

FCA DBAAT LICENSING AGREEMENT

Your right to use the DBAAT is subject to the terms of this DBAAT Licence Agreement (Agreement), please read this Agreement carefully before accessing or using the DBAAT. By accessing the DBAAT you confirm your acceptance of the terms of this Agreement. If you do not understand or accept the terms in full you must not use the DBAAT.

PARTIES

(1) The Financial Conduct Authority (FCA) of 12 Endeavour Square London, United Kingdom, E20 1JN (**Licensor**)

(2) You the licensee (**Licensee or You**)

BACKGROUND

- (A)** The Licensor has created the DBAAT (as defined below).
- (B)** In consideration of You as Licensee agreeing to the terms of this Agreement the Licensor is willing to grant You the Licensee a non-exclusive licence to use the DBAAT as permitted by this Agreement.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement.

1.1 Definitions:

DBAAT: the methodology, instructions and tool designed and developed by the FCA for the purposes of assessing the quality of advice provided in relation to defined benefit pension transfers, known as the Defined Benefit Advice Assessment Tool (DBAAT), including any improvements or derivatives of the same.

DBAAT Rights: all copyright, design and moral rights subsisting in the DBAAT in any part of the world to which the Licensor is, or may become, entitled. The Licensor, being the sole author of the DBAAT, asserts the Licensor's moral right under Chapter 4 of the Copyright, Designs and Patents Act 1988 to be identified as the author of the DBAAT.

Person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2. GRANT OF LICENCE

2.1 The Licensor hereby grants to the You the Licensee a non-exclusive royalty-free licence under the DBAAT Rights to do the following acts for the term of this Agreement, subject to, and in accordance with, the terms of this Agreement:

- (a) reproduce and apply the DBAAT in accordance with the Licensor's operating instructions solely for the purposes of a defined benefit pensions suitability of advice review and/or to understand the FCA's file review methodology for defined benefit pension transfers; and
- (b) to download a copy of the DBAAT from the FCA's website or the purposes stated at 2.1(a).

2.2 You the Licensee must not and must not permit others to:

- (a) Use, copy or transfer the DBAAT and DBAAT instructions other than as permitted by this Agreement; and/or
- (b) Sub-licence, distribute, rent, loan, lease or deal in the DBAAT and DBAAT instructions whether for commercial gain or otherwise; and/or
- (c) Alter, adapt or modify the DBAAT and DBAAT instructions; and/or
- (d) Remove, change or obscure any of the Licensor's identification markings or notices or proprietary rights on the DBAAT or DBAAT instructions.

3. QUALITY CONTROL AND MARKING

- 3.1** You the Licensee shall ensure that the DBAAT is reproduced and applied diligently and in the form specified by the Licensor and in accordance with the Licensor's accompanying DBAAT instructions.
- 3.2** You the Licensee shall reproduce the DBAAT without any substantial alteration or amendment, save where prior approved by the Licensor in writing.
- 3.3** You the Licensee shall ensure that, in reproducing and applying the DBAAT and in any communications with third parties concerning the DBAAT, the Licensor (as FCA) will be credited as the originators of the DBAAT. You the Licensee will also ensure that any reproductions of the DBAAT will be marked with a notice in the following terms:

© Copyright FCA 2021

4. PROTECTION OF THE DBAAT RIGHTS

- 4.1** You the Licensee will take all reasonable steps to maintain confidentiality in the Licensor's confidential and proprietary information relating to the DBAAT.
- 4.2** You the Licensee will not use the existence of the non-exclusive licence granted under this Agreement to market, promote or otherwise commercially exploit the DBAAT or related services to any Persons.

- 4.3** You the Licensee shall immediately notify the Licensor in writing giving full particulars if any of the following matters come to your attention:
- (a)** any actual, suspected or threatened infringement of the DBAAT or DBAAT Rights;
 - (b)** any claim made or threatened that the DBAAT infringes the rights of any third party; or
 - (c)** any other form of attack, charge or claim to which the DBAAT may be subject.
- 4.4** In respect of any of the matters listed in Clause 4.3:
- (a)** the Licensor shall, at its absolute discretion, decide what action to take, if any;
 - (b)** the Licensor shall have exclusive control over, and conduct of, all claims and proceedings;
 - (c)** You the Licensee shall not make any admissions other than to the Licensor and shall provide the Licensor with all assistance that the Licensor may reasonably require in the conduct of any claims or proceedings; and
 - (d)** the Licensor shall bear the cost of any proceedings and shall be entitled to retain all sums recovered in any action for its own account.

