

ESPRESSO Terms and Conditions, for both the Espresso (Primary) and the Clipbank (Secondary) services

1. Application of Terms and Conditions

- 1.1 These terms and conditions (“**Terms and Conditions**”) together with the order form (the “**Order**”) set out the agreement (the “**Agreement**”) between the customer named on that Order (the “**Customer**”) and Espresso Education Limited (“**Espresso**”) in relation to the provision by Espresso and the Customer’s use of the Espresso service as described in clause 4 below (the “**Service**”). A contract will only be formed between Customer and Espresso when Espresso confirms its acceptance of the Customer’s Order.

2. Term

- 2.1 Unless otherwise agreed in writing between the parties, this Agreement shall commence on the date of Espresso’s acceptance of the Order and shall continue until the expiry of the Order Period, unless terminated earlier in accordance with clause 10.5 or clause 13 (the “**Term**”). For the purposes of this clause, “**Order Period**” shall mean the period commencing on the date the Service is deemed to commence in accordance with clause 2.2 and continuing for the period indicated on the Order (the “**Initial Term**”), and thereafter in accordance with clause 2.3.
- 2.2 Unless otherwise agreed in writing with the Customer, the Service will be deemed to have commenced once a caching server or other similar hardware solution specified by Espresso has been installed and, where Espresso considers it necessary, at least one computer has been configured for the purposes of receiving the Service, in each case at the relevant address(es) identified on the Order (whether provided by Espresso or a third-party) or where no caching server or other similar hardware solution is required, by notification from Espresso that the Customer is authenticated by Espresso and may access the Service over a designated wide area network which meets the relevant minimum specification as may be specified by Espresso from time to time (“**WAN Authentication**”) (the “**Deemed Service Commencement Date**”). For the avoidance of doubt, there will be no delay to the Deemed Service Commencement Date where the actual provision of the Service is delayed due to the Customer or a third party failing to satisfactorily complete any relevant configuration of the Customer’s machines or any necessary changes or adjustments to computer configurations or network settings and Espresso shall have no liability to the Customer in relation to any such delay.
- 2.3 Following the Initial Term this Agreement shall automatically continue in effect for successive one year terms (each a “**Renewal Term**”) unless: (i) either party serves the other party a written notice of non-renewal at least 30 days’ prior to the end of the Initial Term or any Renewal Term; or (ii) this Agreement is terminated earlier in accordance with clause 10.5 or 13.

3. Grant of Licence

- 3.1 Espresso grants to the Customer a non-exclusive and non-transferable licence to use the Service during the Term for the purpose of providing teaching resources on a non-commercial basis at all times subject to the terms and conditions of this Agreement. Subject to Clauses 13.4 and 13.5, from the end of the Term the Customer shall no longer be entitled to use the Service or any part thereof.

4. The Service

- 4.1 The Service will comprise either or both (as indicated on the Order):
- (i) a service comprising of a combination (which will vary from time to time) of video and audio clips, interactive news articles, multi-media games, websites and worksheets (the “**Espresso Primary Service**”); and/or
 - (ii) a digital library of educational clips (including, without limitation, files, data, images and sounds) which have been wrapped with contextualised content (the “**Clipbank Service**”).
- 4.2 The Service will provide content selected by Espresso to the Customer to use as a teaching resource. It is generally designed to work with 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**”) where practicable to do so, is generally categorised into modules that support the same and Espresso will use reasonable endeavours to link and cross-reference the content to the relevant attainment targets. 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.

- 4.3 As part of the Service Espresso will also make available to the Customer certain additional content as described on Espresso's website from time to time (the "**Content Pack**"). The content in the Content Pack will be determined solely by Espresso. It is the Customer's sole responsibility to download the Content Pack from the Service during the Term. The Customer acknowledges and agrees that the value of the Content Pack is equivalent to or greater than the value of the Charges (as defined in Clause 10.1) payable by the Customer to Espresso in the same year as that Content Pack is provided by Espresso to the Customer.
- 4.4 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**").
- 4.5 Espresso will use reasonable endeavours to provide regular updates to the Service ("**Updates**") and Espresso reserves the right to remove, modify or amend certain parts of the content. If the Customer does not receive any Update it is the Customer's responsibility to promptly inform Espresso and Espresso shall have no liability to Customer for any failure to provide Updates where it is not so informed. Where Espresso is so informed it shall then use its reasonable endeavours to rectify any problem that is Espresso's responsibility and within its control and shall use its reasonable endeavours to then provide such Update to the Customer. Updates are designed to be supplied via a broadband connection with a minimum specification of 2Mb. Where this is not possible (for example, if the Customer is connected to the internet via an ISDN line) Espresso may at its sole discretion elect to provide any or all Updates to the Customer on CD ROMS.
- 4.6 Where Espresso supplies a Hardware Solution (as defined in clause 5.2 below) to the Customer as is set out in clause 8 then this shall constitute part of the Service.
- 4.7 Espresso warrants that it will use reasonable skill and care in its provision of the Service.

