

License Agreement

IMPORTANT NOTICE: PLEASE READ CAREFULLY BEFORE SUBSCRIBING TO THE MIMIC BOOKS LITERACY PACKAGE:

This license agreement (**Licence**) is a legal agreement between you (**Licensee** or **you**) and The Licensor Limited (**Licensor** or **we**) for this Mimic Book software product (**Literacy Package** or **Package(s)**), which includes computer software, the data supplied with it, the associated media, printed materials and online documentation (**Teachers Guidance Notes**).

YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS IS INDICATED BY A MOUSE CLICK ON THE 'I agree with the Mimic Books License Agreement*' CHECKBOX. YOU UNDERTAKE THAT YOU HAVE THE CAPACITY TO BIND THE EDUCATIONAL INSTITUTION OR ORGANISATION THAT YOU REPRESENT AND FURTHER THAT YOU AGREE TO THE TERMS OF THIS LICENCE (TOGETHER WITH ALL THE DOCUMENTS REFERRED TO IN IT) WHICH WILL BIND YOU AND YOUR EMPLOYEES. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, WE ARE UNWILLING TO LICENSE THE LITERACY PACKAGE TO YOU AND YOU MUST DISCONTINUE THE ORDERING PROCESS NOW. IN THIS CASE THE ORDERING PROCESS WILL TERMINATE.

GRANT AND SCOPE OF LICENCE

- 1.1 In consideration of payment by you of the agreed licence fee and you agreeing to abide by the terms of this Licence, the Licensor hereby grants to you a non-exclusive, non-transferable licence to use the Literacy Package and Teachers Guidance Notes in the UK on the terms of this Licence for a twelve month period from the date we send you our confirmation of acceptance "Initial Period" unless terminated in accordance with clause 7. After the Initial Period this Licence shall automatically continue in effect for successive one year terms (Renewal Term) unless either party serves the other party a written notice of non-renewal at least 30 days prior to the end of the Initial Period Term or any Renewal Term or if terminated in accordance with clause 7.
- 1.2 You may:
 - (a) Access and use the Literacy Package for your internal business purposes only either (as agreed between the parties):
 - (i) on one CPU if the Licence is a single-user licence or for single use; or
 - (ii) if the Licence is a multi-user or network licence, by the number of concurrent users agreed between you and us;
 - (b) Literacy Package incorporating "patches" and corrections of errors as may be provided by the Licensor from time to time;

- (c) Use any Teachers Guidance Notes in support of the use permitted under condition 1.1 and make up to 10 copies of Teachers Guidance Notes as are reasonably necessary for its lawful use.

LICENSEE'S UNDERTAKINGS

- 1.3 Except as expressly set out in this Licence or as permitted by any local law, you undertake:
- (a) not to copy the Literacy Package or Teachers Guidance Notes;
 - (b) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Literacy Package or Teachers Guidance Notes;
 - (c) not to make alterations to, or modifications of, the whole or any part of the Literacy Package, nor permit the Literacy Package or any part of it to be combined with, or become incorporated in, any other programs;
 - (d) not to disassemble, decompile, reverse engineer or create derivative works based on, the whole or any part of the Literacy Package nor attempt to do any such thing except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Literacy Package with another software program, and provided that the information obtained by you during such activities:
 - (i) is used only for the purpose of achieving inter-operability of the Literacy Package with another software program; and
 - (ii) is not unnecessarily disclosed or communicated without the Licensor's prior written consent to any third party; and
 - (iii) is not used to create any software which is substantially similar to the Literacy Package;
 - (e) to supervise and control use of the Literacy Package and ensure that the Literacy Package is used by your employees and representatives in accordance with the terms of this Licence;
 - (f) not to provide or otherwise make available the Literacy Package in whole or in part (including but not limited to program listings, object and source program listings, object code and source code), in any form to any person other than your employees without prior written consent from the Licensor;
 - (g) that you have read, understood and agree to comply with the terms of this Licence, our terms of website use <http://www.mimicbooks.com/docs/conditions-of-use.pdf> our privacy policy <http://www.mimicbooks.com/docs/privacy-policy.pfd> , our acceptable usage policy <http://www.mimicbooks.com/docs/acceptable-usage-policy.pdf> and linking licence <http://www.mimicbooks.com/docs/linking-license.pdf> and that you will not proceed if you are unwilling to do so.

- 1.4 You must permit the Licensor and his representatives, at all reasonable times and on reasonable advance notice, to inspect and have access to any premises at which the Literacy Package or Teachers Guidance Notes is being used, to the computer equipment located there, and to any records kept pursuant to this Licence, for the purpose of ensuring that you are complying with the terms of this Licence.
- 1.5 You acknowledge that we will not be responsible for any failure (or remedy) of any functionality or compatibility malfunctions relating to the Literacy Package where the minimum hardware, software and internet connection requirements as identified in the Teachers Guidance Notes have not been met.

