# DEMONSTRATION END USER LICENSE AGREEMENT ROSETTA STONE $^{\ensuremath{\mathbb{B}}}$

This End User License Agreement ("License") is a contract between you, the individual installing, accessing or commencing the use of the Rosetta Stone<sup>®</sup> products, materials, and/or services ("Licensee"), and Rosetta Stone Ltd. ("Licensor"), and governs the use of the Rosetta Stone Product. The License granted hereunder is conditioned upon Licensee's acceptance of the terms set forth herein.

#### **Definitions:**

"Software" means language learning software products, any third party software, online or web-based functionality, updates or upgrades licensed by Licensor to Licensee pursuant to this License.

"Rosetta Stone" means Rosetta Stone Ltd. and/or its subsidiaries and affiliates.

"Rosetta Stone Product" means the Rosetta Stone language learning products, including, without limitation, Software, audio tools or audio companion materials, password-protected access to a Licensor website, and any related products, materials, services, and documentation (together with any updates to, or new releases of, the foregoing that are made available to Licensee by Licensor) licensed by Licensor to Licensee pursuant to this License.

## IMPORTANT NOTICE ON LICENSE-- PLEASE REVIEW CAREFULLY

If Licensee does not accept the terms of this License, Licensee must immediately return any media and materials of the Rosetta Stone Product that Licensee may have received.

1. LICENSE, INSTALLATION AND USE: If Licensee accepts this License, and as long as Licensee complies with the terms of this License, Licensor grants Licensee a non-exclusive and nontransferable license to use the Rosetta Stone Product in machine-readable form on any Licensee hard drive or other storage device for demonstration and evaluation purposes only, subject to the limitations and restrictions set forth in this License. Licensor makes no guarantee of access to the Rosetta Stone Product, and may terminate access without warning.

2. TRANSFER: Licensee may not sell, rent, lease, loan or sublicense the Rosetta Stone Product.

**3. LIMITATIONS ON USE:** Licensee agrees not to, and not to permit others to, directly or indirectly (a) reverse assemble, reverse compile, or otherwise reverse engineer or attempt to derive the source code of all or any part of the Software, (b) copy, modify, translate, alter, change, or collect information that can be used to create derivative works of all or any part of the Rosetta Stone Product, (c) download, copy or collect information that could be used to copy all or any part of the Rosetta Stone Product, or access or use all or any part of the Rosetta Stone Product for any purpose other than for the evaluation and demonstration of the Rosetta Stone Product.

4. OWNERSHIP OF INTELLECTUAL PROPERTY: Licensor reserves all rights in the Rosetta Stone Product not expressly granted to Licensee in this License. Licensee acknowledges and agrees that Licensor or its third-party licensors own all rights, title and interest in and to the Rosetta Stone Product (including all software, code, interfaces, text, photographs, graphics, animation, applets, music, video and audio incorporated therein and any related user guides and documentation), the trademark Rosetta Stone, the URLs, and other marks related to Licensor's products and URLs such as <u>rosettastone.com</u> and the trade dress, and look and feel of the Rosetta Stone Product, all of which are covered by various protections including, without limitation, copyright, trademark, and trade secrecy law. If Licensee suggests new features or functionality that Licensor, in its sole discretion, adopts for the Rosetta Stone Product, such new features or functionality will be the sole and exclusive property of Licensor and any and all claims of Licensee as to the same are hereby waived and released. Licensor reserves the right, in its sole discretion and without incurring any liability to Licensee, to update, improve, replace, modify or alter the specifications for and functionality of all or any part of the Rosetta Stone Product from time to time.

5. DISCLAIMER OF WARRANTIES: LICENSEE EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE ROSETTA STONE PRODUCT IS AT LICESEE'S SOLE RISK. THE ROSETTA STONE PRODUCT AND ANY SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS", WITHOUT WARRANTIES OR PROMISES, WHETHER EXPRESS OR IMPLIED, OR BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE. THE ENTIRE RISK AS TO THE SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT OF SUCH ROSETTA STONE PRODUCT (IF ANY) SHALL BE WITH LICENSEE. THERE IS NO REPRESENTATION OR WARRANTY HEREIN AGAINST INTERFERENCE WITH LICENSEE'S ENJOYMENT OR AGAINST INFRINGEMENT. LICENSOR AND ITS THIRD PARTY LICENSORS DISCLAIM ANY AND ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE ROSETTA STONE PRODUCT, THIRD PARTY SOFTWARE AND ANY SERVICES PROVIDED HEREUNDER, INCLUDING ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, NON-INFRINGEMENT, OR THAT LICENSEE'S USE OF THE ROSETTA STONE PRODUCT WILL BE UNINTERUPTED, VIRUS-FREE, OR ERROR-FREE. LICENSEE ACKNOWLEDGES THAT NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES ARE MADE BY ANY THIRD PARTY LICENSORS HEREIN.

