

DEED OF LICENCE TO SUPPLY CONTENT TO EDUCATIONAL BODIES

dated _____ 2007

Parties:

Curriculum Corporation of Level 5 Casselden Place, 2 Lonsdale Street, Melbourne, Victoria, ABN 18 007 342 421

(‘Us’)

and

[insert name of party] of [insert address] ABN [insert]

(“You”)

Background:

- A. The Le@rning Federation Initiative is a collaborative, coordinated programme instituted by all Australian and New Zealand governments aimed at generating online curriculum content, and information systems required to deliver such content, for the benefit of schools and other educational institutions in Australia and New Zealand. The Le@rning Federation Initiative is managed by Us.
- B. We have agreed to grant Educational Bodies the right to Use various content for their educational purposes.
- C. We grant You a Licence to Develop certain Content, and to Supply it as part of certain Supplementary Works, to Educational Bodies licensed by Us, on the terms of this Deed.

Operative Part:

1. INTERPRETATION

1.1. In this Deed, unless the context indicates otherwise:

Communicate means to communicate to the public within the meaning of the *Copyright Act 1968* (Cth) for instance by making the Content available online where it can be accessed by recipients, or by emailing it to recipients (compare ‘**Distribute**’) and Communication is to be similarly construed

Conditions of Use means the document headed ‘Conditions of Use’ which summarises the conditions applicable to the Use of the Content.

Copy	in relation to the Content, means a reproduction in the same or a different medium, but without any alteration of the Content.
Content	means the particular multimedia known as learning objects and digital resources and their component items such as: text, pictures, simple animation, sound, full motion video and computer coding or script that is necessary to provide in-built functionality of the learning object or the digital resource, as well as any associated metadata and Electronic Rights Management Information, being the learning objects and/or digital resources which are set out in Schedule A to this Deed. The learning objects and digital resources are intended primarily to inform or entertain a user, and include related content which facilitates such purposes.
Deed	means this Licence Deed to Supply Content to Educational Bodies .
Develop	means to make a Derivative of the original Content.
Derivative	means any work derived from or developed from Content, including: <ul style="list-style-type: none"> — an Edited Version — an Enhancement — a Supplementary Work
Distribute	means to Supply Copies of the Content to Educational Bodies (compare ' Communicate ') and Distribution shall be similarly construed.
Edited Version	means a modified version of the Content in which the changes made are of such a minor nature that no fresh layer of copyright can be said to arise
Educational Body	means one or more of the following bodies in Australia or New Zealand: <ul style="list-style-type: none"> — an education department — a peak association administering one or more Catholic or independent non government schools — a school, including a school student or the parent of a school student — a tertiary institution

Electronic Rights Management Information	<p>means information:</p> <ul style="list-style-type: none"> — identifying the Content, the author and/or copyright owner, including the acknowledgments statement — indicating conditions on which the Content may be used, including the Conditions of Use.
Enhancements	<p>means modifications to the Content in which new copyright arises, but only to the extent that the Enhancements cannot meaningfully inform or entertain independently of the original Content.</p>
Intellectual Property Rights	<p>means any and all intellectual and industrial property rights throughout the world including rights in respect of or in connection with inventions (including) patents, designs, circuit layouts, copyright (including future copyright and rights in the nature of and analogous to copyright), confidential information and trade marks.</p>
Licence	<p>means the licence granted by Us to You by the operation of this Deed.</p>
Moral Rights	<p>Includes the following rights of an author of the Content:</p> <ul style="list-style-type: none"> — the right of attribution of authorship — the right of integrity of authorship — the right not to have authorship falsely attributed
Rights	<p>means any rights which may be granted by Us to a licensee under a licence, and includes:</p> <ul style="list-style-type: none"> — User Rights — Communication Rights — Development Rights — Supply Rights --- Sublicensing Rights.
Schedule	<p>means a schedule to this Deed</p>
Service Fee	<p>means the fee payable by you to Us in connection with the cost of issuing and managing the Licence, as determined by Us in our discretion</p>
Sublicense	<p>means to grant permission for a third party to exercise Rights of a licensee in relation to the Content.</p>
Supplementary Works	<p>means the works which append the Content, and which have some capacity to inform or entertain independently of the Content</p>
Supply	<p>means to Distribute Copies of the Content to Educational Bodies.</p>

