

PUBLIC BROADCASTING SERVICE
Content Contributor Agreement for PBS LearningMedia Service

This Content Contributor Agreement for the PBS LearningMedia service (the "Agreement") is effective as May 28, 2015 (the "Effective Date") between the Public Broadcasting Service, a non-profit corporation organized under the laws of the District of Columbia, located at 2100 Crystal Drive, Arlington, VA 22202 ("PBS") and National Oceanic and Atmospheric Administration, a division of the United States Department of Commerce, located at 1315 East West Hwy, SSMC III in Silver Spring, MD 20910 ("Licensor").

WHEREAS, PBS is providing an online educational video, audio, image, interactive, and text repository that supports the distribution of digital content over the Internet through PBS, PBS member stations, and Approved Third Parties' websites, currently known as PBS LearningMedia ("LM"); and

WHEREAS, Licensor, in recognition and appreciation of the educational mission, good will, and value derived from its association with PBS and LM, desires to participate as a contributor, thereby making certain Content available to LM;

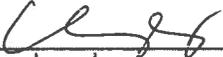
NOW, THEREFORE, recognizing the foregoing consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

Licensor hereby grants to PBS the LM Rights in the Content for the Term pursuant to the attached Terms and Conditions, as the capitalized terms used herein are defined in the attached Terms and Conditions.

IN WITNESS WHEREOF, PBS and Licensor have executed this Agreement as of the Effective Date.

PUBLIC BROADCASTING SERVICE

LICENSOR

By: 
Name: Kelly Whitney
Title: Director Curriculum
PBS LearningMedia

By: 
Name: Louisa Koch
Title: NOAA Education Director

TERMS AND CONDITIONS

1. Definitions.

- a. **"Approved Third Parties"** means third parties approved by PBS.
- b. **"Content"** means all materials that Licensor provides to LM through: (i) upload; (ii) approval for PBS or other third party to upload; (iii) input of a hyperlink ("Pointer Asset"); or (iv) any other manner approved by PBS. Content may include any and all formats, including but not limited to text, audio, and video. Content shall be delivered in accordance with the technical specifications outlined on the LM On-Board website, which is currently available at <https://projects.pbs.org/confluence/display/DLM/How+to+Create+Content>.
- c. **"Designated Users"** means the targeted audience of the Content, including without limitation pre-K through grade twelve (12) schools, universities, colleges, other higher education institutions, school districts, school administrators, teachers, teacher aides, educators, homeschoolers, and/or students.
- d. **"Digital Classroom Use"** means unlimited releases of any integrated digital Content and/or multimedia curriculum service targeting Designated Users for use for Educational Purposes.
- e. **"LM Rights"** means the non-exclusive, world-wide rights of PBS, PBS member stations, Approved Third Parties, and Designated Users to distribute, exhibit, authorize, license, permit, and otherwise exploit the Content or elements thereof (including, but not limited to, footage, clips, titles, captions, characters, logos, music, and audio tracks) in connection with LM for Digital Classroom Use, in whatever format and/or interface at such party's sole discretion, and pursuant to the following levels as designated by Licensor for each uploaded property:
 - (i) "Level Zero (0)" means the right to exhibit and/or stream the Content over the Internet for Digital Classroom Use;
 - (ii) "Level One (1)" means the right, more fully detailed in the license currently available at <http://www.pbslearningmedia.org/help/full-license-for-section-3b-of-terms-of-use-download/>, to exhibit and/or stream the Content over the Internet, and to download the Content and play it on any device, for Digital Classroom Use;
 - (iii) "Level Two (2)" means the right, more fully detailed in the license currently available at <http://www.pbslearningmedia.org/help/full-license-for-section-3c-of-terms-of-use-download-and-share/>, to exhibit and/or stream the Content over the Internet, to download the Content and play it on any device, and to share the Content with third parties, for Digital Classroom Use; and
 - (iv) "Level Three (3)" means the right, more fully detailed in the license currently available at <http://www.pbslearningmedia.org/help/full-license-for-section-3d-of-terms-of-use-download-share-and-modify/>, for:
 - (A) PBS, PBS member stations, and Approved Third Parties to exhibit and/or stream the Content over the Internet, to download the Content and play it on any device, to share the Content with third parties, and to reversion and/or modify (e.g., index, compile, chapter, abridge, combine, edit, mix, or otherwise modify) the Content, including, but not limited to, the addition of interactive menus, interviews, commentary, teachers' guides, learning modules, or other educational materials regardless of format (the "Enhancements"), and to distribute the Enhancements along with the Content on LM.
 - (B) Designated Users to exhibit and/or stream the Content over the Internet, to download the Content and play it on any device, to share the Content with third parties, and to reversion and/or modify (e.g., index, compile, chapter, abridge, combine, edit, mix, or otherwise modify) the Content and the Enhancements to facilitate the creation of appropriate curriculum-based educational materials for use in a Designated User environment.
- f. **"Educational Purposes"** means (i) for the primary purpose of learning or teaching in both formal and informal educational settings, (ii) use by educators or students in classrooms, libraries, schools, and at home, or (iii) the presentation of materials to an individual or a group for the purpose of learning or teaching.
- g. **"Term"** means the period of time commencing on the Effective Date and continuing in full force and effect for two (2) years. This Agreement will automatically renew at the end of the current

