Media Pod Hosting Agreement

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. email sales@mediapod.co.uk
Web www.media-pod.co.uk
Telephone + 44 (0) 1274 713400 (the "**Supplier**"); and

(2)   You, being the entity or entities entering into this Agreement, as fully detailed in the Order Form defined below (the "**Customer**").

These terms and conditions, together with the Order form, shall form the agreement between the parties. By submitting an official order or completing the Supplier's order form, the Customer is offering to contract on the terms and conditions set out in this agreement and the Supplier may accept this offer in accordance with clause 2.1 below.

1   Definitions and Interpretation

1.1   In this agreement the following terms have the following meanings:

"**Authorised Users**"
Customer and employees and independent contractors of the Customer together with any persons who may lawfully access the media library systems of the Customer;

"**Commencement Date**"
The date on which this agreement is formed pursuant to clause 2.1 and the Supplier commences provision of the Services;

"**Customer**"
The customer named in the Customer's purchase order or the Order form;

"**Documentation**"
The documentation related to the Software and the Hosting Service; and

"**Fees**"
The initial fee payable within 30 days of the date of this agreement and the annual fee (variable) payable on each anniversary of the Commencement Date (the date the service goes live), together with the additional storage and bandwidth usage fees referred to in clause 6.2;

"**Hosting Service**"
The service whereby the Software and its associated data is hosted on a computer system under the control of the Supplier for use by the Customer's Authorised Users;

"**Information**"
Any and all know-how, documentation and information, whether commercial, financial, technical, operational or otherwise relating to the business, affairs, customers, suppliers or methods of one party and disclosed to or otherwise obtained by the other party in connection with this agreement;

"**Intellectual Property**"
Any and all intellectual property rights including patents, trademarks, design rights, copyright, rights in databases, domain names, topography rights, know-how, look and feel, rights in confidential information and all similar rights (whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world) together with any and all goodwill relating or attached thereto, the right to apply for registration of and/or register such rights and all extensions and renewals thereof;

"**Modifications**"
all modifications to the Software which remedy defects in the Software including temporary fixes, bug fixes, patches and maintenance releases and/or all modified versions of the Software which provide additional and/or enhanced functionality;

"**Order form**"
The Supplier's offer to supply the Software and Services detailed in the Order form for the supply of Services;

"**Services**"
The Hosting Service and the Support Services;

"**Software**"
The software named in the Order form and

"**Support Services**"
The services relating to the support and maintenance of the Software described in clause 5.

1.2   Headings are included for convenience only and shall not affect the construction or interpretation of this agreement.

1.3   Any reference to a clause, schedule or appendix shall (unless expressly provided otherwise) be a reference to a clause of or schedule or appendix to this agreement. Schedules and appendices shall have the same force and effect as if set out in the body of this agreement.

1.4   Any reference to the singular shall include the plural and vice versa and any reference to one gender shall include all genders including the neuter gender.

1.5   Any reference to a person shall, unless the context otherwise requires, include individuals, partnerships, companies and all other legal persons.

1.6   The words "include", "includes", "including" and "included" will be construed without limitation unless inconsistent with the context.

1.7 Reference to a sum being variable shall be to that sum as increased, at the discretion of the Supplier, on each anniversary of the Commencement Date to reflect the Supplier's standard current charges for the relevant matter. Variations in Fees would be advised to the Customer three months prior to their expiry date.

2 Basis of Contract and term

2.1 An order shall be deemed to be accepted on the earlier of: (a) the Supplier issuing a written acceptance of the order; and (b) the Supplier doing any act consistent with fulfilling the order or providing the Services, at which point this agreement shall be formed.

2.2 The Services shall begin on the Commencement Date and shall continue until this agreement is terminated in accordance with its terms or upon not less than two months' notice, such notice to expire on any anniversary of the Commencement Date.

3 Licence

3.1 The Supplier hereby grants to the Customer a non-exclusive, non-transferable licence to access and use the Software through the Hosting Service and to access and use the Documentation in each case only in respect of the Customer's usual business or, if the Customer is an educational organisation, for educational purposes.

