



## Terms and conditions for On-line Resource Subscription Services 2023 Version

### About the Services

#### 1. Subscription

1.1	Subscription	<ul style="list-style-type: none"> <li>By confirming its purchase via RBA's website the Customer makes the Subscription for the Services described in these T&amp;Cs.</li> <li>RBA accepts that Subscription.</li> </ul>
1.2	The parties agree to be legally bound to the following, which form the terms and conditions in relation to this Subscription (in order of priority if there are inconsistencies, and no other terms and conditions apply)	<ul style="list-style-type: none"> <li>These T&amp;Cs.</li> <li>Information relating to Fees (as communicated by RBA via its website or otherwise from time to time).</li> </ul>
1.3	From when the Customer may first request Services (i.e. the commencement date of the Subscription)	When a purchase is confirmed via EYH's website.
1.4	When the Subscription (and therefore the Customer's right to request Services under it) ends	When the Agreement is cancelled according to these T&Cs.
1.5	Description of the Services the Customer will receive under this Subscription	Online access to an Early Years resource base.
1.6	Procedure which the Customer must follow to access Services under this Subscription	By logging into the online resource base using a unique username and password.

#### 2. General standards

2.1	Standards to which RBA must provide the Services	With reasonable skill and care.
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#### 3. Access limits

3.1	Maximum limits on the quantity of Users under a particular Subscription	<p>In the case of individual childminders including those with assistants:</p> <ul style="list-style-type: none"> <li>1</li> </ul> <p>In the case of a Setting:</p> <ul style="list-style-type: none"> <li><b>Employees/officers</b> of that Setting</li> </ul> <p>For the avoidance of doubt, access is not permitted to consultants or contractors.</p>
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#### 4. Obligation to update Content

4.1	RBA's obligation to provide the Customer with new Content as part of the Services	<ul style="list-style-type: none"> <li>RBA is contractually obliged to provide the Customer with new Content at periodic intervals reasonably determined by RBA</li> <li><b>Exceptions:</b> if any of the circumstances in item 4.2 apply</li> </ul>
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4.2 RBA may provide new Content (but is NOT contractually obliged under these T&Cs to provide it) **if at least one of the following applies**

- (a) Over limits
- (b) Non-compliance
  
- (c) Outside Subscription duration
- (d) Uncontrollable Circumstances

The Customer has exceeded any maximum limits on Users
The Customer has failed to comply with any rules, procedures or policies in place in connection with the Services as indicated elsewhere in these T&Cs or otherwise.
The request is made before the commencement or after the end of the Subscription according to the Subscription Form.
All of the following apply <ul style="list-style-type: none"> <li>• Any Uncontrollable Circumstance applies at the time; and</li> <li>• That Uncontrollable Circumstance reasonably prevents RBA from providing the Services.</li> </ul>

**Financial arrangements**

**5. Changes to Fees**

5.1 Routine changes to the Fees at the anniversary of the 1 year subscription period

<p>RBA may increase the Fees without any communication to the Customer where:</p> <ul style="list-style-type: none"> <li>• The Fees paid by the Customer have been subject to an 'Early Bird' discount or any other type of discount.</li> </ul> <p>RBA may increase the Fees by written communication to the Customer. In relation to increases which are (in aggregate) no more than 10% in a calendar year:</p> <ul style="list-style-type: none"> <li>• The consent of the Customer to the increase is not required.</li> <li>• The increase takes effect immediately after RBA has communicated the increase to the Customer, in writing.</li> </ul> <p>In relation to all other increases not described above:</p> <ul style="list-style-type: none"> <li>• The written agreement of the Customer to the increase is required.</li> <li>• The increase shall not take effect until that agreement of the Customer has been given.</li> </ul>
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5.2 The Fees which the Customer must pay RBA for the Subscription (in order of priority if there are inconsistencies). Currently excludes VAT

<ul style="list-style-type: none"> <li>• As communicated by RBA separately to its website.</li> <li>• As indicated on the website provided by RBA for the Customer to purchase the Services.</li> </ul>
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5.3 Other Fees payable by the Customer to RBA for **other services** in addition to the Subscription (if any)

<p>Other Fees will be payable for the following <b>other services</b>:</p> <ul style="list-style-type: none"> <li>• On-site consultancy</li> <li>• Training courses</li> </ul>
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**6. No set off**

6.1 Whether either party has any right of set off, counterclaim, deduction (or the like of any of these) against the other party in connection with a Subscription

<p>No. All such rights of the parties (whether arising in law, equity or otherwise) are waived to the fullest extent permitted by Law.</p>
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## Intellectual Property