5. Use of the Service

- 5.1 The Service will only be provided once a caching server or other similar solution specified by Espresso has been installed at the relevant address(es) identified on the Order (whether provided by Espresso or a third-party) or where the Customer has received WAN Authentication from Espresso. The Service will be provided to the Customer to be stored on local caching servers or such other similar solution specified by Espresso and run locally on the Customer's network unless such specific WAN Authentication has been received. Espresso may from time to time at its sole discretion make the Service or elements thereof available over the internet.
- 5.2 Except where WAN Authentication has been received and except and to the extent that Espresso has made elements of the Service available to the Customer over the internet, the Service must be stored on a caching server or other similar hardware solution located at the address(es) identified on the Order (the "**Hardware Solution**") (or, in the event of the failure of such Hardware Solution, temporarily on other appropriate equipment) and the Service may only be accessed and used through the Customer's internal network (whether this be from the Customer's premises or remotely in accordance with clause 5.4 and Schedule 1). Where WAN Authentication has been received the Customer may access the Service over the designated wide area network as specified by Espresso in such WAN Authentication.
- 5.3 The Customer may authorise 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 within such other organisations ("**End-Users**") to access and use the Service, but no other individuals or third parties unless Espresso has given its prior written consent to the same. The Customer is responsible for ensuring that all End-Users comply with the terms and conditions of this Agreement.
- 5.4 The Customer shall be entitled to permit End Users of the Espresso Primary Service or Clipbank Service who are employed by or contracted to the Customer (or, if relevant, an education establishment whose address is listed on the Order) as teaching staff to access and use the Espresso Primary Service or Clipbank Service remotely from any location ("**Remote Access End Users**") provided that (i) the Customer has received Espresso's prior written consent to permitting such access; and (ii) the Customer complies and ensures that such Remote Access End Users comply with the terms and conditions set out in Schedule 1, Espresso's licence agreement for Remote Access End Users as is currently set out in Schedule 2 and any variations thereto as will be available on the Espresso website from time to time (the "**Remote Access End User License Agreement**"), and any instructions and procedures as may be set out on the Espresso website from time to time. For the avoidance of doubt, where the Customer is a "Local Authority" or "Regional Broadband Consortium" or similar body, Espresso's consent, or otherwise, will be in relation to each individual educational establishment, rather than all educational establishments, at the addresses indicated on the Order (or otherwise agreed with Espresso) unless expressly stated otherwise.

- 5.5 The Customer shall be entitled to permit End Users of the Espresso Primary Service and/or Clipbank Service who are registered as current pupils of the Customer (or, if relevant, an educational establishment whose address is listed on the Order) to access and use the Espresso Primary Service and/or Clipbank Service (as applicable) remotely from any location (“**Pupil Home Access End Users**”) provided that (i) the Customer has received Espresso’s prior written consent to permitting such access and, in the case of the Espresso Primary Service, has subscribed to the “home access” facility where available as part of that Espresso Primary Service; and (ii) the Customer complies and ensures that such Pupil Home Access End Users comply with the terms and conditions for Pupil Home Access End Users as are currently set out in Schedule 3 and any variations thereto as will be available on the Espresso website from time to time (the “**Pupil Home Access Terms**”). For the avoidance of doubt, where the Customer is a “Local Authority” or “Regional Broadband Consortium” or similar body, Espresso’s consent, or otherwise, will be in relation to each individual educational establishment, rather than all educational establishments, at the addresses indicated on the Order (or otherwise agreed with Espresso) unless expressly stated otherwise.
- 5.6 Espresso shall not be responsible for the provision or maintenance of any hardware, software or Internet connection used by the Customer, the Remote Access End Users or Pupil Home Access End User for the purposes of remotely accessing the Service (or any element thereof). The Customer shall ensure that the Remote Access End Users and Pupil Home Access End Users comply with the Minimum Specification when accessing the Espresso Primary Service and/or Clipbank Service (as applicable) remotely. The Customer acknowledges that Espresso will not be responsible for any failure (or the rectification thereof) of the Espresso Primary Service and/or Clipbank Service where it is being remotely accessed (or attempted to be remotely accessed) and the Minimum Specification has not been met. For the purposes of this Agreement, “Minimum Specification” means the minimum hardware, software and Internet connection requirements that Espresso considers necessary for accessing the Service from time to time and as shall be advised to the Customer by Espresso promptly upon request.
- 5.7 The Customer is responsible for preventing unauthorised use of and access to the Service through its internal network whether such use or access is from the Customer’s premises, remotely pursuant to clauses 5.4 or 5.5, or Schedules 1, 2 or 3 or otherwise. Where the Customer is aware or should reasonably be aware that there has been any breach of security or other unauthorised use or access of the Service the Customer must promptly notify Espresso by email at schoolsupport@espresso.co.uk.
- 5.8 If Espresso believes or has reasonable grounds to suspect that the Service is being used by the Customer or its End-Users in any way which is not expressly permitted by this Agreement, then Espresso reserves the right to suspend the Customer’s (and hence it’s End-Users’) use of and access to the Service.
- 5.9 The Customer and its End-Users may only retrieve and display materials provided as part of the Service on computer screens, projector screens, electronic whiteboards and similar equipment located at the address(es) specified on the Order and on computer screens at other addresses where the Service is accessed remotely pursuant to clause 5.4, Schedule 1 and Schedule 2, print pages of parts of the Service (including the Documentation), temporarily store parts of the Service in electronic form on disk, hard drive or server other than the Hardware Solution, and may modify individual video clips, worksheets and other elements of the Service written in html computer code, but in each case only to the extent reasonably necessary to provide teaching resources on a non-commercial basis at the address(es) listed on the Order. Espresso reserves the right to audit the Customer’s and its End-Users use of the Service to ensure compliance with this Agreement. The parties shall consult with each other and co-operate in relation to such audit to allow Espresso reasonable access to the Customer’s premises, equipment and materials at reasonable times to carry out such audit and the Customer shall use all reasonable endeavours to procure reasonable access to Remote Access End Users’ premises and Remote Access End Users’ and Pupil Home Access End Users’ equipment and materials at reasonable times for the purpose of such an audit where such Remote Access End Users or Pupil Home Access End Users’ (as appropriate) have accessed the Service remotely.
- 5.10 The Customer may not (except to the extent permitted by any applicable law) without the prior written permission of Espresso: (i) except as expressly set out in clause 5.8 above, modify or reproduce any part or the whole of the Service; (ii) redistribute any part or the whole of the Service; (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 make the Service available to any third party.
- 5.11 Espresso processes information about the Customer and the End-users in accordance with its privacy policy at www.espresso.co.uk/privacy_policy.html. By using the Service, the Customer consents to such processing and warrants that all data provided by it or the End-Users is accurate. Espresso uses “cookies”, text files, log files and/or page tagging placed on the Customer’s and/or End-Users’ computers and/or other hardware (together the “**Log Files**”). The information generated by the Log Files about the Service and the Customer’s and End-Users’ use of the Service (including End-Users’ IP addresses) (the “**Service Evaluation Data**”) will be transmitted to and stored by Espresso. Espresso will use this

