

LICENCE AGREEMENT

No. S060002

THIS AGREEMENT is made the day of 2006

BETWEEN

1. Licensor : THE HONG KONG REPROGRAPHIC RIGHTS LICENSING SOCIETY LIMITED, a limited liability company incorporated under the laws of Hong Kong of 802 Stanhope House, 738 King's Road, Hong Kong; and
2. Licensees: particulars of the Licensees are described in Schedule I

WHEREAS

The Licensor, as agent for its members, is authorized to grant a non-exclusive and non-transferrable right to make Copies of the Licensed Materials and the Licensees have agreed to enter into this Licence Agreement upon the terms and conditions herein.

IT IS HEREBY AGREED THAT:

1. Definitions

- 1.1 In this Licence Agreement (including the Schedules), the following expressions shall have the following meanings except when the context otherwise requires:

"Annual Day" means 1 September each year

"Commencement Date" means 1 September 2006

"Copies" means in relation to the whole or a substantial part of a copyright work, reprographic or duplicated reproductions in hardcopy form. For avoidance of doubt, this does not include copies in electronic or digital format

"Course" means subject, programme, module or other similar descriptions in relation to a course of study provided by any of the Licensees

"Course Pack"	means a compilation (whether bound or loose-leaf) of four or more photocopied extracts from one or more Licensed Materials which is intended to provide students with a compilation of materials designed to support the teaching of a Course
"Hong Kong"	means the Hong Kong Special Administrative Region, the People's Republic of China
"Illustrations"	means charts, graphs, diagrams, drawings, cartoons and pictures accompanying other works and included for illustrative purposes
"Licence Fee"	means the fee payable by each of the Licensees to the Licensor as set out in Schedule III in this Licence Agreement
"Licensed Machines"	means any machine or equipment used for making Copies in the Licensed Premises
"Licensed Materials"	means the materials described in Schedule II subject to such exclusions as are defined therein
"Licensed Premises"	means the addresses of the Licensees and as amended from time to time within Hong Kong owned, leased or used by any of the Licensees
"Published Works"	means all literary, musical, dramatic, or artistic work, or a part of such copyright works in printed form, of which copies have been issued to the public whether in the form of a book, magazine, journal, periodical or otherwise
"Term"	means a period of three years from the Commencement Date (inclusive)
"Textbook"	means a book written in accordance with any syllabus

issued by the Hong Kong Curriculum Development Council

2. Licence Restrictions and Obligations

- 2.1 In consideration of the payment obligations and subject to the terms and conditions herein, the Licensor hereby grants to each of the Licensees a non-exclusive and non-transferrable right to make multiple Copies of the Licensed Materials using the Licensed Machines in its own Licensed Premises during the Term.
- 2.2 Each of the Licensees may authorise its own employees, staff, and students to make multiple Copies of the Licensed Materials provided such copying complies with the terms of this Licence Agreement. Each of the Licensees must ensure that all Copies of the Licensed Materials are made by:
- (a) its teachers; or
 - (b) its employees or staff (other than teachers) upon instruction by its teachers; or
 - (c) its students upon instruction by its teachers.
- 2.3 The Licensed Materials are subject to such exclusions as defined in Schedule II of this Licence Agreement. The Licensor shall be entitled to notify the Licensees of the exclusion list and additions to the exclusion list by giving a written notice to Subsidized Primary Schools Council, being the agent of all the Licensees, in January and July of each year during the Term. The exclusion list and additions to the exclusion list shall not take effect until one month after written notification to Subsidized Primary Schools Council.
- 2.4 Subject to compliance by the Licensees with all the terms and conditions contained in this Licence Agreement, section 168 of the Copyright Ordinance (Chapter 528) shall apply and the Licensor shall indemnify the Licensees against any liability for infringement deriving from the copying of works falling within the apparent scope of this Licence Agreement in accordance with the said section.

