

eyworks Terms of Service

Please read this document carefully. It contains important information about your rights and obligations. It also contains a disclaimer of warranty and a limitation of liability cause.

ABOUT THESE TERMS OF SERVICE

In these Terms of Service:

1. “Application” means any website maintained by EYWORKS LIMITED including without limitation the website at www.eyworks.co.uk and its subdomains, and the application for tablet devices that EYWORKS LIMITED publishes;
2. “Services” means all those services provided through the Application and (where we provide one or more tablets to you on which you access the Application), the provision of any tablet.
3. These Terms of Service set out the terms on which we offer the Services and provide the Application and on which you agree to use the Services provided by EYWORKS LIMITED and the Application maintained by EYWORKS LIMITED.
4. Please review these Terms of Service carefully and make sure that you understand them before using the Services or the Application. If you do not agree to these Terms of Service, you must cease use of the Services and Application immediately.

INFORMATION ABOUT US

1. We provide the Services and operate the Application. We are EYWORKS LIMITED, a limited company incorporated in England with registered number 07939645 and registered address at Acorn House, 381 Midsummer Boulevard, Milton Keynes, MK9 3HP.
2. References to “eyworks”, “we” and “us” are references to EYWORKS LIMITED.
3. You can only access, download or use the Services and/or the Application either if you are a nursery or if you have been authorised to use the Application by a nursery registered as a user of the Application. References to “you” are to the nursery accessing, downloading or using the Services or Application, or (where applicable) any person accessing, downloading or using the Services or Application having been authorised to do so by a nursery.

WHAT IS THE EYWORKS APPLICATION?

1. The Application supports the current Early Years curriculum and related learning and development frameworks, and is compliant with the Data Protection Legislation (as defined in the Data Processing Addendum annexed hereto) regarding the storage, collection and communication of personal data relating to children.
2. The Application provides password-based in-application security. The Application is a locked environment from which data cannot be exported. Users must set up an account, with a username and password of their choosing before gaining access to the Application. However, authorised users may export the information as a PDF or Excel file and/or request the data content in HTML or printed format to share it with parents. The

Application cannot be connected with or published to social networks or other third party applications.

ACCEPTANCE OF TERMS OF SERVICE

1. By using the Services and/or the Application, you accept and agree to be bound by these Terms of Service.
2. eyworks may at any time modify these Terms of Service. eyworks will notify you of any changes to these Terms of Service either by emailing you (at the email address entered by you into any form on the Application) or by posting a notice on the Application.
3. By continuing to use the Services and/or the Application after changes to these Terms of Service are made and notified to you, you agree to be bound by such changes.
4. You can review the most current version of our Terms of Service at any time by clicking on the "Terms of Service" link located at the bottom of the eyworks website at www.eyworks.co.uk. The most current version displayed on that page will supersede all previous versions. It is your responsibility to ensure that you are familiar with the current Terms of Service. You are advised to check the above link on a regular basis.

LIMITATIONS ON USE

1. Only a registered nursery may authorise individual users to access the Application and the Services. It is the nurseries responsibility (and that of any individual authorised by a nursery) to ensure that the requirements of this paragraph 5 are met.
2. Each individual must be at least 18 years old to use the Services or the Application and must be a director, officer, qualified nursery practitioner and/or an employee of a nursery. Prior to creating a profile on the Application for any child you must either be authorised to do so by such child's parent or guardian or must be in loco parentis with regards to such child.
3. No individual may be given access to the Application or use the Services if he/she has been convicted of or is pending trial for any criminal offence (other than an offence under the road traffic legislation) or if he/she has ever been the subject of a restraining order, in each case whether in the UK or abroad.
4. By using the Services or the Application (or authorising an individual to use the Services or the Application), the nursery warrants and undertakes that it has the right, authority and capacity to enter into and be bound by these Terms of Service. The nursery further warrants that:
 - (a.) the use of the Application by the nursery or any individual authorised by it (and the display on such person's computer screen or mobile device of any content on the Application) is not unlawful in the jurisdiction in which the Application is being accessed;
 - (b.) the nursery is authorised by the parent or guardian of any child whose details it intends to enter onto the Application or is in loco parentis with respect to such child;
 - (c.) no individual authorised by the nursery has been convicted of and is not pending trial for any criminal offence (other than an offence under the road traffic legislation) in any jurisdiction; and
 - (d.) no individual authorised by the nursery has not been and is not the subject of a restraining order in any jurisdiction.

