

PAY, ACCESS AND LEARN ("PAL"): A SYSTEM FOR ONLINE LEARNING FROM ELANGUAGES

LICENSING OF DIGITAL CONTENT

PLEASE READ CAREFULLY BEFORE ACCESSING ANY CONTENT FROM THE PAL WEBSITE:

This licence agreement (**Licence**) is a legal agreement between you (**Customer**) and the University of Southampton, a company incorporated by Royal Charter and registered in England and Wales with company number RC000668 whose registered office is at University of Southampton, University Road, Southampton, SO17 1BJ, telephone number +44 (0)2380 599604, email address elang1@soton.ac.uk (**University, us or we**) for use of content within a module within the PAL website, which offer interactive online learning resources for students. The resources are organised into modules of ten items on a related topic (for example, Basic skills for academic writing) and each module provides at least six hours of activity-based learning (**Content**).

We licence use of the Content to you on the basis of this Licence. We do not sell the Content to you. We remain the owners of the Content at all times.

OPERATING SYSTEM REQUIREMENTS: THE CONTENT REQUIRES A PC OR MAC COMPUTER, OR A TABLET WITH A MINIMUM OF 32MB OF MEMORY AND THE WINDOWS, MAC OS, LINUX, ANDROID OR IOS OPERATING SYSTEM OF AT LEAST WINDOWS 98SE, MAC OS X, ANDROID 3 OR IOS 4.

IMPORTANT NOTICE TO ALL CUSTOMERS:

- BY ACCESSING THE CONTENT AND CLICKING ON THE "ACCEPT WITH OBLIGATION TO PAY" BUTTON BELOW YOU AGREE TO THE TERMS OF THIS LICENCE WHICH WILL BIND YOU. THE TERMS OF THIS LICENCE INCLUDE, IN PARTICULAR, LIMITATIONS ON LIABILITY IN CLAUSE 9.
- IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, WE WILL NOT LICENSE THE CONTENT TO YOU AND YOU MUST DISCONTINUE THE ORDERING PROCESS NOW BY CLICKING ON THE "CANCEL" BUTTON BELOW. IN THIS CASE THE ORDERING PROCESS WILL TERMINATE.

IMPORTANT NOTICE TO CONSUMERS:

- AS A CONSUMER, YOU HAVE THE RIGHT TO WITHDRAW FROM YOUR TRANSACTION WITHOUT CHARGE AND WITHOUT ANY REASON UP TO 14 DAYS FOLLOWING YOUR RECEIPT OF THE ORDER.
- HOWEVER, BY CLICKING ON THE "ACCEPT WITH OBLIGATION TO PAY" BUTTON, YOU HEREBY CONSENT TO IMMEDIATE PERFORMANCE OF THE CONTRACT AND ACKNOWLEDGE THAT YOU WILL LOSE YOUR RIGHT OF CANCELLATION AND THEREFORE WITHDRAWAL FROM THE CONTRACT ONCE THE ACCESSING OF THE CONTENT HAS BEGUN
- THIS DOES NOT AFFECT YOUR CONSUMER RIGHTS FOR ANY DEFECTIVE CONTENT.

You should print a copy of this Licence for future reference.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Licence.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Content: all content in any particular PAL module, including text, information, data, software, executable code, images, audio, or video material in any medium or form provided by the University to you on the Website from time to time, and more particularly set out in the Order Confirmation.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Licence Fee: the fee payable for the Licence of the Content as set out on the Website and detailed in the Order Confirmation.

Licence Period: the period of time for which the Content is licensed to you, as set out in the Order Confirmation.

Order: your order for the Content.

Order Confirmation: the email sent by the University in acceptance of your offer to purchase the Licence in accordance with this Licence, and which contains details of the Content, Licence Fee and Licence Period.

Website: the eLanguages PAL website operated by the University and located at:
<https://www.elanguages.ac.uk/pal.php?page=index>

1.2 When we use the words "writing" or "written" in this Licence, this will include email unless we say otherwise.

2. OUR CONTRACT WITH YOU

2.1 Please ensure that you read the terms of this Licence carefully, and check that the details on the Order and in these Terms are complete and accurate, before you submit the Order. If you think that there is a mistake or require any changes, please contact the University to discuss.

2.2 When you submit the Order to the University, this does not mean we have accepted your order for the Content. Our acceptance of the Order will take place as described in clause 2.3. If the University is unable to supply you with the Content, we will inform you of this in writing and we will not process the Order.

2.3 The terms of this Licence will become binding on you and the University when we issue you with the Order Confirmation, at which point a contract will come into existence between you and the University.

2.4 The University may revise the terms of this Licence from time to time due to changes in relevant laws and regulatory requirements.

2.5 If we have to revise the terms of this Licence under clause 2.3, We will give you at least one month's written notice of any changes to these Terms before they take effect. You can choose to cancel the contract in accordance with clause 9.