### 7. Intellectual Property

7.1	General statement regarding Intellectual Property	<p>A Customer entering into a Subscription (or its Affiliate) shall <b>not</b> obtain any interest or right (including any right of use) in the separately developed or separately acquired Intellectual Property of RBA or its Affiliate.</p> <p><b>Exceptions:</b> to the extent otherwise:</p> <ul style="list-style-type: none"> <li>• Clearly indicated in these T&amp;Cs (e.g. in any licence); or</li> <li>• Agreed in writing between the Customer and RBA.</li> </ul>
7.2	Interpretation of any license over Intellectual Property granted by RBA under these T&Cs	All rights not expressly granted by RBA to the relevant Customer are reserved to the party granting the licence.
7.3	Who owns Arising Intellectual Property (as between the Customer and RBA)	RBA (or its respective contractors or third party licensors) shall own whatever Arising Intellectual Property is created, developed or the like by itself or its own separate Personnel, its separate contractors or its other separate agents.
7.4	Licence for the benefit of the Customer and its Affiliates in relation to Arising Intellectual Property which belongs to RBA under item 7.3	
(a)	The Intellectual Property over which the licence is granted	<ul style="list-style-type: none"> <li>• Arising Intellectual Property to belong to RBA (and/or its respective third party Customers, contractors, licensors or the like).</li> <li>• Any background Intellectual Property of RBA (and/or its third party contractors, licensors or the like) on which that Arising Intellectual Property depends.</li> </ul>
(b)	Who grants the licence	<ul style="list-style-type: none"> <li>• RBA</li> <li>• <b>If relevant Intellectual Property belongs to RBA's third party contractors, licensors or the like: RBA</b> shall use reasonable endeavours at its own cost to obtain a licence on these terms from that person.</li> </ul>
(c)	To whom the licence is granted	To the Customer and its Affiliates.
(d)	Commencement of the licence	<ul style="list-style-type: none"> <li>• <b>If any undisputed debt in connection with the Subscription owed by the Customer to RBA remains outstanding (whether or not overdue) at the time the Arising Intellectual Property is created developed (or the like):</b> on full payment of debt.</li> <li>• <b>Otherwise:</b> immediately on the creation, development (or the like) of the relevant Arising Intellectual Property.</li> </ul>
(e)	Main terms of the licence	It shall be a non-exclusive, worldwide, perpetual, royalty-free licence.
(f)	Permitted use of the licensed Intellectual Property	<ul style="list-style-type: none"> <li>• To copy or otherwise use that Intellectual Property in any manner</li> <li>• Solely to allow the Customer and its Affiliates to properly enjoy the benefit of the Services.</li> <li>• This includes uses sufficiently connected with genuine research, teaching and/or childcare, but only where relevant to the genuine activities of the licensee.</li> </ul>

(g) Prohibited use of licensed Intellectual Property, even if otherwise permitted in item (f)	<p>Neither the Customer nor its Affiliate may use (or cause or assist or instruct anyone else to use) that Intellectual Property for any of the following</p> <ul style="list-style-type: none"> <li>• For unlawful activities; and/or</li> <li>• For any activities which (on a reasonable view) compete with RBA according to its business activities at the time when the arising Intellectual Property was created, developed or the like; and/or</li> <li>• For any activities which intend to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human form any part of the software used in order for the customer to provide the Services and/or</li> <li>• For activities which bring (or which create an unreasonable risk of bringing) significant, unjustified and unfavourable publicity to RBA and/or its Affiliates; and/or</li> <li>• For commercial purposes or for use in any work or publication in any medium and/or</li> <li>• For activities which damage the goodwill attaching to the licensed Intellectual Property.</li> </ul> <p>If the Customer's Affiliate uses that Intellectual Property in breach of the above, the onus shall lie with the Customer to prove that use was not done with assistance of the Customer, or under the Customer's instructions.</p>
(h) Right to assign or sub-licence	The Customer or its relevant Affiliate may not assign and/or sub-licence the licence without the prior written consent of EYH
(i) General obligations of the Customer	The Customer shall treat any breach of this licence by its Affiliate as if it were the Customer's own breach.

**Events outside EYH's control**

**8. Definition of 'Uncontrollable Circumstances'**

8.1 What are 'Uncontrollable Circumstances' (effectively 'force majeure' events)	<p>Any event or circumstance to which all of the following apply:</p> <ul style="list-style-type: none"> <li>• It is outside RBA's reasonable control; and</li> <li>• It genuinely prevents RBA from carrying out its obligations in relation to the Subscription.</li> </ul>
8.2 <b>Suspension:</b> the following apply to the right of RBA to suspend obligations under a Subscription as a result of relevant Uncontrollable Circumstances	
(a) Obligation to communicate	<p>RBA must communicate its intention to suspend carrying out such obligations as follows</p> <ul style="list-style-type: none"> <li>• To the Customer; and</li> <li>• In writing where reasonably possible.</li> </ul>
(b) Right to suspend	RBA may suspend carrying out those of its obligations in relation to the Subscription to the extent the relevant Uncontrollable Circumstance prevents RBA from otherwise carrying them out.
(c) Obligations of RBA to keep informed	RBA must keep the Customer informed in a proper and timely manner of significant events or circumstances in relevant to the suspension of the relevant obligations.
(d) Resumption	RBA must resume the Services promptly when it is no longer prevented from doing so under the relevant Uncontrollable Circumstance.

