalid or inoperative, the remaining provisions of this License Agreement shall not be affected and shall continue in effect as though such invalid provisions were deleted.

Neither DCA or the owners of the FT.com service will be liable or deemed to be in default of this License Agreement for any delays or failure in performance resulting directly or indirectly from any cause or circumstance beyond its reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authority, rain, fire, flood, accidents, earthquake(s), strikes or labor shortages, transportation facility shortages, failures of equipment, or failures of the Internet.

This License Agreement constitutes the entire Agreement and understanding of the parties. This Agreement may be amended or modified by DCA from time to time only upon written notice to the Library Account and End Users.

## **2(m) Data Security**

Each Library Account will implement and maintain reasonable measures to ensure that only authorised End Users have access to the FT.com service and content.

# **3. Data Protection**

## **3(a) Definitions**

For the purposes of this Data Protection section: (i) the terms “Controller”, “Data Subject”, “Process” (and its derivatives), “Personal Data”, and “Supervisory Authority”, shall each have the meaning given to the corresponding term in the GDPR; (ii) “Data Subject Request” means any request made by a Data Subject to exercise their rights under Chapter III of the GDPR; (iii) “End User Personal Data” means any Personal Data of Library Account’s End Users that is Processed in connection with the Parties’ performance of this License Agreement; (iv) “GDPR” means the EU General Data Protection Regulation 2016/679 and, as applicable in the United Kingdom, the Data Protection Act 2018 (references to “Articles” or “Chapters” of the GDPR shall be construed accordingly); and (v) “Personal Data Breach” means any actual or reasonably suspected Personal Data Breach (as defined in Article 4(12) of the GDPR).

## **3(b) General**

- i. In respect of any Personal Data that is Processed by the Parties under or in connection with this Agreement, as between the Parties, each Party: (i) shall act as a Controller in respect of that Personal Data; and (ii) may determine the purposes and means of the Processing of such Personal Data.
- ii. Each Party shall: (i) ensure that there is a valid legal basis (for the purposes of Article 6 of the GDPR, and (where applicable) Article 9 and/or Article 10 of the GDPR) for its Processing of End User Personal Data; (ii) take all reasonable steps to maintain the accuracy, integrity and security of End User Personal Data in its possession or control from time-to-time; and (iii) comply with all applicable obligations as a Controller of such End User Personal Data under the GDPR.
- iii. DCA shall only Process and share the End User Personal Data for the purposes of performing its obligations under this License Agreement.

### **3(c) Data Subject Rights**

- i. Each Party acknowledges and agrees that Data Subjects of the End User Personal Data have the right to make, or cause to be made, Data Subject Requests. Each Party agrees to provide the other with reasonably necessary and available information and assistance to enable that other Party to comply with its obligations under the GDPR with respect to any Data Subject Request that other Party receives concerning End User Personal Data.
- ii. It is agreed that, as between the Parties, DCA shall be primarily responsible for ensuring the Parties' compliance with the transparency obligations set out in Article 13 and Article 14 (as applicable) of the GDPR with respect to the Processing of End User Personal Data involved in the provision and receipt of the FT.com service. Library Account acknowledges that any obligation DCA may have to Library Account in this regard is fully discharged by the display to End Users of the FT.com Privacy Policy.
- iii. Library Account agrees that it shall provide DCA with any information DCA may request from time-to-time to enable DCA to endeavour to ensure the Parties' compliance with the transparency obligations set out in Article 13 and Article 14 (as applicable) of the GDPR with respect to the Processing of End User Personal Data involved in the provision and receipt of the FT.com service.

For details of the GDPR Articles referred to in this Agreement, see Appendix I.

### **3(d) Personal Data Breach**

- i. Each Party: (a) shall notify the other Party without undue delay of any Personal Data Breach affecting End User Personal Data in that Party's possession or control; and (b) agrees to give the other reasonable assistance in the other's handling of any Personal Data Breach affecting End User Personal Data (including reporting to Supervisory Authorities and/or Data Subjects where required).

## **4. DISCLAIMERS**

### **4(a). Transmission of Information.**

As with any online interaction and electronic communication, there is an inherent risk involved in transmitting any information via the Internet. DCA does not and cannot guarantee that the system of FT.com is or will be free from hackers or viruses or that information provided by Library Account or End Users to FT.com will not be stolen or otherwise surreptitiously obtained. DCA and FT.com are not responsible or liable to the Library Account or any third party for any infections or contamination of your system or delays, inaccuracies, errors, or omissions arising out of your access to or use of the Site, Site Content or Service. The Library Account hereby acknowledges and understands that such risk is inherent in interacting with any website, content or service, including, without limitation, the Site, Site Content and Service, and Library Account takes full responsibility for any harm, danger or damage that ensues due to any such breach in security. In addition, Library Account agrees to be responsible for obtaining

and maintaining all telephone, computer hardware and other equipment needed for access to and use of the Site, Site Content or Service and shall be responsible for all charges related thereto.

#### **4(b) Nature of Services.**

i. Information and Data. The Library Account acknowledges and understands the possibility of human and mechanical error, mistakes or omissions in the data or information provided, delays or interruptions of the data or information stream from any cause whatsoever, as well as other factors. Library Account further acknowledges and agrees that FT.com is not responsible for errors in or omissions from the information contained in or accessed through the Site, Site Content or Service.

ii. Objectionable Material. The Library Account and End User understands that through use of the Site, Site Content and Service they may encounter content that may be deemed offensive, indecent, or objectionable, which content may or may not be identified as such. Library Account and End User agree to use the Site, Site Content and Service at their sole risk and that FT.com shall have no liability for the type of content that may be accessed, including, without limitation, content that End User may find offensive, indecent, or objectionable.

#### **4(c) Written Agreement.**

A printed version of these Terms, and of any notice given in electronic form related to this agreement, shall be admissible in judicial or administrative proceedings to the same extent, and subject to the same restrictions, as other business contracts, documents, or records originally generated and maintained in printed form. Library Account hereby waives any and all defenses they may have based on the electronic form of these Terms and the lack of signing by the parties hereto to execute these Terms.

## **Appendix I**

### **GDPR**

The GDPR (General Data Protection Regulation, with effect May 25<sup>th</sup> 2018):

- Sets out rules about how personal data is processed;
- Protects people's rights and freedoms in relation to personal data;
- Ensures that personal data can move freely within the EU.

For full details of the GDPR: <https://gdpr-info.eu/>