information for the purpose of evaluating and analysing the Customer's and the End-Users' use of the Service, to diagnose and resolve any problems with the Services and to generally support Customers, End-Users and the running of the Service. Espresso may also transfer the Service Evaluation Data to third parties where required to do so by law, or where third parties process it on their behalf. Espresso will not associate any IP addresses in the Service Evaluation Data with any other data held by it. By using the Service, the Customer hereby consents to the processing of data about it and its End-Users by Espresso in the manner and for the purposes set out above.

6. Support Services

- 6.1 Espresso will provide support to the Customer (and its End-Users where accessing the Service from the Customer's premises, but not where accessing the Service remotely) (as requested in accordance with this clause 6) where the content of the Service does not perform and where the content navigation in relation to the Service does not perform without errors (examples of errors include broken links and page unavailability) and as described in clause 8.5 (each being a "Fault"). For the avoidance of doubt, a Fault does not include any error in relation to the functionality of software or websites other than that provided by Espresso as part of the Service or any error in the hardware, software or Internet connection utilised by Remote Access End Users or Pupil Home Access End Users.
- 6.2 If the Customer is still unable to resolve a 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 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 Fault where it is not so informed.
- 6.3 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 Fault.
- 6.4 In the event of a Fault, the Customer shall provide all reasonable assistance to Espresso in identifying whether the problem is a Fault, all relevant detail in relation to the Fault and in carrying out any repair to the Fault (or such other action as Espresso may take). This assistance may include, but is not limited to, arranging for a suitable qualified individual to liaise with Espresso by telephone and/or email.
- 6.5 Espresso shall use reasonable endeavours to assist the Customer in being able to access the Service from the Customer's computers. Espresso will inform the Customer of the minimum specification for computers that is recommended in order to allow access to the Service. Espresso shall not be liable for any failure to access the Service using a computer that does not meet that minimum specification.
- 6.6 Espresso shall be entitled to use remote access tools for the purposes of providing support to the Customer and End-Users (including Remote Access End Users). Through its use of such remote access tools then Espresso shall be entitled to control relevant computers and view and change any settings on such computers. In carrying out such remote access support, Espresso acknowledges that it will only alter the configuration of any computer or other device on the customer's network with the prior consent of the Customer or End-User. Espresso will only be liable for those changes that it makes to settings (and not those made by any other person).
- 6.7 Where the parties agree (on the Order or otherwise) that Espresso is to provide training sessions to the Customer, the Customer shall only be entitled to receive such training sessions during the twelve month period commencing on the date of such agreement (the "Training Period"). Espresso shall use reasonable endeavours to agree suitable dates for such training sessions during the Training Period. On expiry of the Training Period the Customer shall no longer be entitled to receive such agreed training sessions and shall not be entitled to any refund even where the Customer has made a payment in advance in relation to those training sessions.

7. Access and Technical Issues

- 7.1 The Customer shall promptly upon request provide Espresso with the technical information required for Espresso to provide the Service, which includes, but is not limited to, the Customer's relevant IP (Internet Protocol) addresses, MAC (Media Access Control) addresses and such other information as Espresso may require from time to time. It is the Customer's responsibility to notify Espresso of any changes to the technical information the Customer has provided by email to schoolsupport@espresso.co.uk. Espresso shall not be liable for any failure to provide the Service where the Customer has failed to provide the requisite technical information for Espresso to provide the Service.