**6. EXCLUSIVE REMEDIES:** ANY LIABILITY OF LICENSOR FOR A DEFECTIVE COPY OF THE ROSETTA STONE PRODUCT WILL BE LIMITED EXCLUSIVELY TO REPLACEMENT OF LICENSEE'S COPY OF THE ROSETTA STONE PRODUCT WITH ANOTHER COPY.

**7. LIMITATIONS OF LIABILITY:** IN NO EVENT WILL LICENSOR OR ITS THIRD PARTY LICENSORS OR ANY OTHER PERSON OR ENTITY BE LIABLE TO LICENSEE FOR (a) ANY CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, INCLUDING ANY LOSSES RELATING TO LICENSEE, OR LICENSEE'S BUSINESS, SUCH AS LOST DATA, LOST PROFITS, BUSINESS INTERRUPTION, OR LOST SAVINGS, EVEN IF LICENSOR OR ITS THIRD PARTY LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (B) ANY CLAIM BY ANY THIRD PARTY. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, SO THE FOREGOING LIMITATIONS MAY NOT APPLY. IF LICENSEE COULD HAVE AVOIDED DAMAGES BY TAKING REASONABLE CARE, NEITHER LICENSOR NOR ITS THIRD PARTY LICENSORS WILL BE LIABLE FOR SUCH LOSSES. IN NO EVENT SHALL LICENSOR OR ITS THIRD PARTY LICENSORS' TOTAL LIABILITY FOR ALL DAMAGES (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR OTHERWISE) EXCEED THE PURCHASE PRICE OF THE ROSETTA STONE PRODUCT.

## 8. TERMINATION AND SURVIVAL:

A. This License is effective until terminated. By installing and running the program, Licensee authorizes Rosetta Stone to immediately terminate Licensee's rights, without notice, under this License, if Licensee fails to comply with the terms of this License. Upon termination of this License, Licensee must immediately cease all use of and destroy all copies of the Rosetta Stone Product. Licensor may require Licensee to certify in writing that Licensee has complied with this requirement.

B. The provisions of Sections 4, 5, 7, 8, 9, 10, 11 and 12 shall survive the termination of this License for any reason, but this sentence shall not imply or create any continued right to use Rosetta Stone Products after termination of this License.

## 9. GOVERNING LAW AND FORUM:

A. This License will be governed in all respects, by and construed in accordance with the laws of the Commonwealth of Virginia, United States, without reference to its principles relating to conflicts of law. Licensor and Licensee agree that any action arising out of or related to this License must be brought exclusively in a United States state or Federal court in the Commonwealth of Virginia. Licensor and Licensee consent to the personal jurisdiction of the Commonwealth of Virginia and acknowledge that venue is proper in any United States state or Federal court in the Commonwealth of Virginia. Licensee and Licensee and Licensee any objection it has or may have in the future with respect to the foregoing.

B. This License shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

C. Notwithstanding the above, Licensor shall have the right to commence and prosecute any legal or equitable action or proceeding before any court of competent jurisdiction to obtain injunctive or other relief against Licensee in the event that, in the opinion of Licensor, such action is necessary or desirable.

#### 10. ENTIRE AGREEMENT, TRANSLATION, ASSIGNMENT:

A. Except as expressly provided herein, this License constitutes the entire agreement between the parties with respect to the use of the Rosetta Stone Product and supersedes all prior or contemporaneous understandings regarding such subject matter. No amendment to or modification of this License, or action, or delay, will be binding unless in writing and signed by Licensor.

B. In the event of a dispute between the English and any translated version, the English version of this License shall prevail.

C. Licensor may assign this License, in whole or in part, at any time with or without notice to Licensee. Licensee may not assign, delegate or otherwise transfer this License, or assign, transfer or sublicense any rights in the Rosetta Stone Product.

**11. SEVERABILITY:** All provisions of this License apply to the maximum extent permitted by applicable law. If any part of this License is determined to be invalid or unenforceable pursuant to applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this License will continue in effect.

**12. EXPORT:** Licensee acknowledges that the Rosetta Stone Products are subject to U.S. export jurisdiction. Licensee agrees to comply with all applicable international and national laws that apply to the Rosetta Stone Product, including the U.S. Export Administration Regulations and Office of Foreign Assets Control Regulations, as well as end-user, end-use, and destination restrictions issued by United States and other governments.

**13. FORCE MAJEURE:** No failure or omission by either party to carry out or observe any of the terms and conditions of this License (other than payment obligations) shall give rise to any claim against such party or be deemed a breach of this License if such failure or omission arises from an act of God or any other force majeure, an act of any government, or any other cause beyond the reasonable control of the affected party.

**14. WAIVER:** Failure by either Licensee or Licensor to insist upon strict compliance with any of the terms, covenants, or conditions of this License shall not be deemed a waiver of that term, covenant, or condition or of any other term, covenant, or condition of this License. Any waiver of relinquishment of any right or power hereunder at any one or more times shall not be deemed a waiver or relinquishment of that right or power at any other time.

Last Revised: July 2, 2010