8.3 <b>Consequences if RBA suspends its obligations according to item 8.2:</b> all of the following (as relevant, to be read independently)	<p>RBA shall be relieved of liability (all of the following)</p> <ul style="list-style-type: none"> <li>• To any person with rights under the Subscription</li> <li>• For failing to carry out any of its obligations in connection with the Subscription</li> <li>• To the extent RBA's failure to carry out that obligation is caused by the relevant Uncontrollable Circumstance.</li> </ul>
(a) Right to relief	RBA shall be deemed to have met that Contract Standard for all purposes of these T&Cs in relation to activities suspended under item 8.2(b).
(b) If the suspension of obligations according to item 8.2(b) causes RBA to fail to meet any Contract Standard	These are unaffected.
(c) Consequences for the Fees for Services disrupted due to any Uncontrollable Circumstance (section 5)	<p>Where all of the following apply:</p> <ul style="list-style-type: none"> <li>• The relevant Services have been suspended due to any Uncontrollable Circumstance for more than <b>30 continuous days</b>.</li> <li>• The Services are still suspended at the time the notice described in item 17.2 is given.</li> </ul> <p>See section 17 for details.</p>
8.4 Right of either party to cancel the Subscription if the Subscription has been disrupted due to <b>the continuation of any Uncontrollable Circumstances</b>	

**Information**

**9. Confidentiality**

9.1 Confidential Information of either party	<p>Information relevant to their business activities generally, including without limitation, business strategies, plans, finances (including RBA Fees but only to the extent the Fees have been uniquely determined by RBA for the purposes of the Subscription (e.g. they are not set by the Customer, they are not publicly-available etc.), operations, Personnel and human resources activities generally, products or services, research activities, data (including personal data in relation to which it is the data controller for the purposes of the Data Protection Act 2018 and the General Data Protection Regulation ((EU) 2016/679)) ("<b>Data Protection Legislation</b>"), know how, trade secrets, customers or unpublished Intellectual Property.</p>
9.2 Access to Confidential Information	Disclosures made by that party and/or its Affiliates or Personnel in the course of any dispute resolution procedure described in section 25.
9.3 A piece of information of the Discloser is not in any case Confidential Information of the Discloser if any of the following applies to that piece of information at the time	
(a) Public domain	<ul style="list-style-type: none"> <li>• It is in the public domain from time to time</li> <li>• <b>Exception:</b> as a result of any breach of a duty of confidentiality owed by the Recipient under these T&amp;Cs.</li> </ul>
(b) Independently developed	The Recipient can reasonably prove it (or its Affiliates and/or their Personnel) had developed that information independently of its association with the Discloser and/or the Discloser's Affiliates and/or their Personnel.
(c) Independently acquired	<ul style="list-style-type: none"> <li>• The Recipient and/or its Affiliate and/or their respective Personnel receives that information in good faith from a third party in circumstances unconnected with the Subscription.</li> <li>• <b>Exception:</b> where the Recipient knows or has reasonable grounds to suspect that the third party is in breach of confidentiality obligations owed to the Discloser and/or its Affiliate.</li> </ul>