- 7.2 The Customer shall promptly upon request provide Espresso with such access to the Customer premises and networks as Espresso reasonable requires in order to install and/or configure any hardware, software or content relevant to the provision of the Service.
- 7.3 The Customer acknowledges that, other than as expressly stated in this Agreement, Espresso will not be responsible for the provision, maintenance or support of any caching server, other hardware, software, any broadband, ISDN or other internet connection or any network connection. Under no circumstances will Espresso be deemed liable for any internet connection or call costs whatsoever or for any failure in the Service (or any element thereof) where the Customer has not complied or ensured compliance with the Minimum Specification.
- 7.4 If requested by the Customer, Espresso will provide a specification of the cache server and any software that Customer requires in order to be able to use the Service.

8. Hardware Solution

- 8.1 The provisions of this clause 8 shall only apply where Espresso supplies the Hardware Solution to the Customer as part of the Order.
- 8.2 Installation of the Hardware Solution shall take place at the address(es) for installation set out in the Order and the Hardware Solution may only be installed and used at such address(es) unless Espresso otherwise gives its prior written consent.
- 8.3 Any date given for delivery and/or installation of the Hardware Solution is an estimate only and time is not of the essence for such delivery and/or installation. The Customer shall give Espresso 48 hours prior notice should it wish to alter any date given for delivery and/or installation. If the Customer does not give such prior notice or if delivery and/or installation is not possible due to: (i) Customer's own fault; or (ii) because in Espresso's reasonable opinion the Customer's network is not ready; or (iii) the Customer has not complied with the minimum specifications, including those in relation to its internet connection, network, hardware and software and equipment, space and access requirements, in each case as may be set out on Espresso's website or as otherwise advised by Espresso from time to time; then the Customer shall be liable for a sum equal to the amount of the Installation Fee (as set out on the Order Form) relating to the given date and for a further Installation Fee (as set out on the Order Form) relating to the date that such delivery and/or installation does then take place.
- 8.4 Delivery of the Hardware Solution will take place at the relevant address as set out on the Order. The Hardware Solution is at the Customer's risk from the time of delivery and the Customer will be responsible for insuring the Hardware Solution from the time of delivery. Title in the Hardware Solution will pass to the Customer at the end of the Initial Term and Espresso shall not require any additional payment for that Hardware Solution. At any time before title in the Hardware Solution passes to the Customer Espresso may enter the Customer's premises to retake possession of that Hardware Solution.
- 8.5 Where Espresso supplies to the Customer a Hardware Solution and the Customer has purchased "warranty and maintenance" services from Espresso (as indicated on the Order or otherwise agreed between the parties), then the definition of a Fault shall be extended to include Hardware Solution Faults as described in clause 8.6 below and accordingly in such circumstances Espresso shall provide the support services as set out in clause 6 in relation to that extended definition.
- 8.6 "Hardware Solution **Fault**" shall mean any physical breakdown of the Hardware Solution. For the avoidance of doubt, this shall specifically not include any error relating to: (i) a Hardware Solution other than a Hardware Solution supplied by Espresso to Customer; or (ii) the caching functionality of any caching server that is comprised in a Hardware Solution.
- 8.7 Where a Hardware Solution Fault occurs and Espresso identifies that this is irreparable then, at Espresso's sole discretion, Espresso may arrange for the collection of the Hardware Solution by Espresso or its agent and either:
- (i) send a replacement pre-configured Hardware Solution to the Customer; or
 - (ii) send an engineer to the Customer's premises to install a replacement Hardware Solution.

9. Intellectual Property Rights

- 9.1 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 this Agreement.

- 9.2 The Customer acknowledges that “Espresso”, “Clipbank”, “Channel 4 Learning” and other brands, cartoons, characters and animations used on 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” or “Clipbank” trademarks in documents and literature for internal distribution only for the purpose of providing teaching resources on a non-commercial basis.
- 9.3 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.

10. Charges

- 10.1 The Customer shall pay the Charges annually in advance as calculated in accordance with the Order and this clause 10 (“**Charges**”). All amounts payable under this Agreement are expressed exclusive of VAT and other taxes which shall be payable by the Customer at the applicable rate from time to time. Espresso shall be entitled to invoice the Customer annually in advance for the relevant Charges and all invoices shall be paid by the Customer within 30 days of the date of invoice.
- 10.2 Espresso reserves the right to suspend provision of all or part of the Service without notice to the Customer if the Customer does not pay the Charges by the due date.
- 10.3 Espresso may charge the Customer interest on any overdue sums at the rate of four per cent (4%) per annum above the base rate of HSBC Bank plc from time to time from the relevant due date until the date payment is made.
- 10.4 Where the Service includes the Espresso Primary Service, the Customer acknowledges that to calculate the appropriate amount of the Charges Espresso needs to know the number of pupils in full time education at the relevant school(s) (or such other entities as may be appropriate in the circumstances) (the “**FTE Number**”). The Customer warrants that the FTE Numbers it provides to Espresso are accurate. At least forty-five (45) days (but no more than sixty (60) days) prior to each renewal of this Agreement the Customer shall provide to Espresso the FTE Number that is accurate at that time.
- 10.5 Espresso shall be entitled to increase the Charges in relation to each Renewal Term provided that it notifies the Customer at least 30 days in advance (“**Charges Increase Notice**”). Customer shall be entitled to terminate this Agreement by giving written notice of termination to Espresso within thirty (30) days of the date of the Charges Increase Notice, such termination to take effect only on the date immediately preceding the date that the relevant increase in Charges would otherwise have taken effect.
- 10.6 For the avoidance of doubt, Espresso shall not be responsible for sending the Customer any invoices in relation to anything other than the Charges for the Services. Where other services are provided by a third party the Customer shall be responsible for liaising directly with that third party in relation to the provision of those services and any invoices related to those services.

