Licence Terms and Conditions

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We are the owner of all content including without limitation text, information, data and audio material (**Content**) in the audio files and accompanying documentation and materials in any medium or form (**Materials**) supplied by us to you.

In consideration for the licence fee agreed between us and which is to be payable by you, we will grant you a non-exclusive licence (**Licence**) to use the Materials and the Content on these terms for the reasons and in the manner set out below (**Purpose**):

- making the Materials available to your students and staff members (either free of charge or by making a limited charge in accordance with the conditions set out below) to download through your web site in a manner which is secure and restricts any downloading only to your students and staff members;

- you shall ensure that any such student or staff member must **prior** to downloading the Materials accept (by clicking an “Accept” button, in the manner described in the EULA) the terms of our end user licence agreement (“EULA”) a copy of which is included in the Annex to these terms and that they cannot download the same unless they have accepted our EULA (you will, upon written request and on reasonable notice, grant us and/or our representative access to your premises and any relevant computer equipment so that we can verify that the mechanism for acceptance of our EULA is being properly dealt with by you; you will also ensure that evidence is collected and retained by you to show that any person downloading the Materials has accepted our EULA prior to download and provide us with such evidence upon written request);

- you shall procure that any student or staff member who ceases to be enrolled in or employed by you shall cease to be able to download the Materials and shall use your reasonable endeavours to ensure that they destroy or delete any copies of the Materials in their possession or control; and

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You must maintain accurate and up-to-date records of the number and recipient of all copies of the Materials which have been downloaded by your staff and students and, at our written request, provide copies of and/or access to such records.

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You must notify us immediately you become aware of any misuse of any Materials or Content, any breach of any EULA or any unauthorised access or downloading of the Materials or Content and co-operate fully with us to remedy the issue as soon as reasonably practicable. We may suspend your licence until we are satisfied, acting reasonably, that any issues have been rectified.

We may, acting reasonably, require the removal of, or editorial revisions to, any of the Materials licensed to you. You agree to effect any such removal or replacement as soon as reasonably practicable and, if requested by us, to use your reasonable endeavours to procure the removal or replacement of the same by any of your students or staff members who have downloaded the Materials.

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You must not create derivative works based on the whole or any part of the Materials or Content nor attempt to do any such things.

The Content is protected by copyright. All copyright and any other intellectual property rights in the Content is owned by us. All rights in, or in relation to, the Content and any and all derivative works thereof that are not expressly granted to you are expressly retained by us.

The Content and the Materials are provided on an “as is” basis and we expressly exclude any warranty that the Content and/or the Materials are fit or suitable for a particular purpose except that the Materials are suitable as revision materials for specific Physical Education Theory Specifications as taught from September 2008/2009. The Materials and Content are supplied as an aid to revision and learning for students and are not a substitute for the knowledge and teaching which your own relevant staff provide to your students, nor for other forms of revision which students should be encouraged to undertake. If there are changes in the specification or a new specification is adopted then the Materials may no longer be suitable for use and you should ensure that in the event of any such change suitably qualified staff review the appropriateness of the Materials and their continued use by your staff and students.

In no event shall we be liable for any performance by your staff or students, including without limitation any performance by students in examinations.

Our liability under this licence, whether in contract, tort (including negligence) or otherwise shall not exceed the licence fees.

We shall have no liability to you for any loss or damage which may be suffered by you (or any person claiming under or through you), whether the same arise in contract, tort (including negligence) or otherwise, which fall into any of the following categories:

- loss of profits;
- loss of anticipated savings;
- loss of goodwill;
- loss arising from damaged or corrupted or lost data; or
- any indirect, special, incidental or consequential loss.

Nothing in these terms shall operate to exclude or limit our liability for:

- death or personal injury caused by our negligence;

- any breach of the terms implied by section 12 of the Sale of Goods At1979 or section 2 of the Supply of Goods and Services Act 1982;

- fraud; or

- any other liability which cannot be excluded under applicable law.

We may terminate this licence immediately on written notice to you if you are in material breach of any of its terms and, where such breach is capable of remedy, if you fail to remedy the breach within 30 days of receipt of notice from us to you requiring you to remedy the breach.

Upon termination of this Licence, you shall destroy or delete all copies of the Materials in your possession or control.

If any provision of these terms (or part of any provision) is found by any court or other authority of competent territory to be invalid, unenforceable or illegal, the other provisions shall remain in force.

These terms sets out the full extent of our obligations and liabilities in respect of the supply of the Materials. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding on us except as specifically stated in these terms. Any condition, warranty, representation or other term concerning the supply of the Materials which might otherwise be implied into, or incorporated in, these terms, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law.

These terms and any document expressly referred to in them represents the entire agreement between us in relation to the licensing of the Materials and supersede any prior agreement, understanding or arrangement between us, whether oral or in writing.

Annex

End User Licence Agreement

IMPORTANT NOTICE: PLEASE READ CAREFULLY BEFORE DOWNLOADING THE MATERIALS: This licence agreement (**Licence**) is a legal agreement between you (**Licensee** or **you**) and PEfocus Limited (Company Number: 7556664) of 2 Malthouse Cottages, The Street, Crookham Village, Hampshire GU51 5SD (**Licensor** or **we**) for our audio files and any accompanying documentation and/or materials in any medium of form (**Materials**), which includes all content including without limitation text, information, data and audio material (**Content**) in the Materials.