(d) Trivial	The information is of a trivial nature.
9.4 Duration of the Recipient's obligations in item 9.5 in relation to each piece of the Discloser's Confidential Information	<p>Either</p> <ul style="list-style-type: none"> <li>• <b>3 years</b> from the date on which RBA ceases to be obliged to provide any Services whatsoever under these T&amp;Cs; or</li> <li>• Such longer period required by Law in relation to that piece of Confidential Information.</li> </ul>
9.5 <b>The Recipient's obligations:</b> the Recipient must comply with all of the following obligations in relation to each piece of Confidential Information of the Discloser in the possession of the Recipient from time to time (for the period indicated in item 9.4)	
(a) Non-disclosure (subject to item 9.6)	<p>The Recipient</p> <ul style="list-style-type: none"> <li>• Must keep that Confidential Information strictly in confidence, and</li> <li>• Must not disclose it or make it available to third parties.</li> </ul>
(b) Not to misuse	<ul style="list-style-type: none"> <li>• The Recipient must not copy, modify, reverse engineer or otherwise use that Confidential Information for any purpose other than for legitimate purposes connected with the relevant Services.</li> <li>• Without limiting the above, the Recipient must not use that Confidential Information to conduct any venture (whether for profit or otherwise) independently of the Discloser.</li> </ul>
(c) Comply with the Law	The Recipient must comply with relevant Law in relation to the keeping, disclosure or use of that Confidential Information.
(d) Not to direct others	<ul style="list-style-type: none"> <li>• The Recipient must not direct or assist any person to do anything in breach of the rest of this item 9.5.</li> <li>• If any Personnel of the Recipient or those of its Affiliate or (if the Recipient is RBA) any subcontractor directly or indirectly appointed by the Recipient does anything in breach of the rest of this item 9.5, the onus shall lie with the Recipient to prove it was not done at the direction of, or with the assistance of the Recipient.</li> </ul>
9.6 <b>Permitted disclosures:</b> the Recipient is permitted to disclose or make available any Confidential Information of the Discloser in <b>any</b> of the following circumstances, regardless of item 9.5(a)	
(a) Consent	With the prior written consent of the Discloser, subject to the Recipient's compliance with any conditions attached to that consent.
(b) To Personnel, advisers etc.	<p>To any of the following</p> <ul style="list-style-type: none"> <li>• The Recipient's genuine existing or prospective Personnel, advisers, contractors, consultants, agents, insurers, funders, shareholders or other investors, or purchasers of the business of, and/or shares in, the Recipient, auditors and banks.</li> <li>• Any public body authorised to review these T&amp;Cs, the Customer is a public body.</li> <li>• Any person to whom the Recipient wishes to make a genuine novation and/or assignment of any part of these T&amp;Cs.</li> <li>• Relevant third parties engaged for the purpose of resolving disputes under section 25.</li> </ul> <p>These disclosures are subject to item 9.7.</p>

(c) Required by Law

- To the extent the Recipient is required to disclose or make available the Confidential Information by Law, including without limitation, a court, a regulatory body, a law enforcement body, a genuine public auditor or other genuine public body (if the Recipient is a public body), the UK Parliament, a relevant stock exchange or similar body, where reasonably necessary by the Recipient in exercise of any of its public functions or in relation to any obligations the Recipient has under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004.
- These disclosures are subject to item **Error! Reference source not found.**

9.7 Rules regarding the Recipient disclosing (or making available) any Confidential Information of the Discloser to any person described in item 9.6(b) (all of the following)

(a) Need to know

- Such disclosures must be in good faith; and
- Strictly on a 'need to know' basis.

(b) Treating unauthorised disclosures etc.

The Discloser may regard any unauthorised disclosure or other misuse of such Confidential Information by any such person as if it were the Recipient's own act.

(c) Separate confidentiality agreement

- The Recipient must require the relevant person to enter into a suitable written confidentiality agreement with the Discloser on reasonable terms.
- But only if requested to do so by the Discloser, acting reasonably and proportionately in the circumstances.

## Data Protection

### 10. Data Protection – status as a Controller

10.1 Status of each party regarding any Personal Data in its possession or control in connection with the Services

- Each party is to determine the purposes for which that Personal Data will be held and used.
- Therefore, each party is to be a 'Controller' (and not a 'Processor for the other party) in its own right in relation to that Personal Data.

10.2 General obligations of each party in relation to Personal Data in its possession or control in connection with the Services in relation to which it is a Controller

- Each party must comply with relevant Law (particularly any Data Protection Legislation) in relation to the holding and processing of that Personal Data.
- This includes maintaining necessary registrations with the Information Commissioner and/or any other relevant regulatory body.

## Reliance

### 11. Reliance on Content

11.1 Who is entitled to rely on the Content supplied by RBA in connection with the Services

Only the Customer subject to the Customer's understanding that:

- No warranty or guarantee is provided by RBA as to the relevance, accuracy, completeness, currency and reliability of any of the Content; and
- The Content does not constitute advice and should not be relied on without first obtaining independent advice from a qualified professional.

This item is also subject to these T&Cs particularly item 13.1

**Liability**

**12. Caps on the liability of RBA**

12.1 Caps on the liability of RBA for liabilities described in item 15.1 which are **reasonably expected (according to the usual terms of insurance policies of the relevant types) to be covered by insurance**

These caps are subject to these T&Cs, particularly section 14 and section 15

To the level of the proceeds paid under any insurance cover which is relevant to the particular liability.

12.2 Caps on the liability of RBA for liabilities described in item 15.1 **which are not covered elsewhere in this section 12**

These caps are subject to these T&Cs, particularly section 14 and section 15

- To 100% of the Fees that have been paid by the Customer to RBA in relation to the particular Subscription in any one subscription year, aggregated to all liabilities that arise in that year.
- This applies regardless of whether those Fees had accrued or been paid at the time the liability first arose.