- 2.5 Each of the Licensees shall give written notice to the Licensor forthwith and in any event within ten (10) business days of its becoming aware of any allegation of infringement or of any claim that may give rise to the indemnity given under Clause 2.4 being called into effect. No Licensee shall settle or compromise any such allegation or claim or make any comment or admission to or provide any response to any third party in respect thereof without the prior written approval of the Licensor. The Licensor shall take over the conduct of any such allegation, claim or proceeding arising from it.
- 2.6 The Licensees shall be permitted under the terms of this Licence Agreement to make multiple Copies of the Licensed Materials subject to the following:
- (a) The Licensor acknowledges that the "Guidelines for Photocopying of Printed Works by Not-for-profit Educational Establishments" ("Guidelines"), the contents of which the Licensor has agreed to, permits not-for-profit educational establishments to make Copies of Published Works subject to the limits set out therein ("Limits"). For the purpose of this Licence Agreement, each of the Licensees shall observe and comply with the following limits, which have already taken the Limits into account, when making Copies of the Licensed Materials:
- i) subject to the limits set out in Clauses 2.6(a)(ii) to (iii) below, each of the persons, to which the Licensees are allowed to provide Copies of the Licensed Materials pursuant to Clause 2.6(c) of this Licence Agreement, may receive no more than one (1) Copy with respect to the same Licensed Material;
 - ii) in any one academic year in relation to the same Course, except for Textbooks, the following limits apply:
 - A) each of the Licensees may copy no more than one complete article of any length from any one periodical;
 - B) with respect to a poem, each of the Licensees shall not copy more than 250 words, this word limit may be extended to allow the completion of an unfinished line of the poem; provided that if there are more than one poems included in the same Licensed Material, each of the Licensees shall not copy more than ten percent (10%) of the number of pages of the Licensed Material, this limit may be extended to allow a complete page to be copied;

- C) with respect to a story or an essay, each of the Licensees shall not copy more than 2,500 words, this word limit may be extended to allow the completion of an unfinished paragraph of the story or essay; provided that if there are more than one stories or essays included in the same Licensed Material, each of the Licensees shall not copy more than ten percent (10%) of the number of pages of the Licensed Material, this limit may be extended to allow a complete page to be copied;
 - D) with respect to an artistic work, including an Illustration, the Licensees may copy the complete work; provided that if there are more than one artistic works included in the same Licensed Material, each of the Licensees shall not copy more than ten percent (10%) of the number of pages of the Licensed Material, this limit may be extended to allow one complete artistic work to be copied;
 - E) with respect to a musical work in printed form, each of the Licensees shall not copy more than ten percent (10%) of the number of pages of the printed music items, this limit may be extended to allow a complete page to be copied; provided that if there are more than one musical works included in the same Licensed Material, each of the Licensees shall not copy more than ten percent (10%) of the number of pages of the Licensed Material, this limit may be extended to allow a complete page to be copied; and
 - F) with respect to any other work (“Other Work”), each of the Licensees shall not copy more than ten percent (10%) of the number of pages of the work, this limit may be extended to allow a complete page to be copied; provided that if there are more than one Other Works included in the same Licensed Material, each of the Licensees shall not copy more than ten percent (10%) of the number of pages of the Licensed Material, this limit may be extended to allow a complete page to be copied;
- iii) with respect to Textbooks, each of the Licensees shall not, in any one academic year:
- (A) copy from more than three (3) Textbooks in relation to the same Course; and
 - (B) with respect to each Textbook, copy more than five (5) percent of

the number of pages of the Textbook.

The limits set out in this Clause 2.6(a)(iii) apply to the Licensees regardless of the rights offered by or requirements imposed by the Guidelines.

The limits set out in Clauses 2.6(a)(i) to (iii) above may be altered in any manner and at any time during the Term by mutual agreement in writing between the parties. The Licensees shall appoint Subsidized Primary Schools Council as their agent to negotiate the terms of any agreement in relation to alterations to the limits set out in Clauses 2.6(a)(i) to (iii). The agreed limits will take effect three months after the date of the written mutual agreement.

- (b) Apart from the circumstances set out in Clause 2.6(c) of this Licence Agreement, Copies shall in no circumstances be made for the purposes of or in the course of any trade or business or any other profit or non-profit making activity which is prejudicial to the owner of the copyright.
- (c) Each of the Licensees shall not circulate or provide any Copies it made to persons other than:
 - (i) its own employees, staff or students for the purpose of instruction, teaching, learning, discussion or classroom use in relation to any Courses provided by that Licensee;
 - (ii) teachers participating in sharing sessions or workshops for the purpose of sharing teaching and learning experiences. The Licensee shall within fifteen (15) days of the date of any such sharing session or workshop provide a statement to the Licensor giving particulars of the Copies of the Licensed Materials made by the Licensee for the purpose of the sharing session or workshop. The statement must show the name of the author, the name of the publisher, the title, the ISBN or ISSN number, the page numbers of the pages copied, the quantity of Copies made, the total number of pages of the original Licensed Materials, the total number of teachers participated; or

