

## DEMOTIX – Licence for the Use of Licensed Content

This agreement governs the use of Licensed Content and is made between Demotix Limited, of 17-19 Bedford Street, London, WC2E 9HP (“Demotix”) and the Licensee. Use of the Licensed Content is strictly limited to the terms of this Licence for the Use of Licensed Content (“Licence”). This Licence applies to Licensed Content which is delivered online, digitally or via physical transfer.

Demotix may change the terms of this Licence at any time and without notice. When the terms have been changed, Demotix will notify the Licensee by displaying the new terms on its Website and, where the Licensed Content was delivered other than online, by sending a copy of the new terms to the Licensee. If the Licensee does not agree to be bound by the terms of the Licence, the Licensee is not permitted to download or license any Licensed Content.

### 1. DEFINITIONS

The following terms shall have the following meanings:

**Copying or Copy** means any form of reproduction of the whole or part of any Licensed Content, through any medium and by any means, and includes without limitation the adaption, alteration, distortion, manipulation and cropping of the Licensed Content, and the creation of a derivative work from the Licensed Content

**Editorial Content** means Licensed Content which relates to events that are newsworthy or of public interest and which is licensed for use in an editorial manner

**Intellectual Property Rights** means all intellectual and industrial property rights of whatsoever nature (including without limitation all copyright, names, logos, trademarks, the Website design and its 'look and feel', text, documents, content, selection and arrangement of elements, databases, organisation, graphics, photographs and images, compilation, magnetic translation, digital conversion, computer codes contained in the Website) and similar or analogous rights (whether or not registered, whether present, future or contingent, and including without limitation all renewals, extensions, revivals and accrued rights of action and all pending applications), existing in any jurisdiction and all rights to apply for acquisition of the same

**Invoice** means the invoice issued by Demotix which sets out the terms agreed with the Licensee. The Invoice forms part of this Licence. All references to the Licence shall include the terms of the Invoice

**Licensed Content** means any film, video footage, still image, visual representation, audio product, audio-visual product, accompanying text, articles, journalistic material, negatives, transparencies, film imprints, prints, original digital files, or any Copies thereof, and any other content protected by copyright, trade mark or other Intellectual Property Rights which is displayed on the Website and licensed to the Licensee by Demotix under this Licence. References to the Licensed Content shall be to the Licensed Content as a whole as well as any part of the Licensed Content

**Licensee** means the person or entity purchasing a licence hereunder (including the Licensee's officers, directors, agents, representatives and employees) or, if there is a Buyer (see clause 5), the person or entity designated as Licensee on the Invoice/during the purchasing process

**Licensed Rights** means the written information which accompanies the Licensed Content, including without limitation the information provided in the Invoice, editorial feed, on the Website (for example, in the purchase area), or in any other written communication which accompanies the Licensed Content. The Licensed Rights may include without limitation details of the territory in which the Licensed Content may be used, use restrictions and price details. The Licensed Rights form part of this Licence, and all references to the Licence shall include the Licensed Rights

**User** means any employee or subcontractor of the Licensee who manipulates edits or modifies the original digital file containing the Licensed Content or incorporates the Licensed Content within any derivative work.

**Website** means Demotix's website at [www.demotix.com](http://www.demotix.com) / [www.demotiximages.com](http://www.demotiximages.com)

### 2. LICENCE

2.1 In consideration of payment by the Licensee of the Fee (as defined in clause 4.1) for the specified purpose, Demotix hereby grants to the Licensee the non-exclusive, non-transferable, non-sub-licensable, revocable right in relation to the Licensed Content in accordance with the Licensed Rights:

- 2.1.1 to make a printed copy of the Licensed Content retrieved from the Website and to download and store securely by electronic means on the Licensee's server one copy of each item of the Licensed Content and one high-resolution backup copy for security purposes only;
  - 2.1.2 subject to clauses 2.1.3 and 2.1.4, to use and Copy the Licensed Content, solely to the extent explicitly stated in this Licence, and including for use in electronic publications (such as website designs) so long as such use in electronic publications does not exceed a maximum resolution of 72dpi;
  - 2.1.3 in relation to Editorial Content only, to crop Editorial Content, provided that the editorial integrity of the Editorial Content is not compromised, and provided that (unless otherwise agreed in writing in advance by Demotix) the Editorial Content is not used for any commercial, promotional, advertising or merchandising use;
  - 2.1.4 subject to clause 8.3.2 (restriction of assignments and sub-licences), to use, sell or license derivative works incorporating the Licensed Content, so long as the Licensed Content is not contained in an electronic template which can, or is intended to be, reproduced by third parties on electronic or printed products, and so long as use in electronic publications (such as website designs) does not exceed a maximum resolution of 72 dpi; and
  - 2.1.5 subject to the terms of this Licence, to store the Licensed Content in a digital library, network configuration or similar arrangement to allow the Licensee's employees, partners, subcontractors or clients to view the Licensed Content, to modify and edit the original digital file containing the Licensed Content and to incorporate the Licensed Content within any derivative work. However, the Licensed Content must under no circumstances be used in this way by more than one (1) User during the Term, unless additional subscription licences are purchased for each additional User before such additional use begins.
- 2.2 All of the above rights may be exercised by subcontractors of the Licensee for preparation of the final product for the licensed use; provided that such subcontractors agree to abide by the terms of this Licence, and the Licensee shall at all times remain responsible and liable for all acts and infringements of each subcontractor.
  - 2.3 The Licensee acknowledges that all Intellectual Property Rights in the Licensed Content is and remains the property of Demotix or its licensors (as applicable), and that the Licensed Content shall only be used by the Licensee as permitted by this Licence.
  - 2.4 Where Demotix reasonably believes that the Licensed Content is being used outside of the scope of the Licence, the Licensee shall at Demotix's reasonable request, provide a sworn statement detailing the scope of the use made by the Licensee of the Licensed Content, which statement shall be signed by an officer of the Licensee in a form to be approved by Demotix, or at Demotix's reasonable request, withdraw from publication the Licensed Content. Demotix may terminate this Licence at any time with immediate effect at its sole discretion.
  - 2.5 All rights, title and interest not specifically and expressly granted to the Licensee under this Licence are reserved to Demotix and or its licensors (as applicable), and no use of the Licensed Content other than expressly stated in this Licence is allowed.

### **3. INTELLECTUAL PROPERTY**

- 3.1 The Licensee hereby acknowledges that it shall not acquire any rights, ownership, interest or goodwill in the Intellectual Property Rights or other proprietary rights of Demotix or other rights owner(s) in the Licensed Content other than the rights granted expressly under this Licence and that all such Intellectual Property Rights and other rights in the Licensed Content (whether existing at, or coming into existence after, the commencement date of this Licence) shall remain vested in, and are expressly reserved to, Demotix or the respective rights owners. This clause will survive this Licence and the Licensee's use of the Licensed Content hereunder.
- 3.2 To be clear, the Licensee may not use the name "Demotix" other than as expressly agreed in this Licence.

### **4. FEES**

- 4.1 The Licensee shall pay the fee for the specified purpose ("**Fee**") either at the time of downloading or within 14 days of the date of the Invoice (as applicable). Any claims for adjustment or rejection of the terms of the Invoice must be made in writing to Demotix within 10 days of receipt of the Invoice. All sums specified in the purchase process are exclusive of VAT or any similar taxes which, if payable,

shall be paid on presentation by Demotix of an appropriate VAT invoice.

- 4.2 If the Licensee fails to pay Demotix's invoice in full within the time specified in the invoice, Demotix may add a service charge of one and one-half percent (1.5%) per month (or such lesser amount as is permitted by law), on any unpaid balance until payment is received. Demotix reserves the right to revoke this Licence in its sole discretion if payment is not made on time.
- 4.3 Except where stated otherwise in this Licence, no refunds or credits of the Fee will be issued by Demotix. The transfer of the file containing the Licensed Content from Demotix to the Licensee via the internet, or the breaking of the CD-ROM (compact disc read only memory) seal, is considered to be the complete fulfilment of Demotix's obligations hereunder.

## 5. BUYER

- 5.1 Where a person or entity purchases the licence hereunder on behalf of a third party Licensee ("**Buyer**"), the Buyer hereby warrants that the Buyer is authorised to act as an agent on behalf of the Licensee and has full power and authority to bind the Licensee to this Licensee. Should the Licensee dispute such power and authority, the Buyer shall be bound and liable for any failure of the Licensee to comply with the terms of this Licence. However, nothing in this clause 5 shall excuse the Buyer's obligation to make payment to Demotix for the Licensed Content.