**13. Exclusion of liability**

13.1 The liability of RBA

- In connection with the **use and/or reliance on any Content or other output** supplied by or on behalf of RBA in connection with the Services
- **Is excluded**
- To the extent **any** of the following applies
- Subject to these T&Cs, particularly section 14 and section 15

(a) Use by others

To the extent that the Content or other output is used or relied upon **by any person other than** the Customer.

(b) Alterations

The Content other output has been materially altered

- By any person other than RBA or a person acting on RBA behalf; and
- Without RBA clear written consent.

(c) Nature of use

The Content or other output has been used or relied upon in any of the following ways:

- Unlawfully; and/or
- In a manner that is materially inconsistent with any guidance given by or on behalf of RBA at any time; and/or
- In a manner that a reasonable person would not expect it to be used or relied upon.

13.2 Liability of RBA in connection with a particular Subscription is excluded for all of the following (subject to these T&Cs, particularly section 14 and section 15)

(a) Indirect, consequential

Indirect or consequential loss or damage

(b) Profits

Loss of actual or anticipated profits (including loss of profits on contracts).

(c) Revenue

Loss of revenue

(d) Opportunity

Loss of opportunity

(e) Business

Loss of business

(f) Savings

Loss of anticipated savings

(g) Reputation etc.

Loss of reputation or goodwill

(h) Data

Loss of damage to or corruption of data

(i) Use of money etc.

Loss of use of money or other property



**14. Exceptions to caps and exclusions of liability**

14.1 The caps and exclusions of a party’s liability indicated elsewhere in these T&Cs

- Do not apply and shall not be taken into account in calculating any caps on its liability
- To the extent the liability relates to any of the following (each of these is to be read independently)

(a) Death etc.	Death or personal injury caused by that party's negligence.
(b) Deliberate	<ul style="list-style-type: none"> <li>• That party’s deliberate act or deliberate failure to act.</li> <li>• A party shall be regarded as having deliberately acted or failed to act where that act as done (or failed to be done) where there is reasonable evidence that the act was done (or not done) under the instruction of that party’s Representative and/or any other member of its senior management.</li> </ul>
(c) Fraudulent misrepresentation	That party's fraudulent misrepresentation.
(d) Specific debts	Specific debts arising under or in connection with the Subscription including (as relevant and without limitation) any liability to pay Fees and any interest accruing on such debts.
(e) Not permitted by Law	Anything else to the extent liability cannot be capped and/or excluded by Law.

**15. Caps and exclusions of liability – interpretation**

15.1 **Interpretation** of caps and exclusions of the liability of a party ('X') in section 12 and section 13

- They apply to X’s liabilities **of any kind** in connection with the Subscription.
- Regardless of whether the liability arises in tort, contract, under statute or otherwise.
- Any cap on X’s liability is to be aggregated between
  - The liability X owes to the other party; and
  - The liability X owes any third party in connection with a relevant Subscription.

**16. Apportionment of liability**

16.1 Apportionment where the loss of party ('X') is only partly due to the fault of the other party ('Y')

Where X’s losses in particular circumstances relevant to the Subscription

- Are partly caused by the fault of Y and/or anyone acting on Y’s behalf (whether in tort, contract, under statute or otherwise); and
- Are partly due to other factors (including X’s own acts and failures to act),

Then the liability of Y to X for compensation or the like shall be reduced fairly and proportionately to reflect the extent to which Y’s act or failure to act contributed to causing X’s losses.

**Cancellation**

**17. Cancellation**

17.1 A party may cancel a Subscription before its expiry date in any of the following circumstances

(a) Cancellation Default Event	A Cancellation Default Event then applies to the other party.
(b) Uncontrollable Circumstances	If an Uncontrollable Circumstance has continued for more than the period indicated in item 8.4 (and is then still continuing without RBA having resumed the affected Services)

(c) Cancellation without cause	<p>Either party may do so.</p> <p>The minimum amount of notice to be given (unless the parties otherwise agree in writing):</p> <p><b>If the Customer terminates:</b> 1 months' notice prior to the expiry of the subscription year.</p> <p><b>If RBA terminates:</b> 1 month's notice at any time.</p>
17.2 How a party cancels a relevant Subscription if any of the circumstances in item 17.1 applies	<p>By giving the Defaulting Party a notice as follows:</p> <ul style="list-style-type: none"> <li>• Strictly according to section 27.</li> <li>• <b>If a Cancellation Default Event applies to the other party:</b> the notice must set out in reasonable detail the relevant Cancellation Default Event.</li> </ul>
17.3 Arrangements regarding the refund of Fees if a Subscription is cancelled before its expiry date according to this section 17	
(a) If it is cancelled by RBA due to a Cancellation Default Event of the Customer	No refund
(b) If it is cancelled in any other circumstances	No refund
17.4 What are the Cancellation Default Events of RBA	See section 18.
17.5 What are the Cancellation Default Events of the Customer	See section 19.