3.2 The licence is non-assignable and non-transferable and Customer may not loan, rent, lease, sub-licence, sell or otherwise transfer the right to use the Software to any third party or use the same to provide bureau or other services to the third parties. Notwithstanding the aforesaid and clause 13, if Customer is a school and it is restructured or merged with another single school then, provided that Customer obtains the Supplier's prior written consent (which will not be unreasonably withheld or delayed) the Customer may transfer the licence and this Contract to the restructured/merged single school entity (this does not include trusts or groups of schools). If the Customer is any other type of entity and is restructured or merged with another entity, the Customer is not permitted to transfer the licence to the restructured/merged entity and must request a new order form from the supplier based on the new entity and enter into a new agreement on agreed terms with the Supplier. In this instance, once a new agreement is reached, the Customer's media would remain intact.

3.3 The licence entitles the Customer to make such copies of the Software and Documentation as are necessary (in the case of the Software) solely for archive and back-up purposes and (in the case of the Documentation) to enable the Customer to exercise its rights under the licence. The Customer shall ensure that all copyright and proprietary notices contained on the original version of the Software and Documentation appear on all copies made.

3.4 Save as permitted by law the Customer may not merge, decompile, disassemble, reverse engineer, copy, adapt or modify the Software or ascertain or list the source code of the Software or copy the Documentation.

3.5 The Supplier may audit the use of the Software and the Hosting Service by each Authorised User no more than once in each quarter provided that the Supplier shall exercise such right with reasonable prior notice and in a manner that does not substantially interfere with the Customer's normal conduct of business. If such audit reveals use of the Software or the Hosting Service by persons other than the Authorised Users, the Customer shall promptly disable such persons' access and shall not issue any new passwords to such individuals and (without prejudice to its other rights and remedies) the Supplier shall have the right to charge the Customer for such person's use of the Software and/or the Hosting Service as if they were additional Authorised Users.

3.6 The licence shall continue for so long as this agreement is in effect, but if the Customer wishes to cease to use the Hosting Service, it shall be entitled to do so upon giving not less than two months' notice, such notice to expire on any anniversary of the Commencement Date and, on the date this right is exercised:

(a) Customer's right to use the Software shall cease and the access to the software will be automatically disabled. Access will be granted by the Supplier for export of the Customer's media by the Customer for a period of 60 days.

(b) The Customer's media will be retained on the hosted platform for a period of 60 days from the expiry of the agreement to allow the Customer enough time to export their media from the Supplier's hosting platform. After this period, the Customer's media will be automatically deleted by the Supplier. At any point during the 60 day period, the Customer can change their mind and request that the agreement is re-activated at the renewal price applied by the Supplier and Commencement of the agreement would be back-dated to the expiry date.

(c) If the Customer requires any assistance in connection with export of media, they shall be entitled to purchase such services at the Supplier's then current rates.

3.7 All right, title and interest (including all Intellectual Property) in and to the Software shall be the exclusive property of the Supplier and other than as expressly stated herein, this agreement does not grant Customer any rights in or to the Software.

4   Hosting

4.1   The Supplier shall perform the Hosting Services and shall use reasonable endeavors to ensure the Software is available to the Customer for use in accordance with this Agreement. The Supplier shall promptly inform the Customer of any security breaches with respect to the Hosted Service.

4.2   Customer's access to the Hosting Service shall be limited to their Authorised Users. The Customer shall use all reasonable endeavors to prevent unauthorised access to the Hosting Service and shall notify the Supplier promptly if it becomes aware of any such unauthorised access or use.

4.3   The Customer shall ensure that each Authorised User keeps a secure password for his use of the Software, that each Authorised User keeps his password confidential.

4.4   The Customer acknowledges that from time to time it may be necessary or desirable to take the Software out of service for repair or maintenance and the Supplier will use reasonable endeavors to inform the Customer of any such outage at least one week in advance, save that in emergency situations, when the Software needs to be taken out of service for immediate repair, such advance notice may not be possible. The Supplier will however attempt to notify the Customer at the earliest possible time in the event of an emergency outage.

4.5   The Supplier does not warrant specific uptime or network response times on any network, however the Supplier agrees that it will use reasonable endeavors to actively monitor network performance, and make or recommend alterations to improve such performance as it becomes necessary.