PRICE AND PAYMENT

- 1.6 The price of any Literacy Package will be as quoted on our site from time to time, except in cases of obvious error.
- 1.7 Prices are liable to change at any time, but changes will not affect orders in respect of which we have already sent you acceptance of confirmation.
- 1.8 Our site contains a large number of Packages and it is always possible that, despite our best efforts, some of the Packages listed on our site may be incorrectly priced. We will normally verify prices as part of our acceptance procedures so that, where a Package's correct price is less than our stated price, we will charge the lower amount when dispatching the Package to you. If a Package's correct price is higher than the price stated on our site, we will normally, at our discretion, either contact you for instructions before dispatching the Package, or reject your order and notify you of such rejection.
- 1.9 We are under no obligation to provide the Literacy Package to you at the incorrect (lower) price, even after we have sent you an Acceptance Confirmation, if the pricing error is obvious and unmistakable and could have reasonably been recognised by you as a mis-price.
- 1.10 Payment for all Literacy Packages must be made in advance by PayPal or cheque.
- 1.11 The Licensee shall pay the prices annually in advance. All amounts payable under this Agreement are expressed exclusive of VAT and other taxes which shall be payable by the Licensee at the applicable rate from time to time. The Licensor shall be entitled to invoice the Licensee annually in advance for the relevant prices and all invoices shall be paid by the Licensee within 30 days of the date of invoice.

- 1.12 The Licensor reserves the right to suspend provision of all or part of the Literacy Package without notice to the Licensee if the Licensee does not pay the prices by the due date or until payment has been received in cleared funds.
- 1.13 The Licensor may charge the Licensee interest on any overdue sums at the rate of four per cent (4%) per annum above the base rate of HSBC Bank plc from time to time from the relevant due date until the date payment is made.
- 1.14 The Licensor shall be entitled to increase the prices in relation to each Renewal Term provided that it notifies the Licensee at least 30 days in advance. The Licensee shall be entitled to terminate this Agreement by giving written notice of termination to The Licensor within thirty (30) days of the date of the prices Increase Notice, such termination to take effect only on the date immediately preceding the date that the relevant increase in prices would otherwise have taken effect.

INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIAL INFORMATION

- 1.15 You acknowledge that all intellectual property rights in the Literacy Package and Teachers Guidance Notes anywhere in the world belong to the Licensor or to their Licensors, that rights in the Literacy Package are licensed (not sold) to you, and that you have no rights in, or to, the Literacy Package or Teachers Guidance Notes other than the right to use them in accordance with the terms of this Licence.
- 1.16 You acknowledge that you have no right to have access to the Literacy Package in source code form or in unlocked coding or with comments.
- 1.17 The integrity of the Literacy Packages are protected by technical protection measures (**TPM**) so that the intellectual property rights, including copyright, in the Literacy Package of the Licensor are not misappropriated. You must not attempt in any way to remove or circumvent any such TPM, nor apply or manufacture for sale or hire, import, distribute, sell or let for hire, offer or expose for sale or hire, advertise for sale or hire or have in your possession for private or commercial purposes any means the sole intended purpose of which is to facilitate the unauthorised removal or circumvention of such TPM.
- 1.18 Each party shall, during the term of this licence and thereafter, keep confidential all, and shall not use for its own purposes nor without the prior written consent of the other disclose to any third party any, information of a confidential nature (including, without limitation, trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party unless such information is public knowledge or already known to such part at the time of disclosure, or subsequently becomes public knowledge other than by breach of this licence, or subsequently comes lawfully into the possession of such party from a third party.

- 1.19 The terms of this licence are confidential and may not be disclosed by the Licensor without the prior written consent of the Licensee.

WARRANTY

- 1.20 The Licensor warrants that it has tested the Literacy Package for viruses using commercially available virus-checking software, consistent with current industry practice.
- 1.21 You acknowledge that the Literacy Package has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the Literacy Package as described on the Site and in the online demonstration page are suitable for your purposes.
- 1.22 You acknowledge that the Literacy Package may not be free of bugs or errors, and agree that the existence of minor errors shall not constitute a breach of this Licence.
- 1.23 If, within the Warranty Period, you notify the Licensor in writing of any defect or fault in the Literacy Package in consequence of which it fails to perform substantially in accordance with Teachers Guidance Notes, and such defect or fault does not result from you having amended the Literacy Package or used it in contravention of the terms of this Licence, the Licensor will, at its sole option, either repair or replace the Literacy Package, provided that you make available all the information that may be necessary to help the Licensor to remedy the defect or fault, including sufficient information to enable the Licensor to recreate the defect or fault.