5. INDEMNITY AND LIABILITY

Limited Warranty

- 5.1** The Licensor warrants to You the Licensee that to the best of the Licensor's knowledge the DBAAT constitutes all the intellectual property that the Licensor owns that it is able to make available to You the Licensee pursuant to this Agreement and does not infringe the intellectual property rights of any Person.
- 5.2** The Licensee warrants to You as original Licensee that the DBAAT when used properly will perform substantially as described in the DBAAT instructions and the media on which the DBAAT is recorded will be free from defects in the material under normal use.
- 5.3** The Licensor's entire liability and You the Licensee's exclusive remedy given in section 5 of this Agreement will be at the Licensor's sole option either to repair or replace the DBAAT media or part of that does not conform with the Warranty.

Exclusion of any other Warranties

- 5.4** The Licensor has the benefit of certain statutory immunities under UK law, including under Schedule 1ZA of the Financial Services and Markets Act 2000.
- 5.5** Without prejudice to the Licensor's statutory immunity explained at 5.3, in no event will the Licensor be liable for any direct, consequential, incidental, or special damage or loss of any kind (including without limitation loss of profits, loss of contracts, business interruptions, loss of or corruption to data) however caused and whether arising under contract, tort, including negligence or otherwise. You the Licensee acknowledge that how and for what purposes the DBAAT is used by You is not within the Licensor's control.
- 5.6** Nothing in this Agreement excludes or restricts the liability of the Licensee or Licensor to each other for (a) death or personal injury resulting from negligence or (b) any other circumstances that cannot be limited by law.

Indemnity

- 5.7** You the Licensee shall hold harmless and indemnify the Licensor against all claims, demands, liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Licensor arising out of or in connection with the Licensee's access to and use of the DBAAT and DBAAT instructions including any actions taken by You or a third party.
- 5.8** The provisions of this clause 5 shall survive the termination of this Agreement however arising.

6. ASSIGNMENT AND OTHER DEALINGS

- 6.1** You the Licensee shall not assign, transfer, mortgage, charge, sub-license, sub-contract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the Licensor.

7. DURATION AND TERMINATION

- 7.1** This Agreement shall commence on the day that you the Licensee access the DBAAT and shall continue until terminated in accordance with the following provisions.
- 7.2** This licence Agreement will terminate automatically without any further notice or action from the Licensor if You the Licensee:
- (a)** commit any breach of this licence which is material and not capable of remedy, or which is capable of remedy but which is not remedied within 14 days of notice from the Licensor to do so; or

(b) become bankrupt, insolvent, go in to liquidation, are the subject of a winding up petition, enter into an arrangement with creditors, have an administrator, administrative receiver or receiver appointed.

- 7.3** The Licensor may terminate the licence at any time and/or withdraw the DBAAT and DBAAT instructions for reasons of the Licensor's convenience without further notice.
- 7.4** You the Licensee may terminate the licence at any time by destroying all copies you hold of the DBAAT and DBAAT instructions and ceasing to use the DBAAT.
- 7.5** Upon termination of the licence for any reason You the Licensee will destroy all copies of the DBAAT and DBAAT instructions that you hold in any form including back-up copies. Any use of the DBAAT after termination of the licence is unlawful.
- 7.6** Provided the Agreement has not been terminated for the reasons in 7.2, you the Licensee may continue to retain one copy of the DBAAT on an unsupported basis for audit purposes.
- 7.7** Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

8. WHOLE AGREEMENT AND RIGHTS OF THIRD PARTIES

- 8.1** This Agreement constitutes the entire agreement between You the Licensee and the Licensor in respect of the DBAAT. If any part of the Agreement is held by a court of competent jurisdiction to be unenforceable the validity of the remainder of the Agreement will be unaffected.
- 8.2** This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

9. GOVERNING LAW AND JURISDICTION

- 9.1** This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 9.2** The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

If you have any questions about this Agreement please contact the FCA at 12 Endeavour Square London E20 1JN UK. Telephone 0207 066 1000.