

## LICENCE AGREEMENT

### FOR EDUCATIONAL INSTITUTIONS

## 1 Definitions and Interpretation

### 1.1 Definitions

In this Agreement except to the extent the context requires otherwise:

**Commencement Date** means the date set out in the Schedule (to be completed by CC);

**Educational User** means an employee, staff member or student of the Licensee;

**Fee** means the fee set out in the Schedule;

**GST** means a goods and services tax imposed by legislation enacted by the Australian Government.

**Material** means all data, documents, including (without limitation) lesson plans, teaching materials and student activity sheets and all other information available on the resourcebank website;

**Term** means twelve months from the Commencement Date; and

**Terms and Conditions** means the terms and conditions of use on the resourcebank website.

### 1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) headings and boldings are for convenience only and do not affect the interpretation of this Agreement;
- (b) a reference to the singular includes the plural and vice versa;
- (c) a reference to a natural person includes any company, partnership, joint venture, association, corporation or other body corporate;
- (d) a reference to a clause, party, or schedule is a reference to a clause of, and a

schedule to, this Agreement and a reference to this Agreement includes any annexure, exhibit and schedule;

- (e) a reference to a document includes all variations, amendments or supplements to, or replacements of, that document; and
- (f) a reference to a party to a document includes that party's successors and permitted assigns.

## 2 Term of Agreement

This Agreement will commence on the Commencement Date and continue until the expiry of the Term, unless terminated earlier by either party in accordance with clause 10.

## 3 Scope of Agreement

In consideration of the Fee, CC grants to the Licensee a non-transferable, non-exclusive licence to access and use the Material for the Term on the terms and conditions of this Agreement.

## 4 Licence

4.1 The licence granted under clause 3 entitles the Licensee to provide an Educational User with access to the Material to:

- (a) display the Material on a whiteboard or computer monitor; and/or
- (b) print the Material

for the sole purpose of the conduct of the teaching or studies (as the case may be) of an Educational User provided the copyright notice on each page is retained and such access is in accordance with the Terms and Conditions.

4.2 All intellectual property rights in the Material vests in Curriculum Corporation unless otherwise indicated and the Licensee must not:

- (a) copy, communicate, publish, perform, distribute, modify, enhance or adapt the Material;

## LICENCE AGREEMENT

### FOR EDUCATIONAL INSTITUTIONS

- (b) unless otherwise permitted by law, reverse assemble or reverse compile the whole or any part of the Material or permit a third party to do so;
- (c) provide the Material directly or indirectly to any third party other than an Educational User;
- (d) except as permitted by this Agreement, exercise any of the intellectual property rights of CC;
- (e) transfer, lease, sell, assign or otherwise dispose of the Material in whole or part, including (without limitation) any search results or output from the Material; and
- (f) must not permit an Educational User to transmit any virus of disruptive or disabling feature to the Material.

#### 5 Registration and access

The Licensee is solely responsible for the security of and access to the Material through its computer system.

The Licensee must ensure that no person other than an Educational User may access the Material through the Licensee's computer systems.

The Licensee may share the assigned username and password with its Educational Users, and may post the username and password on restricted websites or intranets that are accessible only by Educational Users. The Licensee must not disseminate the username and password to any other person or organisation.

#### 6 Access to other websites

The Licensee acknowledges that the Material may contain hyperlinks which refer users, including Educational Users, to websites which are not necessarily maintained, governed, approved, sponsored or endorsed by CC. The Licensee acknowledges and agrees that (a) permitting or restricting access to such other websites by

Educational Users through use of the Material is the sole responsibility of the Licensee; and (b) CC will not be liable for the accuracy, quality, fitness for purpose or otherwise of any material on such other websites or any loss or damage suffered by the Licensee or an Educational User in reliance on material on such other websites.

#### 7 Fee

The Fee is due and payable by the Licensee annually in advance and must be paid within 30 days of receipt of an invoice from CC.

If this Agreement is terminated within 14 days of the Commencement Date, CC will refund to the Licensee in full the Fee paid.

The consideration payable for any supply under this Agreement is inclusive of any GST.

#### 8 Rights of CC

CC may vary, add or remove Material at any time without notice.

