

**National Day Nurseries Association
NDNA Development Zone
Terms & Conditions of Service**

The Agreement

The following agreement (“this Agreement”) describes the terms and conditions on which National Day Nurseries Association (NDNA) offers you access and use of material found on this website (“the Service”). This offer is conditional on your agreement to all the terms and conditions contained in this Agreement, including your compliance with policies, guidelines and terms linked by way of URLs in this Agreement (“Terms & Conditions of Service”).

By using the Service or by exercising any rights provided to parts of it, you accept and agree to be bound by the Terms and Conditions of Service. NDNA only grants you the rights contained in this Agreement in consideration of your acceptance of the Terms & Conditions of Service.

If you do not agree to the Terms & Conditions of Service you should not use the Service and therefore decline this Agreement, in which case you are prohibited from accessing and/or using the Service. NDNA may amend this Agreement at any time at its sole discretion, effective upon posting the amended agreement on the Early Years Development Zone. No variation or counter offer of this Agreement will be accepted by NDNA.

1 The Service

NDNA is the national charity representing children’s day nurseries across the UK. Our goal is clear – to promote quality in early years care and education for the benefit of children, their families and the local community. To do this we provide our members with information, training and support so they can give the best possible care to young children.

- 1.1 You acknowledge that NDNA is a service provider that may allow people to interact online regarding topics and content chosen by NDNA. As part of the nature of the Service, NDNA will not always be able to regulate the content/communications created and made available by learners of the Service or otherwise. As a result NDNA has limited control over the quality, morality, legality, truthfulness or accuracy of various aspects of the Service.
- 1.2 You acknowledge that: (1) by using the Service you may have access to graphics, sound effects, music, video, audio, computer programmes, animations, text and other creative output (“Content”); and (2) Content may be provided by NDNA or by others such as the learners of the Service (“Content Contributors”).
- 1.3 You acknowledge that NDNA and other Content Contributors have rights in their respective Content under copyright and other applicable laws, and that except as described in this Agreement that such rights are not transferred by mere use of the Service. You accept full responsibility and liability for your use of any Content in violation of any such rights. You agree that your creation of Content is not in any way based upon any expectation of compensation from NDNA. You acknowledge that this Agreement does not assign or transfer ownership, title or interest of the Intellectual Property rights in the Service to you.

2 Licences and IPR

- 2.1 Subject to the terms of this Agreement, NDNA hereby grants you a non-exclusive, royalty free and revocable licence to access and use the Service and use the content in the Service in accordance with the Terms & Conditions of Service for as long as you are in compliance with such Terms & Conditions of Service.
- 2.2 Content owned or licensed to NDNA as part of the Service can be used by any learners of the Service for any such purposes that are conducive to education, teaching, learning, private study and/or research.
- 2.3 Notwithstanding the foregoing, you understand and agree that by submitting your Content to any area of the Service, you automatically grant (and you represent and warrant that you have the right to grant) to NDNA a non-exclusive, royalty free, perpetual licence to: (a) use, reproduce and communicate your Content within the Service and a right to sub-licence such use to learners of the service as long as the Content is used by such learners within the Service; and (b) to use and reproduce and to authorise third parties to use and reproduce any of your Content in any or all media for marketing and/or promotional purposes in connection with the Service.
- 2.4 You understand and agree that by submitting your Content to any area of the Service you automatically grant (or you warrant that the owner of such Content has expressly granted) to NDNA a non-exclusive, worldwide, royalty-free, perpetual licence under any and all patent rights you may have or obtain with respect of your Content, to use your Content for all purposes within the Service.
- 2.5 You agree to use all best efforts to ensure that your Content does not infringe any Intellectual Property rights of a third party.
- 2.6 You agree that even though you may retain certain copyright or other intellectual property rights with respect of the Content you create while using the Service, you do not own the account you use to access the Service, nor do you own any data NDNA stores on NDNA servers. Your intellectual property rights do not confer ownership of others' data stored by or on behalf of NDNA.

3 Enrolment conditions

- 3.1 Enrolment keys provided by NDNA are intended for single, individual use in conjunction with a valid NDNA Development Zone account. Keys are non-transferrable once purchased. No refunds can be given once the key has been used to access a course.
- 3.2 The enrolment period for free online courses provided by the NDNA is unlimited and courses can be accessed as many times as wished.
- 3.3 The enrolment period for online courses purchased via the NDNA Shop is 180 days from first use. Access may not be extended beyond this period without the purchase of an additional enrolment key.
- 3.4 Where an exception to the standard enrolment period exists, this will be stated in the confirmation email sent with the enrolment key.
- 3.5 For certificates relating to face-to-face training courses, the standard 180 day enrolment period also applies. However, lost certificates may be reissued at NDNA's discretion.

3.6 Enrolment of the NDNA Courageous Conversations, Education Healthcare Plans and Working with Parents online courses and quizzes, supported by the Department for Education, includes subscription to the myNDNA tips and activities emailing list.

