

11.9 TERMS AND CONDITIONS - TAPESTRY ON-LINE LEARNING JOURNAL

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in these Conditions.

Authorised Users: those Family Groups and employees of You who are authorised by You to use the Services and the Documentation.

Business Day: any day which is not a Saturday, Sunday or public holiday in the UK.

Conditions: these terms and conditions of business as amended from time to time.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5.

Documentation: the documents, tutorials and information made available to You by Us online via <http://eyfs.info/home> or such other web address notified by Us to You from time to time which sets out a description of the Services and the user instructions for the Services.

Effective Date: the date on which We first make the Services available to You or (in the case of a Renewal) the relevant anniversary of that date.

Family Group: parents, carers and grand-parents of a child registered to attend Your establishment.

Renewal: the procedure described in clause 14.2 and Renew shall be construed accordingly.

Security Policy: Our Privacy, Security and Back-up Policy as made available at <http://eyfs.info/> or such other website address as may be notified to You from time to time.

Services: the subscription services known as Tapestry provided by Us to You under these Conditions via <http://eyfs.info/tapestry-info/introduction> or any other website notified to You by Us from time to time, as more particularly described in the Documentation.

Software: the online software applications made available by Us as part of the Services.

Subscription Fees: the subscription fees (as amended from time to time) as set out on Our website payable by You to Us for the User Subscriptions for the Subscription Term.

Subscription Term: subject to clause 14, the period of 12 months from the Effective Date.

Support Services Policy: Our policy for providing support in relation to the Services as made available at <http://eyfs.info/> or such other website address as may be notified to You from time to time.

User Subscriptions: the user subscriptions purchased by You pursuant to clause 9.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with these Conditions.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

We/Us/Our: Foundation Stage Forum Limited (Company number 05757213) of 1, Southdown Avenue, Lewes BN7 1EL.

You/Your: the person who wishes to use and pay for the Services via the internet on a pay-per-user basis subject to the Conditions.

Your Data: the data inputted by You, Authorised Users, or Us on Your behalf for the purpose of using the Services or facilitating Your use of the Services.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Conditions.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8 A reference to writing or written includes faxes but not e-mail.
- 1.9 References to clauses and schedules are to the clauses and schedules of these Conditions; references to paragraphs are to paragraphs of the relevant schedule to these Conditions.

2. USER SUBSCRIPTIONS

2.1 Subject to You purchasing the User Subscriptions in accordance with clause 9.1, complying with the obligations and restrictions set out in this clause 2 and the other terms and conditions of these Conditions, We hereby grant to You a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for Your business.

2.2 You undertake that:

- (a) You are a member of the Foundation Stage Forum <http://eyfs.info/joinus/subscribing> and will continue to be a member throughout the Subscription Term;
- (b) the maximum number of Authorised Users that You authorise to access and use the Services and the Documentation shall not exceed the number of User Subscriptions You have purchased from time to time;
- (c) the Authorised Users shall take all reasonable steps necessary to protect and secure the password used to access the Services including, but not limited to, changing the password periodically.

2.3 You shall not (and shall procure the Authorised Users shall not) access, store, distribute or transmit any Viruses, or any material during the course of the use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) in a manner that is otherwise illegal or causes damage or injury to any person or property;

and We reserve the right, without liability or prejudice to its other rights to You, to disable or suspend Your (or any of the Authorised User's access to the Services if any of the provisions of this clause are breached.

2.4 You shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (i) and except to the extent expressly permitted under these Conditions, attempt to copy, modify, duplicate, create derivative works from,

frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

(ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

(b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or

(c) use the Services and/or Documentation to provide services to third parties; or

(d) subject to clause 19.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or

(e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; and

2.5 You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Us.

2.6 The rights provided under this clause 2 are granted to You only, and shall not be considered granted to any subsidiary or holding company of You.

3. ADDITIONAL USER SUBSCRIPTIONS

3.1 You may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number purchased at the Effective Date and We shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of these Conditions.

4. SERVICES

4.1 We shall, during the Subscription Term, provide the Services and make available the Documentation to You on and subject to the terms of these Conditions.

4.2 We shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

(a) planned or anticipated maintenance where We shall give not less than 24 hours prior notice of the proposed unavailability of the Services; and

- (b) unplanned maintenance where We will use all reasonable endeavours to resolve the issue.

