



Department
for Education

Home Learning Environment app accreditation terms and conditions

July 2019

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Summary

The following terms and conditions apply to all applications for the Home Learning Environment App Accreditation, which have been made through the application process on the HLE Portal (as defined below).

Please note that additional/separate terms and conditions shall be issued for participating in the Pilot of free app access for disadvantaged families as set out on the HLE Portal as part of that process.

Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Accreditation: those apps deemed by the Department to meet the Evaluation Criteria to the required standard (as set out in the Guidance for Applicants) to be accredited by the Department as a “hungry little minds”, app and permitted for use in conjunction with the Accreditation Branding;

Accreditation Branding: the branding notified to Applicants at the time of being granted Accreditation and as may be updated from time to time by the Department;

App: the mobile/tablet early years learning app which is submitted for the Evaluation Process by the Applicant;

Applicant: the applicant for the Home Learning Environment App Accreditation detailed as part of the Submission Form;

Application: the submission of an App by the Applicant for participation in the Evaluation Process for the Home Learning Environment App Accreditation by way of the application process on the HLE Portal;

Brand Guidelines: the guidelines relating to the use of the Accreditation Branding (including without limitation logo, font, colour, sizing and placement requirements) notified by the Department at the time of Accreditation and as may be updated from time to time by the Department;

Conditions: these terms and conditions as amended from time to time in accordance with Condition 9.2;

Data Protection Laws: means the following laws: (i) the General Data Protection Regulation ((EU) 2016/679); and (ii) the European Privacy and Electronic Communications Directive (Directive 2002/58/EC), including, in each case, any laws applicable to the processing of personal data that promulgate the same into national law (including, in the United Kingdom, the Data Protection Act 2018) and as such law (or respective national law) may be replaced, supplemented, substituted or amended from time to time;

Department: The Department for Education;

Educational and Technical Panel: the educational and technical panel established by the Department for the purposes of assessing apps in accordance with the Evaluation Process;

Evaluation Criteria: the technical, security and educational standards by which the App shall be evaluated and which are set out on the HLE Portal;

Evaluation Process: the evaluation of the App against the Evaluation Criteria to determine if the App meets the standards required by the Department to receive Accreditation;

Expiry Date: one (1) year following the date of Accreditation of an App (or such other date as may be notified by the Department);

FOIA: the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by

the Information Commissioner or any relevant Central Government Body in relation to such Act;

Guidance for Applicants: the guidance provided by the Department on the HLE Portal and which may be updated from time to time and which shall, without limitation, set out the Evaluation Criteria and the scoring requirements for Accreditation;

HLE Portal: the Home Learning Environment portal at <https://www.gov.uk/government/publications/early-years-apps-pilot-home-learning-environment>;

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks business names and domain names, rights in get-up, goodwill, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Prohibited Act: (a) to directly or indirectly offer, promise or give any person working for or engaged by the Department a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Application; (c) an offence: (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud the Department; or (d) any activity, practice or conduct which would constitute one of the offences listed under (c);

Submission Form: the form completed by the Applicant and submitted as part of the Application in order to participate in the Learning Environment App Accreditation;

Term: where applicable, the term from the date of Accreditation of the App until the Expiry Date or the date of termination of the Accreditation (and the licence to use the Accreditation Branding) under these Conditions, if earlier.

1.2 Interpretation:

- a. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- b. Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- c. A reference to **writing** or **written** includes email.

Basis of contract

- 2.1 By submitting an Application the Applicant is accepting to be bound by these Conditions, which shall to avoid any doubt apply at all times to all matters relating to the Application, the Evaluation Process, Accreditation and the rights to make use of the Accreditation Branding.
- 2.2 These Conditions apply to the exclusion of any other terms that the Applicant seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

Submission of Apps

- 3.1 The Applicant agrees that any App submitted as part of an Application shall be evaluated in accordance with the Evaluation Criteria and the Guidance for Applicants and the Educational and Technical Panel shall determine if the App meets the required standards (as set out in the same) for Accreditation.
- 3.2 The Applicant acknowledges that the version of the App which is submitted shall be evaluated under the Evaluation Process and any Accreditation shall be in respect of that version of the App only. The Applicant shall promptly notify the Department in the event of any substantive change between the version of the App submitted as part of an Application and any subsequent version of the App released and a copy of the latest version of the App shall be provided to the Department. The Department may provide guidance from time to time on the HLE Portal and/or directly to Applicants advising them of changes that will be deemed to be substantial changes. The Department reserves the right to ask the Educational and Technical Panel to re-assess any such new version of the App which may result in Accreditation being lost for an App which has previously received Accreditation.
- 3.3 The Applicant shall only be permitted to submit an App for which the Applicant is the exclusive owner of the Intellectual Property Rights in the App or for which the Applicant is a valid licensee (and which licence would permit the Applicant to submit the App as part of an Application). The Applicant shall indemnify and hold harmless the Department and any third party appointed by the Department to perform services in connection with the Evaluation Process ("**Indemnified Parties**") from and against any and all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Indemnified Parties arising out of or in connection with any claim brought against the Indemnified Parties for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection the receipt and use of the App as part of the Evaluation Process, Accreditation (if awarded) and as otherwise set out in these Conditions.
- 3.4 The Applicant warrants and undertakes that the App submitted as part of an Application:
 - (a) is suitable for young persons;
 - (b) shall not contain any content that is offensive, illegal, defamatory or discriminatory or which otherwise is unsuitable for young persons or contravenes any requirements of the Department;
 - (c) meets the acceptable app guidelines of all major app stores and social media sites which would be suitable for the dissemination of the App, including without limitation those of Apple, Google, Facebook and Amazon;
 - (d) meets the advertising guidelines of Google Play, Amazon Apps and Apple Store (as applicable);

- (e) is free from viruses and malware;
- (f) places strict control on in-app purchases to prevent young persons incurring material costs; and
- (g) contains reasonable terms and conditions of use which are fully compliant with consumer laws and regulations.

3.5 The Applicant warrants and undertakes that the App does not collect unreasonable personal data on users and that the App contains privacy notices which are fully compliant with Data Protection Laws and that the Applicant's collection and processing of personal data via the App is at all times fully compliant with Data Protection Laws. Notwithstanding the generality of the foregoing the Applicant shall at all times full comply with Data Protection Laws in respect of its participation in the Evaluation Process and the Home Learning Environment App Accreditation process.

3.6 The Applicant shall indemnify and hold harmless the Department from and against any and all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Department and arising out of or in connection with any third party claim arising from:

- (a) any non-compliance of the App or the Applicant with Data Protection Laws; and
- (b) any breach of Condition 3.4.

3.7 The Applicant agrees that the use of the App by any user is subject to the Applicants terms and conditions on the App and that the Department shall have no responsibility or liability in respect of the use (or misuse) of the App by a user unless they are using the App on behalf of the Department as part of the Evaluation Process.

Evaluation Process and Accreditation

- 4.1 The Evaluation Process shall be undertaken in the manner and in the timelines determined by the Department set out in the Guidance for Applicants.
- 4.2 The Applicant shall provide any information reasonably requested by the Department and required for the conduct of the Evaluation Process.
- 4.3 The Applicant shall be notified by e-mail if the App has been deemed fit for Accreditation by the Department. Unsuccessful Applicants will be informed by email when the process concludes and will be given brief feedback regarding their submission. Unsuccessful Applicants shall be entitled to appeal the decision, in accordance with the appeals process notified to the Applicant as part of a notification of an unsuccessful Application.
- 4.4 If the App receives Accreditation the Applicant shall be entitled to use the Accreditation Branding in accordance with Condition 5. To avoid any doubt in the event that the App does not receive Accreditation the Applicant shall not be entitled to use the Accreditation Branding.
- 4.5 The Applicant agrees that the Department shall be entitled to provide demonstrations of and refer to an App which has received Accreditation and include App branding and reasonable extracts of content from the App in promotional and other materials relating to the Home Learning Environment App Accreditation process and the subsequent pilot.
- 4.6 To avoid any doubt Accreditation and the right to make use of Accreditation Branding shall be limited strictly to the specific App which has been the subject of the Evaluation Process. The Applicant shall not be entitled to use the Accreditation Branding independently of the App or in respect of any other app.

Accreditation Brand Licence

- 5.1 If the Applicant is granted Accreditation in respect of the App, the Department hereby grants to the Applicant for the duration of the Term, a non-exclusive and royalty free licence to use the Accreditation Branding in relation to the marketing and sale of the version of the App which has been subject to the Evaluation Process and the Accreditation, subject always to the Applicant's compliance with these Conditions.
- 5.2 The use of the Accreditation Branding in accordance with these Conditions is subject to the following:
- (a) The Applicant agrees that the Department is the exclusive owner of the Accreditation Branding and all Intellectual Property Rights subsisting therein;
 - (b) The Applicant shall comply strictly with the directions of the Department regarding the form and manner of the application of the Accreditation Branding and shall comply with the Brand Guidelines;
 - (c) The Applicant shall not (and shall procure that no sub-licensee shall) use any other name or logo confusingly similar to the Accreditation Branding;
 - (d) Any goodwill derived from the use by the Applicant (or any sub-licensee) of the Accreditation Branding shall accrue to the Department. The Department may, at any time, call for a document confirming the assignment of that goodwill and the Applicant shall immediately execute it (and, where applicable, procure execution by all sub-licensees);
 - (e) The Applicant shall not do, or omit to do, or permit to be done, any act that will or may weaken, damage or be detrimental to the Accreditation Branding or the reputation or goodwill associated with the Accreditation Branding or the Department, or that may invalidate or jeopardise any registration of the Accreditation Branding Rights;
 - (f) The Applicant shall not (and shall procure that no sub-licensee shall) apply for, or obtain, registered intellectual property rights in respect of the Accreditation Branding or any name or logo which is confusingly similar to, the Accreditation Branding;
 - (g) The Applicant shall provide, at the request of the Department all necessary assistance with the prosecution and maintenance of registered rights in respect of the Accreditation Branding and any other challenges;
 - (h) The Applicant shall immediately notify the Department in writing giving full particulars if any of the following matters come to its attention:
 - (i) any actual, suspected or threatened infringement of the Accreditation Branding;
 - (ii) any actual or threatened claim that the registered Accreditation Branding rights are invalid;

- (iii) any actual or threatened opposition to the registered Accreditation Branding rights;
 - (iv) any claim made or threatened that use of the Accreditation Branding rights infringes the rights of any third party;
 - (v) any person applies for, or is granted, a registered right by reason of which that person may be, or has been, granted rights which conflict with any of the rights granted to the Applicant under this agreement;
or
 - (vi) any other form of attack, charge or claim to which the Accreditation Branding may be subject.
- (i) In respect of any of the matters listed in Condition 5.3(h)
- (i) the Department shall, in its absolute discretion, decide what action if any to take;
 - (ii) the Department shall have exclusive control over, and conduct of, all claims and proceedings;
 - (iii) the Applicant shall not make any admissions other than to the Department and shall provide the Department with all assistance that it may reasonably require in the conduct of any claims or proceedings; and
 - (iv) The Applicant shall have no rights (statutory or otherwise) to bring proceedings in its own name.

5.3 Nothing in these Conditions shall be construed as a warranty or representation that the exercise by the Applicant of the rights granted under this Condition 5 shall not infringe the rights of any third party.

Termination

- 6.1 Without limiting or affecting any other right or remedy available to it, the Department may terminate:
- (a) the Application and the Applicant's' participation in the Evaluation Process, immediately upon notice in writing, in the event of any breach of these Conditions;
 - (b) the Accreditation (as applicable) and the Applicants licence to use the Accreditation Branding, immediately upon notice in writing, in the event of any breach of these Conditions.

Consequences of termination

- 7.1 On termination of the licence under Condition 6, the Applicant shall immediately cease making use of the Accreditation Branding (as applicable) and shall procure that any sub-licences cease making use also.
- 7.2 Termination or expiry of the licence or the Applicants participation in the Evaluation Process shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages which existed at or before the date of termination or expiry.
- 7.3 Any provision of these Conditions that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the licence or the Applicant's participation in the Evaluation Process shall remain in full force and effect.

Liability

- 8.1 The Department does not guarantee that an Application shall be successful and that any App shall receive Accreditation.
- 8.2 The Department shall not be responsible for and hereby excludes to the fullest extent permitted by law any warranties (express or implied) and implied conditions relating to the Application, the Applicant's participation in the Evaluation Process and Accreditation and any liability for loss or damage (of whatever nature) suffered by the Applicant as a result of the Application, the App failing to receive Accreditation or (if Accreditation is granted) the use of the Accreditation Branding.
- 8.3 The Department shall have no liability for any indirect, special or consequential loss or any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

General

- 9.1 **Assignment and other dealings.** The Applicant shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under these Conditions without the prior written consent of the Department (granted or withheld at the Department's sole discretion).
- 9.2 **Variation.** Except as set out in these Conditions, no variation of the Conditions, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 9.3 **Waiver.** A waiver of any right or remedy under these Conditions or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under these Conditions or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under these Conditions or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 9.4 **Severance.** If any provision or part-provision of these Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition 9.4 shall not affect the validity and enforceability of the rest of these Conditions.
- 9.5 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with these Conditions shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Application.
 - (b) A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Condition 9.5(b), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the UK.
 - (c) This Condition 9.5 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

- 9.6 **Third party rights.** Unless it expressly states otherwise, the Conditions do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Conditions.
- 9.7 **Freedom of Information.** The Applicant acknowledges that these Conditions and all matters relating to the Evaluation Process and the Home Learning Environment App Accreditation process may be subject to an information request under the FOIA and that the Department shall determine, at its sole discretion, what information requires to be disclosed in response to such request for information and if any exemption from disclosure applies. The Applicant further acknowledges that the Department is subject to the requirements of the FOIA and shall provide such information and assistance as the Department may reasonably require to comply with its obligations under FOIA in respect of the Applicant's participation in the Evaluation Process and the Home Learning Environment App Accreditation process. The Supplier acknowledges that the Department may be required under the FOIA to disclose Information without consulting or obtaining consent from the Applicant. The Department shall take reasonable steps to notify the Applicant of a request (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so.
- 9.8 **Prevention of Fraud and Bribery.** The Applicant represents and warrants that neither it, nor to the best of its knowledge any of its employees or contractors, have at any time (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act or otherwise. The Applicant shall immediately notify the Department of any breach of the foregoing. The Department shall be entitled upon written notice to terminate the Applicant's Application and participation in the Evaluation Process and/or (where relevant) the Accreditation and the right to make use of the Accreditation Branding in the event of any breach of this Condition.
- 9.9 **Governing law.** These Conditions, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter shall be governed by, and construed in accordance with the law of England and Wales.
- 9.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Conditions including without limitation all matters relating to the Application, the Evaluation Process, the Accreditation and the rights to make use of the Accreditation Branding.



Department
for Education

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Reference: DfE-00161-2019



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