- (iii) parents or guardians of any of its students participating in any function carried out by that Licensee. The Licensee shall within fifteen (15) days of the date of any such function provide a statement to the Licensor giving particulars of the Copies of the Licensed Materials made by the Licensee for the purpose of the function. The statement must show the name of the author, the name of the publisher, the title, the ISBN or ISSN number, the page numbers of the pages copied, the quantity of Copies made, the total number of pages of the original Licensed Materials, the total number of parents and guardians participated.
 - (d) Each of the Licensees must direct its students to purchase books, Textbooks and Published Works which are used as primary or principal teaching materials or on a regular basis in any Course provided by that Licensee. No Copies of the Licensed Materials shall be used to substitute the purchase of such books, Textbooks and Published Works. No Copies of the Licensed Materials shall be used as primary or principal teaching materials or on a regular basis in any Course provided by that Licensee.
 - (e) No Copies of the Licensed Materials shall be made and used for preparation of a Course Pack.
- 2.7 Any of the Licensees may apply in writing to the Licensor for consent to make Copies exceeding the limits as set out under Clause 2.6. The Licensor shall make all reasonable efforts to deal with all such applications for consent submitted by the Licensees within ten (10) business days after their submission. The relevant copyright owners of the Licensed Materials shall have the absolute discretion in deciding: (a) whether to grant the permission to the Licensees; and (b) as to the appropriate fee with respect to the permission. The Licensees shall not make Copies of the Licensed Materials in excess of the limits set out in Clause 2.6 without prior written approval from the Licensor.
- 2.8 The Licensees agree to clearly exhibit on each of the Licensed Machines a notice with the following words or such other words as the Licensor and the Licensees may mutually agree:
- “This machine is licensed by THE HONG KONG REPROGRAPHIC RIGHTS LICENSING SOCIETY LIMITED for the copying of licensed copyright materials.”

- 2.9 The Licensees agree to exhibit on each Copy of the Licensed Materials either of the following notices or such other words as the Licensor and the Licensees may mutually agree:

“This material was reproduced under the terms of a licence granted by THE HONG KONG REPROGRAPHIC RIGHTS LICENSING SOCIETY LIMITED. No further copying permitted.”

or

“這資料根據一份由香港版權影印授權協會有限公司所允許的特許的條款複製，不准再行複製。”

- 2.10 The Licensees agree to co-operate with the Licensor in educational programmes designed to propagate among the school management, employees, consultants, staff and students (as relevant) of the Licensees an awareness of, and respect for, laws relating to the protection of intellectual property.
- 2.11 Each of the Licensees agrees to authorize the Licensor to conduct one sample survey of the usage of the Licensed Machines for making Copies of the Licensed Materials at any time during the Term of this Agreement. The measures and methodology used in the sample survey should be designed by the Licensor and mutually agreed by both parties. The costs for the sample survey shall be borne by the Licensor. The Licensee shall, without any charge to the Licensor, appoint an appropriate member of staff to work with the Licensor's designated survey team and to provide the necessary support and convenience for efficiency and effectiveness of the process of the survey.

3. Assurances and Undertakings

- 3.1 Nothing herein shall be deemed, intended or implied to constitute a sale or assignment of the Licensed Materials to the Licensees and no rights are conveyed hereunder to the Licensees except the right to make multiple Copies of the Licensed Materials under the terms of this Licence Agreement.

4. Payment

- 4.1 Each of the Licensees shall pay to the Licensor the Licence Fee, calculated as shown in Schedule III and constituting the consideration payable in respect of this Licence Agreement.
- 4.2 The Licensees shall appoint Subsidized Primary Schools Council as their agent to collect the Licence Fee from all the Licensees and to pay the monies to the Licensor. The Licence Fee, or any portion of the Licence Fee, will not be regarded as having been paid by the Licensees until receipt of the monies by the Licensor from Subsidized Primary Schools Council.
- 4.3 The Licence Fee shall be paid to the Licensor as provided for in Schedule III.

5. Commencement and Termination

- 5.1 This Licence Agreement shall commence on the Commencement Date and expire at the end of the Term unless terminated earlier pursuant to the terms of this Licence Agreement.
- 5.2 This Licence Agreement will terminate in relation to a Licensee upon occurrence of any of the following events:
- (a) by three months' written notice given by:
 - (i) the Licensor to Subsidized Primary Schools Council acting as the agent of all the Licensees; or
 - (ii) Subsidized Primary Schools Council, acting as the agent of all the Licensees, to the Licensor.
 - (b) by immediate written notice given by the Licensor to that Licensee, copied to Subsidized Primary Schools Council acting as the agent of all the Licensees, that it is in material breach of any terms or conditions of this Agreement where such material breach is, in the opinion of the Licensor, incapable of being remedied.