Technological Protection Measure	means a device or process designed to inhibit infringement of copyright in that Content by either of the following: <ul style="list-style-type: none"> — by ensuring that Content is accessible solely by use of an access code or process approved on behalf of the copyright owner — through a copy control mechanism.
Us, We, Our	means Curriculum Corporation.
Use	as a verb - means to read, view, play, perform, operate or execute the Content (depending on its nature and format), within the functionality that is offered by CC to an ordinary user. The term User Rights shall be similarly construed and accordingly does not (in itself) include the right to reverse engineer, de-compile or otherwise circumvent a Technological Protection Measure.
You, Your	means [insert name of party]

- 1.2. In this Deed, unless the contrary intention appears:
- a) a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
 - b) if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
 - c) a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

2. COMMENCEMENT AND DURATION

- 2.1. Your Licence to Supply the Content to Educational Bodies commences on the date this Deed is signed.
- 2.2. The Licence is perpetual.
- 2.2. Upon the termination of the Licence under this Agreement, You must
- (a) immediately cease to Supply the Content to Educational Bodies
 - (b) cease storing it in any medium whatsoever, whether electronically or in hard copy; and
 - (c) destroy all copies of the Content in Your possession and control or return them to Us.

3. GRANT OF LICENCE

- 3.1. Ownership of all Intellectual Property Rights in the Content vests in Us.

- 3.2. We grant You a non-exclusive, non-transferable Licence to:
- (a) Develop the Content; and
 - (b) Supply the Content to those Educational Bodies which receive a licence from Us to Use the Content,
- on the terms of this Deed.
- 3.3. Any variation to the amount or type of content You have a Licence to Develop and Supply under this Deed must be agreed in writing, and any such agreement is to be appended as an attachment to Schedule A.
- 3.4. Your Right to Develop the Content is limited to making:
- (a) an Edited Version of it as set out in Schedule B; and
 - (b) Supplementary Works of it as set out in Schedule C.
- 3.5. Your Right to Supply the Content is limited to Supplying it:
- (a) in the form of an Edited Version as set out in Schedule B; and
 - (b) as part of a Supplementary Work as set out in Schedule C.
- 3.5 You must, when developing an Edited Version, ensure that the following words, or words to the same effect, appear on the Edited Version and that the description of Intellectual Property Rights owner is correct:
- The intellectual property rights in this work are owned by Curriculum Corporation. This item is [reproduced by **insert name of party**] under licence from Curriculum Corporation.*
- 3.6 You must clearly state in any Edited Version of the Content and any Supplementary Work that the Content is complimentary and provided as part of the Users' right to use the Content under their existing licence with Us.
- 3.7 You must clearly state in any Supplementary Work that inclusion of the Content with the Supplementary Work does not constitute endorsement of the Supplementary Work by Curriculum Corporation or The Learning Federation Initiative.
- 3.8 Any Supplementary work You make must:
- (a) have educational value;
 - (b) not be immoral or unethical;
 - (b) not bring Us into disrepute; and
 - (c) have relevance and be appropriate to the Content it supplements.
- 3.9 You will provide us with a complimentary copy of any Supplementary Work you develop upon its creation.

4. **RIGHTS NOT GRANTED UNDER THE LICENCE**

4.1 This Licence does not grant You the Right to Use, change, alter or Develop the Content, other than to:

- Develop an Edited Version of the Content in the manner set out in Schedule B; and
- Develop a Supplementary Work of the Content in the manner set out in Schedule C.

4.2 This Licence does not grant You Sublicensing Rights.

4.3 You must not:

- make an Enhancement of the Content;
- circumvent any Technological Protection Measure; or
- interfere with any Electronic Rights Management Information.