11. Confidentiality

- 11.1 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 information is commercially sensitive, but the parties agree that such confidential information (other than any pricing information) may be made available by the Customer internally and to its End-Users to the extent necessary for their use of and access to the Service in accordance with the terms and conditions of this Agreement. The Customer further acknowledges that Espresso may disclose Confidential Information to its professional advisers, agents and subcontractors.

11.2 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.

12. Exclusions and Limits of Liability

12.1 Nothing in this Agreement 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 or fraudulent concealment, or any liability which cannot be limited or excluded by law.

12.2 Subject to clauses 12.3 and 12.4, Espresso's total aggregate liability to the Customer for all claims arising under or in connection with this Agreement regardless of form of action and whether in contract, tort, warranty (including the warranty at clause 9.3) or other legal or equitable grounds (including in each case negligence) is limited in any one year for all such claims arising within that year to an amount equal to the Charges payable in that year or, where such claim arises after expiry or termination, an amount equal to the Charges payable in the year immediately preceding the date of such expiry or termination.

12.3 Espresso's total aggregate liability to the Customer for all claims arising under or in connection with the Espresso Primary Service regardless of form of action and whether in contract, tort, warranty (including the warranty at clause 9.3) or other legal or equitable grounds (including in each case negligence) is limited in any one year for all such claims arising within that year to an amount equal to the Charges payable in respect of the Espresso Primary Service in that year or, where such claim arises after expiry or termination, an amount equal to the Charges payable in respect of the Espresso Primary Service in the year immediately preceding the date of such expiry or termination.

12.4 Espresso's total aggregate liability to the Customer for all claims arising under or in connection with the Clipbank Service regardless of form of action and whether in contract, tort, warranty (including the warranty at clause 9.3) or other legal or equitable grounds (including in each case negligence) is limited in any one year for all such claims arising within that year to an amount equal to the Charges payable in respect of the Clipbank Service payable in that year or, where such claim arises after expiry or termination, an amount equal to the Charges payable in respect of the Clipbank Service in the year immediately preceding the date of such expiry or termination.

12.5 Espresso shall not be liable to the Customer for any loss of profits, anticipated savings or good will 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.

12.6 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 be uninterrupted or error free. Espresso's sole obligations and liabilities in respect of the supply of the Service are as stated in this Agreement 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.

13. Termination

13.1 Either party may terminate this Agreement 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 Schedule 1, and any material breach of the provisions of (if applicable) the Remote Access End User Licence Agreement and/or the Pupil Home Access Terms, will each constitute a material breach of this Agreement.

13.2 Espresso may terminate this Agreement (i) at any time by giving at least 60 days' prior written notice to the Customer and (ii) if Espresso discontinues the Service by giving the Customer reasonable notice. Within 30 days of any such termination by Espresso, Espresso shall refund to the Customer such proportion of the Charges that have been paid by the Customer and which reasonably relate to the period after termination for which the Agreement would have continued had it not been for such termination.

13.3 Espresso may at any time terminate this Agreement 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.

- 13.4 Except as set out in Clause 13.5, on 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 content referred to in clauses 4.1 and 4.2, the Documentation and any Updates. The Customer shall also promptly return to Espresso all Espresso Confidential Information and Documentation that is has in its possession.
- 13.5 The Customer shall be entitled to retain the Content Pack from and after the date of termination of this Agreement. Accordingly, Espresso hereby grants the Customer a non-exclusive and non-transferable perpetual licence to use the Content Pack provided that such use is only for the purpose of providing teaching resources on a non-commercial basis and such use shall at all times subject to the provisions of Clause 5 of this Agreement.
- 13.6 The provisions of clause 9 (Intellectual Property), clause 11 (Confidentiality), clause 12 (Exclusions and Limits of Liability), clause 13 (Termination), and clause 14 (General) will survive any termination or expiration of this Agreement. Termination, howsoever arising, will not affect the rights and obligations of either party accrued prior to termination.

