

## ILD Software Agreement - Terms of Use

Interactive Learning Diary Ltd is a company registered in the UK under number SC414002. The company offers educational software systems. The Interactive Learning Diary and the Interactive Nursery Manager. These can be used independently or fully integrated as one system.

Through our software product, Interactive Learning Diary (ILD) provides educators and other individuals with tools and resources (including [www.interactivelearningdiary.co.uk](http://www.interactivelearningdiary.co.uk) and the "Parent Portal") to enable them to create observations of children's learning and to report and document on the activities they participate in while in the care of the educator (the "Services"). The Services are provided subject to these terms and conditions, which also incorporate our Privacy Policy, and any other guidelines, rules or operating policies that Interactive Learning Diary may establish and post on our website from time to time (collectively the "Agreement"). The servers we use to provide the Services (the "Servers") are located in the United Kingdom.

Please read this Agreement carefully before proceeding with any use of our website or the Services. By logging into your account for the first time, you accept and agree to be bound by this Agreement. By requesting a free trial, you are bound by the agreement. If you do not accept the terms and conditions of this Agreement, please exit this website and cease using the Services immediately.

### 1. Services and Support

**1.1** By posting updated versions of the Agreement on the ILD website, or otherwise providing notice to you, ILD may modify the terms of this Agreement and may discontinue or revise any or all other aspects of the Services at its sole discretion. All such changes shall become effective upon posting of the revised Agreement on the ILD website. Your continued use of the Services will constitute your acceptance of the variation to the Agreement. ILD will use reasonable efforts to make you aware of any changes to the terms of this Agreement.

**1.2** All prices are subject to change at any time. All fees paid or payable to ILD for the Services are non-refundable unless an account is terminated by ILD. Payment for Services must be made by bank transfer or cheque unless other payment arrangements have been made between you and an authorised ILD representative. Fees are payable in UK Sterling. All prices are subject to change, and you are responsible for reviewing the pricing schedule from time to time and for remaining aware of the fees charged by ILD for the Services.

**1.3** For all accounts, ILD may charge an account re-activation fee should an account need to be re-activated by a customer after an account has become de-activated due to non-payment, an untimely authorisation for payment, or any other breach of this Agreement.

**1.4** As part of the registration process, you will identify an email address for your ILD account. You are responsible for maintaining the security of your account, passwords and

contents and for all uses of your account and of the Services in your name. ILD reserves the right to refuse registration of, or cancel accounts it deems inappropriate.

## 2. Restrictions and Responsibilities

This is an Agreement for the Services, and you are not granted a licence to any software under this Agreement (except to the extent required for you to use the Services). Except to the extent that applicable laws prevent ILD from doing so, you will not, directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of, or found at or through the Services or any software, documentation, or data related to the Services (“Software”); remove any proprietary notices or labels from the Services or any Software; reproduce or copy the Software or the Services or any part thereof; modify, translate, or create derivative works based on the Services or any Software; or copy, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services or any Software. The Services shall be used for your internal business purposes only and you shall not use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party.

**2.1** You acknowledge and agree that the Services, the Software, the Interactive Learning Diary company names and logos and all related product and service names, design marks and slogans, and all other material comprising the Software or the Services, are the property of ILD or its affiliates or suppliers (collectively, the “Marks”). Unless stated otherwise, all Marks are protected as the copyright, trade dress, trademarks and/ or other intellectual properties are owned by ILD. You are not authorised to use any of the Marks in any advertising, publicity or any other commercial manner without the prior written consent of ILD. Your use of the Services confers no title or ownership in the Services, the Software or the Marks and is not a sale of any rights in the Services, the Software or the Marks. All ownership rights remain the property of ILD or its third party suppliers, as the case may be.

**2.2** You represent, covenant, and warrant that you will use the Services only in compliance with this Agreement and all applicable laws. You hereby agree to indemnify and hold harmless ILD against any damages, losses, liabilities, settlements, and expenses (including without limitation costs and reasonable solicitors’ fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise arising from or relating to your use of the Services. You acknowledge that you are responsible for the content of any account created using the Services. Although ILD has no obligation to monitor the content provided by you or your use of the Services, ILD may do so and may remove any such content or prohibit any use of the services it believes may be (or is alleged to be) in violation of the foregoing.

**2.3** The Services may only be used for lawful purposes. Transmission or solicitation of any material that violates laws that may apply in your area is prohibited. This may include material that is obscene, threatening, harassing, libellous, or in any way a violation of intellectual property laws or a third party’s intellectual property rights.

