



This distribution agreement, as it may be varied from time to time, (the "**Agreement**") is a legal agreement between you, or, if you are acting in the course of your employment, your employer ("**Developer**") and EducationalAppStore Limited of 1 Square Rigger Row, Plantation Wharf, London, SW11 3TZ ("**Distributor**"). Before clicking to accept the terms of this Agreement, you should read this Agreement carefully, and should only click to accept the terms of this Agreement if you have the authority to bind the Developer to the terms of this Agreement.

WHEREAS:

- A. The Developer has developed an educational product which it wishes to make available for online download.
- B. The Distributor operates a website on which it makes educational products available to registered users for download.
- C. The Developer and the Distributor want to make the Developer's educational product available for download on the Distributor's website.

IT IS AGREED as follows:-

1. INTERPRETATION

1.1 In this Agreement:-

"APK" means the Android application package file in respect of the Product.

"Commencement Date" means the date on which the Developer accepts the terms of this Agreement.

"Confidential Information" in relation to each party, means all information not publicly known that is confidential in nature and which is used in or otherwise relates to that party's business, customers or financial or other affairs, including without limitation information that is confidential in nature relating to:

- (a) trade secrets and know-how;
- (b) personnel, agents, third party intermediaries and suppliers;
- (c) future projects, business development or planning, commercial relationships and negotiations

in each case existing in any form, whether or not marked "confidential information", and all other information clearly designated by the disclosing party as "Confidential".

"Content Standards" has the meaning given to it in Clause 11.

"Developer Branding" means any and all business names, trade marks, service marks, domain names, brands, logos, programme titles and other geographical representations used by the Developer in conjunction with its business.

"DPA" has the meaning given to it in Clause 10.1.

"End User" means a registered user of the Site who has downloaded the Product

"IP Rights"	means all patents, rights to inventions, copyright and related rights, moral rights, database rights, rights in designs, trade marks, service marks, trade names, domain names, rights in goodwill or to sue for passing-off, rights in undisclosed or confidential information (such as know how, trade secrets and inventions (whether patentable or not)) and other similar or equivalent rights or forms of protection (whether registered or unregistered) and all applications (or rights to apply) for, and for renewals and extensions of, such rights as may now or in the future exist anywhere in the world.
"Operating System"	means the Android operating system.
"PayPal Account"	means a current and subsisting payment account which the Developer has in place with PayPal.
"Personal Data"	has the meaning given to that term in the Data Protection Act 1998.
"Product Fee"	means the price of the Product in respect of each download of that Product by an End User.
"Product Record"	has the meaning given to it in Clause 7.3.
"Product"	means the Developer's educational software, content and any other digital materials which the Distributor has agreed to distribute on the Site pursuant to this Agreement.
"Royalty"	means 30% of the Product Fee.
"Site"	means the website operated by the Distributor at www.educationalappstore.com or such other website as may be notified to the Developer in writing from time to time.
"Supported Foreign Currency"	means US Dollars or Euros.
"Threshold"	means ten pounds Sterling (£10) or equivalent in a Supported Foreign Currency.

1.2 Interpretation

In this Agreement (except where the context otherwise requires):

- 1.2.1 use of the singular includes the plural (and vice versa) and use of any gender includes the other genders;
- 1.2.2 a reference to a party is to a party to this Agreement and includes that party's personal representatives, successors or permitted assignees;
- 1.2.3 any reference to a statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under it as from time to time amended, consolidated or re-enacted;
- 1.2.4 a reference to persons includes individuals, corporations, and unincorporated bodies or associations that are recognised at law (whether or not having separate legal personality and irrespective of their jurisdiction of origin, incorporation or residence); and
- 1.2.5 a reference to a Clause is to the relevant clause of this Agreement.

- 1.3 The headings are included for convenience only and are not to affect the construction or interpretation of this Agreement.

2. **TERM**

- 2.1 This Agreement will take effect upon the Commencement Date and will continue unless and until terminated by either party in accordance with Clause 9 or Clause 19.

3. **PRODUCT TESTING AND ACCEPTANCE**

- 3.1 The Distributor will not make any Product available on the Site unless the Product has been tested by the Distributor. The Developer will accordingly submit the Product, including the APK, graphic assets, screenshots, videos and localised descriptions relevant to the Product to the Distributor for testing. The Distributor retains sole discretion as to whether or not a Product meets its requirements for distribution on the Site and shall have no liability to the Developer if it determines that a Product does not meet its requirements.
- 3.2 The Developer will also submit details of its PayPal Account, or such other payment account details as agreed by the Distributor, its contact details as required for Clause 6 and the applicable Product Fee when it submits the Product for testing by the Distributor.
- 3.3 The Developer may enforce digital rights management ("**DRM**") for its Product provided that such DRM is designed only to prevent an End User sharing the Product with other persons or with other computers or mobile devices, and the DRM does not restrict access to or use of the Product by the End User.