5. **SUPPLY OF CONTENT**

5.1 You must, upon commencement of this Deed:

- a) ensure that, in Developing the Content, all Electronic Rights Management Information is retained within the Content in the form and manner in which We Supply it to You;
- b) store the Content in a secure password protected medium; and
- c) not Supply the Content to the public generally.

5.4 You must not knowingly Supply the Content to Educational Bodies who do not receive a Licence from Us to use the Content.

Territory

5.5 You may Supply the Content in Australia and New Zealand only.

6. **WARRANTIES**

6.1 You warrant that, on the Commencement of the Licence and at all times during the currency of this Deed, You will ensure compliance by Your employees with the terms and conditions of the Licence;

6.2 You must notify Us immediately if You become aware of, or suspect, any breach of the Licence and You agree to take all steps reasonably required by Us to stop the breach.

7. **MORAL RIGHTS AND OTHER CONDUCT**

7.1 You are prohibited from doing anything in relation to the Content which would constitute an infringement of the Moral Rights of the author of that Content.

- 7.2 You must not misrepresent its business connection to Us or to the TLF Initiative.
- 7.3 You must not do anything in relation to the Content which would constitute misleading or deceptive conduct.
- 7.4 In addition, We may issue specific directions, including a direction to insert, amend or remove any attribution of authorship, trade mark or logo, copyright statement or disclaimer.

8. PAYMENT

- 8.1 You agree to pay Us a Service Fee annually for Your Supply Right according to Our current Scale of Fees as it is determined and annually updated at our sole discretion and posted at [www,thelearningfederation.edu.au](http://www.thelearningfederation.edu.au) [insert rest of address].
- 8.2 Your Service Fee will be payable one year in advance. One month before the Licence fee is payable, We will invoice You for the full amount of the annual Licence fee payable by You.
- 8.3 The Service Fee will be based on the Scale of Fees at of before the date of invoice.
- 8.4 You are required to pay the Service Fee no later than one month after We issue You an invoice referred to in clause 8.2.
- 8.5 Your Service Fee payable at the commencement of this Licence is the fee set out in Schedule D to this Deed.

9. TERMINATION

- 9.1 This Deed and the Licence operating under it may be terminated immediately by notice from Us to You if any one or more of the following occurs:
- a) You breach the Licence or this Deed;
 - b) You fail to pay the Service Fee within one month of issue of the invoice referred to in clause 8.2.
 - c) One or more Education Bodies to whom we have granted a licence to Use the Content breaches or terminates their licence with Us; or
 - d) We cease to exist and Our obligations are not assigned to any restructured or substitute entity.
- 9.2 This Deed and the Licence operating under it may be terminated for any reason by either party on the provision of 3 month's notice to the other party:
- 9.3 If this Deed is terminated pursuant to clause 9.1 c) or is terminated by Us under clause 9.2, We will refund to You on a pro rata basis a percentage amount of the Service Fee, calculated by reference to the period of time You were unable to exercise Your Supply Right.

10. LIABILITY

- 10.1 You agree to indemnify Us in respect of any loss, damage, liability or expense arising from:
- a) a breach of the Licence or this Deed; and/or
 - b) any wilful, unlawful or negligent act or omission by You, Your employees, servants, Agents, or any person claiming to exercise their rights under this Licence Deed through You.
- 10.2 We make no representation or warranty:
- a) as to the suitability or compatibility of the Content to Your computer systems; or
 - b) that the Content is free of error, defect, virus or other harmful element.
- 10.3 You acknowledge that You have relied on Your own inquiries, and release Us from any liability, in regard to all the matters set out in clause 10.2.
- 10.4 We are not liable for any loss, damage, liability or expense suffered by You by or arising from Your storage, Supply, or inability to store or Supply, the Content.
- 10.5 You must take reasonable care to detect any actual or threatened infringement of the Intellectual Property Rights in the Content. You must immediately report any suspected infringement of which You become aware to Us. You must not take any steps to prevent the Intellectual Property Rights in the Content from being infringed, or take any action in respect of an apparent infringement, without Our written consent.
- 10.6 You must do anything We reasonably require to enable Us to decide whether to take action in respect of an actual or threatened infringement. We are not in any circumstances required to take action. If We decide to take action, You must, at Your own expense, do everything We reasonably require to assist Us in relation to that action.
- 10.7 You must promptly notify Us in writing if there is a claim against You or an indication that Your use of the Supplementary Works constitute an infringement of a third party's Intellectual Property Rights.
- 10.8 We are entitled to take over control of any claim of the type referred to in clause 10.7, and to defend or settle the claim and any proceedings in relation to the Content. You must, at Your own expense, do everything reasonable to assist Us in relation to the claim or the proceedings.