**2.4** In using the varied features of the Services, you may provide information (such as name, contact information, or other registration information) to ILD. ILD may use this information and any technical information about your use of the Services to tailor its presentations to you, facilitate your movement through the Services, or to communicate separately with you.

**2.5** ILD will not use any of your parent, child or staff data or any other customer information for any other purposes than those related to the Services. Your customer information will not be shared with any other parties. In addition, ILD will not use your customer information for the purpose of sending unsolicited commercial email.

**2.6** You will adopt and maintain a policy that complies with all applicable privacy laws and which is at least as stringent as our Privacy Policy (as modified by ILD from time to time). You acknowledge that all personal information that you provide to us has been collected with the relevant individual's consent, and that you have informed the individual of the purpose for which that information was collected, and that you may provide this information to us for the purposes of use in relation to the Services. You acknowledge that we may store the personal information that you provide to us on servers located in the United Kingdom, and you warrant that you have obtained the consent of the relevant individuals to the storage and transmission of their personal information in this manner.

**2.7** You must not use the Services to distribute illegal contests, pyramid schemes, chain letters, multi-level marketing campaigns, or any other prohibited material.

**2.8** You must not use the Services to send email campaigns that link to or display nudity, obscene content, gambling related content, pay day lender related content, pharmaceutical related content, illegal software, viruses, or to distribute any other content that we deem inappropriate.

**2.9** You must not use the Services for the sending of unsolicited email (sometimes called "spam").

**2.10** All rights not expressly granted are reserved.

### **3. Termination of Agreement**

**3.1** To terminate this Agreement prior to the next renewal date, you must contact us by sending written notice to [admin@interactivelearningdiary.co.uk](mailto:admin@interactivelearningdiary.co.uk) at least 28 days prior to your annual renewal date. If not, ILD will automatically renew your annual subscription and full subscription fee will be payable. No refunds will be issued if you terminate this Agreement.

**3.2** ILD may terminate this Agreement or the Services at any time with cause, and with notice if it is found you have breached this agreement (No refund will be issued). ILD shall have no liability to you or any third party because of such termination. If ILD terminates this Agreement because you breached this Agreement or any applicable laws, no refund will be issued even if you have unused, prepaid amounts for Services under this Agreement.

**3.3** ILD may delete any of your archived data within 30 days after the date of termination if notice in writing is not received within this time scale to retain data for a specified period of time, only to allow download of data belonging to you. Any statutory retention requirements with respect to your business correspondence remain your responsibility. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, ownership, warranties, disclaimers and limitations of liability.

**3.4** If you do not log into your account for more than 90 days, the account will become inactive. When an account is classified (at ILD sole discretion) as inactive, ILD will flag that account as inactive.

INACTIVE ACCOUNTS HAVE 90 DAYS TO BECOME ACTIVE OR THE ACCOUNT AND ITS DATA, INCLUDING OBSERVATIONS TAKEN, IMAGES, REPORTS, AND OTHER INFORMATION MAY BE PERMANENTLY DELETED FROM ILD DATABASE.

## **Warranties, Disclaimer and Remedies**

USE OF THE SERVICES AND ANY RELIANCE BY YOU UPON THE SERVICES, INCLUDING ANY ACTION TAKEN BY YOU BECAUSE OF SUCH USE OR RELIANCE, IS AT YOUR SOLE RISK. TO THE MAXIMUM EXTENT PERMITTED BY LAW, ILD DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ACCURATE OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. THE SERVICES ARE PROVIDED "AS IS" AND TO THE EXTENT PERMITTED BY LAW ILD DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (BUT NOT LIMITED TO) IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

Your sole and exclusive remedy for any failure or non-performance of the Services shall be for the ILD to use commercially reasonable efforts to adjust or repair the Services, or where such adjustment or repair is not feasible, for ILD to either (at its discretion) perform the Services again or provide you with a refund for the amount you actually paid to ILD for the relevant Services.

