

Espresso Go! Mobile Learning: Terms and Conditions

1. Application of Terms and Conditions

- 1.1 These terms and conditions (“**Terms and Conditions**”) set out the agreement between the recipient and user of content and software known as “Espresso Go! Mobile Learning” (the “**Customer**”) and Espresso Education Limited (“**Espresso**”).
- 1.2 Espresso Go! Mobile Learning is content and software that is initially supplied to the Customer on memory cards (the “**Memory Cards**”) with updates to be made available online from time to time in accordance with these Terms and Conditions, and as more particularly described in Clause 4, below (the “**Service**”). The Customer acknowledges that it was provided with these Terms and Conditions with an order form for the Service (the “**Order Form**”) and that such Terms and Conditions shall commence in effect as described in clause 2.1. Each Order Form shall form a separate contract on the terms set out in that Order Form and incorporating these Terms and Conditions.

2. Commencement Date

- 2.1 These Terms and Conditions shall commence on the date that the Customer receives the first of the Memory Cards supplied to it pursuant to an Order Form (the “**Commencement Date**”).

3. Grant of Licence

- 3.1 Espresso grants to the Customer a non-exclusive and non-transferable licence to use the Service for the purpose of using it as a teaching resource and/or learning aid on a non-commercial basis at all times subject to these Terms and Conditions. The Customer may permit individuals (which, for the avoidance of doubt, shall include, but not be limited to teachers and pupils) within its own organisation and if other organisations are specified on the Order Form within such other organisations (“**End-Users**”) to access and use the Service. The Customer is responsible for ensuring that all End-Users comply with these Terms and Conditions and any terms of use that may apply to the Service from time to time. Espresso’s terms of use that currently apply to the use of the Service are as set out in Schedule 1 and any variations thereto as will be available on the Espresso website, currently at www.espresso.co.uk, (the “**Espresso Website**”) from time to time. The Customer shall comply and shall ensure that its End-Users shall comply with any relevant instructions and procedures as may be set out on the Espresso Website from time to time.

4. The Service

- 4.1 The Service will comprise content and software selected by Espresso to act as a teaching resource and/or learning aid (the “**Service Content**”). It is designed to work with the National Curriculum and is categorised into modules that support the National Curriculum and/or other curricula set by the Qualifications and Curriculum Authority (the public body sponsored by the Department for Education and Skills) (the “**QCA**”). For the purposes of this clause 4, “**National Curriculum**” shall mean the curriculum that sets out the statutory entitlement to learning for all pupils, determines the content of what will be taught, sets attainment targets for learning and is maintained by the QCA.
- 4.2 As part of the Service, Espresso will provide documentation detailing instructions for use of the Service and may also provide from time to time certain other supporting documentation (the “**Documentation**”).
- 4.3 Espresso will, for a period of twenty-four (24) months from the Commencement Date, use reasonable endeavours to make updates to certain of the Service Content (currently known as “**News Bites**”) available via download from the Espresso Website in accordance with this clause 4 (“**News Bites**”). After the expiry of such twenty-four (24) month period the Customer may continue to download News Bites provided that: (i) the Customer does so in accordance with these Terms and Conditions; (ii) Espresso continues to make News Bites generally available to its customers of services the same or similar to the Service; and (iii) these Terms and Conditions have not been terminated in accordance with clause 11.
- 4.4 A minimum equipment and software specification is required for downloads of News Bites and detail of the same is available from Espresso on request. The News Bites will be available for download using a username and password supplied to the Customer by Espresso. Such username and password must be entered on the Espresso Website in accordance with on-screen instructions in order to access the News Bites. Each download of News Bites to a Memory Card is intended to overwrite any News Bites previously stored on such Memory Card. The Customer is entitled to select its own preferred method for downloading the News Bites, including that which may require third party software, materials and/or methodologies. Espresso shall have no liability to Customer for any such third party software, materials

and/or methodologies or for Customer's inability or failure to download any News Bites or for Customer's inability to access or use any News Bites overwritten by later downloads of News Bites.