4. **INTELLECTUAL PROPERTY RIGHTS AND LICENCE**

- 4.1 Other than as expressly set out in this Clause 4, nothing in this Agreement shall be deemed to grant either party any rights to the IP Rights of the other party or its licensors.
- 4.2 The Developer grants to the Distributor a non-exclusive, irrevocable (subject to the other terms of this Agreement), worldwide, royalty free, transferable right to:
- 4.2.1 sell, distribute and make available the Product to End Users through the Site and to grant a non-exclusive, worldwide, irrevocable and perpetual licence to use the Product to the End Users;
 - 4.2.2 use, test, copy, reproduce and store the Product for the purposes of this Agreement; and
 - 4.2.3 use the Developer Branding in order to promote and distribute the Product.
- 4.3 The Developer acknowledges and agrees that the Distributor will be permitted to retain one copy of the Product following the termination of this Agreement.
- 4.4 The Developer grants to the End Users a non-exclusive, worldwide, irrevocable and perpetual licence to use the Product. The Developer may include a separate end user licence agreement within the Product provided that end user licence agreement is not inconsistent with this Agreement.
- 4.5 The Developer represents, warrants and undertakes that the Product, and the use of the Product by an End User or by the Distributor in accordance with this Agreement, does not infringe the IP Rights of any third party. The Developer agrees that it will indemnify and keep indemnified on demand the Distributor against any loss suffered by the Distributor and/or its officers, directors, partners, employees, agents and contractors as a result of a claim that the Product infringes the IP Rights of a third party.

5. **WARRANTY**

- 5.1 The Developer warrants and represents that:
- 5.1.1 it has full legal authority to enter into this Agreement and all necessary rights, including IP Rights, to fulfil its obligations under this Agreement; and

5.1.2 the Product is virus-free, does not contain any spyware or malware and will not interfere with the proper operation of the Site or of any of the mobile devices or other computer equipment of the Distributor or the End Users;

5.1.3 the Product is compatible with the Operating System; and

5.1.4 the Product complies with the Content Standards.

5.2 This Agreement sets out the full extent of the Distributor's obligations and liabilities to the Developer. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding on the Distributor except as specifically stated in this Agreement. Any condition, warranty, representation or other term which might otherwise be implied into, or incorporated in, this Agreement, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law. The Developer and the Distributor agree that the only rights and remedies available to each party arising out of or in connection with any condition, warranty, representation or other term concerning the distribution of a Product shall be for breach of contract as provided in this Agreement.

6. **SUPPORT**

6.1 The Developer is solely responsible for support and maintenance of the Product and for any complaints regarding the Product. The Developer will provide the Distributor with contact information which will be displayed on the Site in order for End Users to contact the Developer with any complaints or issues regarding support or maintenance of the Product.

6.2 If the Developer becomes aware of any fault, error or defect with regard to the Product, details of such fault, error or defect should be provided to the Distributor in writing. The Developer will investigate any such fault, error or defect and will provide a patch or upgrade to resolve the problem. The Developer agrees that it will indemnify and keep indemnified on demand the Distributor against any loss suffered by the Distributor and/or its officers, directors, partners, employees, agents and contractors as a result of any fault, error or defect with regard to the Product.

7. **PAYMENT, ROYALTIES AND REFUNDS**

7.1 To receive payment in respect of a Product under the terms of this Agreement, the Developer must have a PayPal Account.

7.2 The Developer is responsible for determining, and notifying the Distributor of, the Product Fee. The Product Fee must be expressed in pounds Sterling or a Supported Foreign Currency.

7.3 The Distributor will collect the Product Fee from an End User. The Distributor will keep an electronic record of the number of Products which have been purchased by End Users (the "**Product Record**") and will provide the the Developer with remote access to the Product Record by way of a secure access log in as provided by the Distributor. The Developer must not share its log in details with any third party and is responsible for ensuring that its log in details and any password are kept confidential.

7.4 Where:

7.4.1 the total Product Fees for a month reach or exceed the Threshold the Distributor will, within thirty (30) days of the end of that month, make a payment to the Developer's PayPal Account equal to the value of the Product Fees for that month less the Royalty for each Product downloaded which shall be retained by the Distributor; or

7.4.2 the total Product Fees for a month do not reach the Threshold the Distributor will carry over the Product Fees until such month as the cumulative Product Fees meet or exceed the Threshold at which point the Distributor will make a payment to the Developer in accordance with Clause 7.4.1.