## 6. SUBSCRIBER ACCOUNT

- 6.1 In order to access the Website, the Licensee must create a subscriber account ("**Subscriber Account**"). The Licensee is expressly prohibited from using any other Subscriber Account without Demotix's permission. In creating its Subscriber Account the Licensee represents and warrants that all of the information provided by the Licensee is accurate and complete. The Licensee shall be solely responsible for any activity occurring on its Subscriber Account, agrees to keep the access details confidential and secure, and will notify Demotix immediately if any unauthorised party becomes aware of any breach of security or unauthorised use of the Subscriber Account.
- 6.2 Save in respect of any negligence on the part of Demotix, Demotix accepts no liability for any losses caused by any unauthorised use of the Licensee's Subscriber Account. The Licensee accepts that it will be liable for losses incurred by Demotix or other third parties due to such unauthorised use.

## 7. SUPPLY OF LICENSED CONTENT

- 7.1 The Licensee will be responsible for the acquisition of any permissions, licences, software, telecommunications lines and equipment to enable the Licensee to receive the Licensed Content and/or to retrieve the Licensed Content from the Website. Any costs incurred by Demotix beyond the costs associated with the electronic download of the Licensed Content to the Licensee shall be borne by the Licensee.
- 7.2 The Licensee shall examine all Licensed Content for possible defects (digital or otherwise) before sending any Licensed Content for Copying. Without prejudice to clause 12.3, Demotix shall not be liable for any loss or damage suffered by the Licensee or any third party, whether directly or indirectly, caused by any alleged or actual defect in any Licensed Content or its caption or in any way from its Copying.
- 7.3 If the Licensee/Buyer requests in writing to cancel this Licence within 30 days of the date of receipt of the Invoice by the Licensee/Buyer of the Licensed Content, and such Licensed Content has not been used by the Licensee, Demotix may cancel this Licence and issue a credit to the Licensees' or Buyer's account or credit card of up to 100% of the Fee minus an administrative fee that will be charged at Demotix's current standard rate. Nothing in this clause 7.3 shall apply to research, lab, service fees, administration fees or editorial subscription fees which shall be payable according to the terms stated on the Invoice, and which are non-refundable.

## 8. THE LICENSEE'S DUTIES

- 8.1 The Licensee shall:
- 8.1.1 take all necessary measures to safeguard the Intellectual Property Rights of Demotix in the Licensed Content;
  - 8.1.2 be solely responsible for determining and obtaining before publication any release, consents or licences required for any proposed use of the Licensed Content;
  - 8.1.3 take all necessary steps to ensure that the Licensed Content and the Licensee's use

thereof complies with all laws, registrations, Directives and guidelines, and the principles enunciated in the Press Complaints Commission Code of Practice [<http://www.pcc.org.uk/cop/practice.html>];