BY CLICKING ON THE "ACCEPT" BUTTON BELOW YOU AGREE TO THE TERMS OF THIS LICENCE WHICH WILL BIND YOU. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, WE ARE UNWILLING TO LICENSE THE MATERIALS TO YOU AND YOU MUST DISCONTINUE DOWNLOADING OF THE MATERIALS NOW.

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1.1 In consideration of you agreeing to abide by the terms of this Licence, we hereby grant to you a non-exclusive, non-transferable licence to use the Materials on the terms of this Licence.

1.2 You may:

(a) download and use the Materials for your own personal educational (and/or, if you are a member of staff, teaching) purposes only to a device which is in your possession and control;

(b) transfer the Materials from one device to another provided that any such device is in your possession and control and provided that they are used on only one device at any one time.

1.3 This Licence is for the permitted purpose set out in condition 1.2 above (Purpose) and you may use the Materials solely for such Purpose.

1.4 If you are a member of staff, you may only use the Materials for the purpose of teaching students at the educational establishment (**Educational Establishment**) which has the main licence for the Materials (under which this EULA is granted).

2. LICENSEE'S UNDERTAKINGS

2.1 Except as expressly set out in this Licence, you undertake:

(a) not to copy the Materials or Content except where such copying is incidental to normal use of the Materials for the Purpose;

(b) not to broadcast (or otherwise make available to third parties), rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Materials or Content;

(c) not to make alterations to, or modifications of, the whole or any part of the Materials or Content nor permit the Content or any part of it to be combined with, or become incorporated in, any other materials;

(d) not to create derivative works based on the whole or any part of the Materials or Content nor attempt to do any such things; and

(e) to keep all copies of the Materials secure and within your possession and control.

2.2 We may, acting reasonably, require the removal of, or editorial revisions to, any of the Materials licensed to you. You agree to effect any such removal or replacement as soon as reasonably practicable.

3. INTELLECTUAL PROPERTY RIGHTS

3.1 You acknowledge that all copyright and other intellectual property rights in the Materials belongs to us, that rights in the Materials are licensed (not sold) to you, and that you have no rights in, or to, the Materials other than the right to use them in accordance with the terms of this Licence.

3.2 All rights in, or in relation to, the Materials and any and all derivative works thereof that are not expressly granted to you are expressly retained by us.

4. WARRANTIES

4.1 The Materials are provided on an "as is" basis and we expressly exclude any warranty that the Materials are fit or suitable for a particular purpose except that the Materials are suitable as revision materials for specific Physical Education Theory Specifications as taught from September 2008/2009. The Materials and Content are supplied as an aid to revision and learning for students and are not a substitute for the knowledge and teaching which staff at the Educational Establishment provide to students, nor for other forms of revision which students should undertake. If there are changes in the specification or a new specification is adopted then the Materials may no longer be suitable for use. If you are a staff member providing relevant teaching to students, you should advise your students as to the continued suitability of the Materials in the event of any such change. If you are a student and you have doubts about the suitability of the Materials you should check with a relevant member of staff at your Educational Establishment.

5. OUR LIABILITY

5.1 In no event shall we be liable for any performance by you, including without limitation any performance of you (or in the case of staff, your students) in examinations.

5.2 We shall have no liability to you for any loss or damage which may be suffered by you (or any person claiming under or through you), whether the same arise in contract, tort (including negligence) or otherwise, which fall into any of the following categories:

(a) loss of profits;

(b) loss of anticipated savings;

(c) loss of goodwill;

(d) loss arising from damaged or corrupted or lost data; or

(e) any indirect, special, incidental or consequential loss.

5.3 Nothing in these terms shall operate to exclude or limit our liability for:

(a) death or personal injury caused by our negligence;

(b) any breach of the terms implied by section 12 of the Sale of Goods At1979 or section 2 of the Supply of Goods and Services Act 1982;

(c) fraud; or

(d) any other liability which cannot be excluded under applicable law.

6. TERMINATION

6.1 We may terminate this Licence immediately on written notice to you if you are in material breach of any of its terms and, where such breach is capable of remedy, if you fail to remedy the breach within 30 days of receipt of notice from us to you requiring you to remedy the breach.

6.2 This Licence shall automatically terminate if you cease to be a student or member of staff of the Educational Establishment.

6.3 This Licence shall cease if the licence granted by us to the Educational Establishment is terminated or expires.

6.4 Upon termination or expiry of this Licence, you shall destroy or delete all copies of the Materials in your possession or control.

7. GENERAL

7.1 If any provision of these terms (or part of any provision) is found by any court or other authority of competent territory to be invalid, unenforceable or illegal, the other provisions shall remain in force.

7.2 This Licence sets out the full extent of our obligations and liabilities in respect of the supply of the Materials. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding on us except as specifically stated in this Licence. Any condition, warranty, representation or other term concerning the supply of the Materials 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.

7.3 You may not transfer, assign, charge or otherwise dispose of this Licence, or any of your rights or obligations arising under it.

7.4 This Licence and any document expressly referred to in it represents the entire agreement between us in relation to the licensing of the Materials and supersedes any prior agreement, understanding or arrangement between us, whether oral or in writing.

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