- 7.5 Where the Product Fee determined by the Developer in accordance with Clause 7.2 is zero (£0.00) the Distributor will have no obligation to make any payment to the Developer and no Royalty will be payable.
- 7.6 Where the Product Fee is expressed in a Supported Foreign Currency, the Distributor will deduct the Royalty after conversion (at such rate as the Distributor or its Bank determine) of the Product Fee to pounds Sterling but before deduction of any applicable bank or other charges relating to that conversion.
- 7.7 Any refund of the Product Fee to an End User will be made at the sole discretion of the Distributor. Developer agrees that it will not make any refund to any End User unless expressly permitted by the Distributor. The Distributor reserves the right to deduct any refund paid to an End User from any future payment to the Developer.
- 7.8 The Distributor reserves the right to charge the Developer for:
- 7.8.1 hosting the Product on the Site; and / or
 - 7.8.2 advertising the Product on the Site or otherwise.

Such hosting or advertising will be charged in accordance with the Distributor's standard rates for such services as notified to the Developer from time to time.

8. **LIABILITY**

- 8.1 The Developer acknowledges and agrees that it is solely responsible for, and that the Distributor has no responsibility or liability to the Developer or a third party for:
- 8.1.1 any Product which is distributed through the Site pursuant to this Agreement;
 - 8.1.2 any breach of the Developer's obligations under this Agreement;
 - 8.1.3 any breach of any agreement which the Developer has with a third party, including without limitation any End User; and
 - 8.1.4 any breach by the Developer of any applicable law or regulation.
- 8.2 The Developer acknowledges and agrees that the Distributor shall have no liability to the Developer for any:
- 8.2.1 indirect, special or consequential loss; or
 - 8.2.2 direct or indirect loss of profits, business, data, anticipated savings or opportunity,
- which may be incurred by the Developer in connection with this Agreement.
- 8.3 Notwithstanding Clauses 8.1 and 8.2 nothing in this Agreement shall limit or exclude the liability of either party for:
- 8.3.1 death or personal injury resulting from negligence; or
 - 8.3.2 fraud or fraudulent misrepresentation; or
 - 8.3.3 any other liability which cannot be excluded by law.

9. **TERMINATION AND REMOVAL OF PRODUCT FROM SITE**

- 9.1 This Agreement may be terminated by the Distributor at any time by giving thirty (30) days written notice (which shall include email) to the Developer.

- 9.2 This Agreement may be terminated with immediate effect by either party giving the other written notice (which shall include email):
- 9.2.1 if the other is in material breach of this Agreement and fails to remedy that breach (if capable of remedy) within thirty (30) days of receipt of written notice of the breach; or
 - 9.2.2 if the other is in material breach of this Agreement which is not capable of remedy.
- 9.3 Upon termination of this Agreement for any reason:
- 9.3.1 the Distributor shall cease to use any log in details provided to it by the Distributor (including those provided to access the Product Report):
 - 9.3.2 each party will return any Confidential Information of the other party to that other party; and
 - 9.3.3 the Distributor will remove the Product from the Site.
- 9.4 Termination of this Agreement, or removal of any Product from the Site pursuant to Clause 9.5 or Clause 11.2, shall not effect:
- 9.4.1 any rights or remedies of the parties which have accrued prior to the date of termination;
 - 9.4.2 any provisions of this Agreement which are expressed to continue in force after termination; or
 - 9.4.3 the licence granted to End Users pursuant to either Clause 4.4 or 4.2.1;
 - 9.4.4 The Developer's obligation to continue to provide support in accordance with Clause 6 for End Users who have downloaded the Product prior to the date of termination or removal (as the case may be).
- 9.5 Where the Developer has a Product on the Site:
- 9.5.1 The Developer may at any time by providing written notice to the Distributor remove any Product from the Site; and
 - 9.5.2 The Distributor may at any time and without any liability to the Developer by providing written notice to the Developer remove any Product from the Site.

For the avoidance of doubt, in the event that removal of one or more Products pursuant to this Clause 9.5 has the result that no Product of the Developer is distributed on the Site then this Agreement shall automatically terminate.

10. **DATA PROTECTION AND PRIVACY**

- 10.1 The Developer agree that it will comply with the requirements of the Data Protection Act 1998 ("**DPA**") in respect of any Personal Data it collects, uses or accesses relating to End Users, including but not limited to user names and passwords. In particular the Developer will:
- 10.1.1 provide End Users with a privacy notice which complies with the DPA; and
 - 10.1.2 ensure that it maintains appropriate technical and organisational measures sufficient to comply with the Seventh Principle of the DPA.

11. **CONTENT STANDARDS**

11.1 The Developer will ensure that a Product does not contain any content which:

11.1.1 is pornographic or sexually explicit;

11.1.2 is violent;

11.1.3 is defamatory;

11.1.4 is offensive, intolerant or discriminatory, including on the grounds of race or ethnicity, sex or sexual orientation, religious or other beliefs, age or disability;

11.1.5 is fraudulent or misleading;

11.1.6 contains any Personal Data;

11.1.7 involves gambling,

or any content which is otherwise unlawful (together the "**Content Standards**").