2.6 You may make a change to the Order at any time prior to accessing the Content or within 14 calendar days of placing an Order by contacting us. Where this means a change in the total price of the Order, we will notify you of the amended price in writing. You can choose to cancel the Order in accordance with clause 9.1 in these circumstances.

2.7 If you wish to cancel an Order before it has been fulfilled, please see your right to do so in clause 9.

3. PRICE AND PAYMENT

3.1 The price of the Licence will be set out in the Order Confirmation. Our prices may change at any time, but price changes will not affect Orders that the University has already confirmed with you. VAT is not payable.

3.2 The Licence Fee is payable by you upon placing an order for the Licence and in advance of the grant of the Licence. Please note that the university only accepts payment via MasterCard, Solo/Switch, Visa, Maestro and PayPal Express.

4. GRANT AND SCOPE OF LICENCE

4.1 In consideration of payment of the Licence Fee, the University hereby grants to you a non-transferable, non-exclusive licence to use the Content during the Licence Period.

4.2 You may access the Content for your personal purposes only on one computing device at any one time.

4.3 Except as expressly set out in this Licence or as permitted by any local law, you undertake:

- (a) not to copy the Content except where such copying is incidental to normal use of the Content;
- (b) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Content;
- (c) not to make alterations to, or modifications of, the whole or any part of the Content (including printed copies thereof), nor permit the Content or any part of it to be combined with, or become incorporated in, any other programs;
- (d) not to create derivative works based on the whole or any part of the Content nor make any commercial or business use of the Content without obtaining the University's written consent;
- (e) not to infringe any moral rights (as defined in Chapter IV of the Copyright, Designs and Patents Act 1988) that subsist in respect of the Content;
- (f) to include our copyright notice on all entire and partial copies you make of the Content on any medium; and
- (g) not to provide or otherwise make available the Content in whole or in part, in any form to any person without prior written consent from us.

4.4 You shall not grant sub-licences, in whole or in part, of any of the rights granted under this Licence, or sub-contract any aspects of exploitation of the rights licensed to it, without the University's prior written consent.

4.5 Where you choose, or are provided with, a login name, user identification code, password or any other piece of information as part of our security procedures, you must treat such information as confidential and not disclose it to any third party.

4.6 The University has the right to disable any user identification code or password, whether chosen by you or allocated by us, at any time, if in our reasonable opinion you have failed to comply with any of the provisions of this Licence.

4.7 You shall ensure that the Content and any user identification code or password is kept secure, and shall use the best available practices and systems to:

- (a) enforce the use restrictions of this Licence; and
- (b) prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Content.

4.8 If you become aware of any misuse of any Content, or any security breach in connection with this Licence that could compromise the security or integrity of the Content or otherwise adversely affect the University, you shall promptly notify the University and fully co-operate with the University to remedy the issue as soon as reasonably practicable. The University may suspend your rights under this Licence until the misuse or security breach is remedied.

5. UNIVERSITY'S OBLIGATIONS AND RIGHTS

5.1 The University may require you to cease all use of any of the Content if it reasonably believes that your use of this Content infringes the Intellectual Property Rights of any third party, or breaches any applicable law or regulation. In this instance, the University may, at its option either:

- (a) provide you with alternative Content so as to avoid the infringement (but provide you with substantially the same features/functionality/specification); or
- (b) terminate this Licence immediately on written notice in respect of the affected Content.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 The University retains ownership of all Intellectual Property Rights in the Content.

7. WARRANTIES

7.1 You warrant that your use of the Content:

- (a) will not infringe any third party's Intellectual Property Rights;
- (b) is not defamatory, libellous, obscene, or otherwise unlawful;
- (c) does not violate any applicable law, statute or subordinate legislation; and
- (d) does not, to the best of its knowledge and belief, contain any viruses, Trojan horses, worms, time bombs, or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data or personal information.

8. INDEMNITY

8.1 You shall indemnify the University against all claims, liabilities and expenses arising out of:

- (a) your activities under this Licence;
- (b) any infringement of any rights of the University or of any third party by the use of the Content by you; or
- (c) your failure to comply with all applicable laws and regulations.

9. YOUR RIGHTS TO CANCEL AND APPLICABLE REFUND

9.1 Before you have accessed the Content, you have the following rights to cancel an Order:

(a) You may cancel any Order within 14 calendar days of placing an Order by contacting us. To cancel an Order, you just need to let us know that you have decided to cancel. The easiest way to do this is to complete the cancellation form <https://www.elanguages.ac.uk/pal.php?page=cancelpack> on the Website. If you use this method we will email you to confirm we have received your cancellation. Alternatively you may use a copy of the form which is attached at the bottom of the terms of this Licence.

(b) You can also email us at elang1@soton.ac.uk. If you are emailing us or writing to us please include details of your Order to help us to identify it. If you send us your cancellation notice by email or by post, then your cancellation is effective from the date you send us the email or post the letter to us. We will confirm your cancellation in writing to you;

(c) If you cancel an Order under clause 9.1(a) and you have made any payment in advance for Content that has not been provided to you, we will refund these amounts to you.