YOUR CONDUCT

1. By downloading and/or using the Application, the nursery agrees to procure that any individual authorised by it shall, and each individual agrees not to upload, post, e-mail or otherwise send or transmit any material that contains viruses, Trojan horses, worms or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment associated with the Services or Application.
2. The nursery and each individual agrees and undertakes to keep his/her/its username and password confidential, not to disclose your password to any other person and not to permit any other person to log in to the Application using his/her/its username and password.
3. The nursery and each individual agree not to interfere with the servers or networks connected to the Application or to violate any of the procedures, policies or regulations of networks connected to the Application, including these Terms of Service. The nursery and each individual also agree not to:
 - (a.) attempt to reverse engineer or sell, export, license, modify, copy, distribute or transmit the Application to any third party, or jeopardize the correct functioning of the Application, or otherwise attempt to derive the source code of the software (including the tools, methods, processes and infrastructure) that enables or underlies the Application);
 - (b.) attempt to gain access to secured portions of the Application to which you do not possess access rights;
 - (c.) impersonate any other person while using the Services or Application;
 - (d.) conduct yourself in a vulgar, offensive, harassing or objectionable manner while using the Application;
 - (e.) resell or export the software associated with the Application;
 - (f.) use the Application to generate unsolicited advertisements or spam; or
 - (g.) use any automatic or manual process to search or harvest information from the Application, or to interfere in any way with the proper functioning of the Application.
4. The nursery and each individual undertake at all times to ensure that any tablet provided by the Company has electronic password protection in effect so that if the tablet is left unused for more than 5 minutes, it will require the password to be re-entered in order to access any content on the tablet.
5. All content uploaded by you to the Application shall at all times remain the exclusive property of the nursery. eyworks shall have no rights to publish, amend, display, or otherwise use any such content except as set out herein or with the prior express written consent of the nursery.
6. By using the Applications, the nursery represents and warrants to eyworks that it has a valid GDPR consent from a responsible adult to permit:
 - (a.) the nursery to provide to eyworks the personal data relating to each child whose personal data it uploads via the Application;
 - (b.) eyworks to process the personal data in the manner contemplated in its privacy policy and otherwise as required to make the Application available to the nursery from time to time; and
 - (c.) eyworks to allow such personal data to data processors located outside of the EEA.
7. Regulation (EU) 2016/679 (General Data Protection Regulation). "Responsible Adult" means the legal parent or guardian of a child whose personal data is uploaded by the nursery to the Application.

8. You undertake by no later than 1 month after you first input personal data in respect of a child into the Application to provide the Responsible Adult of that child with a copy of (or link to) our Privacy Policy.

OUR RIGHTS

In providing the nursery and any individual authorised by the nursery with access to the Application, eyworks reserves the following rights, and in accessing, browsing or otherwise using the Application you grant to eyworks and agree that eyworks shall have the following rights:

1. the right to refuse or withdraw access to the Application in accordance with applicable laws for any reason at any time (with or without notice) if in eyworks's sole and absolute discretion the nursery or any individual authorised by the nursery violates or breaches any of these Terms of Service;
2. the right to suspend, amend or disable your profile without giving you notice for any reason (although we will use reasonable endeavours to give you such notice in good time);
3. the right to take back, replace or modify any tablet device provided to you by the Company including without limitation where we replace a tablet device with an alternative model;
4. the right to amend or update the Application, and Services fees, billing methods or these Terms of Service from time to time;
5. the right to update and/or replace any firmware and Application on any tablet provided by the Company;
6. the right without notice to remove content, materials or user accounts for any reason whatsoever in our sole and absolute discretion, including without limitation content and materials which are unlawful, offensive, threatening, libellous, defamatory, obscene or which infringe third party rights, and user accounts used to propagate any such content or materials;
7. the right to access any or all of your accounts in order to respond to your requests for technical support so long as we maintain appropriate administrative physical and technical safeguards for the protection of the security and confidentiality and integrity of your data; and
8. the right to report you to the police or other judicial body if eyworks believes in its sole and absolute discretion that your conduct (whether in using the Application, our Services or otherwise) is unlawful or threatens the welfare of any user of the Application or the Services or any member of eyworks's staff.

CONTENT

You hereby represent and warrant that in respect of any content uploaded to the Application and/or transmitted to any member via the Application by you that:

1. you have the right to publish such content (whether by virtue of ownership of the intellectual property rights in such content or as a result of the grant to you of a license to use and publish such content);

2. in the event that you upload any content to the Website, you have the consent of any data subject (or in the case of a child, his/her parent) to upload such content;
3. the publication of such content on the Application is not likely to bring the reputation of eyworks into disrepute or breach any applicable laws relating to data protection including, but not limited to, the Data Protection Act 2018;
4. such content:
 - (a.) is not illegal in the UK or in any jurisdiction in which such content might reasonably be expected to be viewed and does not promote any illegal activity;
 - (b.) is not in breach of OFSTED rules or guidelines in force from time to time;
 - (c.) does not promote terrorism or assist any person in committing or procuring the commitment of any act of terrorism;
 - (d.) such content does not encourage or promote any political cause or affiliation;
 - (e.) such content is not of a pornographic, sexually explicit, violent, offensive or obscene nature;
 - (f.) such content does not promote racism, bigotry, hatred or physical harm of any kind against any person or group of persons;
 - (g.) such content does not contain libellous or otherwise untrue statements about any person (whether living or dead) and does not harass or advocate the harassment of any person;
 - (h.) such content is not likely to cause offence to any authorised viewer of such content;
 - (i.) is not likely to lead a viewer to assume that you are related to, authorised by or otherwise represent eyworks.
1. You acknowledge and agree that eyworks shall have no obligation to review and approve any content uploaded to the Application. eyworks shall be entitled to remove any content without notice and without giving any reason.
2. Further you acknowledge and agree that eyworks may be required to provide information about the origin of any unlawful content published and/or the occurrence of any unlawful activity occurring on the Application to any police or judicial authority in any country in which such content has been viewed and is illegal and you hereby irrevocably authorise eyworks to provide such information to such persons (on request or in our discretion) without consulting or informing you.
3. Other than as set out in the Data Processing Addendum, eyworks shall bear no responsibility and have no liability in respect of any content uploaded by you or another authorised user to the Application and/or how you or another authorised user uses any uploaded content including, but not limited to, any breaches of applicable data protection laws. You hereby acknowledge and agree that any content uploaded to the Application is done so at your own risk.

LICENSING

1. The initial contract for access to the Application and use of its Services is for a minimum duration of 12 months and auto renews at the end of this 12 month period.
2. If any additional eyworks software is added to your subscription, the minimum duration of 12 months is reset across your subscription under Licensing clause 1.
3. eyworks Limited offers a satisfaction guarantee period of 30 days from the licence start date specified on the licence agreement form.

