

1. Definitions.

In this agreement, the following definitions apply unless the context requires otherwise:

Distributor means the entity which You pay to arrange access to the Program.

Program means the BroadLEARN™ Early Learning Education Edition program produced by Us, utilising the world wide web.

Software means the software We use to allow the Program to be made available for access by You.

We, Us or similar words means Mediasphere Holdings Pty Ltd ACN 120 008 924.

You means the entity or person who has agreed to access the Program in accordance with this agreement, and where the context permits includes any other person You allow to use the Program.

2. Term.

This agreement applies for so long as You access the Program (the **Term**). Any provisions of this agreement which can continue after such access has ceased will continue to apply (for example, clauses 7, 8, 9 and 12).

3. Services.

In consideration of payment by You to the Distributor as referred to in clause 5, We agree to provide You with controlled access to the Program, in accordance with the terms of this agreement, for 3 years after You first access the Program.

We reserve the right to make changes to information in, and obtained through the use of, the Program, at any time and without notice.

We may monitor Your use of the Program to ensure You are using the Program in accordance with this agreement.

4. Access.

During the Term We will make reasonable efforts to make the Program available to You 24 hours per day 7 days per week, but you should note the provisions of clause 9.

To gain access to the Program, You will be provided with a product activation key. We will use Our reasonable endeavours to ensure that such information is kept in a confidential and

secure manner, but You should note the provisions of clause 9.

You are responsible for arranging Your means of access to the Program through the use of an internet service provider or by other means, at Your own expense.

Use of the Program is limited to Your employees, Your students and Your agents for educational purposes only (**Users**). Only the number of Users in relation to whom you have paid a fee to the Distributor may use the Program at any one time.

5. Payment.

Your access to the Program will be conditional on payment by You of a fee to the Distributor. It is Your responsibility to arrange for payment on terms satisfactory to the Distributor.

6. Helpdesk.

If You experience difficulties accessing or using the Program, email Our helpdesk at info@mediasphere.com.au. We will use reasonable efforts to assist you within a reasonable time, but You should note the provisions of clause 9.

7. Intellectual Property Rights.

(a) We own (or have rights to) all rights and interests in and to copyright and other intellectual property in all text, graphic images and other information in the Program, and in the information generated through use of the Program.

(b) You may not copy or distribute the information (in any form) obtained from the Program or Your use of the Program to third parties, "mirror" or include the information on Your own server, or modify or re-use the information without Our prior written permission.

(c) We grant You a non-exclusive, non-transferable licence for the Term to use the intellectual property rights subsisting in the Program from time to time for the purposes of Your use of the Program as permitted by this agreement.

(d) You may internally cache the website through which the Program is accessed during the Term.

(e) You must not print or download copies of information contained in or obtained from the Program, and must not store files on computers.

(f) We reserve all rights to the Software, the Program, the data contained in the Program, the documentation referred to in clause 8, and all rights subsisting in them.

8. Confidentiality.

You agree to keep all information contained or embodied in the Program, and any documents or other information provided to You by or on behalf of Us (the **Confidential Information**) strictly confidential, and not disclose that information to any person without Our prior written consent, and to ensure all users of the information comply with this clause. This restriction will not apply to disclosure required by law, or any disclosure of information which is in the public domain otherwise than as a result of a breach of this agreement.

9. Exclusion of Warranties and Liability.

We warrant to You that at the time the Program was made available by Us to the Distributor (and except for viruses or other malicious code) it was of satisfactory quality, free from defect in materials and workmanship, and would perform substantially in accordance with the functions described in any documentation accompanying the Program for 6 months from the date that You first use the Program. We also warrant to You that we used best endeavours to ensure the Program was free from viruses and other malicious code at the time it was made available by Us to the Distributor. We agree that if We are in breach of these warranties, then following written notice of such breach by You to Us, We will promptly repair or replace (at Our option and cost) the defective part so that We comply with these warranties.