(d) However, if you cancel an Order under clause 9.1(a) and you have already accessed the Content by that time, the charges in relation to any Content already accessed will be deducted from any refund that is due to you. We will tell you what these costs are when you contact us. However, where you have cancelled an Order because of the University's failure to comply with the terms of this Licence (except where the University has been affected by an event outside our control in accordance with clause 15), you do not have to make any payment to the University.

10. THE UNIVERSITY'S RIGHTS TO CANCEL

10.1 Without affecting any other right or remedy available to it, the University may terminate this Licence with immediate effect by giving notice to you if you commit a material breach of any term of this Licence which breach is irremediable or (if such breach is remediable) you fail to remedy that breach within a period of 14 days after being notified in writing to do so.

10.2 On any expiration or termination of this Licence:

(a) all rights and authorisations granted by the University to the you under this Licence shall automatically terminate and immediately revert to the University; and

(b) you shall, according to the University's instructions, immediately destroy all Content in your possession or subject to your control including from back-up systems and any cached Content within your control.

11. LIABILITY

11.1 Save where expressly provided, all conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the maximum extent permitted by law.

11.2 Nothing in this Licence shall operate to exclude or limit the University's liability for:

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

(b) any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;

(c) fraud; or

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

11.3 The University shall have no liability for any losses or damages which may be suffered by you (or any person claiming under or through you), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

(a) loss of use;

(b) loss of profits;

(c) loss of business opportunity;

(d) loss of contracts;

(e) loss of goodwill; or

(f) loss arising from damaged, corrupted or lost data;

provided that this clause 11.3 shall not prevent claims for direct financial loss that are not excluded by any of categories (a) to (f) inclusive of this clause 11.3;

11.4 Subject to clause 11.2, the University's liability, whether in contract, tort (including negligence), or otherwise and whether in connection with this Licence or any collateral contract, shall not exceed the Licence Fee paid by you.

12. IF THERE IS A PROBLEM WITH THE CONTENT

12.1 In the unlikely event that there is any defect with the Content or access to the Website:

(a) please contact us and tell us as soon as reasonably possible;

(b) please give us a reasonable opportunity to repair or fix any defect; and

(c) we will use every effort to repair or fix the defect as soon as reasonably practicable and, in any event, within 5 Business Days.

You will not have to pay for the University to repair or fix a defect with the Content under this clause 12.

12.2 As a consumer, you have legal rights in relation to Content which is faulty or not as described. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office. Nothing in the terms of this Licence will affect these legal rights.

13. THIRD PARTY RIGHTS

13.1 No one other than a party to this Licence shall have any right to enforce any of its terms.

14. ASSIGNMENT AND OTHER DEALINGS

14.1 You shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any manner with this Licence or any of its rights and obligations under this Licence, or purport to do any of the same, without the prior written consent of the University.

14.2 The University may at any time and without your consent assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights or obligations under this Licence.

15. EVENTS OUTSIDE OUR CONTROL

15.1 Neither party shall be in breach of this Licence nor liable for delay in performing, or failure to perform, any of its obligations under this Licence if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed OR the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for three months, the party not affected may terminate this Licence by giving 14 days' written notice to the affected party.

16. HOW WE MAY USE YOUR PERSONAL INFORMATION

16.1 We will use the personal information you provide to us to:

- (a) provide the Content;
- (b) process your payment in relation to the Licence for such Content; and
- (c) inform you about similar products or services that we provide, but you may stop receiving these at any time by contacting us.

16.2 We will not give your personal data to any third party.

17. SEVERANCE

17.1 If any provision or part-provision of this Licence is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Licence.

18. NO PARTNERSHIP OR AGENCY

18.1 Nothing in this Licence is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

18.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

19. NOTICES

19.1 If you wish to contact the University in writing, or if any condition in this Licence requires you to give us notice in writing, you can send this to us by email to elang1@soton.ac.uk or by pre-paid post to the address details stated at the top of this Licence. We will confirm receipt of this by contacting you in writing, normally by email.

19.2 If the University has to contact you or give you notice in writing, we will do so by email or by pre-paid post to the address you provide to us in your order for the Content.

20. VARIATION

20.1 No variation of this Licence shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21. GOVERNING LAW AND JURISDICTION

21.1 This Licence and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

21.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Licence or its subject matter or formation (including non-contractual disputes or claims).

Cancellation of a PAL package

Please note that you are only able to cancel a package if you have not accessed the learning objects within it. **Complete and return this form only if you wish to withdraw from the contract.**

To: eLanguages, University of Southampton, University Road, Southampton, SO17 1BJ

Telephone: +44 (0)23 8059 9604

Email: elang1@soton.ac.uk

I hereby give notice that I cancel my contract in relation to the licence of Content in the following PAL module:

Ordered on:

Name of consumer:

Address of consumer:

Signature of consumer (only if this form is notified on paper):

Date:
