THE OPEN UNIVERSITY

-and-

LICENCEE

LICENCE AGREEMENT

THE OPEN UNIVERSITY ("the OU"), a body corporate established under The Further and Higher Education Act 1992 whose principal place of business is at Walton Hall, Milton Keynes, Bucks MK7 6AA.

OFFERS to you, the Licensee, the permission to copy and use the Licensed Work and Associated Materials on terms and conditions as set out in this Agreement. Upon completing and returning the enclosed Acceptance of Licence Form, your institution will become a non-exclusive Licensee of The Open University.

Acceptance shall be by delivery of a completed copy of the Acceptance of Licence Form attached hereto to the OU. Acceptance shall be acceptance of all terms of this Licence. In the event that no or partial compliance is made as to the manner or form described for acceptance, no licence will be granted and this offer is deemed withdrawn.

RECITALS

WHEREAS the Open University holds the rights in the Licensed Work

AND WHEREAS the Open University is permitted and has agreed to deliver the Licensed Work to the licensees in accordance with the terms of this Agreement for the period ending September 2010.
THE OPEN UNIVERSITY AND THE LICENSEE AGREE AS follows:

1. DEFINITIONS

1.1 In this Licence, the following expressions shall have the following meanings:

"Adaptations" means any adaptation, alteration, addition to, deletion from, manipulation, or modification of parts of the Associated Materials.

"Agreement" means this Agreement together with any attached schedules.

"Associated Materials" means including but not limited to printed materials, DVDs, videos and other electronic files accompanying the focus CD-Rom.

"Authorised Users" means individuals who are authorised by the Licensee to access the Licensed Work and Associated Materials and who are affiliated to the Licensee as a current student, trainee, faculty member or employee of the Licensee.

"Commercial Use" means the use of the whole or parts of the Licensed Work and Associated Materials for any reason that generates a profit.

"Educational Purposes" means use by Authorised Users of the relevant parts of the Licensed Work and Associated Materials for the purpose of education, training, teaching, distance learning, private study or research.

"Intellectual Property Rights" means patents, trademarks, trade names, design rights, copyright (including rights in computer software and moral rights), rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

"Licensed Work" means the digital copy of the software called “focus” with associated materials.

"Licensor" means the company(ies), organisations and/or individuals(s) who own or control the Intellectual Property Rights in the Licensed Work.

"Licensee" means the licensee whose details are set out in the Acceptance of Licence Form attached hereto and made a part hereof.
1.2 Headings contained in this Agreement are for reference purposes only and shall not be
deemed to be an indication of the meaning of the clause to which they relate.

1.3 Where the context so implies, words importing the singular number shall include the
plural and vice versa and words importing the masculine shall include the feminine
and vice versa.

2. **GRANT OF LICENCE**

2.1 In consideration of the Licensee co-operating on the representations and warranties
under clause 12, The Open University hereby grants the Licensee a non-exclusive and
non-transferable licence to access and use the Licensed Work and Associated
Materials and to allow Authorised Users to access and use the Licensed Work and
Associated Materials throughout the term of this Agreement for Educational Purposes
only.

3. **USE OF THE LICENSED WORK AND ASSOCIATED MATERIALS**

3.1 Throughout the term of this Agreement and subject to Clause 4 the Licensee may for
Educational Purposes only:

3.1.1 make local electronic copies of all or part of the Licensed Work and
Associated Materials, provided that such use is subject to all the terms
and conditions of this Agreement;

3.1.2 allow Authorised Users to print out captured assets from the Licensed
Work and Associated Materials;

3.1.3 allow Authorised Users to take extracts of and to manipulate the
Licensed Work and Associated Materials;

3.1.4 allow Authorised Users to incorporate whole or parts of the Licensed
Work and Associated Materials, extracts and Adaptations in printed or
electronic form in virtual learning environments, assignments,
portfolios (including non-public display thereof) and in dissertations,
including reproductions of the dissertation for personal use and library
deposit, if such use conforms to the customary and usual practice of the
Licensee. Each item shall carry appropriate acknowledgement;

3.1.5 display, download, print parts of the Licensed Work and Associated
Materials for the purpose of promotion of the Licensed Work, testing
of the product, or for training Authorised Users;

3.1.6 publicly show whole or parts of the Licensed Work and Associated
Materials and Associated Materials as part of a professional
presentation at a seminar, conference, or workshop, or other such
similar professional activity; Each item shall carry appropriate
acknowledgement

3.2 Nothing in this Licence shall constitute a waiver of any statutory right available and
held by the Licensee from time to time under the Copyright, Designs and Patent Act
1988 or any amending legislation.
4. **RESTRICTIONS**

4.1 **THE LICENSEE AND AUTHORISED USERS MAY NOT:**

4.1.1 sell, resell, redistribute, publish or otherwise make the information contained in the Licensed Work and Associated Materials available in any manner or on any medium to any one other than Authorised Users;

4.1.2 remove, obscure or modify copyright notices, text acknowledging or other means of identification or disclaimers as they may appear;

