

As of 8th January 2018

CPD Standard Pathway

Standard non-expiring site licence

End User Licence Agreement

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The copyright and other intellectual property rights in this Product are owned by CUREE Ltd (“CUREE”). By opening this package you, the Licensee, (an individual or legal entity) agree with CUREE to be bound by the terms of this Agreement which will govern the Licensee’s use of the Product.

CUREE LIMITED is a company registered in England and Wales under number 4936927 with registered office at 8th Floor, Eaton House, 1 Eaton Road, Coventry, West Midlands CV1 2FJ (“CUREE”). This is also our address for general correspondence.

THE LICENSEE is an educational establishment wishing to use the Product for the purposes of undergoing training in connection with the Product at its establishment.

RECITALS

- (A) CUREE – the Centre for the Use of Research and Evidence in Education - supports and develops the effective use of research and evidence in education in order to improve practice and policy and to raise standards.
- (B) CUREE has developed an interactive CPD Standard Pathway Tool
- (C) The Licensee wishes to use the above referenced product for non Commercial Purposes only and this Agreement sets out the terms upon which CUREE agrees to grant such licence to the Licensee.

AGREED TERMS

1. INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:

Commercial Purposes: means both for the purpose of financial gain, and for the purpose of the provision of training to such other educational establishments that do not fall within the meaning of Licensee or Licensed User under the terms of this Agreement;

Content: means the content contained in the Product;

Intellectual Property Rights: means any patent, copyright, registered design, database right, trade mark or other intellectual property right subsisting in the Territory in respect of the Product and the Training and applications for any of the foregoing;

Licensed Premises: means the address of the Licensee’s educational establishment;

Licensed Users: means the Licensee’s employees

Licensee: means the organisation(s) to whom CUREE grants the Rights to the Product under this Agreement;

Permitted Purpose: means the purpose of giving teaching and training in association with the Product given by the Licensee to the Licensed Users subject always to the terms set out in this Agreement;

Product: means the CPD Standard Pathway Tool;

Rights: means the non-exclusive, non-transferable, perpetual and royalty free licence to use the Product for the Permitted Purpose and view the Content in and associated with the Product in the Territory in accordance with the terms of this Agreement;

Territory: means the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man;

Third Party Content: means all content owned by a third party, but licensed under contract for distribution by CUREE or its distributor as an integral part of the Product, as specified in Schedule 1;

Training: means any training in the effective use and deployment of the Product, or training which is otherwise based on the subject matter of the Product, or which utilises the Product for the benefit of teaching the Licensed Users.

- 1.2 Any reference in this Agreement to “writing” or related expressions includes a reference to cable, facsimile transmission, e-mail or comparable means of communication.
- 1.3 Any reference in this Agreement to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted, extended or replaced at the relevant time.
- 1.4 The headings in this Agreement and the Recitals above are for convenience only and shall not affect its interpretation.
- 1.5 Any reference to a clause, sub-clause or Schedule shall be construed as a reference to a clause, sub-clause or Schedule to this Agreement unless expressly stated to the contrary.
- 1.6 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.7 Where the words include(s), including or in particular are used in this Agreement, they are deemed to have the words without limitation following them and where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.
- 1.8 Any obligation in this Agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.9 Words in the singular includes the plural and vice versa.

2. LICENCE

- 2.1 In consideration of the Licensee’s payment of the Licence Fee, CUREE grants to the Licensee the Rights in the Territory.

3. PERMITTED USE

- 3.1 The Licensee is licensed to view the Content and to use the Product expressly for its own internal, non Commercial Purposes only at the Licensed Premises for the benefit of the Licensed Users.