**18. RBA Cancellation Default Events**

Each of the following is a Cancellation Default Event of EYH (to be read independently) if and for as long as they continue to apply

18.1 Material Breach not capable of being remedied	<ul style="list-style-type: none"> <li>• RBA is in Material Breach of the terms of the Subscription.</li> <li>• On a reasonable view, that Material Breach is not capable of being remedied by RBA.</li> </ul>
18.2 Material Breach capable of being remedied	<p>All of the following</p> <ul style="list-style-type: none"> <li>• RBA is in Material Breach of the terms of the Subscription.</li> <li>• On a reasonable view the Material Breach is capable of being remedied by RBA.</li> <li>• For as long as RBA has still not remedied the Material Breach <ul style="list-style-type: none"> <li>- To the reasonable satisfaction of the Customer</li> <li>- At RBA own cost</li> <li>- More than <b>30 days</b> after the Customer has requested RBA to do so</li> <li>- The Customer must have issued its request by notice given strictly according to section 27.</li> </ul> </li> <li>• The Customer shall not unreasonably refuse consent to a written request by RBA to an extension of the above deadline if there are delays to RBA remedying the Material Breach which are significantly due to factors outside the reasonable control of RBA.</li> </ul>
18.3 Certain appointments	RBA is subject to a court order (or equivalent) or a resolution requiring the appointment of a liquidator in relation to RBA and/or its assets.

18.4 Winding up

- RBA is subject to a court order (or equivalent) or a resolution requiring RBA to be dissolved and/or wound up.
- **Exception:** in relation to a genuine solvent reconstruction where
  - The replacement entity agrees in writing to become legally bound to the obligations of RBA under the Subscription.
  - The replacement entity accepts in writing liability for the liabilities of RBA in connection with the Subscription.
  - The replacement entity (and/or any third party guarantor it wishes to propose at the time) has at least equivalent financial standing as that which RBA had at the date of these T&Cs.
  - The replacement entity has the same underlying majority controlling ownership as RBA.

**19. Customer Cancellation Default Events**

19.1 **Non-payment by the Customer:** if and for as long as all of the following apply

(a)	Amounts overdue	Any amount owed by the Customer to RBA in connection with the Subscription is overdue.
(b)	Not disputed	The amount owed is not subject to a genuine dispute which the Customer is using reasonable and genuine efforts to attempt to resolve.
(c)	No right to delay etc.	The Customer has no grounds under these T&Cs to refuse and/or to delay payment.
(d)	Overdue	The amount (or any part of it) must remain overdue more than <b>30 days</b> after RBA has issued a further demand for payment.
(e)	How RBA issues the demand described in item (c)	Strictly according to section 27.
(f)	When RBA may issue the demand described in item (c)	At any time after the relevant amount first becomes overdue.

**Miscellaneous**

**20. Governing law and jurisdiction**

20.1	Law under which these T&Cs is to be interpreted and generally governed	English law.
20.2	Jurisdiction to exclusively apply to disputes arising in connection with the Subscription. This is subject to the dispute resolution arrangements in section 25	English courts.