11.2 The Distributor reserves the right to remove without notice any Product from the Site which it believes does not comply with the Content Standards without any liability to the Developer.

12. **CONFIDENTIALITY**

12.1 Each party undertakes that for the duration of this Agreement and thereafter it will keep confidential and (except for the purposes of this Agreement) will not use or (without the prior written consent of the other party) disclose to any third party any Confidential Information of the other party which may become known to it as a result of negotiations leading up to or the performance of this Agreement. Each party undertakes to the other party to take all steps as shall from time to time be necessary to ensure compliance with the provisions of this Clause 12 by its employees, agents and sub-contractors.

12.2 The obligations in Clause 12.1 shall not apply in relation to:

12.2.1 information which is or becomes public knowledge other than as a result of a breach of Clause 12.1;

12.2.2 information which the party using or disclosing the information either knew prior to the other party's first disclosure to it or received from a third party entitled to disclose the same;

12.2.3 information which any party is required to disclose by law, any court of competent jurisdiction, any Government agency or regulatory body lawfully requesting the same or by the regulations of any stock exchange provided that (to the extent not prohibited by law or order of court, government agency or regulatory body or stock exchange regulation) the disclosing party promptly notifies and consults with the other party in advance in relation to the timing and content of such disclosure.

13. **PRODUCT RATINGS AND REVIEWS**

13.1 End Users and independent third parties may rate and review Products on the Site. The Distributor may, but has no obligation to, moderate any such ratings and reviews. The Developer may contact the Distributor if it is concerned about any ratings or reviews and the Distributor may, in its sole discretion, agree to remove any rating or review which the Developer considers to be incorrect or unjustified.

13.2 The Distributor may use ratings and reviews in its sole discretion to determine the placement of Products and products of other developers.

14. TRANSFER OF RIGHTS AND OBLIGATIONS

- 14.1 This Agreement is binding on the Developer and the Distributor, and on their respective permitted successors and assigns.
- 14.2 The Developer may not transfer, assign, charge or otherwise dispose of this Agreement, or any of its rights or obligations arising under it, without the Distributor's prior written consent.
- 14.3 The Distributor may transfer, assign, charge, sub-contract or otherwise dispose of this Agreement, or any of the Distributor's rights or obligations arising under it, at any time during the term of the Agreement.

15. NOTICES

- 15.1 All notices given by the Developer to the Distributor must be given to EducationalAppStore Limited, by email to emailus@educationalappstore.com. The Distributor may give notice to the Developer at either the e-mail address or any postal address the Developer provided to the Distributor when the Product is submitted for testing.
- 15.2 Notice will be deemed received and properly served immediately 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.

16. WAIVER

No forbearance or delay by either party in enforcing its rights will prejudice or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

17. SEVERABILITY

If any of the terms of this Agreement 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.

18. THIRD PARTY RIGHTS

With the exception of Clause 4.4 which may be enforced by End Users against the Developer directly, the parties do not intend that any term of this Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement and notwithstanding section 2(1) of the Contracts (Rights of Third Parties) Act 1999, the parties may in writing vary, rescind or terminate this Agreement (whatever the nature of such variation, rescission or termination) without seeking the consent of any End User on whom this Agreement confers rights

19. CHANGES TO THIS AGREEMENT

- 19.1 The Distributor may make changes to this Agreement at any time by providing the Developer with written notice (including by email) of those changes. The Distributor will also post any changes which it makes to the Agreement on the Site.
- 19.2 The Distributor must either accept or reject the changes by email to the Agreement within thirty (30) days of the Distributor issuing notice of the change to the Agreement. In the event that:
 - 19.2.1 The Developer rejects the changes this Agreement will automatically terminate;
 - 19.2.2 The Developer does not respond within thirty (30) days the Distributor will suspend distribution of Products on the Site until the earlier of:

- (a) the date on which the Developer accepts the changes in which case the changes will be effective from the date of acceptance;
- (b) the date on which the Developer rejects the changes in which case the Agreement will terminate; or
- (c) the expiry of ninety (90) days from the date the Distributor originally notified the Developer of the changes in which case the Agreement will terminate.

19.3 Any changes which are required by law will be effective immediately. If the Developer does not agree with the changes which are required by law it may terminate this agreement by giving thirty (30) days written notice (which shall include email) to the Distributor.

20. **ENTIRE AGREEMENT**

20.1 This Agreement constitutes the whole agreement between the Developer and the Distributor and supersedes any previous arrangement, understanding or agreement between the Developer and the Distributor, relating to the distribution of Products.

21. **LAW AND JURISDICTION**

This Agreement, its subject matter or its formation (including, without limitation, non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales, and the parties hereby submit to the non-exclusive jurisdiction of the courts of England and Wales.