

## **TERMS AND CONDITIONS**

Penkat  
BTEX Ltd  
**PO Box 7442**  
Old Wolverton  
Milton Keynes  
MK12 5NN  
UK

### **INTRODUCTION**

(A) BTEX Limited ("BTEX") operates the websites at [www.penkat.com](http://www.penkat.com) & [www.streetmap.co.uk](http://www.streetmap.co.uk) (and variations thereon) (the "Websites").

(B) The Content Provider is the proprietor of the short film or still photographs (the "Content"), the technical specifications for which are further described below, to be displayed on the Websites.

(C) BTEX wishes to use the Content on the Websites and the Content Provider wishes to allow BTEX to use the Content on the Websites.

(D) The parties have agreed that the Content Provider shall provide the Content to BTEX and allow BTEX to use the Content on the Websites subject to the terms and conditions set out in this agreement.

The Parties Agree as follows:

### **1 INTERPRETATION**

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Affiliate:** a person who has entered into an agreement with BTEX allowing it to host Content.

**Competitor:** any websites which operates a professional quality film database for the public [for the avoidance of doubt, this shall/ shall not include sites which offer user-generated video content].

**Content:** all text, information, data, software, executable code, images, audio or video material in whatever medium or form provided by the Content Provider to BTEX for incorporation in the Websites.

**Effective Date:** the date on which Content is provided to BTEX.

**Intellectual Property Rights:** all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, moral rights, rights in performances and any other grand rights, know-how, confidential information, trade secrets, business names and domain names, Marks, patents, design rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off.

**Net Advertising Revenues:** the gross revenues from the sale of pre-roll or post-roll advertisements which are attached to the Content provided by a Content Provider and hosted on the Websites or an Affiliate websites arising from third parties viewing the Content which is film, less reasonable agency fees, commissions, credits due to cancellations and provision for bad debt. Net Advertising Revenue excludes any revenue generated by accepted promotional videos from Organisations or content that is still photographs.

**Websites:** the websites at [www.penkat.com](http://www.penkat.com) & [www.streetmap.co.uk](http://www.streetmap.co.uk) or any variation thereon.

- 1.2 Clause and schedule headings do not affect the interpretation of this agreement.
- 1.3 References to clauses and schedules are (unless otherwise provided) references to the clauses and schedules of this agreement.
- 1.4 In the event and to the extent only of any conflict between the clauses and the schedules, the clauses shall prevail.
- 1.5 Words in the singular include the plural and those in the plural include the singular, and references to masculine words include the feminine.
- 1.6 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 References to including and include(s) mean respectively including without limitation and include(s) without limitation.
- 1.8 A person includes a corporate or unincorporated body.
- 1.9 Writing or written includes faxes and e-mail.

## **2 PROVISION OF CONTENT**

- 2.1 The Content Provider must ensure the Content meets the quality criteria below. Uploading Content onto the Websites is entirely at the discretion of BTex and

submission of Content is no guarantee that it will be uploaded. Submitted material which is not used by BTex on the Websites will not be routinely returned to the prospective Content Provider. A prospective Content Provider seeking the return of their material should seek the prior agreement of BTex. No explanation of the reason for refusal shall be routinely given.

2.2 A prospective Content Provider must ensure and now warrants that Content:

- (a) is not threatening, defamatory, obscene, indecent, seditious, offensive, pornographic, abusive, liable to incite racial hatred, discriminatory, menacing, scandalous, inflammatory, blasphemous, in breach of confidence, in breach of privacy or which may cause annoyance or inconvenience; or
- (a) has all necessary licences and/or approvals including permission to use all Intellectual Property Rights in the Content and that any music used is free from Performing Rights Society (PRS) Licences; or
- (b) does not constitute or encourage conduct that would be considered a criminal offence, give rise to civil liability, or otherwise be contrary to the law of or infringe the rights of any third party, in any country in the world; or
- (c) is not technically harmful (including, without limitation, containing computer viruses, logic bombs, Trojan horses, worms, harmful components, corrupted data or other malicious software or harmful data).

2.3 Other than the payment of fees in clause BTex has no obligation to the Content Provider, and undertakes no responsibility, to review the Content to determine whether any such Content may result in any liability to any third party.

### 3 LICENCE

3.1 Subject to Content acceptance by BTex, which is indicated by Content being uploaded to the Websites, during the term of this agreement, the Content Provider now grants to BTex a licence to distribute the Content on the Websites in return for the payment by BTex of the Fees as set out in clause 7.

3.2 The licence granted under clause 3.1 permits BTex to:

- (a) electronically reproduce and distribute, and publicly perform and display, the Content in whole or in part on the Websites and through the websites of any affiliates of BTex;

- (b) reproduce and distribute through any media now known, or hereafter developed, excerpts of the Content in advertisements for, and in marketing and promotional materials related to, the Websites;
- (c) licence third parties to use excerpts of the Content for promotional purposes, including but not limited to use of excerpts on the internet or television broadcast, such use to be subject to a fair use requirement;
- (d) Append pre-roll or post-roll advertisements to the Content which is film.

3.3 During the term of this agreement, the Content Provider agrees that it shall not:

- (a) grant distribution or publication rights to any of the Content to any Competitor of BTex however this does not preclude you using the Content on your client's website or in private user-groups or social-networking Websites.

For the avoidance of doubt BTex's main competitor are online mapping companies and companies who provide mapping to their video channels.