Term for each subsequent year unless either party gives written notice of its intention not to renew at least sixty (60) days before expiration of the then current Term.

2. **Delivery.** Licensor shall begin delivering the Content to PBS, at Licensor's expense, within ninety (90) days of the Effective Date. In the event that Content delivery begins after ninety (90) days, the Term shall automatically be extended by the number of days that the Content is delayed, in addition to any other rights or remedies that PBS may have.
3. **Approval.** The parties agree that the Content is subject to approval by PBS in its sole discretion. Neither PBS nor its member stations are obligated in any way to accept the Content for inclusion in LM or to distribute the Content in any way whatsoever. All obligations to Licensor are deemed fully satisfied by the consideration provided hereunder, the receipt and sufficiency of which are hereby acknowledged.
4. **Intellectual Property Rights.** The Content shall bear a proper credit, including logo or equivalent watermark, in Licensor's name. Licensor shall be solely responsible for the Content and the consequences of posting or publishing the Content. Licensor represents and warrants that Licensor owns or has the necessary licenses, rights, consents, and permissions to use and authorize PBS to use all patent, trademark, trade secret, copyright, literary, artistic, musical, and any other proprietary rights in and to any and all Content; and that duplication and distribution of the Content by PBS will not defame, violate the right of privacy, or constitute an invasion of any other rights of any person, firm, or corporation.
5. **Spanish Translation.** Notwithstanding the rights level designed pursuant to Section 1(e) above, Licensor hereby grants to PBS the right to translate the Content into Spanish and to distribute, exhibit, license, and otherwise exploit modified versions of the Content in Spanish, including without limitation Spanish language audio, Spanish closed captions, Spanish metadata, and Spanish text for textual assets. Such use shall otherwise be in accordance with the terms of this Agreement.
6. **Policy Compliance.** All Content and Enhancements must be acceptable to PBS for duplication and distribution hereunder, including, but not limited to, compliance with applicable PBS policies existing at the Effective Date of this Agreement and any PBS policies thereafter duly promulgated by PBS.
7. **Captions.** When possible, Licensor shall deliver the Content to PBS closed captioned as a service for the hearing impaired. Licensor hereby grants and licenses to PBS, PBS member stations, and Approved Third Parties, the right to duplicate, distribute, and publicly perform the captions (whether in open or closed captioned format) in any medium or form consistent with the terms and conditions under which PBS, pursuant to this Agreement, has the right to duplicate, distribute, promote, or otherwise exhibit the Content. Furthermore, Licensor shall ensure that the Content complies with the Twenty-First Century Communications and Video Accessibility Act of 2010 (Public Law 111-260), which requires the provision of closed captioning on certain video programming delivered using Internet protocol that was published or exhibited on television with captions after the effective date of the applicable regulations.
8. **Information and Promotion**
 - a. Licensor hereby grants to PBS the right to use, and to authorize PBS member stations and Approved Third Parties to use, the title, names, likenesses, voices, and biographies of all persons appearing on or performing services on the Content (including the right to excerpt portions of the Content or Enhancements), Licensor's name and logo, and any Content elements, for the purpose of advertising, promoting, or publicizing the Content and/or for institutional or LM promotion in any medium or format. Licensor acknowledges and agrees that PBS member stations and Approved Third Parties may edit and use the publicity releases and biographies provided herein to create their own promotional materials to promote LM and the Content.
 - b. Licensor agrees not to use the name and mark "PBS," the PBS Everyone Symbol, the PBS logos, or any other trademark or servicemark of PBS for any purpose whatsoever without written permission, including, where appropriate, entering into a separate written agreement with PBS for such use.