4.1.3 make printed or electronic copies of the whole or parts of the Licensed Work and Associated Materials for any purpose, beyond those authorised by this Agreement;

4.1.4 display or distribute any part of the Licensed Work and Associated Materials on any electronic network, including without limitation the Internet and the World Wide Web, and any other distribution medium now in existence or hereinafter created, beyond those authorised by this Agreement;

4.1.5 permit anyone other than Authorised Users to access or use the Licensed Work and Associated Materials;

4.1.6 use all or any part of the Licensed Work and Associated Materials for any Commercial Use or for any purpose other than Educational Purposes;

4.1.7 permit the Licensed Work and Associated Materials to be electronically transmitted to any other recipient except where the recipient is an Authorised User under the terms of a valid Licence Agreement;

4.1.8 permit anyone to decompile the software encoded in the Licensed Work other than is permitted under the Copyright Designs and Patents Act 1988 or any amending legislation.

5. **RESPONSIBILITIES OF THE LICENSEE**

5.1 The Licensee will:

5.1.1 use all reasonable efforts to ensure that only Authorised Users are permitted access to the Licensed Work and Associated Materials.

5.1.2 use all reasonable efforts to ensure that all and Authorised Users are made aware of and undertake to abide by the terms of this Licence;

5.1.3 use all reasonable efforts to monitor compliance and notify the OU at the address on the Acceptance of Licence Form immediately and provide full particulars on becoming aware of any breach by an Authorised User of the terms of this Licence. Upon becoming aware of any breach of the terms of this Licence the Licensee further agrees promptly to fully investigate and initiate disciplinary procedures in accordance with the Licensee's standard practice and use all reasonable effort to ensure that such activity ceases and to prevent any recurrence;
6. RESPONSIBILITIES OF THE OPEN UNIVERSITY

6.1 The Open University shall ensure access to the Licensed Work and Associated Materials in accordance with the provisions as laid down in this Agreement.

7. AVAILABILITY OF LICENSED WORKS AND ASSOCIATED MATERIALS

7.1 The availability of Licensed Work and Associated Materials are subject to change through regular updating and/or deletions as a consequence of rights or other issues.

8. FEE

8.1 The Licence does not incur any fees for the period ending 30 September 2010. Thereafter the OU reserve the right to introduce a Licence fee structure.

8.2 The Licensee will be given at least one year’s notice regarding the introduction of a Licence fee structure, during which time arrangements can be made for the Licensee to renew the Licence and subscribe to the Licence fee structure or terminate the Licence Agreement.

9. TERM AND TERMINATION

9.1 The term of this Agreement will commence upon the date of signature and will remain in full force and effect until 30 September 2010 unless terminated earlier as provided for in this Clause 9.

9.2 The Licence Agreement may be renewed or terminated with agreement between the parties in accordance with clause 8.

9.3 Either party may terminate this Agreement at any time on the material or persistent breach by the other of any obligation on its part under this Agreement by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty days after receipt of the written notice unless during the relevant period of thirty (30) days the defaulting party remedies the breach forthwith.

9.4 Upon termination or expiry of this agreement and unless notified otherwise by the Licensee any additional use of the Licensed Work and Associated Materials extracts and/or Adaptations beyond the permitted use in accordance with Clause 3 and already made during the life of the Agreement requires the permission of the Licensors. For the avoidance of doubt this includes but not limited to any electronic or hard copying.

9.5 The terms of Clause 4 shall survive any termination or expiration of this agreement.

10. ACKNOWLEDGEMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

10.1 The Licensee acknowledges that all copyrights, patent rights, trademarks, database rights, trade secrets and other intellectual property rights relating to the Licensed Work and Associated Materials are the sole and exclusive property of the OU and that this Licence does not assign or transfer to the Licensee any right, title or interest therein except for the right to use the Licensed Work and Associated Materials in accordance with the terms and conditions of this Agreement.
11. REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION

11.1 The Licensee represents and warrants that it has sufficient authority and rights to enter into and perform its obligations under this Agreement.

11.2 The OU represents and warrants that it has the right to grant the Licence and that the use of the Licensed Work and Associated Materials by Authorised Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party. The foregoing shall not apply to improper usage of the Licensed Work and/or Associated Materials by the Licensee or Authorised Users. The OU makes no representation or warranty, and expressly disclaims any liability with respect to the content of the Licensed Work including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential information.

11.3 Nothing in this Agreement shall make the Licensee liable for breach of the terms of this Agreement by any Authorised User provided that the Licensee did not cause, knowingly assist or condone the continuation of such breach after becoming aware of a an actual breach having occurred.

11.4 Subject to the above and to the extent permitted by law, the OU shall not be liable to the Licensee for any loss or damage including any loss of profits, goodwill, contract or any indirect or consequential loss including loss or damage suffered by the Licensee as a result of an action brought by a third party.

11.5 The OU reserves the right to change the content, presentation, user facilities or availability of parts of the Licensed Work and Associated Materials and to make changes in any software used to deliver the Licensed Work and Associated Materials. The OU will make reasonable efforts to notify the Licensee of substantial changes to the Licensed Work and/or Associated Materials.