- 3.2 The Licensee is licensed to store any digital based copy of the Content on any computer owned by the Licensee or the Licensed User and located at the Licensed Premises or at the Licensed User's home and without prejudice to the provisions of clause 8.2.2 may make backup copies of the Product on any hard disk or to a server on the Licensed Premises.
- 3.3 The Licensee may copy and print any of the printable resources available on the Product for distribution to and use by the Licensed Users.
- 3.4 The Licensee is permitted to use any or all of the Product for the purposes of incorporating the same into materials which are (or are part of) the Licensee's or Licensed User's own internal programmes only.
- 3.5 The Licensee agrees to comply with any additional Third Party Software conditions notified to it on or before delivery of any Third Party Software (including, if so required, the execution and return of a Third Party Software Licence) and the Licensee agrees to indemnify CUREE and keep CUREE indemnified from and against any and all claims made against CUREE alleging that the use of any Third Party Software permitted under this Agreement breaches the Third Party Software conditions. Such indemnity will include all loss, costs and expenses incurred by CUREE as a consequence of such claim.

4. **RESTRICTIONS ON USE**

The Licensee may not, and shall not permit others, to:

- 4.1 use the Product for Commercial Purposes nor offer the Product or training for the Product to any other third party;
- 4.2 sub-license, sell, distribute, assign, rent, lease or otherwise transfer the licence in this Agreement or the Product or copies of the Product except as permitted by this Agreement;
- 4.3 translate, modify or create derivative works based on the Product except as permitted by law and the provisions of this Agreement;
- 4.4 make copies of the Product, in whole or part, except for the purposes of the Training, for the Licensee's own use and for reasonable security and back-up or archival purposes as permitted in this Agreement. Any copies made shall include all copyright or other proprietary notices;
- 4.5 in respect of any copies of the Product and the Product itself, remove, delete, fade, modify or otherwise tamper with or fail to transmit the copyright notice logo, trade mark, trade name or other mark signifying the Licensor or the Licensor's distributor, but for the avoidance of doubt the Licensee shall not be prohibited from inserting its own logo, trade mark, trade name or other mark onto digital copies of the Product;

4.6 vary, delete or obscure any notices of proprietary rights, including without limitation logos, trade marks, trade names or other marks identifying the Licensor or Licensor's distributor or any product identification or restrictions on or in the Product;

4.7 grant Licensed Users of the Product any rights in connection with the Product including to license or distribute the Product.

5. **NO OTHER RIGHTS**

5.1 The Licensee acknowledges and agrees that it has the Rights granted under this Agreement and the Licensee shall assert no other rights in and to the Products.

5.2 CUREE reserves all rights not expressly granted in this Agreement.

6. **INTELLECTUAL PROPERTY RIGHTS**

6.1 As between CUREE and the Licensee, CUREE owns all Intellectual Property Rights and all other rights in and to the Product. No title in or Intellectual Property Rights subsisting in the Product, including any and all upgrades, modifications, new versions and releases of the Product, is or will be transferred to the Licensee.

6.2 The Licensee understands that the Product contains proprietary information and agrees that except in accordance with an express written authority signed by an authorised signatory of CUREE, it will not provide or otherwise make the Product available for any reason to any other person, firm, company or organisation.

6.3 The Licensee will ensure that all of its Licensed Users are advised that the Product constitutes confidential information and that all Intellectual Property Rights in the Product shall be the property of CUREE, and the Licensee will ensure that all such Licensed Users shall comply with all of the terms and conditions of this clause 6.3.

6.4 Recognising that the Product has significant commercial value to CUREE, the Licensee agrees to indemnify CUREE in respect of any losses or expenses incurred by CUREE as a result of the unauthorised use of the Product by any third party, whether through misuse of the Product by the Licensee or through any other breach by the Licensee of this Agreement or through the negligence of the Licensee or through any other cause.