PAYMENTS

1. eyworks charges for access to the Application and use of its Services. eyworks charges a fee (the "Recurring Fee") which shall be payable in advance on a monthly or annual basis. The applicable Recurring Fee to the nursery shall be as set out in the contract summary signed by the Company and the nursery.
2. All Recurring Fees in respect of the nursery and any individuals authorised by the nursery shall be payable by the nursery.
3. In the event that you sign up to the Application and/or Services, the nursery agrees to the following:
 - (a.) it shall be solely responsible for promptly providing any contact or billing information changes or updates (including phone number, email address, credit card numbers) by sending an email to eyworks at accounts@eyworks.co.uk;
 - (b.) it agrees to pay all fees in respect of us providing access to the Application in advance as well as any chargeable products ordered through the Application and hereby provide eyworks with express irrevocable authorisation to charge the nursery or its payment provider monthly or annually (as applicable) in advance in relation to fees payable in respect of us providing the Application and at the time of purchase of any chargeable product. The nursery will also pay all applicable taxes related to the Recurring Fee;
 - (c.) it shall notify eyworks of any billing problems or discrepancies within 60 days of the charges appearing on its account. If such billing problems or discrepancies are not brought to eyworks's attention within such period, the nursery shall be deemed to have waived the right to dispute such problems or discrepancies; and for the purposes of this paragraph, "Renewal Date" shall mean the first date of the next billing cycle. The nursery may cancel its subscription by giving eyworks three (3) month's written notice (which notice shall be given to the eyworks Limited Cancellations Team at cancellations@eyworks.co.uk no less than three (3) days prior to the Renewal Date). Cancellation shall occur on the first Renewal Date falling after the expiration of the notice period detailed above. All cancellation requests will be processed within five (5) working days and will be confirmed via email.
4. eyworks reserves the right to:
 - (a.) charge you an additional reasonable fee to cover the cost of any payment correctly requested by us which failed or was rejected due to the nursery not having provided us with any changes or updates to its contact or billing information, or there being insufficient funds to make the due payment;
 - (b.) claim statutory interest at 8% above the Bank of England reference rate in force on the date the debt becomes overdue and at any subsequent rate where the reference rate changes and the debt remains unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998; and
 - (c.) immediately without notice cease to provide the Application and Services to the nursery and all individuals authorised by the nursery where any payment has not been paid by the due date. The nursery shall be responsible for any losses (including legal fees, court costs or other costs) incurred by eyworks in collecting payment of delinquent undisputed amounts.
5. All recurring fees and other amounts paid or duly payable to eyworks shall be non-refundable.
6. The nursery shall make all payments under these Terms without withholding or deduction of, or in respect of, any tax unless required by law. If any such withholding or deduction is required, the nursery shall, when making the payment to which the withholding or deduction relates, pay to us such additional amount as will ensure that

we receive the same total amount that we would have received if no such withholding or deduction had been required.

TABLETS

1. We may agree from time to time to provide the nursery with dedicated tablets through which to access the Application plus the option to pay a specific insurance premium for each tablet provided for an agreed period up to a maximum period of 24 months.
2. If you decide to not pay the insurance premium pursuant to Tablets clause 1, you undertake to purchase an insurance policy that covers damage, loss and theft with a minimum coverage equal to the full replacement value of the tablets provided to you. You are required to provide a copy of the insurance policy to eyworks on demand. If no such policy is put in place by the dates that the tablets are delivered, you agree to indemnify eyworks for any and all damage, loss and/or theft to the tablets.
3. The nursery and each of the individuals undertake to look after the tablets provided to them and acknowledge and agree that in circumstances where you have paid the insurance premium pursuant to Tablets clause 1:
 - (a.) in the event that you damage a tablet in circumstances where it is repairable, we will provide a replacement tablet on payment of the lower in value of
 - i. a repair fee to cover the cost of any repair or
 - ii. the cost of any excess payable by us pursuant to the insurance policy. We will notify you of the amount of any repair fee;
 - (b.) in the event that you damage a tablet in circumstances where it cannot be repaired, we will provide a replacement tablet on payment of a replacement fee to cover the cost of any excess payable by us pursuant to the insurance policy. We will notify you of the amount of any replacement fee;
 - (c.) in the event that a tablet is stolen or otherwise lost, we will provide a replacement tablet on payment by the nursery of 100% of the cost of a new tablet at such time.
4. eyworks's insurance policy limits the number of times a tablet can be replaced due to damage. You therefore acknowledge and agree that each tablet can only be replaced once if you make a claim under Tablets clauses 3(a) or 3(b).
5. You acknowledge that this terms of service and insurance, if applicable, will be invalidated, and eyworks shall bear no responsibility and have no liability, if you:
 - (a.) instruct a third party to repair or seek to repair such tablet device without our prior written consent;
 - (b.) amend, modify or otherwise change any tablet device; or
 - (c.) sell, lease, transfer or otherwise part possession with any tablet device.