- (b) advertise or promote the Content on or in connection with any Competitor of BTex.

#### 4 **QUALITY CRITERIA**

- 4.1 Content should be provided to BTex in a complete and final condition. For the avoidance of doubt this includes the completion of all post-production steps.
- 4.2 Film Content will be between [1.5] and [4] minutes long and filmed at high quality.
- 4.3 Film Content will be edited and preferably without voiceovers. This is only preferable to appeal to the international audience.

#### 5 **CONTENT PROVIDER**

- 5.1 The Content Provider warrants that it has full power and authority to enter into and perform this agreement.
- 5.2 On submission of the Content, the Content Provider will complete a submission proforma which sets out full contact details for the Content Provider, preferred method of royalty payment and further details of the derivation of intellectual property rights permission if applicable. The Content Provider warrants the complete accuracy of the submission proforma.

5.3 The Content Provider shall indemnify and keep indemnified BTex against all claims, losses, damages, costs and expenses which it may suffer as a result of any breach of this Agreement or howsoever arising in relation to the Content. BTex reserves the right to seek evidence of the rights asserted in the Content, for example by the production of receipts from third party contributors as appropriate.

## **6 OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS**

6.1 BTex retains all Intellectual Property Rights in the Websites (excluding the Content), the derivative works and its trade marks, and nothing in this agreement shall be taken to grant any rights to the Content Provider in respect of any BTex Intellectual Property Rights.

6.2 Title to and ownership of all Intellectual Property Rights embodied by or otherwise incorporated into the Content shall remain with the Content Provider.

## **7 ROYALTY PAYMENT AND LIMITATION**

7.1 Where Content is uploaded by BTex to the Websites, the Content Provider will receive 50% of the Net Advertising Revenues (the "Websites Royalty Payment").

7.2 Where Content is hosted on an Affiliate website, a Content Provider will receive 25% of the Net Advertising Revenues received by BTex (the "Affiliate Royalty Payment").

7.3 Website Royalty Payments and Affiliate Royalty Payments (together "Royalty Payments") will be payable 45 days from the date on which Content is uploaded by BTex to the Websites, and every 3 months thereafter until the Content is removed from the Websites.

7.4 Royalty Payments to Content Providers are contingent on BTex receiving such payments from advertisers. BTex will only pay to the Content Provider Royalty Payments when BTex has been paid and in the event that BTex is not paid by an advertiser, no Royalty Payment will be payable to the Content Provider.

7.5 Royalty Payments will be only be made once the total payment due exceeds the minimum level of £50.00. Royalty Payments under £50.00 will be rolled forward until the minimum level is reached at which point the Royalty Payment will be made on the next applicable date in accordance with clause 7.3.

7.6 All Royalty Payments are inclusive of VAT.

7.7 Interest on any late Royalty Payments shall be payable at 1% above the base rate of Lloyds TSB Bank from time to time.

7.8 Subject to clause 8.3, BTex's maximum liability in contract, tort (including negligence) to the Content Provider shall be the Royalty Payments for the preceding quarter provided always that nothing in this agreement shall exclude liability for personal injury or death caused by negligence, or for fraud.

## 8 TERMS AND TERMINATION

8.1 This agreement shall commence on the Effective Date and shall continue from year to year indefinitely, unless terminated by either party returning removing the Content (in the case of BTex) or requesting its removal (in the case of the Content Provider).

8.2 In the event that BTex receives a notification from a third party that the Content breaches the terms of this agreement or is in any other way objectionable, BTex may remove the Content immediately (together with any other Content provided by the Content Provider).

8.3 Where Content is removed from the Websites without notice, BTex shall not be liable for any direct, indirect or consequential loss or damage incurred in connection with the removal of Content, whether accruing to the Content Provider or by any third party. BTex shall not be required to pay any unpaid Royalty payments.

8.4 BTex reserves the right to take down Websites content on 30 days' notice in writing to a Content Provider.

8.5 A Content Provider can request the removal of his or her Content from the Websites on 90 days' notice. The 90 day period runs from the date of receipt by BTex of notice in writing, to be sent to BTex Ltd, PO Box 7442, Old Wolverton, Milton Keynes, MK12 5NN, UK by special delivery (or for international content providers, the appropriate signed for service).

8.6 This agreement shall terminate if Content Provider commits any material breach of its obligations under this agreement which (if remediable) is not remedied within 14 days after the service of written notice specifying the breach and requiring it to be remedied;

8.7 On expiry or termination of this agreement:

- (a) all provisions of this agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing, or is expressly stated to continue, shall continue in full force and effect; and
- (b) BTex shall take down from the Websites and return the Content to the Content Provider within 30 days.

**9 MISCELLANEOUS**

- 9.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 9.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 9.3 This agreement sets out the entire agreement between the parties relating to its subject matter and supersedes all prior oral or written agreements between them. The parties have not entered this agreement in reliance of any warrants or representation which has not been set out in this agreement.
- 9.4 The parties do not intend any term of this agreement to be enforced by any third party.
- 9.5 No failure or delay by any party in exercising its rights under this agreement or to exercise any remedy shall be construed as a waiver of any right or remedy.

**10 GOVERNING LAW**

- 10.1 This agreement shall be governed by and construed in accordance with English law. Disputes arising in connection with this legal notice shall be subject to the exclusive jurisdiction of the English courts.

Signed: \_\_\_\_\_

Print name: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_