7. **LICENSEE'S UNDERTAKINGS**

The Licensee acknowledges, undertakes and agrees with CUREE that:

7.1 prior to use of the Product by its Licensed Users all such parties shall be notified of the terms of this Agreement and such parties shall agree to be bound by the terms of this Agreement;

7.2 nothing in this Agreement shall operate to relieve the Licensee of its obligations to obtain the required licences for the purposes of the public broadcast of the Product at its premises;

- 7.3 the Licensee shall not by any act or omission impair or prejudice the copyright in the Product or in any part of the Product;
- 7.4 without prejudice to any other provisions in this Agreement, the Licensee shall indemnify and keep fully indemnified CUREE from and against all actions proceedings claims demands costs (including without prejudice to the generality of this provision the legal costs of CUREE on a solicitor and own client basis) awards and damages arising directly or indirectly as a result of any breach or non performance by the Licensee of any of the Licensee's undertakings warranties or obligations under this Agreement.
8. **DISCLAIMER**
- 8.1 The Product is provided "as is" and "as available" and CUREE does not warrant that this Product will meet the Licensee's requirements or conform to any description or specification of functionality or that its operation will be uninterrupted or error free or that defects in the Product will be corrected.
- 8.2 Without prejudice to the generality of the foregoing, no warranty is given by CUREE that:
- 8.2.1 the Product will have the effect of improving the teaching skills of the Licensed Users or participants in the training associated with Product;
- 8.2.2 the Product will work effectively, or error free, when uploaded to the Licensee's hard drives or other computer systems.
- 8.3 CUREE warrants that it has good title or is otherwise authorised to license the Product to the Licensee.
- 8.4 CUREE's sole obligation in the event of non-conformity of the Product to the Training will be, in the case of the Product being developed or owned by CUREE, to remedy any non-conformity of the Product to the Training provided that CUREE has been notified of the non-conformity within 90 days of the date of delivery to the Licensee.
- 8.5 The above constitutes the only warranties provided by CUREE in respect of the Product. The obligations and liabilities of CUREE set out in this Agreement replace all implied guarantees and warranties, including without limitation, any warranty of satisfactory quality or fitness for a particular purpose which is the Licensee's responsibility to determine.
- 8.6 The Licensee acknowledges that:
- 8.6.1 the Product has been produced to meet individual Licensee specifications; and
- 8.6.2 it is not possible to produce a digital copy of the Product guaranteed to be error-free in all circumstances.
- 8.7 CUREE recommends, and will make available if so requested, support and maintenance for the Product.

8.8 It is understood and acknowledged by the Licensee that the Licensee shall use the Product entirely at its own risk.

8.9 Neither party shall be liable for any failure or delay in performance of this Agreement which is caused by circumstances beyond the reasonable control of either the Licensee or CUREE.

9. **TRAINING**

CUREE recommends the purchase of the Training to accompany the Product. Such Training is provided by CUREE's authorised training partners, information about whom may be obtained from CUREE by telephone or from www.curee.co.uk.

10. **TERM**

Subject to the provisions of clause 12, the licence granted under this Agreement is perpetual unless the Licensee terminates it by destroying the Product together with all copies.

11. **LIABILITY**

11.1 The Licensee acknowledges that it is the responsibility of the Licensee to ensure that the facilities and functions provided by the Product meet the Licensee's requirements.

11.2 Save in respect of claims for death or personal injury arising from CUREE's negligence, in no event will CUREE be liable for any damages resulting from:

11.2.1 loss of data;

11.2.2 loss of use;

11.2.3 loss of profits;

11.2.4 loss of anticipated savings,

nor for any damages that are an indirect or secondary consequence of any act or omission of CUREE, whether such damages were reasonably foreseeable or actually foreseen and even if CUREE has been advised of the possibility of such damages.

11.3 All liability that is not expressly assumed by CUREE in this Agreement is excluded.

11.4 The Licensee acknowledges and agrees that the limitations contained in this clause 11 are reasonable in the light of the nature and purpose of the Product.

12. **TERMINATION**

12.1 CUREE may terminate this Agreement forthwith on giving notice in writing to the Licensee if the Licensee commits any material breach of any term of this Agreement and (in the case of a breach capable of remedy) shall have failed within 30 days after the receipt of a request in writing from CUREE to do so, to remedy the breach.