14. General

- 14.1 Neither party will be liable for any failure or delay in performing its respective obligations under this Agreement 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 the Agreement are (except as expressly provided) cumulative and not exclusive of any rights, powers and remedies provided by law, or otherwise.
- 14.2 Neither party may assign or transfer its rights or obligations under this Agreement without the other party's prior written consent, except that Espresso may assign or transfer its rights and obligations under this Agreement to another member of the Espresso Group. "**Espresso Group**" shall mean Espresso, its Subsidiaries and its Holding Companies and their Subsidiaries (where "Subsidiary" and "Holding Company" shall be construed in accordance with s.1159 of the Companies Act 2006). Espresso may subcontract part or all of the performance of its obligations under this Agreement without notice to the Customer or requiring its consent.
- 14.3 This Agreement represents 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).
- 14.4 If any provision of this Agreement 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 this Agreement which shall remain in full force and effect.
- 14.5 No failure or delay by either party in exercising any right or remedy under this Agreement (and no course of dealings between the parties) shall operate as a waiver of that right or remedy.
- 14.6 Except where expressly provided to the contrary, this Agreement is 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.
- 14.7 This Agreement is 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.
- 14.8 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.
- 14.9 Espresso will be entitled to make changes to this Agreement 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 the Agreement it may only do so by obtaining the prior written consent of Espresso.
- 14.10 All notices between the parties shall be in writing and addressed to the parties respective addresses as set out on the Order, 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).

14.11 This Agreement, and any dispute or claim arising out of or in connection with it (including any dispute or claim relating to non-contractual obligations) 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 & Conditions for Remote Access Service

1. Application of Terms and Conditions

- 1.1 Where the Customer has received prior written consent (which may include email) from Espresso then its Remote Access End-Users may access and use the Espresso Primary Service remotely from any location provided that they comply with the relevant terms and conditions as set out in this Schedule 1, the Remote Access End User License Agreement as is currently set out in Schedule 2 and any variations thereto as will be available on the Espresso website from time to time, and the instructions and procedures as may be set out on the Espresso website from time to time. The Customer is responsible for ensuring that the Remote Access End-Users comply with all such terms and conditions and instructions and procedures. This service will hereinafter be referred to as the "Remote Access Service".
- 1.2 In addition to the Customer's obligations under Schedule 2 of this Agreement, all Remote Access End Users will also be required to enter into and comply with the Remote Access End User Licence Agreement.

2. Remote Access Service

- 2.1 The Remote Access Service must only be used by Remote Access End Users and only for the purpose of lesson planning and support.
- 2.2 The Customer acknowledges that Remote Access End Users must comply with a minimum required hardware and software specification (as specified to Customers by Espresso from time to time) to access the Remote Access Service. Espresso is not responsible for ensuring that Remote Access End Users are provided with this minimum specification by Customers or for providing any technical support they may need in order to access the Remote Access Service. Espresso will provide technical support to the Customer in respect of the Remote Access Service but this will only be available between the hours of 8:30 am to 5:30 pm from Monday to Friday (excluding all bank and school holidays).
- 2.3 The Remote Access Service will not be available to access from an educational establishment's own network. For the avoidance of doubt, the Service will be available in the normal way at the addresses specified on the Order.
- 2.4 Remote Access End Users may only gain access to the Remote Access Service via a username and password (the "Account Details") as issued to the Customer in relation to each relevant educational establishment by Espresso. The Customer, and if applicable, each educational establishment (as identified by its address on the Order) must have its own unique set of Account Details.

3. Account Administration Area

- 3.1 Where the Customer is a "Local Authority" or "Regional Broadband Consortium" or similar body, Espresso may, by agreement with the Customer, provide the Customer with access to an account administration area (the "Administration Area") and an administrator account and password. Espresso shall not be obliged to offer such an Administration Area to the Customer and Espresso shall be entitled, at its sole discretion, to manage any account details itself.
- 3.2 Where the Customer is provided with access to an Administration Area it will be responsible for managing all relevant Account Details via that Administration Area and ensuring that these Account Details are communicated to all relevant educational establishments and to Remote Access End Users; and (ii) shall disable the Account Details of any educational establishment that no longer wishes to use or is no longer authorised to use the Remote Access Service promptly after it becomes aware of the same. Espresso will provide reasonable assistance to the Customer (if requested) to identify and bulk upload initial relevant Account Details.
- 3.3 Where Espresso approves the appropriate authentication technology the Customer is responsible for creating and managing Account Details for that educational establishment by means of the Account Administration Area and ensuring that these Account Details are communicated to that educational establishment and Remote Access End Users within 10 working days of Espresso notifying the Customer of such approval. Espresso will provide reasonable assistance to the Customer (if requested) to bulk create usernames and passwords.

3.4 Where an educational establishment has terminated its contract subscription, the Customer must delete that educational establishment's Account Details via the Administration Area within 1 working days from the date it is advised (whether by Espresso or the educational establishment) of the same.

4. Duration of access to the Remote Access Service

4.1 Where Espresso has approved the authentication technology to access the Remote Access Service then such access may continue until the earlier of:

- (i) the expiry of this Agreement;
- (ii) the termination of this Agreement in accordance with clause 13;
- (iii) the withdrawal, by Espresso, of its approval of the authentication technology to access the Remote Access Service in accordance with paragraph 4.2 of this Schedule 1.

4.2 Espresso may withdraw its approval of the authentication technology to access the Remote Access Service:

- (i) at any time upon 30 days prior written notice to the Customer;
- (ii) immediately and without notice to the Customer if the Customer or the Remote Access End User breaches or Espresso reasonably believes the Customer or Remote Access End User has breached any of the terms and conditions applicable to the Remote Access Service.