- 8.1.4 ensure that all copies of the Editorial Licensed Content bear the copyright symbol © accompanied by Demotix's and relevant author's name (as applicable) and the year of first publication of the Licensed Content along with any other acknowledgement Demotix may, from time to time, direct the Licensee to include, and ensure that no proprietary notice, credit and identification number is removed, cut, concealed, modified, obscured or otherwise tampered with, unless expressly agreed with Demotix. For example: © Photographer Name / Demotix 2009. If the Licensee fails to include such a credit, the Licensee shall, if required by Demotix, pay an additional fee of up to 100% of the Fee. The foregoing is without prejudice to any other rights or remedies available to Demotix;
  - 8.1.5 where technically feasible, provide a screen credit, equal in size and placement to similar footage in the media, for any film or video footage used in a feature film, broadcast television or cable production which must read as directed by the designated director;
  - 8.1.6 use its best efforts to ensure that any third party to whom the Licensee makes the Licensed Content available: (i) abides by the terms and conditions of this Licence; and (ii) does not Copy, redistribute, retransmit, publish or republish or otherwise exploit the Licensed Content except as permitted hereunder;
  - 8.1.7 use the most up to date version of the Licensed Content and shall cease distribution of any outdated version of which it is notified by Demotix;
  - 8.1.8 if any Licensed Content (other than Editorial Content) features a model or property in connection with a subject that would be unflattering or controversial to a reasonable person, accompany each such use with a statement that indicates that the Licensed Content is being used for illustrative purposes only, and any person depicted in the Licensed Content (if any) is a model; and
  - 8.1.9 maintain a strong firewall to safeguard against unauthorised access to the Licensed Content. On request the Licensee shall provide full details of such firewall to Demotix.
- 8.2 Upon reasonable notice, (i) the Licensee shall provide to Demotix sample copies of a Copy containing Licensed Content, and (ii) Demotix may – using its own employees or a third party – audit the Licensee's records which are related to the use of Licensed Content in order to verify compliance with the terms of this Licence. Should Demotix reasonably believe that Licensed Content is being used outside of the scope of the terms hereunder, the Licensee shall, at Demotix' request, provide a letter signed by an officer of the Licensee in a form to be approved by Demotix, stating compliance with the Licence.
- 8.3 The Licensee shall not:
- 8.3.1 breach any code of practice for publication, shall not use the Licensed Content for any use which is pornographic, defamatory, damaging to the reputation of Demotix, or unlawful, and shall not otherwise store the Licensed Content transiently or permanently on any medium or transfer or transmit or Copy or loan to any third party or publish or otherwise exploit, modify or create derivative works from or combine with any other material the Licensed Content except to the extent necessary to exercise the rights granted hereunder;
  - 8.3.2 save as permitted herein, assign, (sub-)license, distribute or transfer the Licensed Content or any rights granted or obligations imposed hereunder without Demotix's prior written consent, nor shall the Licensee assign, (sub-)license, distribute or transfer any derivative work which contains the Licensed Content in a way that would allow a third party to download, extract or otherwise access and use the Licensed Content as a standalone file;
  - 8.3.3 use, or permit third parties to use, the Licensed Content in any way which is contrary to the terms of this Licence or any restriction on use that is provided to the Licensee before or at the time of delivery of the Licensed Content, whether included in the Licensed Rights or any other written communication from Demotix, and all such restrictions which are provided to the Licensee shall be incorporated into and become part of this Licence;
  - 8.3.4 incorporate the Licensed Content in any logo, trade mark or service mark;
  - 8.3.5 unless expressly agreed with Demotix, make any alterations or modifications to the Licensed Content save for such alterations or modifications only as are strictly necessary to enable the Licensee to exercise its rights under this Licence;

- 8.3.6 in any form Copy or publicise the final product of the licensed use of the Licensed Content in any secondary reproductions (including without limitation screen shots and compilations) unless otherwise agreed with Demotix in writing in advance or otherwise authorised by law (failing which an additional licence may be required and additional fees fall due);
  - 8.3.7 make available or assist others in making available the Licensed Content for use by any third party other than as expressly permitted in this Licence, nor shall the Licensee assign, (sub-)license, distribute or transfer any derivative work which contains the Licensed Content in a way that would allow a third party to download, extract or otherwise access and use the Licensed Content as a standalone file, other than as expressly stated in this Licence or as otherwise agreed between the parties in writing;
  - 8.3.8 modify, re-purpose or re-configure for use in any mobile-directed websites or mobile application that are specifically created for viewing of Licensed Content on mobile devices, without obtaining Demotix's prior written consent;
  - 8.3.9 do, or authorise any third party to do, any act which would or might invalidate or be inconsistent with any Intellectual Property Rights of Demotix or any third party in the Licensed Content and shall not omit, or authorise any third party to omit to do, any act which by its omission would or might invalidate or be inconsistent with any Intellectual Property Rights of Demotix or any third party in the Licensed Content;
  - 8.3.10 infringe or seek to challenge or permit any third party to infringe or challenge the validity of Demotix's Intellectual Property Rights; nor
  - 8.3.11 without prejudice to the generality of the foregoing, do anything with the Licensed Content which is in breach of or otherwise inconsistent with the moral rights of the authors of the Licensed Content.
- 8.4 The Licensee shall promptly and fully notify Demotix of any actual, threatened or suspected infringement (in the territory in which the Licensee is permitted to use the Licensed Content) of any Intellectual Property Rights of Demotix or of any of Demotix's contributors of Licensed Content, or any other rights in the Licensed Content which comes to the Licensee's notice; of any claim by any third party coming to its notice that the Licensed Content and/or the exercise by the Licensee of its rights hereunder infringes the Intellectual Property Rights or other third party rights; and if the Licensee becomes aware or suspects that any third party has gained access to the Licensed Content through the Licensee (or the Licensee's Subscriber Account) or that any third party is wrongfully using the Licensed Content.
- 8.5 If the Licensee becomes aware, or is notified by Demotix, that the Licensed Content is subject to a threatened or actual claim of infringement, violation of another right, or another other claim for which Demotix may be liable, or if Demotix withdraws any Licensed Content for any good reason, the Licensee shall physically remove the Licensed Content from its premises, computer systems and storage and, if possible, cease any future use at its own expense. Demotix shall free of charge provide the Licensee with comparable Licensed Consent (such comparability to be judged by Demotix in its reasonable judgment), subject to the terms of this Licence.
- 8.6 The Licensee shall at the request and reasonable expense of Demotix do all such things as may be reasonably required to assist Demotix in taking or resisting any proceedings in relation to any infringement or claim and in maintaining the validity and enforceability of the Intellectual Property Rights of Demotix in the Licensed Content. If Demotix takes legal proceedings at its own expense, Demotix will be entitled to retain the entire proceeds recovered in those proceedings, including any sums ordered to be due to the Licensee. Demotix will be under no obligation to take any action in the event of infringement.

