

THIS LICENCE is made on

March 2008

BETWEEN

(1) **Walsall City Academy Trust (WCAT)** a company existing under the laws of England with registered number 4251277 and whose address is Lichfield Road, Bloxwich, Walsall, WS3 3LX. (“**Licensor**”)

(2) (“**Licensee**”)

WHEREAS:

- (a) The Licensor has created a software package ‘Elementum Scriptor’ (hereafter defined as the software), supplied by download.
- (b) The Licensor wishes to grant a Licence to allow access by its staff to software to aid teaching and learning in the Licence’s school.
- (c) In consideration of the Licensee accepting and complying with the terms and conditions of this Licence the Licensor will disclose a password to the Licensee, which will allow the Licensee access to the software and use it as part of its educational programme.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS

In this Agreement:

The following expressions shall have the following meaning:

Expression	Meaning
“The Software”	The software is available by download from the Licensor including such additions, amendments or other changes as may be made by the Licensor to the software from time to time.
“Confidential Information”	All confidential technical information, data, software and other intellectual property and know how including without limitation to the password, download, provided to the Licensee under this Licence by the Licensor.
“Third Party Materials”	Materials created by third parties, which are contained in the software which the Licensee is licensed to use.
“Third Party Site”	Any web site, not owned by the Licensor, which is referred to or accessed by hypertext link through the software.

2. GRANT OF LICENCE

2.1 The Licensor hereby grants the Licensee a non-transferable, non-exclusive licence to have access to and use and to allow its staff to have access to and to use software from the date of this Licence, subject to the terms and conditions of this Licence, including its termination provisions. Nothing in this Licence is intended to confer any benefit on a third party Contract (Rights of Third Parties) Act 1999 is hereby excluded.

2.2 At the commencement of this Agreement the Licensor will provide to the Licensee:

2.2.1 the download for the purpose of enabling access to the software

2.2.2 a password to enable access to that software

- 2.3 The Licensee shall not assign, sub-license, sell, lease, encumber, charge or otherwise attempt this licence or any rights or obligations hereunder.
- 2.4 The Licensee will take reasonable steps to train its staff in the need to keep the password confidential, will take all reasonable steps to ensure the password is not given to a third party and will report promptly in writing to the Licensor any breaches by it or its students of these obligations regarding the password.
- 2.5 The Licensor may, but is not obliged to, make changes from time to time to the software by way of additions, amendments or other changes whatsoever. The Licensor will give the Licensee reasonable notice wherever possible of such changes as are made to enable the Licensee to include those changes.

3. Training

- 3.1 In respect of support with any technical problems specific to the software the Licensee will in the first place attempt to find a solution from the Frequently Asked Questions posted by the Licensor at the URL. Should any such questions not be answered in this matter, questions may be put by e-mail to the Licensor and the Licensor will use reasonable efforts to provide solutions or workarounds to the questions raised where feasible.

4. CONSIDERATION

- 4.1 The Licensee will pay to the Licensor the sum of £35.00 for the purchase of the software.

5. RIGHTS IN THE SOFTWARE

- 5.1 The Licensee acknowledges that the copyright and other intellectual property rights subsisting in the software are the property of the Licensor.
- 5.2 The Licensee further agrees that the Confidential Information is and remains the property of the Licensor or the relevant owner thereof. The Licensee undertakes to hold the Confidential Information in confidence and secret and to take all necessary precautions to safeguard any unauthorised disclosure of the Confidential Information.
- 5.3 The Licensee agrees that it will not make the Confidential Information available to any other person, firm, company or organisation for any reason (except to its employees, agents and students as authorised by Licensee to use the Confidential Information).
- 5.4 The Licensee warrants that it will take reasonable precautions to ensure that the software confidential information are not disclosed to third parties.

6. RIGHTS IN THE THIRD PARTY MATERIALS

The Licensee acknowledges that any intellectual property rights that subsist in the Third Party Materials are owned by third parties. The Licensee undertakes not to infringe any intellectual property rights subsisting in the Third Party Materials.

7. DISCLAIMER

- 7.1 Other than as set out in Clause 7.3, the Licensor makes no warranties, representations or undertaking about:

7.11 Any of the content of the software (including, without limitation as to quality, accuracy, completeness or fitness for any particular purpose including without limitation as an aid for educational instruction and learning); or

7.12 Any content of any Third Party Site referred to or accessed by hypertext link through the software.

7.2 The Licensor does not endorse or approve or guarantee availability of the content of any Third Party Site. The Licensor does not have any liability in connection with any Third Party Site (including, but not limited to, liability arising out of any allegation that the content of any Third party Site infringes any law or the rights of any person or entity).

7.3 The Licensor has exercised and will exercise reasonable care and skill in the preparation of the software. However the responsibility for including the software as part of a teaching program and for using the software lies exclusively with the Licensee. The Licensor makes no undertaking, representations or warranties whatsoever as to the results achieved by the Licensee's students consequent on using the software, as such results are completely outside the Licensor's control.

7.4 If the Licensee has any claim against the Licensor, including a claim arising out of any error or deficiency in the software, the Licensor's maximum aggregate liability for any such claim will be the value of the purchase fee of this Licence at the level at which it was invoiced by the Licensor. "Claim" in this context means all claims, whether for damages, indemnity, contribution or any other type of claim based on any other cause of action whatsoever this clause 7 expresses the complete and maximum liability of the Licensor to the Licensee for any claim arising out of or otherwise in connection with this Licence. Nothing in this clause shall be taken as limiting the Licensor's liability in respect of direct physical injury or death.

8. TERMINATION AND EFFECTS OF TERMINATION

8.1 If either of the parties is in material or continuing breach of any of its obligations under the Licence and fails to remedy the breach (if capable of remedy) for a period of 30 days after written notice of such breach or if a second similar default occurs within 6 months of the original default;

8.2 If either of the parties is involved in any legal proceeding concerning its insolvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purposes of an amalgamation or reconstruction, makes an arrangement with its creditors or petitions for an administration order or has a receiver or a manager appointed over all or any part of its assets or generally becomes unable to pay its debts within the meaning of Section 123 or Section 268 of the Insolvency Act 1986 or equivalent circumstances occur in any other jurisdiction.

8.3 If the Licence is terminated, the Licensee shall continue to enforce the confidentiality undertaking as set out in clause 5 of this Licence.

9. GENERAL PROVISIONS

9.1 Entire Agreement and Variations

This Agreement constitutes the entire agreement between the Licensor and the Licensee relating to the software. Each confirms that it had not relied upon any representation not recorded in this Agreement as an inducement to enter into this Agreement. No variation of these terms and conditions will be valid unless confirmed in writing by authorised signatories of both parties on or after the date of this Agreement.

9.2 Severability

If any of the provisions of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

9.3 Waiver

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

9.4 Notices

Any notice given under this Agreement by either party to the other party must be in writing and may be delivered personally or by first class post and in case of post it will be deemed to have given 2 working days after the date of posting. Notices will be delivered or sent to the addresses on the first shown page of this Agreement or to any other address notified in writing for the purpose of receiving notices.

9.5 Governing Law and Jurisdiction

These terms and conditions are governed by and constructed according to English law and both parties agree to submit to the exclusive jurisdiction of the English Courts.