



PLANET eSTREAM CONNECT – TERMS & CONDITIONS

THIS AGREEMENT is

Between

- (1) **PLANET ENTERPRISES LIMITED** incorporated and registered in England and Wales with company number 03080901 whose registered office is at The Old School, 690 Bradford Road, Birkenshaw, BD11 2DR (“**Planet**”); and
- (2) You being the entity or entities entering into this Agreement (the “**Customer**”).

BACKGROUND

- (A) Under the terms of a separate agreement, Planet has agreed to licence to the Customer its software product known as “Media Pod”, which is a media repository for the Customer’s digital assets.
- (B) Under the terms of the ERA Agreement, Planet has agreed with the ERA that it may store, access and download certain ERA Recordings for and on behalf of the Customer only for non-commercial educational use within the scope of the current ERA Licence held by the Customer.
- (C) Under the terms of the BBC Agreement, Planet has agreed with the BBC that it may access and copy BBC Content via the BBC Content Delivery System currently known as “Redux” and, via the Services only, provide access to the BBC Content to the Customer.
- (D) Planet has therefore agreed to provide the Services to the Customer on the terms and conditions of this agreement in addition to the services described in Background A above.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement:

1.1 Definitions:

“Annual Fee”	£0.00
“Authorised Users”	the academic, research or teaching staff (including authorised temporary staff with authorised password access) of the Customer who are located within the UK and hold a current paid-up ERA licence.
“BBC”	the British Broadcasting Corporation (company number: RC000057).
“BBC Agreement”	the agreement made between (1) the BBC and (2) Planet , pursuant to which Planet may access and copy BBC Content via the BBC Content Delivery System and provide access to the BBC Content to the Customer.
“BBC Content”	the off-air recording of television and radio programmes broadcasted by the BBC from mid-2007 to the present and any other programme content broadcast from 1 August 1989 onward that the BBC may make available via the BBC Content Delivery System.
“BBC Content Delivery System”	the BBC technology delivery system (currently known as “Redux”) that records and supplies the BBC Content to Planet eStream Connect.
“BBC Metadata”	the structured, encoded data that describes characteristics of the BBC Content to aid in the identification, discovery, assessment and management of the BBC Content and associated computer data, including the electronic programme guide, PIPS data and subtitles data.
“Commencement Date”	means the date on which the Supplier commences service of the Media Pod Software.
“ERA”	The Educational Recording Agency Limited (company number: 02423219).
“ERA Agreement”	the agreement made between (1) the ERA and (2) Planet , pursuant to which Planet may store, access and download certain ERA Recordings for and on behalf of the Customer only for non-commercial educational use within the scope of the current ERA Licence held by the Customer.
“ERA Licence”	a licence granted by the ERA to the Customer which includes the non-exclusive right for the Customer to cause or authorise the making of ERA Recordings and to access ERA

Recordings for non-commercial educational purposes.

“ERA Recordings” the recordings of broadcasts that include content owned and/or controlled by the licensor members of the ERA.

“Initial Term” the period of 12 months from the Commencement Date.

“Intellectual Property Rights” 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, means patents, utility models, rights to inventions, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) 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.

“Services” the services to be provided by Planet under this agreement, namely access to the Planet eStream Connect system which enables the Customer to share certain content with other Planet eStream users and access the BBC Content and ERA Recordings.

1.2 Clause headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular, and a reference to one gender shall include a reference to the other genders.

1.5 A reference to **writing** or **written** includes fax and email.

1.6 References to clauses are to the clauses of this agreement unless stated otherwise.

1.7 Any words following the terms **including**, **include** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. COMMENCEMENT AND DURATION

2.1 Planet shall provide the Services to the Customer on the terms and conditions of this agreement from the Commencement Date:

2.1.1 for an initial period of 12 (twelve) consecutive calendar months; and

2.1.2 thereafter indefinitely for periods of 12 (twelve) consecutive calendar months each commencing on the anniversary of the Commencement Date, providing that the Customer pays the Supplier the annual fees invoiced separately for Media Pod , if a licence is not in place for the Media Pod , access to the Connect service will automatically expire

unless this agreement is terminated:

2.1.3 by one of the parties giving to the other not less than 1 (one) month's written notice prior to the commencement of the next 12 (twelve) month period under clause 2.1.2; or

2.1.4 in accordance with clause 9.

3. PLANET 'S OBLIGATIONS

3.1 Planet shall use all reasonable endeavours to provide the Services and, in particular, provide the Customer with access to the ERA Recordings via the Planet eStream Connect system, subject to the terms of this agreement.

3.2 The parties acknowledge and accept that the provision of access to the BBC Content is subject to the BBC Agreement and that Planet cannot guarantee that such access will continue and/or be uninterrupted.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall and shall procure that all Authorised Users shall:

4.1.1 co-operate with Planet in all matters relating to the Services;

4.1.2 provide, for Planet, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's Media Pod as reasonably required by Planet or any of them;

4.1.3 obtain before the Commencement Date and maintain all necessary licences (including a valid ERA Licence) and consents and comply with their respective terms in full and with all relevant legislation (including the Data Protection Act 2018 and the EU GDPR) in relation to the Services;

4.1.4 not use any content (including BBC Content, BBC Metadata and ERA Recordings) that is accessed, copied, downloaded, recorded, streamed or otherwise made available via the Services for any commercial non-educational purposes whatsoever. The parties acknowledge and accept that this is a material term of this agreement;