- 12.2 Forthwith upon the termination of this Agreement, the Licence shall terminate.
- 12.3 The Licensee indemnifies CUREE in full against the financial consequences of any breach of the nature described under clause 12.1.
- 12.4 Termination of this Agreement howsoever caused will:
- 12.4.1 be without prejudice to any obligations or rights of either of the parties hereto accrued prior to such termination; and
 - 12.4.2 not affect any provision of this Agreement which is expressly or by implication intended to come into effect on, or to continue in effect after, such termination.
- 12.5 The Licensee undertakes that, upon termination of this Agreement for any reason, it shall permanently delete and destroy all copies of the Product in its possession or control including any copies stored on the hard disk of any computer or other media under its control and further undertakes to certify in writing to CUREE that the same has been done.

13. **CONFIDENTIALITY**

- 13.1 Each party shall treat as confidential all information obtained from the other pursuant to this Agreement and shall not divulge such confidential information to any person (except such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent providing that this clause shall not extend to information which was rightfully in possession of such party prior to the commencement of negotiations leading to this Agreement, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause) or which is trivial or obvious.
- 13.2 Each party shall ensure that its employees are aware of and comply with the provisions of this clause.
- 13.3 The foregoing obligations as to confidentiality shall survive any termination of this Agreement.

14. **FORCE MAJEURE**

- 14.1 If either party is affected by Force Majeure it shall forthwith notify the other party of the nature and extent thereof.
- 14.2 Neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay in performance, or non-performance, of any of its obligations under this Agreement to the extent that such delay or non-performance is due to any Force Majeure of which it has notified the other party; and the time for performance of that obligation shall be extended accordingly.

14.3 If the Force Majeure in question prevails for a continuous period in excess of six months, the parties shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.

14.4 The provisions of this clause 14 do not apply in respect of any payment obligations arising under or in connection with this Agreement.

15. **WAIVER OF REMEDIES**

The failure of either party to enforce or to exercise at any time or for any period of time any term of or any right pursuant to this Agreement does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect that party's right later to enforce or to exercise it.

16. **VARIATIONS**

Any variation to this Agreement must be in writing and signed on behalf of each of the parties by a duly authorised person.

17. **THIRD PARTIES**

Any person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available independently of such Act.

18. **ASSIGNMENT**

This Agreement is personal to the Licensee and the Licensee may not sub-license, assign or in any way transfer any of the rights, liabilities and/or obligations under this Agreement on a temporary or permanent basis to any third party without the prior written consent of CUREE.

19. **NO PARTNERSHIP**

Nothing in this Agreement shall constitute or be deemed to constitute any partnership or joint venture or either party as the agent of the other for any purpose whatsoever and neither of the parties shall have any authority or power to bind the other or to contract in the name of the other party or create a liability against the other party.

20. **ILLEGALITY OR SEVERANCE**

If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of this Agreement and the remainder of the provisions in question shall not be affected thereby.

21. **NOTICES**

21.1 Any notice or other information required or authorised by this Agreement to be given by either party to the other may be given by hand or sent (by first class pre-paid post,

facsimile transmission, e-mail or comparable means of communication) to the other party at the address shown above.

21.2 Any notice or other information given by post under clause 21.1 which is not returned to the sender as undelivered shall be deemed to have been given on the third (3rd) day after the envelope containing the same was so posted; and proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted, and that it has not been so returned to the sender, shall be sufficient evidence that such notice or information has been duly given.

21.3 Any notice or other information sent by facsimile transmission, e-mail or comparable means of communication shall be deemed to have been duly sent on the date of transmission, provided that a confirming copy is sent by first class pre-paid post to the address shown above within 24 hours after transmission.

22. **ENTIRE AGREEMENT**

22.1 This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement, supersedes all previous agreements and understandings between the parties with respect to this Agreement, and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.

22.2 Each party acknowledges that, in entering into this Agreement, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

23. **PROPER LAW & JURISDICTION**

23.1 This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales.

23.2 Each party hereby submits to the exclusive jurisdiction of the courts of England and Wales.

SCHEDULE 1 THIRD PARTY CONTENT

The following is a list of all third party software / content used on the Product:

- Adobe Acrobat
- Microsoft PowerPoint
- Windows Media Player
- Microsoft Word