4.3 For the avoidance of doubt, the withdrawal of Espresso's approval pursuant to paragraph 4.2 may be in relation to the Customer and / or to one or more educational establishment and / or one or more Remote Access End Users.

5. Security

5.1 The Customer shall take all reasonable steps to prevent any unauthorised access to the Remote Access Service. This will include, but is not limited to, ensuring that Account Details are only divulged to relevant educational establishments and authorised Remote Access End Users and not to any other persons.

5.2 Where the Customer suspects that the Remote Access Service has been abused or misused, it must inform Espresso immediately. Misuse or abuse includes, but is not limited to, any breaches of this Agreement and / or the Remote Access End User License Agreement.

Schedule 2

ESPRESSO Remote Access End User License Agreement (the “Agreement”)

This Agreement applies when you access our service from any location outside your educational establishment (“School”) (the “Service”). Please read it carefully before you start to use this Service. By using our Service, you indicate that you accept this Agreement, that you agree to abide by it and that you will be responsible if you are in breach of any of its terms. If you do not agree to this Agreement, please refrain from using our Service.

This Agreement supplements the terms and conditions that we have agreed with your School, Local Authority or other third party service provider (as applicable) and so they may also advise you of some terms that you should abide by.

Information about us

This Service is operated by Espresso Education Limited. We are registered in England and Wales under company number 03261277 and have our registered office at Riverside Studios, Crisp Road, Hammersmith, London W6 9RL.

Accessing our Service

Access to our Service is restricted to teaching staff that are employed by (or contracted to) our customers and is permitted solely for the purposes of lesson planning or support by you.

You are not permitted to access this Service from the School. When you are at School you can continue to access the non-remote Espresso service in the normal way.

You will need to be given a username and password by your School, Local Authority or other third party services provider (as applicable) in order to access our Service. You must treat this information as confidential and not disclose it to any third party. We have the right to restrict access to our Service at any time if, in our opinion, you have failed to comply with any of the provisions of this Agreement.

We are not responsible for making any necessary technical arrangements for you to have access to our Service including, but not limited to, providing you with computer equipment or Internet access and we will not be responsible for any error in or failure of your hardware, software or Internet connection whether this affects your access to or the performance of the Service or otherwise.

The speed, delivery and overall performance of our Service are all determined by the speed of your Internet connection and the specification of your computer equipment. We have informed your School, Local Authority or other third party service provider (as applicable) of the minimum hardware, software and Internet connection requirements that we consider necessary for accessing our Service.

You should be aware that any access you may have to our Service is only permitted while your School, Local Authority or other third party service provider (as applicable) continues to have a valid agreement with us which authorises it to allow you to use our Service.

Viruses, hacking and other offences

You must not misuse our Service by knowingly introducing viruses, trojans, worms, logic bombs or other material that is malicious or technologically harmful. You must not attempt to gain unauthorised access to our Service, the server on which our Service is stored or any server, computer or database connected to our Service. You must not attack our Service via a denial-of-service attack or a distributed denial-of service attack.

Should you commit a criminal offence under the Computer Misuse Act by breaching this provision we will co-operate with the relevant law enforcement authorities and disclose your identity to them. Your right to use our Service will cease immediately.

We will not be liable for any loss or damage caused by a distributed denial-of-service attack, viruses or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of our Service or to your downloading of any material posted on it, or on any website linked to it.

Information about you and your use of our Service

We process information about you in accordance with our privacy policy at www.espresso.co.uk/privacy_policy.html. By using our Service, you consent to such processing and you agree that all data provided by you is accurate. Espresso also uses “cookies”, text files, log files and/or page tagging placed on your computer (the “**Log Files**”). The information generated by the Log Files about the Service and your use of the Service (including your IP address) (the “**Service Evaluation Data**”) will be transmitted to and stored by Espresso. Espresso will use this information for the purpose of evaluating and analysing your use of the Service, to diagnose and resolve any problems with the Services and to generally support the running of the Service. Espresso may also transfer the Service Evaluation Data to third parties where required to do so by law, or where third parties process it on their behalf. Espresso will not associate any such IP addresses in the Service Evaluation Data with any other data held by it. By using the Service, you agree to the processing of data about you by Espresso in the manner and for the purposes set out above.

Support

Your School should have appointed a key member of staff to act as an administrator or co-ordinator for our Service. This person is responsible for all communication with Espresso including monitoring emails, providing support and communicating with you and your colleagues about any other matters concerning our Service.

Any technical enquiries in relation to this Service should be directed to the appropriate administrator or co-ordinator at your School, Local Authority or other third party service provider (if applicable) which will be able to help you with any required software, Service functionality or forgotten passwords. You may also refer to the online support at www.espresso.co.uk/home/faq/pmwiki.php.

Any curriculum enquiries in relation to the content found on this Service can only be referred to Espresso on working weekdays between 8:30 am and 5:30 pm.

Where Espresso agrees with your School that it will endeavour to provide some support to you, you hereby agree that Espresso may use remote access tools for that purpose. Through its use of such remote access tools you agree that Espresso shall be entitled to control your computers and view and change any settings on your computer. Espresso will not be responsible for any changes made by any other person.