4 Community Guidelines and Moderation

4.1 You agree to read and comply with the Community Guidelines and Moderation Policy as posted on the Early Years Development Zone.

4.2 In addition to abiding at all times to the Community Guidelines and Moderation Policy, you agree that you shall not: (a) take any action of upload post, e-mail or otherwise transmit Content that infringes or violates any third party rights; (b) impersonate any person or entity without their consent, including but not limited to an NDNA employee, or falsely state or otherwise misrepresent your affiliation with a person or an entity; (c) upload, e-mail or otherwise transmit Content that violates any United Kingdom law or regulation; (d) upload, e-mail or otherwise transmit Content determined by NDNA in its reasonable opinion to be libellous. You agree that NDNA may take whatever steps it deems necessary to abridge, or delete material on the Service in its sole discretion, without notice to you.

5 Releases, Disclaimers of Warranties, Limitation of Liability and Indemnification

5.1 As a condition of access to the Service, you release NDNA from claims, demands, damages of every kind and nature, known and unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way connected with any dispute you have or claim to have with one or more learners of the Service. You further understand and agree that NDNA will have the rights but not the obligation to resolve disputes between learners relating to the Service.

5.2 Any Content or other data residing on NDNA's servers or the Service may be deleted, altered, moved or transferred at any time for any reason at NDNA's sole discretion without notice and without liability to you or any third party.

5.3 NDNA provides the Service and Content strictly on an "as is" basis and use of the Service and/or Content is at your own risk. NDNA hereby expressly disclaims all warranties or conditions of any kind to the extent permitted by law, including without limitation any merchantability or fitness for a particular purpose. To the extent permitted by law, NDNA accepts no liability for loss suffered or incurred by the learners or any third party as a result of their reliance on the Service and/or Content.

5.4 To the extent permitted by law, in no circumstances will NDNA be liable to you or you liable to NDNA for any loss resulting from a cause over which NDNA or you do not have direct control, including but not limited to failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems.

5.5 In no event shall NDNA be liable to you or to any third party for any special, incidental, consequential, punitive or exemplary damages, including without limitation any damages for loss of profits arising (whether in contract, tort or otherwise) out or in connection with the Service and or Content.

5.6 You agree to defend, indemnify and hold harmless NDNA and learners of the Service and Content from all damages, liabilities, claims and expenses, including without limitation reasonable legal fees and costs, arising from any breach of this Agreement by you, or from your use of the Service. You agree to defend, indemnify and hold harmless NDNA from all damages, liabilities, claims and

expenses, including without limitation reasonable legal fees and costs, arising from any claims by third parties that your activity or Content in the Service infringes upon or violates any of their intellectual property or proprietary rights.

6 Privacy

6.1 You acknowledge and agree that NDNA in its sole discretion, may track, record, observe or follow any and all of your interactions within the Service. NDNA may share general, demographic or aggregated information with third parties about NDNA's learners' base and Service usage, but that information will not be included or be linked to any personal information without consent. NDNA agrees that when exercising these rights, it shall abide by the Data Protection Act, 1998 at all times. NDNA will never sell or share learner data to third party organisations. NDNA will only use data for marketing purposes. If you do not wish to receive such marketing information you must opt-out by emailing moderator@ndna.org.uk and enter 'Marketing Opt-Out' as the subject.

7 Governing Law and Dispute Resolution

7.1 This Agreement and the relationship between you and NDNA shall be governed by and construed in accordance with English law. You and NDNA agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the English courts.

7.2 You and NDNA agree to use best efforts to resolve disputes in an informal manner. Where you and NDNA agree that a dispute arising out of or in connection with this Agreement would best be resolved by the decision of an expert, you and NDNA will agree upon the nature of the expert required and together appoint a suitable expert by agreement.

7.3 Any person to whom a reference is made under Clause 6.2 shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing and shall state the reasons for his decision) shall be final and binding on the parties except in the case of manifest error or fraud.

7.4 You and NDNA shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.

7.5 The costs of the expert shall be borne by you and NDNA in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by you and NDNA in equal proportions.

8 General Provisions

8.1 This Agreement constitutes the entire understanding and agreement between you and NDNA with respect of the subject matter hereof.

8.2 The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.

8.3 The rights granted to you or NDNA arising under this Agreement shall not be waived except in writing. Any waiver of any of your or NDNA's rights under this Agreement or of any breach of this Agreement by you or NDNA shall not be construed as a waiver of any other rights or of any other or further breach. Failure by you or NDNA to exercise or enforce any rights conferred upon it by this Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

8.4 The section headings contained in this Agreement are for convenient purposes only and shall not affect the interpretation of this Agreement.

8.5 Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

8.6 All or any of NDNA's rights and obligations under this Agreement may be assigned to a subsequent owner or operator of the Service in a merger, acquisition or sale of all or substantially all of NDNA's assets.

- END -