9. Warranties and Indemnities

- a. Licensor represents and warrants that it has the full power, legal capacity, and authority to enter into this Agreement and to carry out its terms; that it has all of the rights necessary to grant the rights granted to PBS in this Agreement; that the Content shall be furnished to PBS free and clear of any liens or encumbrances which might interfere with its use as herein provided; that duplication and distribution by PBS, PBS member stations, and Approved Third Parties during the Term hereunder shall not require any payment or compensation whatsoever; that all Pointer Assets will remain available, be maintained by Licensor, and updated as necessary for the duration of the Term; and that Licensor will promptly notify PBS via e-mail at LearningMediaContact@pbs.org if Licensor can no longer ensure that a Pointer Asset will remain available, be maintained by Licensor, and updated as necessary.
- b. The liability of Licensor and its obligations to PBS resulting from any claim, loss, damage, liability or expense directly or indirectly occasioned by or arising out of this Agreement or any activity that is the subject of this Agreement, based upon any act or failure to act on the part of any employee or agent of Licensor, is to be determined under the Federal Tort Claims Act or other Act of Congress, as applicable.
- c. PBS represents and warrants that it has the full power, legal capacity, and authority to enter into this Agreement and to carry out its terms.

10. Insurance. Licensor is self-insured.

11. Confidentiality. Neither PBS nor Licensor shall disclose to any third party (other than its licensees or on a need-to-know basis to their respective employees in their capacity as such) any information with respect to the terms and provisions of this Agreement, except: (a) to the extent necessary to comply with law or the valid order of a court of competent jurisdiction, in which event the party making such disclosures shall seek confidential treatment of such information; (b) as part of its normal reporting or review procedure, as applicable, to its auditors and its attorneys, provided, however, that the auditors or attorneys agree to be bound by the provisions of this Section; (c) as part of its permitted distribution of the Content; or (d) to enforce its rights pursuant to this Agreement.

12. Notices. All notices or demands required or permitted by any provision of this Agreement shall be in writing and shall be sent by U.S. mail, overnight delivery with receipt, or personally delivered to the respective parties hereto at the following addresses or such other addresses as either party may notify the other party in writing:

PBS
Public Broadcasting Service
Attention: Alicia Levi
2100 Crystal Drive
Arlington, Virginia 22202

With a courtesy copy to:
Public Broadcasting Service
Attention: Office of the General Counsel
2100 Crystal Drive
Arlington, Virginia 22202

Licensor
National Oceanic and Atmospheric Administration
Attn: Louisa Koch
U.S. Department of Commerce
1315 East West Hwy, SSMC III
Silver Spring, MD 20910

13. Entire Agreement; Waiver; Assignment; Amendment; Captions. This Agreement supersedes and replaces any previous documents, correspondence, conversations, or other written or oral understandings between PBS and Licensor related to the Content, but expressly excluding any

Program license or production agreement between the parties. No waiver by either party of any breach hereunder is deemed a waiver of any other breach. This Agreement cannot be assigned, altered, amended, changed, or modified in any respect unless each such assignment, alteration, amendment, change, or modification is agreed to in writing, signed, and delivered by each party hereto. The captions contained in this Agreement are for reference purposes only and are not part of this Agreement.

- 14. Choice of Law.** This Agreement is governed by and construed under the laws of the United States applicable to agreements executed and performed entirely within the Commonwealth of Virginia. PBS and Licensor hereby submit to the jurisdiction of the federal courts for the purpose of resolving any dispute arising out of or resulting from this Agreement.
- 15. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