## **9. RELEASES**

- 9.1 Demotix will notify the Licensee in writing if it has obtained a model release and/or other property release for the Licensed Content. However, whether or not Demotix obtains a model and/or property release, the Licensee shall be solely responsible for obtaining prior to use of the Licensed Content any required releases, consents and clearances in relation to the use of the relevant Licensed Content and for determining the contents of such releases, consents and clearances. As to any release delivered by Demotix, neither Demotix nor any licensor makes any representation, warranty or guarantee as to its sufficiency in relation to any use of the Licensed Content.
- 9.2 If any Licensed Content (other than Editorial Content) featuring a model or property is used in connection with a subject that would be unflattering or controversial to a reasonable person, the Licensee must accompany each such use with a statement that indicates that the Licensed Content

is being used for illustrative purposes only, and any person depicted in the Licensed Content, if any, is a model.

- 9.3 The Licensee acknowledges that in some jurisdictions legal protection is provided against use of a person's image, likeness or property for commercial purposes without that person's consent. Neither Demotix nor any party on whose behalf Demotix licenses Licensed Content represent or warrant as to whether any additional payments are due to any such person, and the Licensee shall be solely responsible for any such additional payments.

## **10. INDEMNITY**

- 10.1 The Licensee hereby agrees to indemnify, release and hold harmless Demotix as well as its officers, directors, agents, representatives and employees against any loss, injury or damage, actions, claims, proceedings, liabilities, expenses, demands, costs (including reasonable legal costs, and including any compensation, costs and disbursements paid by Demotix to compromise or settle any claim) which arise out of, or as a result of, claims by third parties relating to (i) the Licensee's use of the Licensed Content; or (ii) a breach of any of the Licensee's obligations under the terms of this Licence; (iii) Licensee's failure to obtain any required release; and (iv) the infringement by the Licensee of any Intellectual Property Right or other right of any person or entity.
- 10.2 This indemnity covers, without limitation, any use of Licensed Content in a manner not expressly authorised by this Licence and includes without limitation a breach of a term of this Licence which may constitute copyright infringement, entitling Demotix to exercise all rights and remedies available to it under copyright laws around the world. The Licensee shall be responsible for any damages resulting from any such copyright infringement, including any claims by a third party.
- 10.3 In addition, and without prejudice to Demotix's other remedies under this Licence, Demotix reserves the right to charge, and the Licensee agrees to pay, a fee equal to up to 10 (ten) times Demotix's relevant standard Fee for the unauthorised use of the Licensed Content.
- 10.4 This indemnity clause will survive this Licence and the Licensee's use of the Licensed Content hereunder.

