

# EST Foundations Curriculum Licensing Agreement

## **1.0 Definitions**

- 1.1 **“Licensed Materials”** means the *EST Foundations Curriculum, including any legitimately made revisions.*
- 1.2 **“Licensee”** means a purchaser who has completed and submitted Author’s Order Form and paid the applicable license fees.
- 1.3 **“Author”** means Dr. Michael Wienen, College Station Texas. E-mail: michael.wienen@verizon.net
- 1.4 **“Year”** means twelve (12) months from the date of submission by Licensee of the EST Foundations Order Form received by Author.
- 1.5 **“EST Foundations Order Form”** means the most current Order Form published by Author as of the date of submission by Licensee of the Order Form.

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## **3.0 Payments**

Licensee shall pay to Publisher, as the non-refundable license fee for use of the Licensed Materials under this Agreement, the applicable fees set forth in the EST Foundations Order Form in a timely fashion.

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- 5.4 **Compliance:** Licensee shall take all reasonable measures to monitor compliance and take all reasonable steps, including appropriate disciplinary action, both to ensure that such activity ceases and to prevent any recurrence.
- 5.5 **Protection and Proprietary Rights:** Licensee shall not, and Licensee shall ensure that no Student or Staff shall: (a) remove or alter Author's copyright or other intellectual property or proprietary notices, legends, or other means of identification or disclaimers as they appear in the Licensed Materials; (b) post or distribute all or any part of the Licensed Materials on any electronic network, bulletin board, or web site accessible to anyone other than Students and Staff; or (c) use all or any part of the Licensed Materials for commercial purposes or monetary reward, whether by means of the sale, resale, loan, transfer, hire, or other form of exploitation.
- 5.6 **Transfer of Rights:** Licensee shall not transfer the rights licensed under this Agreement to any other entity or person unless Author expressly grants permission in writing.

## **6.0 Term and Termination**

- 6.1 **Term:** The term of this Agreement commences on the date of submission by Licensee of the EST Foundations Order Form and receipt of the order form by the Author.
- 6.2 **Termination:** Author may terminate this Agreement and the rights and licenses granted hereunder in the event that Licensee shall have committed a material breach of any term of this Agreement and shall not have remedied the same (if capable of remedy) within twenty (20) days of notification in writing by Publisher. On termination of this Agreement, Licensee shall immediately cease to distribute or make available the Licensed Materials to Staff or Student or in any manner to use or authorize or permit use of the Licensed Materials.
- 6.3 **Returning Licensed Materials:** Within fifteen (15) days after termination of this Agreement for any reason, Licensee shall return to AUTHOR the original and all copies of the Licensed Materials in the possession or control of Licensee. Licensee shall also cease to use the Licensed Materials and ensure that all persons to whom Licensee has given access to the Licensed Materials also cease to use the Licensed Materials.

## **7.0 Limited Warranty; Limitations on Liability; Limitations on Claims**

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Despite any statute to the contrary, any claim arising from or relating to this Agreement (whether contract, tort, or otherwise) shall be brought within two years after it arises.

### **8.0 Arbitration**

Any claim, dispute or controversy arising out of or relating to this Agreement shall be submitted by the parties to arbitration. The award rendered by the arbitrators shall include costs of arbitration, reasonable attorneys' fees, and reasonable costs for expert and other witnesses, and judgment on such award may be entered in any court having jurisdiction; provided, however, that nothing in this Agreement shall be interpreted as preventing either party from seeking injunctive relief from the courts to protect against infringement, misappropriation, or other violation of its name, trademarks, or copyright, trade secret, or other intellectual property or proprietary rights.

### **9.0 General Provisions**

**9.1 Order Form:** Terms and conditions set forth in the EST Foundations Order Form completed and submitted by Licensee are hereby incorporated into this License and made a part hereof. The Order Form and this Agreement set forth the entire agreement of the parties relating to the Licensed Materials and supercede all prior proposals, understandings, and communications, oral and written, between the parties relating to the subject matter of this Agreement.

**9.2 Headings:** The headings in this Agreement are included for convenience only and shall not be used in the interpretation of any provision in this Agreement or affect any right or obligation under this Agreement. Each party has participated in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

**9.3 Waiver:** Modifications to this Agreement are only valid if they are recorded in writing and signed by authorized representatives of Authorand Licensee. No waiver of a breach or any right or remedy relating to this Agreement shall be effective unless made in writing signed by an authorized representative of the party waiving the agreement; and no such waiver shall be deemed a waiver of any future breach or any right or remedy relating to this Agreement, unless the writing so specifies.

**9.4 Severability:** In the event that any provision of this Agreement is held to be invalid, the remainder of the provisions shall continue in full force and effect.

**9.5 Governing Law:** This Agreement is governed by the laws of Texas. The parties consent to jurisdiction in the State of Texas on any matters relating to this Agreement. The parties further agree that any dispute that arises from or relates to this Agreement not subject to the arbitration provisions of this Agreement shall be resolved in the courts of the County of Brazos.