Except for the limited warranties given above, and subject to the terms of those warranties, to the maximum extent permitted by law:

(a) The information in, and obtained from, the Program may include errors and We make no warranty that such information is error free. We disclaim all liability (including for negligence) for Your acting or relying on any inaccurate information supplied by Us.

(b) You acknowledge that the Program is provided "as is", and that We have not made, and that no person acting on Our behalf has made, any representation as to the suitability of the

Program or of any information provided by Us for any particular purpose.

(c) You will use the Program at your own risk, and You release Us in respect of any claim or loss that may be suffered or incurred by You for any reason (including Our negligence) in respect of use of the Program.

(d) You acknowledge that We give no warranty in connection with the availability or reliability of the Program or your access to the Program. You agree to satisfy Yourself about such things at all times.

(e) You acknowledge that We give no warranty in connection with the availability or response times, of the email Helpdesk referred to in clause 6.

(f) We disclaim all warranties as to the freedom of the Software, the Program or the data in the Program from any "back door", "time bomb", "Trojan Horse", "worm", "drop dead device", "virus" or other similar computer software routine or malicious code.

(g) We exclude all implied warranties or conditions concerning any goods or services We supply or agree to supply. Our liability (including for negligence) for any breach by Us of any term or warranty required by law to be implied into this agreement is limited, at Our option, to:

(i) for services, the supplying of the services again, or the payment of the cost of having the services supplied again; or

(ii) for goods, the replacement or supply of equivalent goods, the repair of such goods, the payment of the cost of replacing the goods or acquiring equivalent goods, or the payment of the cost of having the goods repaired.

(h) We disclaim all liability (including for negligence), howsoever arising, in connection with this agreement or the provision of access to the Program (including the Software) by Us. You agree to release and discharge Us and each of Our employees, officers, contractors and agents from all actions, claims, charges, costs, expenses, losses, damages and other liabilities arising

(including consequential loss, loss of profit and other economic loss) out of or otherwise in connection with this agreement.

(i) We have no liability to You for any act, omission or representation by the Distributor.

This clause does not exclude or reduce any liability We may have to You which cannot be excluded or reduced under any applicable statute.

10. Termination.

(a) Without limiting any other right of termination under this agreement, We may terminate this agreement immediately on notice to You if:

- (i) You are in breach of this agreement;
- (ii) You are insolvent.

(b) Upon termination Your access to the Program ceases immediately.

11. Amendment.

We reserve the right to amend the terms and conditions of this agreement upon the provision of at least 1 month's notice to You. Your continued use of the Program signifies Your acceptance of the new terms and conditions.

12. Tax.

You will pay all taxes, levies, fees or charges (including services tax, value-added tax, withholding tax and deemed company tax) (the **Taxes**) which may be payable under any laws in relation to all amounts payable to Us under this agreement, so that We receive the actual amounts payable under this agreement exclusive of any such Taxes.

13. General.

(a) This agreement contains the entire agreement between You and Us with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

(b) Your use of the Program signifies Your acceptance of these terms and conditions.

(c) You may not assign or transfer any of Your rights or obligations under this agreement without Our prior written consent which may be given or withheld in our absolute discretion.

(d) Any provision of this agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

(e) This agreement is governed by the laws of Queensland, Australia. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with this agreement.

(f) You acknowledge that We may receive a payment or other benefit from the Distributor by reason of Your entering into this agreement.

(g) All notices from Us may be sent to Your email address.

14. Assignment or Novation by Us.

You agree that We may assign or novate our rights and obligations under this agreement to any other entity, and that from the date of such assignment or novation, the assignor no longer has any obligations, and all such obligations will be undertaken by the assignee or novatee, as if that entity was the original party to this agreement.

15. Privacy Issues.

We collect and use Your personal information to provide Our services to You, to fulfil associated administrative functions, and for marketing and client relationship purposes. Our Privacy Statement (www.mediasphere.com.au) tells You how We usually use and disclose Your personal information and how You can ask for access to it.