4.1.5 not in any way attempt to access the BBC Content or BBC Metadata by any means other than via the Planet eStream Connect system;

4.1.6 comply with any security and network authentication criteria and user permissions as Planet may reasonably require from time to time;

4.1.7 provide, in a timely manner, such information as Planet may reasonably require including Authorised User information and information in relation

to the access of BBC Content and ERA Recordings, and ensure that it is accurate in all material respects;

- 4.1.8 keep the BBC Content and BBC Metadata safe and secure and not permit it or any part of it to be re-broadcast, commercially exploited, duplicated, copied or transcribed by any means except as expressly permitted by this Agreement;
- 4.1.9 not destroy or otherwise corrupt, alter or add to the BBC Content and/or BBC Metadata or any part thereof;
- 4.1.10 not obscure or modify any copyright notices, acknowledging text or other means of identification in respect of any content that is accessed, copied, downloaded, recorded, streamed or otherwise made available via the Services;
- 4.1.11 not upload or otherwise make content available that:
 - 4.1.11.1 is defamatory of any person;
 - 4.1.11.2 is obscene, offensive, hateful or inflammatory;
 - 4.1.11.3 promotes sexually explicit material, violence, discrimination based on race, sex, religion, nationality, disability, sexual orientation or age; or
 - 4.1.11.4 infringes the Intellectual Property Rights of any person
 - 4.1.11.5 Is not age appropriate for children in primary education
- 4.2 The Customer warrants and represents that the person placing their order for Media Pod on behalf of the Customer has the authority to contractually bind the Customer.
- 4.3 If Planet's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, Planet shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.
- 4.4 The Customer shall indemnify Planet in full for all reasonable costs, charges or losses sustained or incurred by Planet that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement, subject to Planet confirming such costs, charges and losses to the Customer in writing.
- 5. CHARGES AND PAYMENT**
- 5.1 There will be no charges or requests for payments to the Customer for the provision of the Planet eStream Connect Services by Planet during the Initial Term or any Extended Term.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 As between the Customer and Planet , all Intellectual Property Rights in the Planet eStream Connect system shall be owned by Planet. Subject to clause 6.2, Planet licences all such rights to the Customer free of charge and on a non-exclusive basis to such extent as is necessary to enable the Customer to make reasonable use of the Services. If this agreement is terminated, this licence will automatically terminate.

6.2 The Customer acknowledges and accepts that:

6.2.1 where Planet does not own any of the Intellectual Property Rights in the Planet eStream Connect system and/or in relation to the Services, the Customer's use of such rights is conditional on Planet obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle Planet to licence such rights to the Customer;

6.2.2 all Intellectual Property Rights relating to the BBC Content, BBC Metadata and BBC Content Delivery System and any APIs or modifications developed by the BBC and/or Planet are the sole and exclusive property of the BBC (or duly licenced to the BBC) and that this agreement does not create, assign or transfer to the Customer any right, title or interest in relation to the BBC Content, BBC Metadata, BBC Content Delivery System or any developed APIs except for the right to make reasonable use of the Services in accordance with the terms and conditions of this agreement; and

6.2.3 all Intellectual Property Rights of third parties in relation to the Services (including those rights in the ERA Recordings) are the property of those third parties and that this agreement does not create, assign or transfer to the Customer any right, title or interest in those rights except for the right to make reasonable use of the Services in accordance with the terms and conditions of this agreement.

7. CONFIDENTIALITY

7.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 7.2.

7.2 Each party may disclose the other party's confidential information:

7.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 7; and

7.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

7.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

8. LIMITATION OF LIABILITY

8.1 Nothing in this agreement limits or excludes Planet's liability for:

8.1.1 death or personal injury caused by its negligence;

8.1.2 fraud or fraudulent misrepresentation; or

8.1.3 any other liability which cannot be limited or excluded by applicable law.

8.2 Subject to clause 8.1, Planet shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:

8.2.1 loss of profits;

8.2.2 loss of sales or business;

8.2.3 loss of agreements or contracts;

8.2.4 loss of anticipated savings;

8.2.5 loss of or damage to goodwill;

8.2.6 loss of use or corruption of software, data or information;

8.2.7 any indirect or consequential loss.

8.3 Subject to clause 8.1 and clause 8.2, Planet's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to the Annual Fee for the Planet eStream Connect Service (zero) in the year giving rise to the claim.

8.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

9. TERMINATION

9.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

9.1.1 the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 (seven) days after being notified in writing to do so;

9.1.2 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

- 9.1.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed either unable to pay its debts or as having no reasonable prospect of so doing;
- 9.1.4 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 9.1.5 there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

10. GENERAL

- 10.1 Planet shall not be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances Planet shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 4 (four) weeks, the Customer may terminate this agreement by giving 14 (fourteen) days' written notice to Planet.
- 10.2 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 10.3 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 10.4 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Nothing in this clause shall limit or exclude any liability for fraud.
- 10.5 This agreement is personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.
- 10.6 Planet may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this agreement.
- 10.7 Nothing in this agreement 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.
- 10.8 No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 10.9 This agreement is considered to be accepted by the Customer on receipt of a completed and signed Order Form for Media Pod.

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

THIS AGREEMENT has been entered into on receipt of a completed and signed Media Pod Order Form from the Customer and starts on the Commencement Date .