

COLLEGE APP: TERMS OF USE

1. Introduction

1.1 These Terms of Use are a contract between you and Homegrown Learning Limited a company registered in England and Wales with company number 11818690, whose registered office is at The Workbox Penzance, Wharf Rd, Penzance TR18 4FG (referred to as **we, us or our**) governing the use of our Collage App.

2. References to **you** or **your** are to the individual accessing the Collage App.

3. All services provided by us shall be on these Terms of Use to the exclusion of all other Terms of Use of business, including any that you may send to us, and all terms otherwise implied by law, custom or previous course of dealing to the maximum extent permitted by law.

1.4 We reserve the right to update these Terms of Use from time to time at our discretion. If we do so, and the changes substantially affect your rights or obligations, we shall notify you by email. Otherwise, you are responsible for regularly reviewing these Terms of Use so that you are aware of any changes to them.

2. Definitions and Interpretation

2.1 In these Terms of Use, the following words have the following meanings:

Account: your account accessible on the Collage App;

Child, Children: any individuals under the age of 18 identified to your Account;

Collage App: the cloud based app located or such other location as we may notify to you from time to time and any associated mobile application;

Data Protection Legislation: all legislation and regulation in force from time to time relating to data protection, including the General Data Protection Regulation 2016/679 and the Data Protection Act 2018;

Fee: the monthly fee due for access to the Collage App;

IP Rights: any patent, trade mark, registered design or any application for registration of the same, or the right to apply for registration of the same, any copyright or related rights, database right, design rights, rights in trade, business or domain names, rights in trade dress, rights in inventions, rights in confidential information or know-how or any similar of equivalent rights in any part of the world;

Personal Data: has the meaning given to it in the Data Protection Legislation;

Term: any time when you have a fully paid up Account;

Third Party Content: content on the Collage App that belongs to a third party, including National Curriculum content and content from The Religious Education Council of England and Wales; and

User Content: any content that you upload to the Collage App relating to the Children or otherwise, including text, videos, photographs and images.

2.2 Words in the singular include the plural and in the plural include the singular.

2.3 The headings shall not affect the interpretation of these Terms of Use.

2.4 References to Conditions are references to the numbered provisions of these Terms of Use.

2.5 Unless a right or remedy of a party is expressed to be an exclusive right or remedy, the exercise of it by a party is without prejudice to that party's other rights and remedies.

2.6 Any phrase introduced by the words **including** shall be construed as illustrative and shall not limit the generality of the related general words.

2.7 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.

3. Licence to access the Collage App

3.1 To create an Account you must be at least 18 years old and legally capable of entering into a contract. You must provide to us certain information about you and the Children. All information that you provide to us on creation of an Account must be accurate and complete, and you agree to keep the information up-to-date. We shall process all personal data you provide to us relating to you and the Children in accordance with our privacy policy available on the Collage App and in accordance with the requirements of the Data Protection Legislation.

3.2 If you do not have parental responsibility for the Children, you must have the written permission from an individual who does have parental responsibility to provide to us personal data of the Children, including images, recordings and photographs you take of the Children. You must provide us with a copy of that written permission on our request. If you do not have parental responsibility for those Children, you shall also comply with the requirements of Data Protection Legislation in relation to your relationship with the Children. If we believe at any time that you have provided any information about any of the Children without appropriate consent, we shall delete all such information.

3.3 You must provide a user identification and choose a password to access your Account. You are responsible for keeping access details confidential and you shall not allow any third party, including the Children, to access your Account. You are responsible for any activity under your Account. Please contact us immediately by email to hello@homegrownlearning.co.uk if you believe there has been any unauthorised use of your Account.

3.4 During the Term, we grant you a non-transferable, non-exclusive, non-assignable limited licence, without the right of sub-licence to access and use the Collage App for your own purposes and the education of the Children.

3.5 You shall not directly or indirectly:

- (a) except to the extent expressly permitted by law and not capable of exclusion by law, copy, reproduce, redistribute, sell, create derivative works from, decompile, reverse engineer or disassemble all or part of the Collage App;