## **11. RE-CLASSIFICATION, WITHDRAWAL, TERMINATION, CANCELLATION**

- 11.1 Demotix reserves the right at any time at its sole discretion and with immediate effect (i) to re-classify and/or move the Licensed Content to another database (including without limitation the archive database), (ii) to withdraw the right to use the Licensed Content, and (iii) to terminate the Licence, the Licensee's Subscriber Account and access to the Website. Demotix shall give written notice to the Licensee of such re-classification, withdrawal and termination.
- 11.2 Upon expiry or termination of this Licence, the Licensee shall immediately cease all use, publication and distribution in any and all media of the Licensed Content and destroy or delete all copies of the Licensed Content (whether digital, physical or otherwise) including all partial or modified versions of the Licensed Content, and ensure that its subcontractors, clients and customers do likewise. The Licensee shall upon Demotix's reasonable request provide Demotix with a sworn statement by an officer of the Licensee attesting to such deletion and/or destruction, and shall comply with any additional reasonable directions Demotix may give under this clause. Without prejudice to the foregoing, and unless this Licence was terminated because of the Licensee's breach of its obligations under this Licence, the Licensee is permitted to continue using the final products into which the Licensed Content was incorporated during the Term. For the avoidance of doubt, Licensed Content must not be used in a new product or for the first time after expiry of the Term or termination, whichever is the earlier.
- 11.3 Where, following service of a notice under clause 11.1 Demotix reasonably believes that the Licensed Content is continuing to be distributed, the Licensee shall at Demotix's request provide a sworn statement detailing any continued use of the Licensed Content and any third parties to whom the Licensed Content may have been distributed in order that Demotix can provide details of the same to any authority, governmental or investigative body or rights owner who are investigating or querying the same.

## **12. WARRANTY AND LIABILITY OF DEMOTIX**

- 12.1 The Licensee acknowledges that it shall use the Licensed Content at its own risk.
- 12.2 Whilst Demotix takes all reasonable care in the creation, selection and assembly of the Licensed Content, the Licensed Content is provided on an "as is" and "as available" basis. Whilst efforts have been made to correctly caption the subject matter of the Licensed Content, Demotix does not

- warrant that such information is accurate, save where stated otherwise in this Licence. Without prejudice to clause 12.3, and to the fullest extent possible pursuant to applicable law, Demotix, its affiliates, service providers and licensors disclaim all warranties, express, implied, statutory or otherwise, in relation to the subject matter of this Licence.
- 12.3 Demotix warrants that it has all the necessary rights and authority to enter into and perform this Licence, that the Licensed Content will be free from defects in material and workmanship for thirty days from delivery. The representations and warranties made by Demotix in this Licence apply only to the extent that the Licensed Content is used by the Licensee as authorised in this Licence.
- 12.4 In particular, but without limitation, and to the fullest extent possible pursuant to applicable law, Demotix makes no representation or warranty as to:
- 12.4.1 whether any additional fees or payments may be due to any person depicted in the Licensed Content which fees shall solely be the responsibility of the Licensee;
  - 12.4.2 the use of names, people, trade marks, trade dress, logos, registered, unregistered or copyrighted audio, designs or works of art or architecture depicted in any Licensed Content;
  - 12.4.3 the sufficiency of any release delivered with the submission of any Licensed Content; and
  - 12.4.4 the accuracy, validity or authenticity of the Licensed Content .
- 12.5 To the fullest extent possible pursuant to applicable law, Demotix shall not be liable to the Licensee or any other person or entity:
- 12.5.1 for any loss, injury or damage, actions, claims, proceedings, demands or costs incurred or suffered by the Licensee or any third party, whether directly or indirectly, arising out of the Licensee's use of this Licence including without limitation:
    - (a) any alleged or actual defect in any of the Licensed Content or in any way from its use;
    - (b) the refusal or failure of the Licensee to cease distribution of, or to delete, all copies and versions of the Licensed Content in respect of which a notice has been served by Demotix pursuant to clause 11.1;
    - (c) the refusal or failure of the Licensee to use any modified version or new release of the Licensed Content supplied by Demotix to the Licensee to replace or complement an earlier version or release;
    - (d) the unauthorised alteration or modification of the Licensed Content or the combination of the Licensed Content with other material or software not licensed by Demotix;
  - 12.5.2 for loss of data or corruption of data, loss of programs, loss (whether direct or indirect) of goodwill, reputation, profits, business or business opportunities or anticipated savings or for any special, indirect, incidental or consequential loss or damage whatsoever.
- 12.6 Provided the Licensed Content is only used in accordance with this Licence and the Licensee is not otherwise in breach of any of the terms hereunder, and as Licensee's sole and exclusive remedy for any alleged or actual breach of the representations and warranties set forth in clause 12.3 above, Demotix shall, subject to clauses 12.7 and 12.8, defend, indemnify and hold the Licensee and its officers, directors, agents, representatives and employees harmless from all damages (except punitive damages not directly attributable to acts of Demotix), liabilities and expenses (including reasonable legal fees and permitted and authorised costs) arising out of or connected with any actual or threatened legal proceedings alleging that Demotix is in breach of its warranties given hereunder. The foregoing states Demotix's entire indemnification obligation under this Licence.
- 12.7 The Licensee shall promptly notify Demotix of any claim in respect of which it seeks indemnification pursuant to clause 12.6. At Demotix's option, Demotix may assume the handling, settlement or defence of any claim or litigation, in which event the Licensee shall cooperate in the defence of any such claim or litigation. The Licensee shall have the right to participate in such litigation, at its expense, through counsel selected by the Licensee. Demotix will not be liable for legal fees and other costs incurred prior to the Licensee giving notice of the claim for which indemnity is sought.
- 12.8 Subject to clause 12.9, Demotix's maximum aggregate liability under or in connection with this Licence, whether in contract, tort (including negligence) or otherwise, will in no circumstances exceed the total Fee paid by the Licensee in respect of the Licensed Content.