INTELLECTUAL PROPERTY

1. eyworks and/or its licensor(s) are the sole owners of the Application, which includes any software, domains, and content created by eyworks and made available through the Application. The Application is protected by UK and International copyright and other intellectual property laws.
2. We permit you to use the Application for the purposes for which the Application is provided and eyworks grants you a limited license solely for that purpose.

3. Without limitation, this means that you may not sell, export, license, modify, copy, distribute or transmit the Application (or any part of it) or any material provided through the Application without eyworks's prior express written consent.
4. Any unauthorized use of the Application will result in the automatic termination of the limited license granted by us. eyworks reserves the right to terminate the limited license without notice at any time following an unauthorized use by you of the Application.
5. eyworks and its graphics, logos, icons and service names related to the Application are registered and unregistered trademarks or trade dress of eyworks Limited. They may not be used without eyworks's prior express written permission.
6. All other trademarks not owned by eyworks that appear in connection with the Application are the property of their respective owners, who may or may not be affiliated with, connected to or sponsored by eyworks.
7. All content uploaded by you to the Application shall at all times remain your exclusive property. eyworks shall have no rights to publish, amend, display or otherwise use any such content except as set out herein or with your prior express written consent.

SECURITY

Whilst we have implemented commercially reasonable technical and organisational measures to secure content uploaded by the nursery from unauthorised use, we cannot guarantee that unauthorised third parties will never be able to defeat those measures. You acknowledge that you provide nursery content at your own risk.

ELECTRONIC COMMUNICATIONS

By accessing and/or using the Application and/or material provided through the Application, you consent to receiving electronic communications and notices from eyworks. You agree that any notice, agreement, disclosure or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing.

PRIVACY

1. You provide us with information when you register on the Application. We also collect information both relating to you (for example on your usage history and your preferences for certain kinds of offer) and to users of the Application and the Services in general. Any information that you submit or that we collect when you are using the Application or Services is subject to the eyworks Privacy Policy, the terms of which are hereby incorporated into these Terms of Service.
2. Each of eyworks and the User undertake at all times to comply with the Data Protection Legislation (as defined in the Data Processing Addendum).
3. As required by law, data protection measure are described in more detail in the data processing addendum annexed hereto (the "Data Processing Addendum"). In the event of any conflict between these Terms of Service and the Data Processing Addendum, the Data Processing Addendum shall prevail.

NO WARRANTY & LIABILITY LIMIT

1. eyworks provides the Services and Application “as is” and without any warranty or condition, whether express, implied or statutory. eyworks specifically disclaims any implied warranties of title, merchantability, fitness for a particular purpose and non-infringement. eyworks assumes no liability or responsibility for any errors or omissions in the Application or provision of the Services; any failures, delays or interruptions in the Application; any losses or damages arising from the use of the Services or Application; or any conduct by users of the Services or Application. We reserve the right to deliver the Services and Application in our sole and absolute discretion.
2. In no event shall eyworks, its shareholders, directors, officers, employees or agents be liable (jointly or severally) to you for loss of use or any special, incidental, indirect or consequential damages arising out of or in connection with the Services and/or Application or these Terms of Service, on any theory of liability, and whether or not advised of the possibility of damage. eyworks does not seek to exclude liability for death or personal injury caused by our negligence, or fraud or fraudulent misrepresentation on the part of eyworks. If any applicable authority holds any portion of this section to be unenforceable, then liability will be limited to the fullest possible extent permitted by applicable law.
3. From time to time you may use or access services, promotions and websites of third parties. In using or accessing third party services, promotions and websites, you agree to be bound by the terms of service of such third parties governing their services, promotions and websites and hereby acknowledge that we shall not be responsible for the provision of services, accuracy of promotions or content of websites belonging or operated by third parties.
4. You acknowledge and agree that eyworks is not responsible for the accuracy of any information published on the Application by users and does not warrant that any information appearing on the Application is accurate, true or complete. eyworks specifically excludes liability for any loss, harm, distress or damage suffered by you or any third party as a result of inaccurate information appearing on the Application.
5. The Application and any content displayed thereon may contain facts, views, opinions, recommendations and advice. These views, opinions, recommendations and advice are not those of eyworks and are not endorsed by eyworks. eyworks shall not be liable in the event that any content is defamatory, misleading, incomplete or incorrect. Similarly eyworks shall not be liable in the event that any fact is incorrect or misleading.