- (b) modify, translate, or create derivative works based on the Collage App or copy (except for archival purposes), rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Collage App;
 - (c) use or access the Collage App to build or support, and/or assist a third party in building or supporting, products or services competitive to us;
 - (d) remove any proprietary notices from any content on the Collage App;
 - (e) use the Collage App in any manner that could damage, disable, overburden, impair, obstruct or otherwise interfere with the Collage App;
 - (f) transmit spam, chain letters or other unsolicited emails through the Collage App; and/or
 - (g) scrape the Collage App or otherwise collect content, including content of any other user, by automated means.
6. We will use reasonable endeavours to maintain and make the Collage App available at all times. However, there may be occasions when access may be interrupted, including for scheduled maintenance or upgrades, for emergency repairs, or due to failure of telecommunications links and/or equipment. We shall use reasonable endeavours to notify you of any scheduled maintenance or upgrades, and to schedule such maintenance and upgrades outside of normal working hours. However, you agree that we have no liability to you for such interruptions.
7. For the avoidance of doubt, we shall also not be liable if you are unable to access the Collage App or any content for any reason within your control, including your failure to use appropriate equipment or insufficient bandwidth.
8. We may freely use any data that we learn, acquire or obtain in connection with your use of the Collage App including through online tracking tools, in order to improve, review and analyse the Collage App, provided that we shall not use any Personal Data under this Condition 3.8.
- 3.9 We may from time to time at our sole discretion update the Collage App, and/or amend or discontinue any functionality on the Collage App and we shall have no liability to you in respect of any act under this Condition 3.9 except for a pro-rata refund of the Fee as we reasonably determine.

4. **User Content**

4.1 You warrant and represent that you have the right to upload any User Content to the Collage App and that storage and accessibility of that User Content within the Collage App shall not give rise to any claim against us. In particular, you warrant and represent that:

- (a) nothing in the User Content is in breach of any law, statute, or regulation;
- (b) the User Content does not contain any content that is deliberately dishonest, unfair or false or that promotes fraudulent or illegal activities, promotes violence or hatred, is discriminatory of any group of people, or is obscene, offensive, hateful or inflammatory;
- (c) nothing in the User Content contains any viruses or other computer programs intended to damage, detrimentally interfere with and/or surreptitiously intercept any system, network or platform;
- (d) use of the User Content shall not infringe the IP Rights of a third party;
- (e) the User Content must not be used by you in breach of any contractual obligation you owe to a third party, including any obligation of confidentiality.

4.2 You shall indemnify us and our directors from and against all third party costs, claims, demands, liabilities, expenses, damages or losses arising out of or in connection with any breach of such warranties or otherwise in relation to our use of the User Content in accordance with these Terms of Use.

4.3 You grant to us a non-exclusive right and licence together with the right to sub-licence to use, amend, reproduce and distribute the User Content in relation to the Collage App.

4.4 If we receive a request from a Child to delete any User Content that relates to that Child, we shall promptly delete that User Content and shall use our reasonable endeavours to notify you accordingly. In any case, you must remove from your Account all User Content relating to a Child on the earlier of:

- (a) termination of your teacher/student relationship with them if you do not have parental responsibility; and
- (b) when the Child completes their secondary education unless the Child expressly consents that you can retain the User Content. You shall provide to us evidence of such consent at our request.

5. Third Party Content

5.1 The Collage App includes Third Party Content. You agree that additional terms of use may apply to such third party content and we shall notify you accordingly of any such additional terms of use. Use of National Curriculum content is permitted only in accordance with the [Open Government Licence](#) and [permissions from The Religious Education Council of England and Wales](#).

5.2 You agree that we do not check the Third Party Content, and therefore make no warranty as to the accuracy or completeness of Third Party Content. We cannot be liable for any mistakes or omissions in any Third Party Content.

6. Fees and Payment

6.1 Payment of the Fee is made through Stripe and accordingly you agree to comply with the [Stripe terms of use](#).

6.2 The Fee is due monthly in advance, and we may increase the Fee on 30 days' notice to you.

6.3 The Fee is exclusive of VAT which shall be payable in addition when applicable.

6.4 Payment of the Fee is due without set-off, deduction of charges or counterclaim of any kind.

6.5 Without limiting any other right or remedy available to us, if you fail to pay any sum in full by the due date, we shall be entitled to suspend or terminate your Account.

7. Warranties and Liability

7.1 We warrant that we shall make the Collage App available using reasonable skill and care and that the Collage App shall be of satisfactory quality, fit for purpose and as described.

7.2 Except as set out in these Terms of Use, and to the extent permitted by law, no representations, warranties or conditions are given or assumed by us in relation to the Collage App. In particular, you agree that:

- (a) the Collage App has not been developed to meet the specific needs of your Children and the content is therefore for general information only;
- (b) we do not warrant that by using the Collage App any outcome, result or event will be achieved or achievable by you and/or your Children;
- (c) we cannot warrant that your User Content will not be lost or corrupted. If this were to happen, we will use all reasonable commercial endeavours to restore the lost or damaged User Content from the latest back-up of we have of your User Content, and this will be your only remedy for such loss or corruption.