4.6   The Supplier or its hosting provider will save backups of the Software and the data used by the Software.

4.7   The Customer shall not use the Hosting Services to transmit, distribute, disseminate, publish or store any material or information that:

(a)   is illegal, spam in nature, defamatory, obscene, indecent or harassing; or threatening or encouraging bodily harm, destruction of property, or infringing the lawful rights of any party;

(b)   violates the privacy of any party as protected by applicable law (whether local, national or international) or regulation; or

(c)   Contains software viruses, worms, Trojan horses or any computer code, files or programs designed to disrupt, destroy, invade, gain unauthorised access to, corrupt or modify the data,

Hosted Applications, or any other equipment.

5   Support and Modification

5.1   The Supplier shall provide the Support Services comprising:

(a)   access to a help desk for general user enquiries in respect of the Software; and

(b)   access to Software upgrades, updates and fixes generally made available from time to time.

5.2   The Supplier shall only be obliged to provide the Support Services between 9am and 5.00pm BST/GMT Monday to Friday, excluding English public holidays and 24th December to the first working day after 1st January.

5.3   The Supplier shall be entitled to implement Modifications and updates as an automatic policy to the Software without the prior consent of the Customer provided that such Modifications do not alter the basic functionality of the Software prior to such Modifications.

6   Fees

6.1   The Customer shall pay the Fees. The initial Fee shall be payable within 30 days of the date of this agreement, the additional storage and bandwidth Fees referred to in clause 6.2 below shall be paid within 30 days of the Supplier's invoice for such Fees and the annual fees shall be payable within 30 days of the receipt of the Supplier's invoice on each anniversary of the Commencement Date. The Supplier shall invoice the Customer for the initial Fee following the date of this agreement, for the annual Fee on each anniversary of the Commencement Date and the additional storage and bandwidth Fees after the end of the month in which they were incurred. An annual review of storage and bandwidth usage and ongoing requirements will be conducted by the Supplier and if appropriate, the Supplier will provide an order form to the Customer 90 days prior to renewal if fees need to be altered to reflect ongoing needs for increased fair usage

6.2   The Supplier shall be entitled to charge the following additional Fees should the Customer exceed the storage and bandwidth allowances of the Hosting Service beyond the agreed limits of 250 GB total Storage and 100 GB bandwidth per month at any time during a month:

Data Usage	Monthly rate ex VAT
Per 250GB Disk storage	£25.00
Download Bandwidth per 100GB	£9.99

Should the Customer's storage and bandwidth requirement be 2TB Storage and 2TB Bandwidth or more, the Supplier shall be entitled to prevent uploads exceeding this figure.

6.3 Fees and (where applicable) expenses payable are expressed exclusive of all taxes, charges, duties and levies (such as but not limited to value added tax) which the Customer shall pay in addition to the Fees and (where applicable) expenses at the rate and in the manner prescribed by law from time to time.

7 Warranties

7.1 The Supplier warrants that:

(a) it has full capacity and authority and all necessary consents to enter into and to perform its obligations under this agreement;

(b) use of the Software and Documentation strictly in accordance with this agreement will not infringe the Intellectual Property or other rights of any third party;

(c) it shall provide the Services with reasonable skill and care; and

(d) The Supplier warrants that the Software will be free from defects under normal use for the Term. If the Customer notifies the Supplier in writing of any defect or fault in the Software in consequence of which it fails to operate in material respects, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of this License for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by the Supplier, the Supplier shall repair the Software within a reasonable time period provided the Customer provides all the information that may be necessary to assist the Supplier in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable the Supplier to re-create the defect or fault.

7.2 If Customer notifies the Supplier in writing of a failure to comply with the warranty in clause 7.1(b), the Supplier may, in its sole discretion:

(a) procure the right for all Authorised Users to continue to use the Software and Documentation in question; or

(b) replace, vary or modify the Software and/or Documentation in question so that they conform to the warranty in clause 7.1(b); or

(c) terminate this agreement and refund any Fees

paid by Customer that became due and were paid during the year in which the Supplier gave notice to the Customer under this clause 7.2.

7.3 If the Customer notifies the Supplier in writing of a failure to comply with the warranty in clause 7.1(d), the Supplier's sole liability and obligation in relation to any breach of this warranty shall (at its option) be to use its reasonable endeavors to remedy any material defect in the Software or refund the initial Fee.

7.4 The Customer warrants that it has full capacity and authority and all necessary consents to enter into and perform its obligations under this agreement.