- (c) by immediate written notice given by the Licensor to that Licensee, copied to Subsidized Primary Schools Council acting as the agent of all the Licensees, that it is in material breach of any terms or conditions of this Agreement for the first time since the commencement of this Agreement where such material breach is, in the opinion of the Licensor, capable of being remedied but that Licensee fails to remedy such material breach within fifteen (15) calendar days after receipt from the Licensor of a written notice of such material breach.
- (d) by immediate written notice given by the Licensor to that Licensee, copied to Subsidized Primary Schools Council acting as the agent of all the Licensees, that it is in material breach of any terms or conditions of this Agreement for the second time or the subsequent times since the commencement of this Agreement (collectively, the "Subsequent Material Breach(es)") notwithstanding that such material breach is capable of being remedied in the opinion of the Licensor. For the avoidance of doubt, any remedy of the Subsequent Material Breach(es) by that Licensee at any time shall not prejudice the right of the Licensor to terminate this Agreement immediately under this clause 5.2(d).
- (e) if any action or other steps are taken or legal proceedings are started for that Licensee's winding up or bankruptcy or if that Licensee makes any arrangements or composition with its creditors or has a receiver appointed or enters into liquidation or bankruptcy (other than a voluntary liquidation for the purpose of reconstruction or amalgamation).

5.3 In the event of any early termination of this Licence Agreement in relation to a Licensee under Clause 5.2:

- (a) the Licensor shall make a pro-rata refund of the Licence Fee on a daily basis to that Licensee; and
- (b) the right and licence granted to that Licensee pursuant to this Licence Agreement shall immediately lapse. That Licensee shall thereupon cease to hold itself out as a licensee of the Licensor and shall remove any representation to this effect.

- 5.4 Termination of this Licence Agreement for whatever reason shall be without prejudice to any accrued rights and liabilities of the Licensor and the Licensees.
- 5.5 Upon expiration or termination, the right and licence granted to the Licensees pursuant to this Licence Agreement shall immediately lapse. The Licensees shall thereupon cease to hold themselves out as licensees of the Licensor and shall remove any representation to this effect.
- 5.6 One year before the expiry date of this Licence Agreement, the Licensor and the Licensees shall enter into good faith negotiations for a further licence for the Licensed Materials after the Term. The Licensees shall appoint Subsidized Primary Schools Council as their agent to negotiate with the Licensor.

6. Severability

- 6.1 It is agreed by both the Licensor and the Licensees that if part or parts of this Licence Agreement is invalidated, illegal or unenforceable for any reason, the validity, legality and enforceability of remaining provisions hereof and any other rights or claims to damages, interlocutory relief or otherwise that the Licensor or the Licensees may have in relation thereto shall not be affected.

7. Confidentiality

- 7.1 Subject to Clause 7.2 of this Agreement, no party may disclose to any person without the prior written consent of the other party any confidential information in relation to the other party.
- 7.2 The Licensor may use the Licensees' confidential information in the following manner:
- (a) to determine the amount of Licence Fee payable and whether any of the Licensees complies with the limits set out in Clause 2.6 of this Agreement. For this purpose, the Licensor may disclose or distribute the confidential information to its auditors, agents, members or copyright owners of the Licensed Materials; or

(b) for distribution to members of the Licensor or copyright owners of the Licensed Materials.

7.3 The obligation of Clause 7.1 of this Licence Agreement shall not apply to confidential information which is:

(a) required to be disclosed by law;

(b) in the public domain other than by breach of an obligation of confidence; or

(c) disclosed to the party's legal advisers.

7.4 The terms of this Clause 7 shall survive the termination or expiration of this Licence Agreement.

8. Assignment

8.1 Save as otherwise provided in this Licence Agreement, rights and obligations hereunder shall not be assigned by either party without the prior written consent of the other.

9. Existing Rights

9.1 Any rights of the Licensor expressly and explicitly set out under this Licence Agreement are without prejudice to any other right conferred on the Licensor by the Copyright Ordinance (Chapter 528) or existing at law.

9.2 Any rights of the Licensees expressly and explicitly set out under this Licence Agreement are without prejudice to any other right conferred on the Licensees by the Copyright Ordinance (Chapter 528) or existing at law.

10. Governing Law and Jurisdiction

10.1 The Licensor and the Licensees irrevocably agree that this Licence Agreement is to be governed and interpreted in accordance with the laws of Hong Kong. The Licensor and the Licensees hereby submit to the non-exclusive jurisdiction of the Courts of Hong Kong.

11. Miscellaneous

11.1 This Licence Agreement, together with the Schedules attached hereto, constitute the entire agreement between the Licensor and the Licensees with respect to the subject matter hereof, supersedes any prior expression of intent or understanding relating hereto.

