

BroadLEARN™ Early Learning Home Edition User Agreement

1. Definitions.

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

Details means the details on the order form at the front of this agreement.

Products means the Program and any Workbooks We provide to You.

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

Services Fee means the fee You pay to Us for Your use of the Program.

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

We, Us or similar words mean [Mediasphere Holdings] Pty Ltd trading as Mediasphere.

You means the User named in the Details, and where the context permits includes any other person You allow to use the Products.

Term.

This agreement commences when We email You the product key needed to access the Home Edition.

This agreement continues for a period of 12 months (the **Term**), unless terminated earlier by either party in accordance with the terms of this agreement.

Renewal.

Unless We reject Your application, You may renew this agreement for subsequent periods of 12 months upon Your paying the Services Fee payable at the time of the renewal. Your payment amounts to acceptance of the then current terms and conditions of this agreement. We can reject Your application in our absolute discretion.

Services.

In consideration of payment by You to Us of the Services Fee, We agree to provide You with controlled access to the Program, in accordance with the terms of this agreement.

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.

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 10.

To gain access to the Program, We will provide You with a product 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 **Error! Reference source not found.**

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.

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Payment.

You will not have access to the Program until the Services Fee has been paid. The Services Fee is non-refundable for any reason, including if You or Us terminate this agreement. We reserve the right to increase the amount of the Services Fee for any period after the initial 12 month Term.

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 **Error! Reference source not found.**

Intellectual Property Rights.

- (a) We own all right and interest in and to copyright and other intellectual property in all text, graphic images and other information in the Products, 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 Products or Your use of the Products 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 Products from time to time for the purposes of Your use of the Products 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 and subsisting in the Products, the data contained in the Program, and the documentation referred to in clause 0.

Confidentiality.

You agree to keep all information contained or embodied in the Products, 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.

Exclusion of Warranties and Liability.

To the maximum extent permitted by law:

- (a) The information in, and obtained from, the Products 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 Products are 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 Products or of any information provided by Us for any particular purpose.

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(c) You will use the Products 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 Products.

(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 0.

(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.

This clause does not exclude or reduce any liability We may have to You which cannot be excluded or reduced under any applicable statute (including the *Trade Practices Act*).

Termination.

(g) Without limiting any other right of termination under this agreement, either party may terminate this agreement at any time on 3 months' written notice to the other party.

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

(i) You fail to pay any amount payable to Us when due;

(ii) You are in breach of this agreement;

(iii) You are insolvent.

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

Amendment.

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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.

Tax.

All payments by You to Us under this agreement will be made without any deduction or withholding for any taxes, including withholding tax, excise duties, sales tax or customs duties, other than GST (the **Taxes**) unless such deduction or withholding is required by any applicable law. If You are required to deduct or withhold any Tax then You will promptly pay the relevant amount to the appropriate authorities, and promptly pay to Us, in addition to the payment to which We are otherwise entitled under this agreement, an amount equal to such additional amount as would be necessary to ensure that the net amount actually received by Us (free and clear of Taxes) is equal to the full amount We would have received had no such deduction or withholding been required.

If any goods and services tax (**GST**) is payable by a party on a taxable supply made under or in relation to this agreement, the party paying the consideration for the supply must also pay any GST, unless otherwise provided in this agreement.

General.

(j) 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.

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

(l) 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.

(m) 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.

(n) 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.

(o) All notices from Us may be sent to Your email address, or to any other address, specified by You in the Details.

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.

Privacy Issues.

We collect and use Your personal information to provide Our services to You, to fulfil associated administrative functions (for example, billing) and for marketing and client

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relationship purposes. Our Privacy Statement (www.mediasphere.com.au) tells You how We usually use and disclose Your personal inform