12.9 Nothing in the Licence is intended to exclude or limit Demotix's liability for death or personal injury caused by its negligence, for fraud or any other liability that cannot be excluded or limited under applicable law.

### **13. GENERAL**

13.1 Any notice, consent or similar communication ("**Notice**") given under the Licence shall not be binding unless in writing and may be given personally or sent to the party to be notified by pre-paid first class post or by electronic mail or facsimile transmission at its address as notified to the other. Notice given personally shall be deemed given at the time of its delivery. Notice sent by post in accordance with this clause shall be deemed given at the commencement of the second business day of the recipient following its posting. Notice sent by electronic mail or facsimile transmission in accordance with this sub-clause shall be deemed given at the time of its actual transmission provided that the sender does not receive any indication that the electronic mail message or facsimile transmission has not been successfully transmitted to the intended recipient.

13.2 The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of the Licence shall not be a waiver of them or of the right at any time subsequently to enforce any or all such terms and conditions.

13.3 Variations to this Licence will only be valid if they have been signed by the authorised signatories of the parties.

13.4 Nothing in the Licence shall create or be deemed to create a partnership or the relationship of principal and agent between the parties and the Licensee shall have no right or authority to bind or to make any representation or warranty on behalf of Demotix.

13.5 Other than as expressly stated in this Licence, this Licence is not intended to create any right enforceable by any person not a party to it.

13.6 All rights and remedies available to the parties under the terms of the Licence and under the general law shall be cumulative and no exercise by either of the parties of any such right or remedy shall restrict or prejudice the exercise of any other right or remedy granted hereunder or otherwise available to it.

13.7 If any provision of the Licence is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or indications of this are received by either of the parties from any relevant competent authority, the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of Demotix it may be deleted from the Licence and in either event the remaining provisions of the Licence shall remain in full force and effect.

13.8 This Licence contains the whole agreement between the parties and supersedes any prior written or oral agreements, representations or understandings between the parties in relation to its subject matter. The parties confirm that they have not entered into this Licence on the basis of any agreement, representations or understandings which are not expressly incorporated into the Licence. No oral explanation or oral information given by any party shall on its own, without written confirmation, alter or affect the interpretation of the Licence.

13.9 The Licence shall be governed by and construed according to the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts.

### **I HAVE READ AND ACCEPT DEMOTIX'S LICENCE FOR THE USE OF LICENSED CONTENT**

### **I do not accept Demotix's Licence for the Use of Licensed Content**