11.2 This Licence Agreement may be modified or amended in any manner and at any time by mutual agreement in writing signed by the authorised representatives of the parties.

11.3 All notices given by either party to any other party shall be in writing in English and shall be served by sending the same by prepaid post or by fax to the address or fax number of the other party as given herein or to such other address or fax number as that party may have previously notified to the party giving notice as its address or fax number for such service. The notice shall be deemed to have been received on:

- (a) the third (3rd) day after posting (if given by prepaid post); or
- (b) the date of receipt as shown on any transmission report by the machine from which the notice was sent (if given by facsimile). The transmission report must indicate that the notice was sent in its entirety to the facsimile number of the other party.

IN WITNESS THEREFOR the parties hereto have executed this Licence Agreement the day and year first above written.

Signed by Fred Armentrout)
Chairman)
)
)
)
)
for and on behalf of)
The Hong Kong Reprographic)
Rights Licensing Society Limited)

Witnessed by :

[name]
[HK I/C No.]

Signed by [name of Chairman of Schools)
Council])
)
)
)
)
for and on behalf of)
[name of Licensee])
)

Witnessed by :

[name]
[HK I/C No.]

SCHEDULE I

PARTICULARS OF THE LICENSEES

Name of Licensees:

(Letters of Authorization signed by the Licensees in favour of Subsidized Primary Schools Council will be attached to this Licence Agreement)

Address:

Tel:

Fax:

School code/ID:

Contact person:

SCHEDULE II

LICENSED MATERIALS

All Published Works excluding:

- (a) those works (if any) listed in writing by the Licensor and issued to Subsidized Primary Schools Council, being the agent of all the Licensees, in January and July of each year during the Term pursuant to Clause 2.3 of this Licence Agreement. The exclusion list and additions to the exclusion list shall not take effect until one month after written notification to Subsidized Primary Schools Council; and
- (b) all the categories and works referred to in the attached list.

LIST OF EXCLUDED LICENSED MATERIALS

(Effective: 11 February 2006)

THIS AGREEMENT DOES NOT COVER ANY OF THE FOLLOWING LISTED CATEGORIES OF WORKS OR PUBLISHED WORKS:

- * Works published outside the following territories: Hong Kong SAR, Argentina, Australia, Belgium, Canada, Colombia, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Jamaica, Luxembourg, Mainland China, Malta, Mexico, New Zealand, Nigeria, Norway, Quebec, Singapore, Slovak Republic, South Africa, Spain, Switzerland, Taiwan, Netherlands, UK and USA. (In other words, works published in named territories may be copied under this Agreement.)
- * Works without ISBN or ISSN, except newspapers.
- * Workbooks, work cards, exercise books, worksheets, assignment sheets, tests, examination papers, and other works intended to be “consumable” or for one-time use.
- * Teachers’ resources, including instructors’ manuals, solutions manuals, test bank, teachers’ guides.
- * Instruction manuals, including computer and equipment those bundled with software and/or hardware.
- * Publications containing a notice expressly prohibiting copying under the authorization of a licence from a reproduction rights organization.
- * Newspapers (except that this Agreement covers newspapers published in Argentina, Australia, Belgium, Canada, Colombia, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Jamaica, Luxembourg, Mainland China, Malta, Nigeria, Quebec, Singapore, Slovak Republic, South Africa, Switzerland, Taiwan, Netherlands, UK and USA).
- * Magazines (except that this Agreement covers magazines published in Argentina, Australia, Belgium, Canada, Colombia, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Jamaica, Luxembourg, Mainland China, Malta, Mexico, New Zealand, Nigeria, Quebec, Singapore, Slovak Republic, South Africa, Spain, Switzerland, Taiwan, Netherlands, UK and USA).
- * Printed music including the words (except that this Agreement covers printed music including the words published in Hong Kong SAR, Australia, Belgium, Denmark, Finland, Hungary, Iceland, Luxembourg, Mainland China, Malta, Nigeria, Norway, Slovak Republic, Switzerland, Taiwan and USA).
- * The works listed hereunder:
 - City University of Hong Kong Press
 - All publications
 - Harvard Business School
 - All case studies

SCHEDULE III

LICENCE FEE

(1) Licence Fee for the period from 1 September 2006 to 31 August 2007:

Each Licensee at HK\$706

(2) Licence Fee for the period from 1 September 2007 to 31 August 2008:

Each Licensee at HK\$857

(3) Licence Fee for the period from 1 September 2008 to 31 August 2009:

Each Licensee at HK\$1,008

The Licence Fee shall be paid in advance within 30 days of the Commencement Date and within 30 days of each and every following (or subsequent) Annual Day.