**21. Amendment**

21.1	How the terms of a particular Subscription are to be validly amended	<ul style="list-style-type: none"> <li>• If RBA proposes an amendment to the Subscription (whether the Subscription Form or these T&amp;Cs) to the Customer in writing, the Customer shall be deemed to have accepted that amendment if it has not given a notice under section 17 to cancel the Subscription.</li> <li>• If the Customer gives that notice the proposed amendment shall not apply to the Subscription during the relevant notice period.</li> </ul>
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<p>21.2 If no consideration is otherwise indicated in the relevant document evidencing the amendment to the terms of a relevant Subscription</p>	<ul style="list-style-type: none"> <li>• Each party shall be deemed to give the other party consideration of £1.00 if demanded.</li> <li>• The parties agree that this consideration is sufficient.</li> </ul>
<p><b>22. Consequences of the end of Services</b></p>	
<p>22.1 Circumstances where the consequences in item 22.2 apply in relation to a particular Subscription</p>	<p>On the date of the cancellation of the Subscription.</p>
<p>22.2 Consequences if the circumstances in item 22.1 apply</p>	
<p>(a) Discontinue</p>	<p>The rights, powers, obligations, liabilities, prohibitions and restrictions (or the like of any of these) of the parties in connection with the Subscription <b>shall discontinue</b>.</p>
<p>(b) Examples</p>	<p>See item 22.3 for examples.</p>
<p>(c) To what this is subject</p>	<p>This is subject to item 22.4 in relation to those which continue after the circumstances in item 22.1 apply.</p>
<p>22.3 Examples of the rights, powers, obligations, liabilities, prohibitions and restrictions (or the like of any of these) which are <b>to discontinue</b> for the purposes of item 22.2 to the extent relevant to the Subscription</p>	
<p>(a) Providing the Services</p>	<p>Any obligation of RBA to provide the Services under the Subscription.</p>
<p>(b) Fees (section 5)</p>	<p>Obligations of the Customer to pay Fees in relation to the Subscription.</p>
<p>22.4 <b>Continuing rights, obligations etc.:</b> the following rights, powers, obligations, liabilities, prohibitions and restrictions (or the like of any of these) of the parties to a relevant Subscription <b>shall continue</b> until they are completed, until they expire, or indefinitely (as relevant according to the Subscription Form and/or these T&amp;Cs) <b>regardless</b> of the occurrence of the circumstances described in item 22.1 (each of these are to be read independently)</p>	
<p>(a) Already arisen, accrued</p>	<p>Those in connection with the Subscription which had already arisen or accrued at the time the circumstances described in item 22.1 first arose.</p>
<p>(b) Relating to certain events or circumstances</p>	<p>Those which relate to events or circumstances</p> <ul style="list-style-type: none"> <li>• Which are connected with the Subscription; and</li> <li>• Which occurred on or before the date on which the circumstances described in item 22.1 first arose.</li> </ul>
<p>(c) Interest</p>	<p>Any interest accruing on any debts in connection with the Subscription which relate to events or circumstances which had already occurred or arisen on or before the date on which the circumstances described in item 22.1 first arose.</p>
<p>(a) Continuing nature</p>	<p>Those in connection with the Subscription which are expressed (or which are reasonably implied) in the Subscription Form and/or in these T&amp;Cs to continue after the date on which the circumstances described in item 22.1 first arose.</p>
<p><b>23. Entire agreement</b></p>	
<p>23.1 Status of the Subscription Form and these T&amp;Cs in relation to a Subscription</p>	<p>Subject to this section 23, the Subscription Form and these T&amp;Cs together represent the entire agreement between the parties in relation to that Subscription.</p>
<p>23.2 Status of any previous agreements entered between the parties on the subject matter of the Subscription</p>	<p>They are fully extinguished immediately when the relevant Subscription Form is entered.</p>
<p>23.3 Liability of a party in relation to any statement, warranty, representation, opinion or prediction of the future which that party may have made which is not described in a relevant Subscription Form and/or in these T&amp;Cs and/or any document clearly cross-referenced in any of them</p>	<p>To the fullest extent permitted by Law:</p> <ul style="list-style-type: none"> <li>• These are excluded from the terms of the relevant Subscription.</li> <li>• That party's liability in relation to any of these is excluded.</li> </ul>

**24. Relationship between the parties**

- 24.1 Relationship between the parties created by a Subscription
- 24.2 Relationships **which are not** created by these T&Cs

The relationship of Customer and independent service provider.
Any of the following <ul style="list-style-type: none"> <li>• Any partnership between the parties.</li> <li>• Any relationship of principal and agent authorising one party to do anything (e.g. incur liabilities or obligations, make statements) on behalf of the other party (unless clearly indicated or reasonably implied in these T&amp;Cs).</li> <li>• Any employment relationship (or the like) between a party and/or its Affiliates and the Personnel of the other party and/or that other party's separate contractors and/or Affiliates.</li> </ul>

**25. Dispute resolution**

- 25.1 Application of this section 25
- 25.2 Obligations of the Customer if its Affiliate is a Disputing Party
- 25.3 First step – resolution by Representatives
- 25.4 Next step – mediation

To any dispute between the Customer and/or its Affiliates and RBA ( <b>'Disputing Parties'</b> ) in connection with the Subscription ( <b>'Relevant Dispute'</b> ).
If an Affiliate of the Customer is a Disputing Party, the Customer shall use reasonable endeavours to ensure the Affiliate complies with this section 25 in relation to the Relevant Dispute.
<ul style="list-style-type: none"> <li>• The Disputing Parties shall direct their Representatives to use their reasonable endeavours to resolve the Relevant Dispute in a timely manner and in good faith.</li> <li>• The Disputing Parties shall bear their own costs in doing so.</li> </ul>
<ul style="list-style-type: none"> <li>• If the Relevant Dispute has not been resolved within 60 days of commencing the previous step;</li> <li>• The Disputing Parties shall in good faith consider mediation as a way of resolving the Relevant Dispute through use of The Model Mediation Procedure of the Centre for Effective Dispute Resolution or the comparable rules of any successor body.</li> </ul>