7.5 All warranties, representations, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.

8 Liability

8.1 Subject to clause 8.3, the Supplier's total aggregate liability to the Customer in respect of all causes of action arising out of or in connection with this agreement (whether in contract, strict liability, tort, delictual liability (including negligence), misrepresentation or otherwise) shall not exceed, in any case, the Fees paid by the Customer.

8.2 Save as provided in clauses 8.3, the Supplier shall not be liable to Customer for any loss of profit, loss of revenue, loss of or depletion of goodwill, loss of anticipated savings, loss of business opportunity, loss of data or loss of use of data, injury to reputation or any indirect, consequential or special loss or damage, regardless of the form of action, whether in contract, strict liability, tort or delictual liability (including negligence) and regardless of whether either party knew or had reason to know of the possibility of the loss, damage or injury in question.

8.3 Nothing in this agreement shall limit or exclude either party's liability:

(a) for death or personal injury resulting from negligence;

(b) for fraud or fraudulent misrepresentation;

(c) for any other liability the exclusion or limitation of which is not permitted by English law.

8.4 Customer shall assume sole responsibility for the use of the Product by all Authorised Users and Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Software and the Services or any actions taken by the Supplier at the Customer's direction.

9   Confidentiality

9.1   Each party shall keep the other's Information confidential and shall not divulge the same to any third party except for the purposes of this agreement or use it itself for any other purpose without the prior written consent of the other party. The Software shall be deemed to be the Information of the Supplier.

9.2   The provisions of this clause 9 shall not apply to any Information that the receiving party can show:

(a)   is in the public domain in substantially the same combination as that in which it was disclosed to the receiving party other than as a result of a breach of this agreement or any other obligations of confidentiality;

(b)   is or was lawfully received from a third party not under an obligation of confidentiality with respect thereto;

(c)   is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required);

(d)   is approved for disclosure in writing; or

(e)   was developed independently of and without reference to confidential information disclosed by the other party, provided always that each party shall provide the other with at least ten days' written notice of its intention to rely upon one or more of these exceptions, such notice specifying details of the exception to be relied upon and the information concerned.

9.3   Each party shall be entitled to divulge the other party's Information to its employees, agents, directors, officers, authorised sub-contractors, professional advisors and consultants who have a need to know the same in connection with this agreement provided that the receiving party shall ensure that such persons are aware of and, shall procure that such persons comply with, these obligations as to confidentiality.

10   Publicity

Neither party shall make or issue any announcement or public circular relating to the subject matter of this agreement without the prior written approval of the other.

11   Data Protection

11.1   The Supplier acknowledges that it may, in providing the Services, have access to data comprising "personal data" under the terms of the UK Data Protection Act 2018 and the EU GDPR and that it shall be a "data processor" in respect of such data.

11.2   To the extent that the Supplier processes any personal data of the Customer under this agreement, the Supplier shall adhere to the terms of the separate Data Processing Addendum:

Data Processing Addendum
Please Note that there is also an addendum to these cloud platform terms addressing updates required to clause 11 as a result of the EU GDPR , this addendum can be viewed via this http://www.media-pod.co.uk/documents/Media%20Pod%20GDPR%20Data%20Processing%20Addendum.pdf

The Customer hereby grants the Supplier the right to use any data or information hosted by the Supplier pursuant to this Agreement free of charge for the purposes of preparing reports on the usage of the Services (such as but not limited to the number and types of programmes recorded from Freeview channels. These reports may be published by the Supplier (including to other users of the Supplier's hosting services) but the Supplier confirms that in no event shall the reports contain any personally identifiable information (including information that identifies students).

11.3 The Customer hereby grants the Supplier the right to use any data or information hosted by the Supplier pursuant to this Agreement free of charge for the purposes of preparing reports on the usage of the Services (such as but not limited to the number and types of programmes recorded from Freeview channels. These reports may be published by the Supplier (including to other users of the Supplier's hosting services) but the Supplier confirms that in no event shall the reports   contain any personally identifiable information (including information that identifies students).

12   Termination

12.1   A party shall be entitled to terminate this agreement immediately upon notice in writing to the other if the other:

(a)   commits an irremediable breach of this agreement; or

(b)   commits a material remediable breach of this agreement and has failed to remedy such breach within thirty (30) days of written notice requiring remediation; or

(c)   makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, scheme of arrangement, receivership, administration, liquidation, bankruptcy or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of a distraint, execution, event of insolvency or event of bankruptcy or any similar process or event, whether in the United Kingdom or elsewhere.