#### 9 Limitation of liability

- (a) CC assumes no responsibility for the selection or use by the Licensee of the Material and does not warrant that the Material is fit for any particular purpose to which the Licensee proposes to put the Material or that the use of the Material will be uninterrupted, error free, without defect or without other harmful component.
- (b) CC does not warrant that Material is accurate, complete or up to date or that it does not contain unintentional errors.
- (c) CC will not be liable to the Licensee for any direct, indirect, consequential or indirect damages (including, without limitation, loss of profit, opportunity or information) arising out of use of, or inability to use, the Material by the Licensee or the Educational Users.

## LICENCE AGREEMENT

### FOR EDUCATIONAL INSTITUTIONS

- (d) CC will not be liable to the Licensee for any direct, indirect, consequential or indirect damages (including, without limitation, loss of profit, opportunity or information) arising out of the use of any website referred to in the Material or linked by the Material.
- (e) CC makes no representations and gives no warranties as to the suitability or compatibility of the Licensee's computer systems to access and use the Material and the Licensee acknowledges it has relied on its own inquiries in this regard.
- (f) All representations and warranties, other than those expressly set out in this Agreement and those implied by statute which cannot be excluded by agreement, are excluded.
- (g) To the extent that any statute implies into this Agreement any condition or warranty which cannot be excluded by Agreement, then CC's liability for breach of any such warranty shall be, in the case of the supply of goods, at CC's option repairing the goods, replacing the goods or paying the cost of repairing or replacing the goods and, in the case of the supply of services, at CC's option resupplying the services or paying the cost of resupplying the services.

#### 10 Legislative, regulatory and government requirements

The Licensee acknowledges it is solely responsible for complying with all legislative, regulatory and other government requirements for itself and any Educational User in connection with use of the Material.

#### 11 Confidential information

Each party undertakes to the other to keep confidential any confidential information of the other party disclosed to it and not to disclose it to any other person, nor use for any purpose other than the purpose for which it was disclosed to that party, without the prior written consent of the disclosing party or unless required by law.

#### 12 Termination

CC may terminate this Agreement with immediate effect:

- (a) at any time by informing the Licensee in writing of termination; or
- (b) if the Licensee commits any breach of the terms of this Agreement or infringes the intellectual property rights of CC.

Immediately upon termination of this Agreement for any reason, the Licensee must return to CC copies of all Material and any confidential information.

#### 13 General

- 13.1 (a) The Licensee must not assign any or all of its rights, benefits or obligations under this Agreement without the prior written consent of CC.
- (b) CC may assign its rights, benefits or obligations under this Agreement by giving notice of such assignment to the Licensee.
- 13.2 This Agreement is governed by the laws in force of the State of Victoria and the parties submit to the jurisdiction of any court applying those laws.
- 13.3 Failure or delay by either party in enforcing any of the terms or conditions of this Agreement will not constitute a waiver of the party's rights to enforce that or any other term or condition of this Agreement.
- 13.4 If the performance of this Agreement or of any obligation under it, except the making of payments under or in connection with this Agreement, a party is prevented, restricted or interfered with by reason of any act or condition beyond the reasonable control of the party, that party will be excused from such performance to the extent of the same, but will use all reasonable efforts to avoid or remove the causes of non-performance and to cure and complete performance as soon as possible.



## LICENCE AGREEMENT

### FOR EDUCATIONAL INSTITUTIONS

- 13.5 Any notice or other communication required to be given under this Agreement will be sufficiently given to either party if the notice or communication is in writing and forwarded by post, facsimile or e-mail to the registered address or usual or last known place of business or abode of the relevant party. Every notice will be deemed to have been received and given at the time when in the ordinary course of transmission or delivery it should have been delivered or received at the address to which it was sent.
- 13.6 The clauses in this Agreement are severable from one another. If one or more of the clauses in the Agreement are found to be unenforceable they must be severed from this Agreement and the Agreement will remain enforceable.
- 13.7 This Agreement:
- (a) is the entire Agreement between the parties and supersedes all other oral and written communications, understandings and arrangements between the parties with respect to the subject matter of this Agreement; and
  - (b) may be modified by CC at any time by notice in writing.
- 13.8 The rights, powers, remedies of a party under this Agreement are cumulative with the rights, powers or remedies provided by law independently of this Agreement.