11. NOTICES

- 11.1 A notice under this Deed:
- a) may be emailed to the other party;
 - b) will be deemed to be effective from the date of receipt by the addressee; and
 - c) if received after 5.00 pm (according to the time standard of the receiver of the notice), is deemed to be effected on the next business day.

12. AMENDMENTS

12.1 This Deed may be varied only by written agreement between the parties.

13. ASSIGNMENT

13.1 We may assign this to a successor.

13.2 The Deed is not assignable by You.

14. APPLICABLE LAW

14.1 This Deed will be governed by and construed according to the law of the State of Victoria, Australia.

SAMPLE DEED

Executed by the parties as a Deed:

Signed, sealed and delivered by Curriculum Corporation

In the presence of:

name of authorised officer

signature

date

Signed, sealed and delivered by [insert name of party]

In the presence of:

name of Director

signature of Director

date

*name of Director or Company
Secretary [delete whichever
inapplicable]*

*signature of Director or Company
Secretary [delete whichever
inapplicable]*

Date

SCHEDULE A

[insert number] TLF [inset type] content entitled:

[List titles]

SAMPLE DEED

SCHEDULE B

1. At the beginning of an Edited version, the user must have explained to them:
 - (a) that the content is for their use only if their Educational Body is operating under a licence from Curriculum Corporation to use content of The Le@rning Federation;
 - (b) the Conditions of Use of the Content; and
 - (c) that the content is a complimentary copy to their Educational Body and provided under that body's existing licence with Curriculum Corporation for the use of The Le@rning Federation content.
2. The following words or words to the same effect should appear on the front page of the Content:

*The intellectual property rights in this work are owned Curriculum Corporation.
This item is [reproduced by [insert name of party] under licence from Curriculum Corporation.*
3. The Content must be reproduced in the same form as it has been provided by Us to You and must not be modified or altered in anyway, except as authorised by this Deed.

SCHEDULE C

1. You are permitted to Develop and Supply a Supplementary Work appending the Content described in Schedule A.
2. The following words or words to the same effect must appear in any Supplementary Work at the point at which the Content is first referenced:

The [CD ROM/ other format] appended to this publication is a complimentary copy of Content from Curriculum Corporation provided to you under your Educational Body's existing licence with Curriculum Corporation to use The Learning Federation content.

The inclusion of The Learning Federation Content with this publication does not constitute endorsement of the product by Curriculum Corporation or The Learning Federation Initiative.

SAMPLE DEED

SCHEDULE D

Licence fee for the period [insert date] to [insert date]:

[\$ insert amount]

Based on the following Scale of Fees (prices exclude GST):

Number of items of TLF content	Service fee per item (charged annually)*	Annual service fee payable**
0 – 100	\$50 each item	Up to \$5,000
100 – 500	\$5,000 plus \$20 each for every item in excess of 100	Up to \$13,000
500 – 1,000	\$13,000 plus \$15 each for every item in excess of 500	Up to \$20,500
>1,000	\$20,500 plus \$10 each for every item in excess of 1,000	Greater than \$20,500

*This Licence fee per item is reviewable annually at Our discretion

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