12.2   Save as provided below, each party's rights, liabilities and obligations under this agreement shall cease upon its termination or expiration. Each party's accrued rights and liabilities and the rights and obligations of each party that are expressly or by implication intended to come into force upon, or remain in force following, the termination or expiration of this agreement (including under clauses 6, 8, 9, 12, 14, 17 and 18) shall survive any termination or expiration of this agreement.

12.3   Upon expiration or termination of this agreement for any reason:

(a)   The Supplier shall cease to provide the Services; and

(b)   all Authorised Users shall stop using the Software and Services; and

(c)   The Customer shall promptly and at the Supplier's option either destroy or deliver to the Supplier all of the Supplier's Information and personal data in its possession or control and, if requested to do so by the Supplier shall certify in writing that it has done so.

13   Assignment and Subcontracting

13.1   The Customer shall not assign, transfer or otherwise part with this agreement or the benefits or obligations thereof in whole or in part without the written consent of the Supplier.

13.2   The Supplier shall be entitled to assign or transfer this agreement in whole or in part or sub-contract the performance of any part of this agreement to any third party upon written notice to Customer.

13.3   References to a party shall include a reference to its successor and permitted assigns.

14   Third Party Rights

A person who is not a party to this agreement has no right to enforce any of the provisions of this agreement.

15   Notices

Each notice or communication given under or in relation to this agreement shall be in writing and shall be delivered by hand or sent by special delivery post, facsimile or email to the other party at its address/facsimile number or email address set out below. Each such notice shall be deemed to have been served:

15.1   in the case of by hand ,special delivery and email, when actually received; or

15.2   if sent by special delivery mail and returned marked "gone away" or to the like effect, on return of such special delivery mail; or

15.3   If sent by facsimile, on the second working day (being a day other than Saturdays, Sundays and public holidays in the part of the United Kingdom in which the Software is used) after the day of transmission provided that the sending party shall have received an error free transmission report in respect of the notice.

For Customer	For Supplier
The Customer name and address provided in the Order Form.	Planet Enterprises Ltd The Old School, 690, Bradford Road Birkenshaw West Yorkshire BD11 2DR
Facsimile: the number provided in their Order	Facsimile: 01274 713422 Attention: Managing Director
Attention: the contact named in the Order form	Email: sales@mediapod.co.uk

16 Force Majeure

16.1 Subject to clause 16.2, neither party will be in breach of this agreement, nor liable for any failure or delay in performance of any obligations under this agreement arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (a "**Force Majeure Event**"), including acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

16.2 The provisions of clause 16.1 shall apply to a party only if it:

(a) promptly notifies the other parties in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and

(b) could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and

(c) has used all reasonable endeavors to mitigate the effect of the Force Majeure Event, to carry out its obligations under this agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

16.3 If a Force Majeure Event prevails for a continuous period of more than six months, any party may terminate this agreement by giving 14 days written notice to the other party. On the expiry of this notice period, this agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.

17 General

17.1 No variation of or amendment to this agreement shall be effective unless made in writing and signed by the parties (or their authorised representatives).

17.2 The failure or delay of the Supplier to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to this agreement does not constitute and shall not be construed as a waiver of such term or right, power or privilege and shall in no way affect the Supplier's right to later enforce or exercise it, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.

17.3 The illegality, invalidity or unenforceability of any provision of, or any part of a provision of, or any right or remedy arising pursuant to this agreement shall not affect in any way the remaining provisions, rights or remedies, which shall be construed as if such illegal, invalid or unenforceable part did not exist.

17.4 This agreement (including the schedules) contains all the terms agreed by the parties in relation to its subject matter and supersedes any and all prior agreements, understandings or arrangements between them, whether oral or in writing in relation to such matters.

17.5 Except as expressly provided in this agreement, neither party shall not be entitled to assert any credit, set-off or counterclaim against the other in order to justify withholding payment of all or any part of sums due under this agreement.

18 Governing Law

18.1 This agreement (including any associated non-contractual disputes or claims) is governed by English law and the parties hereby submit to the exclusive jurisdiction of the English courts.