5. YOUR DATA

- 5.1 You shall own all right, title and interest in and to all of Your Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of Your Data.
- 5.2 We shall follow Our archiving procedures for Your Data as set out in Our Security Policy, as such document may be amended by Us in Our sole discretion from time to time. In the event of any loss or damage to Your Data, Your sole and exclusive remedy shall be for Us to use reasonable commercial endeavours to restore the lost or damaged data from the latest back-up of Your Data maintained by Us in accordance with the archiving procedure described in our Security Policy. We shall not be responsible for any loss, destruction, alteration or disclosure of Your Data caused by any third party (except those third parties sub-contracted by Us to perform services related to Your Data maintenance and back-up).
- 5.3 We shall, in providing the Services, comply with Our Security Policy relating to the privacy and security of Your Data, as such document may be amended from time to time by Us in Our sole discretion.
- 5.4 You shall comply with (and procure the Authorised Users comply with) the section headed “Your Responsibilities” in Our Security Policy.
- 5.5 If We process any personal data on Your behalf when performing Our obligations under these Conditions, the parties record their intention that You shall be the data controller and We shall be a data processor and in any such case:
 - (a) You acknowledge and agree that the personal data may be transferred or stored outside the EEA or the country where You and the Authorised Users are located in order to carry out the Services and Our other obligations under these Conditions;
 - (b) You shall ensure that You are entitled to transfer the relevant personal data to Us so that We may lawfully use, process and transfer the personal data in accordance with these Conditions on Your behalf;
 - (c) You shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
 - (d) We shall process the personal data only in accordance with the terms of these Conditions and any lawful instructions reasonably given by You from time to time; and

- (e) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

6. THIRD PARTY PROVIDERS

You acknowledge that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. We make no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by You, with any such third party. Any contract entered into and any transaction completed via any third-party website is between You and the relevant third party, and not Us. We recommend that You refer to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. We do not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

7. OUR OBLIGATIONS

- 7.1 We undertake that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Our instructions, or modification or alteration of the Services by any party other than Us or Our duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, We will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide You with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes Your sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding the foregoing, We:
 - (a) do not warrant that Your use of the Services will be uninterrupted or errorfree; or that the Services, Documentation and/or the information obtained by You through the Services will meet Your requirements; and
 - (b) are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and You acknowledge that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.3 These Conditions shall not prevent Us from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under these Conditions.

7.4 We warrant that We have and will maintain all necessary licences, consents, and permissions necessary for the performance of Our obligations under these Conditions.

8. YOUR OBLIGATIONS

You shall:

- (a) provide Us with:
 - (i) all necessary co-operation in relation to these Conditions; and
 - (ii) all necessary access to such information as may be required by Us; in order to provide the Services, including but not limited to Your Data, security access information and configuration services;
- (b) comply with all applicable laws and regulations with respect to Your activities under these Conditions and/or pursuant to the use of the Services;
- (c) carry out all Your other responsibilities set out in these Conditions in a timely and efficient manner. In the event of any delays in Your provision of such assistance as agreed by the parties, We may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of these Conditions and shall be responsible for any Authorised User's breach of these Conditions;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Us, Our contractors and agents to perform their obligations under these Conditions, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by Us from time to time; and
- (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Our data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Your network connections or telecommunications links or caused by the internet.

9. CHARGES AND PAYMENT

9.1 You shall pay the Subscription Fees to Us for the User Subscriptions by following the on-line instructions on Our website. The number of User Subscriptions required by

You is based on the number of children on Your register at the Effective Date where one User Subscription corresponds to one child on the register.

- 9.2 If We have not received payment prior to the expiry of any Subscription Term the Services will cease with effect from the expiry of the Subscription Term and We may, without liability to You, disable Your password, account and access to all or part of the Services and We shall no longer be under any obligation to provide any or all of the Services.

- 9.3 All amounts and fees stated or referred to in these Conditions:

- (a) shall be payable in pounds sterling;
- (b) are exclusive of value added tax, which shall be added to the Subscription Fee(s) at the appropriate rate.

10. PROPRIETARY RIGHTS

- 10.1 You acknowledge and agree that We own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, these Conditions do not grant You any rights to, or in, patents, copyrights, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

- 10.2 We confirm that We have all the rights in relation to the Services and the Documentation that are necessary to grant all the rights We purport to grant under, and in accordance with, the terms of these Conditions.

11. CONFIDENTIALITY

- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under these Conditions. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
- (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

- 11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of these Conditions.
- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of these Conditions.
- 11.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 11.5 You acknowledge that details of the Services, and the results of any performance tests of the Services, constitute Our Confidential Information.
- 11.6 We acknowledge that Your Data is Your Confidential Information.
- 11.7 This clause 11 shall survive termination of these Conditions, however arising.