Security

We will implement a number of controls in order to prevent any misuse of our Service. These may include, but is not limited to, limiting the number of concurrent users within your School that can access the Service, restricting access from certain IP addresses and changing your School’s password on a regular basis. Accordingly you may not always be able to access the Service.

To the greatest extent possible, you are responsible for ensuring the security and proper use of our Service and you must take all necessary steps to ensure that it is not accessed by any unauthorised persons.

Intellectual property rights

(A) We are the owner or the licensee of all copyright, trade marks and database rights in our Service, and in the material published on it. You may not publish, distribute, extract, re-utilise or reproduce any part of our Service in any material form (including photocopying or storing it in any medium by electronic means) other than in accordance with the provisions of these terms of use or as permitted by the Copyright Designs and Patents Act 1988 or the Copyright and Rights in Database Regulations 1997 as applicable or any equivalent legislation as may apply.

You may not distribute products or offer services under or by reference to or otherwise use or reproduce any such trade marks, trade names or service marks that appear in our Service, including “Espresso”, “Netmedia”, “Clipbank” and other brands, cartoons, characters and animations used in our Service, without our prior permission or, where applicable, permission of any other owner of such trade marks, trade names or service marks. You must not use any part of the materials in our Service for commercial purposes without obtaining a licence to do so from us or our licensors.

You are entitled to download and store the content available on our Service solely for use within your own School and for educational purposes only (such as lesson planning or support). Any such content should not be shared or distributed with any persons outside your School. Please note that if you do download any content from our Service this should only be for temporary use. If you cease to be employed by or contracted to the School or Local Authority or if you, the School, Local Authority or other third party service provider ceases to be authorised to use or access the Service then you must promptly delete any such downloaded content.

If you print off, copy or download any content that you access via our Service in breach of these terms of use, your right to use our Service will cease immediately and you must, at our option, return or destroy any copies of the materials you have made.

Our Service changes regularly

We may change the content at any time. If the need arises, we may suspend access to our Service, or close it indefinitely. Any of the material on our Service may be out of date at any given time, and we are under no obligation to update such material.

Our liability

The material displayed on this Service is provided without any guarantees, conditions or warranties as to its accuracy. To the fullest extent permitted by law, we, other members of our group of companies and third parties connected to us expressly exclude:

- all conditions, warranties and other terms which might otherwise be implied by statute, common law or the law of equity; and/or
- any liability for any direct, indirect or consequential loss or damage (howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, even if foreseeable) incurred by any user in connection with our Site or in connection with the use, inability to use, or results of the use of our Site, any websites linked to it and any materials posted on it.

This does not limit or exclude our liability for death or personal injury arising from our negligence, or our liability for fraudulent misrepresentation or fraudulent concealment, or for any other liability which cannot be excluded or limited by law.

Links from our Service

Where our Service contains links to other websites and resources provided by third parties, these links are provided for your information only. We have no control over the contents of those websites or resources, and accept no responsibility for them or for any loss or damage that may arise from your use of them.

Jurisdiction and applicable law

The English courts will have exclusive jurisdiction over any claim arising from, or related to, a visit to our Site. These terms of use are governed by English law.

Variations

We may revise these terms of use at any time by amending this page. You are expected to check this page from time to time to take notice of any changes we made, as they are binding on you. Some of the provisions contained in these terms of use may also be superseded by provisions or notices published elsewhere on our website.

Schedule 3

Pupil Home Access Terms – Clipbank Service and/or Espresso Primary Service

The content and software used in this service contains material owned or licensed by Espresso Education Ltd. Unauthorised copying is illegal. The terms and conditions below set out what you are permitted to do with the content and software used in this service.

In using this content and software you agree to abide by these “Terms of Use”.

There are intellectual property rights, including copyrights and trade marks, in the content and software used in this service (the “Service”). All intellectual property rights subsisting in and/or relating to the Service are and shall remain the property of Espresso or its licensors.

You may only access and use the Service to the extent reasonably necessary for your own personal use. You may also download certain items where you are told this is permitted (and no other material) on to a personal computer to the extent reasonably necessary for your own personal use for educational purposes.

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 Service; (ii) redistribute any part or the whole of the Service; (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 make it available to any third party.

We process information about you in accordance with our privacy policy at www.espresso.co.uk/privacy_policy.html. By using our Service, you consent to such processing and you agree that all data provided by you is accurate. Espresso also uses “cookies”, text files, log files and/or page tagging placed on your computer (the “**Log Files**”). The information generated by the Log Files about the Service and your use of the Service (including your IP address) (the “**Service Evaluation Data**”) will be transmitted to and stored by Espresso. Espresso will use this information for the purpose of evaluating and analysing your use of the Service, to diagnose and resolve any problems with the Services and to generally support the running of the Service. Espresso may also transfer the Service Evaluation Data to third parties where required to do so by law, or where third parties process it on their behalf. Espresso will not associate any such IP addresses in the Service Evaluation Data with any other data held by it. By using the Service, you agree to the processing of data about you by Espresso in the manner and for the purposes set out above.