11.6 Other than the express warranties stated in this Clause 12, the Licensed Work and Associated Materials is provided on an “as is” basis, and the OU disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the Licensed Work and Associated Materials or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability or fitness for a particular purpose. The OU further expressly disclaims any warranty or representation to Authorised Users, or to any third party. The OU accepts no liability for loss suffered or incurred by the Authorised Institution or Authorised Users as a result of their reliance on the Licensed Work and Associated Materials.

12. FORCE MAJEURE

12.1 Either party’s failure to perform any term or condition of this Agreement as a result of circumstances beyond the control of the relevant party (including without limitation, war, strikes, flood, governmental restrictions, and power, telecommunications or Internet failures or damages to or destruction of any network facilities) ["Force Majeure"] shall not be deemed to be, or to give rise to, a breach of this Agreement.

12.2 If either party to this Agreement is prevented or delayed in the performance of any of its obligations under this Agreement by Force Majeure and if such party gives written
notice thereof to the other party specifying the matters constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then the party in question shall be excused the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue.

13. ASSIGNMENT

Neither this Agreement nor any of the rights under it may be assigned or sub-licensed by the Licensee.

14. GOVERNING LAW AND DISPUTE RESOLUTION

14.1 This Agreement shall be governed by and construed in accordance with English law and the parties irrevocably agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the English courts.

14.2 Where the parties agree that a dispute arising out of or in connection with this Agreement would best be resolved by the decision of an expert, they will agree upon the nature of the expert required and together appoint a suitable expert by agreement. In default of agreement upon whom to appoint as a suitable expert, such expert shall upon the request of either party be appointed by the Chair for the time being of the Universities UK.

14.3 Any person to whom a reference is made under Clause 14.2 shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing and shall state the reasons for his decision) shall be final and binding on the parties except in the case of manifest error or fraud.

14.4 Each party shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.

14.5 The costs of the expert shall be borne by the parties in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by the parties in equal proportions.
15. **NOTICES**

15.1 All notices required to be given under this Agreement shall be given in writing in English and sent by electronic mail, fax or first class registered or recorded delivery to the relevant addressee at its address set out below, or to such other address as may be notified by either party to the other from time to time under this Agreement, and notices shall be deemed to have been received (a) 24 hours after successful transmission in the case of electronic mail or fax; (b) fourteen (14) days after the date of posting in the case of first class registered or recorded delivery:

   The Open University  
   Walton Hall  
   Milton Keynes  
   MK7 6AA  

   Tel: 01908 653511  
   Fax: 01908 654322  

   Email: a.f.hales@open.ac.uk

16. **GENERAL**

16.1 This Agreement and its Schedules constitute the entire agreement between the parties relating to the Licensed Works and Associated Materials and supersede all prior communications, understandings and agreements (whether written or oral) relating to its subject matter and may not be amended or modified except by agreement of both parties in writing.

16.2 The Schedules shall have the same force and effect as if expressly set in the body of this Agreement and any reference to this Agreement shall include the Schedules.

16.3 The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.

16.4 The rights of the parties arising under this Agreement shall not be waived except in writing. Any waiver of any of a party's rights under this Agreement or of any breach of this Agreement by the other party shall not be construed as a waiver of any other rights or of any other or further breach. Failure by either party to exercise or enforce any rights conferred upon it by this Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.
## LICENSE ACCEPTANCE

The Licensee hereby accepts and agrees to the terms and conditions of this Licence and its Schedules.

<table>
<thead>
<tr>
<th>Name of Licensee Institution</th>
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<tbody>
<tr>
<td>Full postal address of Licensee Institution</td>
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<tr>
<td>Signature of the Head of the Licensee Institution or authorised nominee</td>
<td>Position</td>
</tr>
<tr>
<td>Print name of signatory</td>
<td>Date</td>
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## PRIMARY CONTACT FOR ADMINISTRATION OF THE LICENSE

<table>
<thead>
<tr>
<th>Primary contact for Licensee</th>
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<tr>
<td>Print name of primary contact for Licensee</td>
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<tr>
<td>Department</td>
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<tr>
<td>E-mail address of primary contact</td>
<td>Telephone number of primary contact</td>
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**Note:** any changes to these contact details must be notified to the OU in writing.
Please note that it is possible to copy the Attachment CD-ROM directly to the hard drive of a computer so that the disc is not required to run the software. This is helpful, for example, if you are working with large numbers of students and wish to ensure that the programme is readily available in your computer laboratory.

To help us understand how the materials are being used by other HEIs/trainers, please provide the following information:

| Name of the course/courses on which you plan to use the materials (this is for information only and does not restrict your use of the materials to the courses mentioned) |
| Approximate number of students/trainees do you expect will use the materials during this academic year? |

Please return this form to:

Observation Skills in Psychology
Centre for Childhood, Development and Learning
Faculty of Education and Language Studies
Briggs Building, The Open University
Walton Hall, Milton Keynes, MK7 6AA