INDEMNITY

You agree to indemnify and hold eyworks and its related companies, and each of their respective shareholders, directors, officers, employees, agents and merchant partners harmless from and against any third-party claim or cause of action, including reasonable attorneys' fees and court costs, arising, directly or indirectly, out of your use of the Services and/or website or your violation of any law or the rights of any third party.

DISPUTES

1. You agree that these Terms of Service and any claim, dispute or controversy arising out of in connection with these Terms of Service or their subject matter or formation (including non-contractual disputes or claims), the Services, the Application, eyworks's

advertising or any related transaction between you and eyworks shall be governed by and construed in accordance with English law.

2. Any dispute or claim arising out of or in connection with such matters (including non-contractual disputes or claims) will be subject to the exclusive jurisdiction of the courts of England and Wales.

TERMINATION

1. eyworks may change or discontinue the Services and/or Application at any time by giving no less than one calendar month prior notice. We reserve the right to terminate these Terms of Service for any reason by giving no less than one month's written notice. These Terms of Service shall automatically terminate in the event that you violate any of the Terms of Service set forth herein (with prejudice to our accumulated rights against you). In the event of any such termination, you will immediately cease use of the Services and Application.
2. The nursery may terminate at any time following the minimum 12 month contract period, by giving no less than three (3) months written notice to the eyworks Limited Cancellations Team (cancellations@eyworks.co.uk).
3. Following termination of the contract, the nursery (and any individual authorised by the nursery) will be unable to access, download or otherwise use any data uploaded to the Application by the nursery or the individual. It is the nursery's responsibility to ensure that all such data is transferred to an alternative provider and/or downloaded prior to the expiry of the notice period referred to above.
4. In the event of any immediate termination without notice, we may in our sole and absolute discretion provide limited access to the Application to permit you to transfer data to an alternative provider and/or download such data.

GENERAL

1. These Terms of Service are agreed between you and us. No person shall have any rights under or connection with these Terms of Service under the Contracts (Rights of Third Parties) Act 1999.
2. If any court or competent authority decides that any term of these Terms of Service is held to be invalid, unlawful or unenforceable to any extent, such term shall, to that extent only, be severed from the remaining terms, which shall continue to be valid to the fullest extent permitted by law.
3. Headings are for reference purposes only and in no way define, limit, construe or describe the extent or scope of such section.
4. Our failure to enforce any provision of these Terms of Service shall not constitute a waiver of that or any other provision and will not relieve you from the obligation to comply with such provision.
5. You are not permitted to assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights under these Terms of Service without our prior express written consent.
6. These Terms of Service set forth the entire understanding and agreement between you and eyworks with respect to the subject matter hereof.

7. These Terms of Service and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.
8. You irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Terms of Service agreement or their subject matter or formation (including non-contractual disputes or claims).

CONTACT US

If you have any questions about these Terms of Service or the download and/or use of the Application and/or Services, please contact us at:

Full name of legal entity: eyworks Limited (company number 07939645)

Postal address: Acorn House, 381 Midsummer Boulevard, Milton Keynes, MK9 3HP

Email: hello@eyworks.co.uk