5. Use of the Service

- 5.1 The Customer acknowledges that the Service is only intended to work on certain personal digital assistants or other similar mobile devices as notified by Espresso to Customer from time to time (the "**Mobile Hardware**"). Espresso shall not be liable for any use of the Service on in relation to any hardware or equipment that is not the Mobile Hardware.
- 5.2 The Customer must activate the Service by entering a username and password into the activation screen shown when a Memory Card is first inserted into the Mobile Hardware and the Customer shall not be entitled to use the Service until such time as it does activates the Service in accordance with this clause. Such username and password will be included in the Documentation or will be available from Espresso on request. Such activation is required in relation to each Memory Card supplied to the Customer. The Service will be deemed to be activated from the date of activation of the first Memory Card. A minimum hardware and software specification must be complied with in order to activate the Service and this will be available from Espresso on request. Espresso shall not be liable for Customer's failure to activate any Memory Cards supplied to it.
- 5.3 Unless expressly stated otherwise, the Customer and its End-Users may only access and use the Service directly from the Memory Cards and may only display materials provided as part of the Service on the Mobile Hardware and only to the extent reasonably necessary for their own non-commercial use. The Customer and/or its End-Users may download News Bites (and no other material) on to a personal computer for archive purposes and to the extent reasonably necessary for their own non-commercial use.
- 5.4 The Customer shall not (except to the extent permitted by any applicable law or unless expressly stated otherwise) without the prior written permission of Espresso: (i) modify or reproduce any part or the whole of the Service; (ii) redistribute any part or the whole of the Service or the Memory Cards; (iii) create a database in electronic or hard copy form by systematically downloading and storing or printing any part or the whole of the Service; or (iv) sub-licence, assign, transfer, loan, sell, lease, rent, charge or otherwise deal in the Service or Memory Cards or make the Service or Memory Cards available to any third party.
- 5.5 The Customer shall not delete any or all of the Service from the Memory Card. If there is unused storage space on the Memory Card then the Customer may use this to store content, data or software other than the Service on that Memory Card. The Customer acknowledges that this may adversely affect the Service. Espresso shall not be liable for any such adverse affect on the Service or for any failure or default under or in relation to this Agreement to the extent that such failure or default is caused directly or indirectly by the storage of content, data or software other than the Service on a Memory Card.
- 5.6 Where the Customer is aware or should reasonably be aware that there has been any unauthorised use of the Service the Customer must promptly notify Espresso by email at schoolsupport@espresso.co.uk.

6. Support Services

- 6.1 Espresso will provide support to the Customer as described in this clause 6 for a period of twenty-four (24) months from the Commencement Date in relation to both the Memory Cards and the Service Content. After the expiry of such twenty-four (24) month period the Customer may continue to seek and receive such support that relates to the Service Content provide that: (i) the Customer request such support in accordance with these Terms and Conditions; (ii) Espresso continues to provide such support generally to its customers of services the same or similar to the Service; and (iii) these Terms and Conditions have not been terminated in accordance with clause 11.
- 6.2 In relation to the Service Content, Espresso will provide support to the Customer, in response to a request by the Customer, where the Service Content is not accessible, not downloadable or has broken links provided that the same is not caused by third party software, materials and/or methodologies used in relation to the downloading of News Bites ("**Service Content Fault**").
- 6.3 In relation to the Memory Cards, Espresso will provide support to the Customer, in response to a request by the Customer, where the Service cannot be activated or Customer cannot access the Service Content ("**Memory Card Fault**").