## **Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES SHALL ILD OR ANY OF ITS UNDERLYING SERVICE PROVIDERS, BUSINESS PARTNERS, INFORMATION PROVIDERS, ACCOUNT PROVIDERS, LICENSORS, EMPLOYEES, DISTRIBUTORS OR AGENTS (COLLECTIVELY REFERRED TO FOR PURPOSES OF THIS SECTION AS "ILD'S ") BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY LOSS OR DAMAGE (INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, EXEMPLARY, SPECIAL, INCIDENTAL, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR REVENUE, BUSINESS INTERRUPTION, LOSS OF DATA, OR FAILURE TO REALISE ANTICIPATED SAVINGS OR BENEFITS OR BUSINESS OPPORTUNITIES), OR FOR ANY CLAIM BY ANY OTHER PARTY. ILD'S EXCLUSION OF LIABILITY APPLIES WHETHER THE CLAIM IS IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION, NEGLIGENCE) OR EQUITY AND EVEN IF ILD HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH

LOSS OR DAMAGE. YOU AGREE THAT ILD LIABILITY TO YOU AT LAW WILL BE REDUCED BY THE EXTENT, IF ANY, TO WHICH YOU CONTRIBUTED TO THE LOSS.

IN THE EVENT THAT, NOTWITHSTANDING THE FOREGOING, ILD IS FOUND LIABLE TO YOU FOR DAMAGES FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), AND PRODUCT LIABILITY OR OTHERWISE), TO THE FULLEST EXTENT PERMITTED BY LAW THE LIABILITY OF ILD TO YOU WILL BE LIMITED TO:

(A) IN THE CASE OF GOODS, THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS, THE REPAIR OF THE GOODS, THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS, OR THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED; AND

(B) IN THE CASE OF SERVICES, THE SUPPLYING OF THE SERVICES AGAIN OR THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN OR REFUND OF FEES ACTUALLY PAID FOR THE SERVICES.

### **Export of Services or Technical Data**

You may not remove or export from the United Kingdom or allow the export or re-export of the Services, or any direct product thereof, including technical data, in violation of any restrictions, laws, or regulations of Great Britain and all other applicable countries.

### **Miscellaneous**

If any provision of the Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. ILD and you agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of the Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No delay or omission by either party in exercising any right or remedy under this Agreement or existing at law or equity shall be considered a waiver of such right or remedy. No agency, partnership, joint venture, or employment is created as a result of the Agreement, and you do not have any authority of any kind to bind ILD in any respect whatsoever.

In any action or proceeding to enforce rights under the Agreement, the prevailing party will be entitled to recover its costs and Solicitors' fees. The Agreement shall be governed by the laws of Great Britain without regard to its choice of law or conflict of law provisions. All legal actions in connection with the Agreement shall be brought in the courts located in Edinburgh, Scotland. The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded from this Agreement.

## **System Requirements**

It is understood that in order to use the Services, an up-to-date internet browser such as Microsoft Edge, Firefox, Safari or Google Chrome is required. Additionally, a stable connection to the Internet is required. The Services may work in a limited manner on other web browsers (such as earlier versions of the previously mentioned browsers), but the Services were not designed for use on web browsers other than those recommended above.

## **Use of the Services**

You will not violate or attempt to violate the security of our website or the Services. You will not hack into the website, ILDs' computer systems or the computer systems of other users of the Services. Hacking means unauthorised access, malicious damage and/or interference and includes, without limitation, mail bombing, Propagating viruses, worms or other types of malicious programs, deliberate attempts to overload a computer system, broadcast attacks or any other method designed to damage or interfere with the operation of a computer system or website.

## **Website and Services availability**

From time to time down-time, either scheduled or unscheduled, may occur. ILD will work within reason to ensure this amount of down-time is limited. ILD will not be held liable for the consequences of any down time. ILD cannot guarantee that any file or program available for download and/or execution from or via the Services is free from viruses or other conditions which could damage or interfere with data, hardware or software with which it might be used. You assume all risk of use of all programs and files associated with the Services, and you release ILD entirely of all responsibility for any consequences of its use.

## **Force Majeure**

ILD will not be liable by reason of the failure in the performance of obligations under this Agreement by reason of strikes, riots, fire, explosions, acts of God, war, governmental action, or any other cause which is beyond ILD's reasonable control.

## **Overseas Access**

The Services may be accessed throughout the United Kingdom and overseas. ILD makes no representations that the Services comply with the laws (including intellectual property laws) of any country outside the United Kingdom. If you access the Services from outside the United Kingdom, you do so at your own risk and are responsible for complying with the laws in the place where you access the site.

We encourage all ILD members to use good housekeeping practices to ensure they do not require extra data storage space. This includes the deletion of duplicate photos / videos /

audio clips and archived files which are no longer required. Full free support is available for members to achieve this.