LICENSOR'S LIABILITY

- 1.24 Nothing in this Licence shall exclude or in any way limit the Licensor's liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent that it may not be excluded or limited as a matter of law.
- 1.25 Subject to condition 1.24 the Licensor shall not be liable under, or in connection with, this Licence or any collateral contract for:
- (a) loss of income;
 - (b) loss of business profits or contracts;
 - (c) business interruption;
 - (d) loss of the use of money or anticipated savings;
 - (e) loss of information;
 - (f) loss of opportunity, goodwill or reputation;
 - (g) loss of, damage to or corruption of data; or

- (h) any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise;

provided that this condition 1.25 shall not prevent claims for loss of or damage to your tangible property that fall within the terms of condition 0 or any other claims for direct financial loss that are not excluded by any of categories (a) to (h) inclusive of this condition 1.25.

- 1.26 Subject to condition 1.24 and condition 1.25, the Licensor's maximum aggregate liability under or in connection with this Licence, or any collateral contract, whether in contract, tort (including negligence) or otherwise, shall be limited to a sum equal to the Licence Fee.
- 1.27 Subject to condition 1.24, condition 1.25 and condition 1.26, the Licensor's liability for infringement of third-party intellectual property rights shall be limited to breaches of rights subsisting in the UK.
- 1.28 This Licence sets out the full extent of the Licensor's obligations and liabilities in respect of the supply of the Literacy Package and Teachers Guidance Notes. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding on the Licensor except as specifically stated in this Licence. Any condition, warranty, representation or other term concerning the supply of the Literacy Package and Teachers Guidance Notes which might otherwise be implied into, or incorporated in, this Licence, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law.

TERMINATION

- 1.29 The Licensor may terminate this Licence immediately by written notice to you if:
 - (a) You commit a material or persistent breach of this Licence which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so; or
 - (b) the Licensee (where it is a company) becomes insolvent or unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), enters into liquidation, whether voluntary or compulsory (other than for reasons of bona fide amalgamation or reconstruction), passes a resolution for its winding-up, has a receiver or administrator manager, trustee, liquidator or similar officer appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt, unable to pay your debts (within the meaning of section 123 of the Insolvency Act 1986).
 - (c)

- 1.30 Upon termination for any reason:
- (a) all rights granted to you under this Licence shall cease;
 - (b) you must cease all activities authorised by this Licence;
 - (c) you must immediately pay to the Licensor any sums due to the Licensor under this Licence; and
 - (d) delete and refrain from using any usernames or passwords to gain access to the Site or any Literacy Package.

TRANSFER OF RIGHTS AND OBLIGATIONS

- 1.31 This Licence is binding on you and us, and on our respective successors and assigns.
- 1.32 You may not transfer, assign, charge or otherwise dispose of this Licence, or any of your rights or obligations arising under it, without our prior written consent.
- 1.33 We may transfer, assign, charge, sub-contract or otherwise dispose of this Licence, or any of our rights or obligations arising under it, at any time during the term of the Licence.

NOTICES

All notices given by you to us must be given to The Licensor at Mimic Books, PO Box 657, HX1 9HX or info@mimicbooks.com. We may give notice to you at either the e-mail or postal address you provided to us when purchasing the Literacy Package. Notice will be deemed received and properly served immediately when posted on our website, 24 hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.

EVENTS OUTSIDE OUR CONTROL

- 1.34 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this Licence that is caused by events outside our reasonable control (**Force Majeure Event**).
- 1.35 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following:
- (a) strikes, lock-outs or other industrial action;
 - (b) civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;

- (c) fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;
- (d) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
- (e) impossibility of the use of public or private telecommunications networks;
- (f) the acts, decrees, legislation, regulations or restrictions of any government.

1.36 Our performance under this Licence is deemed to be suspended for the period that the Force Majeure Event continues, and we will have an extension of time for performance for the duration of that period. We will use our reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which our obligations under this Licence may be performed despite the Force Majeure Event.

WAIVER

1.37 If we fail, at any time during the term of this Licence, to insist upon strict performance of any of your obligations under this Licence, or if we fail to exercise any of the rights or remedies to which we are entitled under this Licence, this shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations.

1.38 A waiver by us of any default shall not constitute a waiver of any subsequent default.

1.39 No waiver by us of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing.

SEVERABILITY

If any of the terms of this Licence are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

ENTIRE AGREEMENT

1.40 This Licence and any document expressly referred to in it represents the entire Agreement between us in relation to the licensing of the Literacy Package and Teachers Guidance Notes and supersedes any prior agreement, understanding or arrangement between us, whether oral or in writing.

1.41 We each acknowledge that, in entering into this Licence, neither of us has relied on any representation, undertaking or promise given by the other or be implied from anything said

or written in negotiations between us prior to entering into this Licence except as expressly stated in this Licence.

- 1.42 Neither of us shall have any remedy in respect of any untrue statement made by the other, whether orally or in writing, prior to the date we entered into this Licence (unless such untrue statement was made fraudulently) and the other party's only remedy shall be for breach of contract as provided in these terms and conditions.

LAW AND JURISDICTION

This Licence is governed by English law. Any dispute arising from, or related to, any term of this Licence shall be subject to the non-exclusive jurisdiction of the courts of England.