- 6.4 For the avoidance of doubt, Espresso will only provide support in relation to Service Content Faults and Memory Card Faults and this does not include support in relation to any error relating to or caused by the functionality of the Mobile Hardware, other equipment or of software, content or websites other than that provided by Espresso as part of the Service.
- 6.4 Where support is required in relation to a Service Content Fault or a Memory Card Fault Espresso should be contacted by telephone on 0800 0345 200 or email at schoolsupport@espresso.co.uk (or such other contact details as Espresso may provide to Customer from time to time). Espresso will use reasonable endeavours to respond as soon as reasonably practicable. If the Customer encounters a Service Content Fault or a Memory Card Fault it is the Customer's responsibility to promptly inform Espresso and Espresso shall not be responsible for providing any support to Customer in relation to any Service Content Fault or Memory Card Fault where it is not so informed.
- 6.5 Espresso shall not be responsible for rectifying or providing any support in relation to any problem or issue that is not, in the reasonable opinion of Espresso, a Service Content Fault or a Memory Card Fault.
- 6.6 In the event of a Service Content Fault or a Memory Card Fault, the Customer shall provide all reasonable assistance to Espresso in identifying whether the problem is a Service Content Fault or Memory Card Fault, all relevant detail in relation to such Service Content Fault or Memory Card Fault and in carrying out any repair to the Service Content Fault or Memory Card Fault (or such other action as Espresso may take). This assistance may include, but is not limited to, arranging for a suitably qualified individual to liaise with Espresso by telephone and/or email.
- 6.7 Espresso will replace a Memory Card where: (i) the Memory Card is damaged by the time it is received by the Customer, provided that Customer notifies Espresso of the same within five (5) days of receipt of the Memory Card; or (ii) Espresso identifies that there is a Service Content Fault or a Memory Card Fault in relation to that Memory Card that can only be remedied by the issue of a replacement Memory Card. Espresso shall be entitled to require the return of any Memory Card for the purposes of diagnosis and any Memory Card that is to be or has been replaced by a replacement Memory Card.

7. Intellectual Property Rights

- 7.1 All trademarks, registered designs, patents, copyright, database rights, rights in databases, design rights, know how, trade and business names, moral rights, publication rights, performance rights, trade get-up, goodwill and any other similar protected rights in any country howsoever arising and all applications for any of the foregoing ("**Intellectual Property Rights**") in the Service shall vest and remain vested in Espresso or its licensors for the full term of the same and all renewals, extensions and continuations thereof and the Customer shall have no rights in respect of the Service save for the limited rights of use expressly granted in these Terms and Conditions.
- 7.2 The Customer acknowledges that "Espresso", "Netmedia", "Channel 4 Learning" and other brands, cartoons, characters and animations used in the Service are subject to Intellectual Property Rights that are owned by Espresso or its licensors. The Customer may not use such Intellectual Property Rights without Espresso's prior written consent other than in its reasonable use of the "Espresso" trademark in documents and literature for internal distribution only for the purpose of providing teaching resources on a non-commercial basis.
- 7.3 Espresso warrants to the Customer that, to Espresso's knowledge, the Service, when used in accordance with this Agreement, does not infringe any existing Intellectual Property Rights of any third party. This warranty does not apply and Espresso shall have no liability to the extent that any such infringement results from the use of the Service in combination with any equipment or software or content not supplied or approved by Espresso or from any modification of the Service by a party other than Espresso or its authorised agent.
- 7.4 Espresso shall be entitled to have returned to it and to replace any or all Memory Cards at any time if Espresso becomes aware or reasonably suspects that any part of the Service infringes the Intellectual Property Rights of any third party.

8. Charges

- 8.1 The Customer shall pay the charges as calculated in accordance with the Order Form (the "**Charges**"). Espresso shall be entitled to invoice the Customer for such Charges on or after receipt of the order Form from the Customer and the Customer shall pay such invoice within thirty (30) days of the date of such invoice. All amounts payable under these Terms and Conditions are expressed exclusive of VAT and other taxes which shall be payable by the Customer at the applicable rate from time to time.

9. Confidentiality

- 9.1 Each party shall keep all commercial, financial or other confidential information obtained from the other in connection with the Service (“**Confidential Information**”) confidential. The Customer acknowledges that all information provided by Espresso in connection with the Service is confidential information and that any pricing related information is commercially sensitive, but the parties agree that such confidential information (other than any pricing information) may be made available by the Customer to its End-Users to the extent necessary for their use of and access to the Service in accordance with these Terms and Conditions. The Customer further acknowledges that Espresso may disclose Confidential Information to its professional advisers, agents and subcontractors.
- 9.2 The obligations of confidentiality set out above shall not apply to the disclosure of Confidential Information of and to the extent required by law, any competent regulatory authority or recognised stock exchange, or if such information is in the public domain other than through breach of this clause.

10. Exclusions and Limits of Liability

- 10.1 Nothing in these Terms and Conditions shall operate to limit or exclude either party’s liability to the other for death or personal injury caused by that party’s negligence, fraudulent misrepresentation, fraudulent concealment, or any liability which cannot be limited or excluded by law.
- 10.2 Espresso’s liability to the Customer for all claims arising under or in connection with an Order Form incorporating these Terms and Conditions regardless of form of action and whether in contract, tort, warranty (including the warranty at clause 7.3) or other legal or equitable grounds (including in each case negligence) is limited in relation to each such Order Form to an amount equal to the Charges payable under that Order Form.
- 10.3 Espresso shall not be liable to the Customer for any loss of profits, anticipated savings or goodwill or for any loss or corruption of data or for any indirect or consequential loss whatsoever even if that party was advised in advance of the possibility of such loss or damage.
- 10.4 The Service (including the provision of any equipment or software) is provided on an “as is” and “as available” basis and Espresso does not warrant that the Service will uninterrupted or error free. Espresso’s sole obligations and liabilities in respect of the supply of the Service are as stated in these Terms and Conditions and all other innocent or negligent representations (but not fraudulent), conditions, warranties and terms express or implied whether by statute, law or otherwise (including without limitation those relating to accuracy, merchantability and fitness for purpose of the Service) are hereby excluded to the fullest extent permitted by law.

11. Termination

- 11.1 Either party may terminate these Terms and Conditions by notifying the other in writing if that other party materially breaches any of the terms of this Agreement and fails to remedy that material breach (if capable of remedy) within 14 days of the notice of the breach. For the avoidance of doubt, any material breach of the provisions of the Terms of Use (as set out in Schedule 1) will constitute a material breach of these Terms and Conditions.
- 11.2 Espresso may terminate this Agreement at any time (i) by giving at least 60 days’ prior written notice to the Customer; and (ii) by giving the Customer reasonable notice if Espresso discontinues the Service.
- 11.3 Espresso may at any time terminate these Terms and Conditions immediately on written notice to the Customer if Espresso becomes aware or reasonably suspects that any part of the Service infringes the Intellectual Property Rights of any third party.
- 11.4 On any termination of this Agreement the licence to use the Service shall terminate and accordingly the Customer shall no longer be entitled to receive or use the Service or any part thereof and shall cease to use the Service and all parts thereof, and in each case this shall include the Memory Card, the Documentation and any News Bites. The Customer shall also promptly return to Espresso all Memory Cards and Documentation as well as all other material relating to the Service and Espresso Confidential Information that is has in its possession.
- 11.5 The provisions of clause 7 (Intellectual Property), clause 9 (Confidentiality), clause 10 (Exclusions and Limits of Liability), clause 11 (Termination), and clause 12 (General) will survive any termination or expiration of these Terms and Conditions. Termination, howsoever arising, will not affect the rights and obligations of either party accrued prior to termination.

12. General

- 12.1 Neither party will be liable for any failure or delay in performing its respective obligations under these Terms and Conditions to the extent that the failure or delay is the result of any cause or circumstance beyond its reasonable control. The rights, powers and remedies provided in these Terms and Conditions are (except as expressly provided) cumulative and not exclusive of any rights, powers and remedies provided by law, or otherwise.
- 12.2 The Customer may not assign or transfer its rights or obligations under these Terms and Conditions without Espresso's prior written consent. Espresso may assign or transfer any or all of its rights and obligations under these Terms and Conditions without the consent of the Customer.
- 12.3 These Terms and Conditions, together with the relevant Order Form, represent the entire terms agreed between the parties in relation to the Service and supersedes all other agreements, oral or written, and all other communications between the parties relating to the Service (or part thereof).
- 12.4 If any provision of these Terms and Conditions is found to be invalid by any court having competent jurisdiction, the invalidity of that provision will not affect the validity of the remaining provisions of these Terms and Conditions which shall remain in full force and effect.
- 12.5 No failure or delay by either party in exercising any right or remedy under these Terms and Conditions (and no course of dealings between the parties) shall operate as a waiver of that right or remedy.
- 12.6 Except where expressly provided to the contrary, these Terms and Conditions are not intended to be for the benefit of, and shall not be enforceable by any person who is not a party to it, under the Contracts (Rights of Third Parties) Act 1999 or otherwise and neither party can declare itself a trustee of the rights under it for the benefit of any third party.
- 12.7 These Terms and Conditions are not intended to create a partnership or joint venture between the parties and neither party is authorised to act as the agent of the other.
- 12.8 The Customer agrees that Espresso may advertise its involvement with the Customer in Espresso's marketing materials, on the Espresso website and in press releases.
- 12.9 Espresso will be entitled to make changes to these Terms and Conditions at any time and the Customer will be subject to any such amended terms and conditions from the date that such changes are made. The most recent version of Espresso's terms and conditions from time to time can be found at www.espresso.co.uk or as may be sent to Customer by Espresso from time to time. Where the Customer wishes to make any changes to these Terms and Conditions it may only do so by in writing and by agreement with Espresso.
- 12.10 All notices between the parties shall be in writing and addressed to the parties respective addresses as set out on the Order Form, or such other address as may be notified from time to time, and shall be sent by hand or post (notices being deemed to have been given 3 days after the date of posting).
- 12.11 These Terms and Conditions shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

Schedule 1

Terms of Use for Espresso Go! Mobile Learning

This memory card contains material owned by Espresso. Unauthorised copying is illegal. The terms and conditions below set out what you are permitted to do with the contents of this memory card.

In using this content and software known as “Espresso Go! Mobile Learning” (the “Espresso Content”) you agree to abide by these Terms of Use.

There are intellectual property rights, including copyrights and trade marks, in the Espresso Content. All intellectual property rights subsisting in and/or relating to the Espresso Content are and shall remain the property of Espresso or its licensors.

You may only access and use the Espresso Content directly from the memory card on which it is provided to you (the “Memory Card”). You may only display materials provided as part of the Espresso Content on a personal digital assistant or other similar mobile device and only to the extent reasonably necessary for your own personal use. You may also download News Bites (and no other material) on to a personal computer for archive purposes and to the extent reasonably necessary for your own personal use.

You shall not (except to the extent permitted by any applicable law or unless expressly stated otherwise): (i) modify or reproduce any part or the whole of the Espresso Content; (ii) redistribute any part or the whole of the Espresso Content or the Memory Card; (iii) create a database in electronic or hard copy form by systematically downloading and storing or printing any part or the whole of the Espresso Content; or (iv) sub-licence, assign, transfer, loan, sell, lease, rent, charge or otherwise deal in the Espresso Content or the Memory Card or make the Espresso Content or the Memory Card available to any third party.

You must not delete any or all of the Espresso Content from the Memory Card. If there is unused storage space on the Memory Card then you may use this to store content, data or software other than the Espresso Content on that Memory Card. Please note that this may adversely affect the Espresso Content and Espresso will not be required to provide any support to you in relation to the same.