12. INDEMNITY

- 12.1 You shall defend, indemnify and hold Us harmless against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with Your use of the Services and/or Documentation, provided that:
- (a) You are given prompt notice of any such claim;
 - (b) We provide reasonable co-operation to You in the defence and settlement of such claim, at Your expense; and
 - (c) You are given sole authority to defend or settle the claim.
- 12.2 We shall defend You, Your officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify You for any amounts awarded against You in judgment or settlement of such claims, provided that:
- (a) We are given prompt notice of any such claim;
 - (b) You provide reasonable co-operation to Us in the defence and settlement of such claim, at Our expense; and
 - (c) We are given sole authority to defend or settle the claim.

- 12.3 In the defence or settlement of any claim, We may procure the right for You to continue using the Services, replace or modify the Services so that they become noninfringing or, if such remedies are not reasonably available, terminate these Conditions on 2 Business Days' notice to You without any additional liability or obligation to pay liquidated damages or other additional costs to You.
- 12.4 In no event shall We, Our employees, agents and sub-contractors be liable to You to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than Us; or
 - (b) Your use of the Services or Documentation in a manner contrary to the instructions given to You by Us; or
 - (c) Your use of the Services or Documentation after notice of the alleged or actual infringement from Us or any appropriate authority.
- 12.5 The foregoing and clause 13.4(b) states Your sole and exclusive rights and remedies, and Our (including Our employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. LIMITATION OF LIABILITY

- 13.1 This clause 13 sets out Our entire financial liability (including any liability for the acts or omissions of Our employees, agents and sub-contractors) to You:
- (a) arising under or in connection with these Conditions;
 - (b) in respect of any use made by You of the Services and Documentation or any part of them; and
 - (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Conditions.
- 13.2 Except as expressly and specifically provided in these Conditions:
- (a) You assume sole responsibility for results obtained from the use of the Services and the Documentation by You, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Us by You in connection with the Services, or any actions taken by Us at Your direction;
 - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Conditions; and (c) the Services and the Documentation are provided to You on an "as is" basis.

- 13.3 Nothing in these Conditions excludes Our liability:
- (a) for death or personal injury caused by Our negligence; or (b) for fraud or fraudulent misrepresentation.
- 13.4 Subject to clause 13.2 and clause 13.3:
- (a) We shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these Conditions; and
 - (b) Our total aggregate liability in contract (including in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Conditions shall be limited to the Subscription Fee paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

14. TERM AND TERMINATION

- 14.1 These Conditions shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Subscription Term.
- 14.2 If You wish to ensure continuity of the provision of the Services beyond the expiry of the Subscription Term it must subscribe and pay for a further licence for the Services, subject to Our then current Conditions, through Our website prior to the expiry of the Subscription Term (“Renewal”).
- 14.3 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this agreement without liability to the other if:
- (a) the other party commits a material breach of any of the terms of these Conditions and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or
 - (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

- (d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

14.4 On termination of these Conditions for any reason:

- (a) all licences granted under these Conditions shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) We may destroy or otherwise dispose of any of Your Data in its possession unless We receive, no later than ten days after the effective date of the termination of these Conditions, a written request for the delivery to You of the then most recent back-up of Your Data. We shall use reasonable commercial endeavours to deliver the back-up to You within 30 days of its receipt of such a written request, provided that You have, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). You shall pay all reasonable expenses incurred by Us in returning or disposing of Your Data; and
- (d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

15. FORCE MAJEURE

We shall have no liability to You under these Conditions if it is prevented from or delayed in performing its obligations under these Conditions, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the Our workforce or that of any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that You are notified of such an event and its expected duration.

16. WAIVER

- 16.1 A waiver of any right under these Conditions is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 16.2 Unless specifically provided otherwise, rights arising under these Conditions are cumulative and do not exclude rights provided by law.

17. SEVERANCE

- 17.1 If any provision (or part of a provision) of these Conditions is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 17.2 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.

18. ENTIRE AGREEMENT

- 18.1 These Conditions, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 18.2 Each of the parties acknowledges and agrees that in entering into these Conditions it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these Conditions or not) relating to the subject matter of these Conditions, other than as expressly set out in these Conditions.

19. ASSIGNMENT

- 19.1 You shall not, without Our prior written consent, assign, transfer, charge, subcontract or deal in any other manner with all or any of Your rights or obligations under these Conditions.
- 19.2 We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Conditions.

20. NO PARTNERSHIP OR AGENCY

Nothing in these Conditions is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21. THIRD PARTY RIGHTS

These Conditions do not confer any rights on any person or party (other than the parties to these Conditions and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

22. NOTICES

22.1 Any notice required to be given under these Conditions shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in these Conditions, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in these Conditions.

22.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

23. GOVERNING LAW AND JURISDICTION

23.1 These Conditions and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.

23.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Conditions or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.