7.3 Any liability that we have to you in respect of the Collage App shall only be for losses that arise as a direct result of our breach of these Terms of Use and you must submit evidence of the financial loss incurred by you as a result of such breach.

7.4 Nothing in these Terms of Use limits or excludes our liability for death or personal injury resulting from negligence, fraud or fraudulent misrepresentation and/or any other liability that cannot lawfully be excluded under English law.

7.5 Your statutory rights as a consumer are not affected by any provision of these Terms of Use. If you have any complaint or wish to raise a dispute under these Terms or otherwise in relation to the Collage App please contact us. If we are unable to resolve the dispute, you may follow the EU online dispute resolution procedure, at <http://ec.europa.eu/odr>

8. Terms and Termination

8.1 If you live in the United Kingdom and/or the European Union, you may terminate your Account and receive a refund for Fees paid within 14 days from the first date your Account is opened, provided that you have not accessed your Account. You agree that by accessing your Account, you waive your right to cancel on 14 days.

8.2 Otherwise, you may terminate your Account only on 30 days' notice. You may continue to access and download your User Content during this notice period.

8.3 Without prejudice to any other rights or remedies which may be available to us, we shall be entitled to give notice in writing to you terminating or suspending your Account if you are in breach of any of these Terms or if we decide to discontinue the Collage App for any reason.

8.4 We reserve the right to terminate any Account that is inactive for an extended period of time.

8.5 If we terminate your Account, you may not re-register under a different name and you acknowledge that your User Content may be deleted.

8.6 No refund of the Fee shall be due on termination except where we decide to discontinue the Collage App for any reason. In such circumstances we shall refund you pro-rata for any part of the Fee paid in advance for access to the Collage App for any time after the date of termination.

9. **IP Rights**

9.1 All IP Rights in the Collage App are owned by us or our licensors.

9.2 You shall promptly notify us of any claim, notification or allegation that you receive that your use of the Collage App infringes the IP Rights of any third party (a **Claim**). You shall:

- (a) not make any admission of liability, agreement, settlement or compromise in relation to a Claim without our prior written consent;
- (b) give to us and our professional advisers all reasonable assistance as may be required in relation to a Claim;
- (c) at our request, give us the exclusive control and right to defend a Claim and make settlements in relation to a Claim; and
- (d) mitigate your losses in relation to a Claim including by stopping accessing the content on the Collage App that gave rise to the Claim.

On receipt of the notice, we shall at our sole expense either procure for you the right to continue accessing and using the Collage App or modify or replace the infringing part of the Collage App to avoid the infringement.

10. **Force Majeure**

10.1 An event of Force Majeure means any event beyond the reasonable control of either party, including change in laws or regulations, war, invasion, armed conflict, terrorism, strike, lock-out, labour dispute, failure of suppliers or subcontractors, riot, civil commotion, accident, act of God, fire, flood and storm.

10.2 If a party is prevented, hindered or delayed from or in performing any of its obligations under these Terms of Use by an event of Force Majeure, the affected party's obligations under these Terms of Use are suspended without liability while the event of Force Majeure continues and to the extent that it is prevented, hindered or delayed.

10.3 If performance of any obligation under these Terms of Use is prevented, hindered, or delayed due to an event of Force Majeure either party shall be entitled to terminate these Terms of Use on written notice to the other party.

11. **General**

11.1 These Terms of Use shall be governed by and construed in accordance with the laws of England and Wales. The parties agree that any dispute arising from these Terms of Use will be subject to the exclusive jurisdiction of the English courts, unless you are based in a jurisdiction outside of England and Wales

11.2 If any of the provisions in these Terms of Use is held invalid or unenforceable then they should be construed to reflect as closely as possible the intentions of those provisions. Any remaining provisions will also still be fully enforceable.

11.3 A party's failure to exercise any of the rights in these Terms of Use shall not be deemed a waiver of that right. These Terms of Use supersedes any prior agreements between the parties and represents the entire agreement between the parties.

11.4 A person who is not party to these terms has no right to benefit or enforce any of these Terms of Use. You may not assign or transfer any rights to any other person without our prior written consent which shall not be unreasonably withheld.

5. Any notice given under these Terms of Use shall be in writing and shall be served by email. Any such notice shall be deemed to have been received on sending.

Last updated: August 2020