**26. Assignment and novation**

- 26.1 If a party wishes
  - To **assign** its rights and benefits in connection with a particular Subscription; and/or
  - To novate the terms of that Subscription

<ul style="list-style-type: none"> <li>• That party must not do so without the prior written consent of the other party.</li> <li>• That consent must not be unreasonably withheld,</li> </ul>
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**27. Notices**

- 27.1 Application of this section 27

It applies to all of the following: <ul style="list-style-type: none"> <li>• Communications described in these T&amp;Cs as 'notices'.</li> <li>• Other communications described in these T&amp;Cs as being subject to this section 27.</li> </ul> The formalities in this section 27 are not required in relation to other communications between the parties in relation to a particular Subscription.
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- 27.2 Methods by which notices must be given to be valid (in at least one of the following ways)

- |   |
|---|
| <b>Method</b>                                       |
| (a) Hand delivery to the recipient's Representative |

<b>When notice is deemed to have been given</b>
On the date it is given to him/her.

(b) By registered mail or courier to the recipient's last known address (addressed to the recipient's Representative unless otherwise indicated)

2 Business Days after the day it was sent (as evidenced by the post mark, despatch notice or other relevant evidence), unless it is returned as undelivered.

(c) By e-mail issued as follows:

- If the notice is given to the Client: to e-mail address [rachel@rachelbuckler.co.uk](mailto:rachel@rachelbuckler.co.uk) or as nominated by the Client to the Provider from time to time for such communication.
- If the notice is given to the Provider: to the usual work e-mail address of the Provider's Representative or such additional or replacement e-mail address as nominated by the Provider to the Client from time to time for such communication.

With the sender being able to reasonably prove the relevant e-mail was sent to the relevant e-mail address.

On the date and at the time the e-mail is received by the recipient (as the recipient can reasonably prove) subject to the following

- If that date and time is before 9 am on a Business Day, it is deemed to have been received at 9 am on that Business Day.
- If that date and time is after 5 pm on a Business Day or on any day that is not a Business Day, it is deemed to have been received at 9 am on the next Business Day.

## 28. Waivers

28.1 Strict requirements for a waiver of a party's rights or powers in connection with the Subscription to be binding on that party

Only if all of the following apply to the waiver (and not otherwise):

- It is in writing.
- It is clearly indicated to be a waiver of the relevant right or power.
- It is properly authorised by that party.

28.2 Other rules regarding waiver of any party's right or power in connection with the Subscription

- Delay or failure to exercise that right or power shall not in itself be a valid waiver of it.
- A waiver of that right or power on one occasion does not (except to the extent otherwise indicated in that waiver) in itself constitute a waiver of the same right or power on a later occasion, and does not affect any other right or power.

## 29. Third party rights

29.1 Rights of third parties with rights under these T&Cs for the purposes of the Contracts (Rights of Third Parties) Act 1999

These are excluded to the fullest extent permitted by Law.

## 30. Severance

30.1 Application of this section 30

It applies where any section, item or other part of the Subscription Form and/or these T&Cs is held by any court (or equivalent body) to be invalid or unenforceable for any reason.

30.2 First step

- If possible, the relevant provision shall be modified by removing or altering those parts of that provision that create the invalidity or unenforceability.
- Such removal or alteration shall be to the minimum extent necessary to allow the provision to be held to be valid and enforceable, having regard to the purpose of the relevant provision.

30.3 Second step

- If the action required in item 30.2 is not reasonably possible, the entire provision shall be severed from the Subscription Form and/or these T&Cs unless it alters the fundamental nature of the Subscription Form and/or these T&Cs or is otherwise against public policy.
- The remaining provisions shall remain in full force and effect.

### 31. Definitions

The following words and expressions shall be given the meaning given to them respectively below, except to the extent the context otherwise requires

Defined term	Definition
<b>Affiliate</b>	<ul style="list-style-type: none"> <li>In relation to a person, any other entity which controls that person, is controlled by that person or is under the same common underlying control as of that person.</li> <li>For this purpose, a person ('X') will be regarded as having control over another person ('Y') if X alone (and without being subject to the further direction of any other person) directly or indirectly possesses the power (whether by the direct or indirect holding of voting shares or otherwise) to direct the management and policies of Y on all matters.</li> </ul>
<b>Arising Intellectual Property</b>	Any Intellectual Property arising as a result of activities in connection with the Services, whether created by RBA, its subcontractors or otherwise.
<b>Business Day</b>	Any day except a Saturday, Sunday or any official bank or public holiday in England.
<b>Cancellation Default Event</b>	<ul style="list-style-type: none"> <li><b>In relation to RBA:</b> each event or circumstance described in section 18.</li> <li><b>In relation to the Customer:</b> each event or circumstance described in section 19.</li> </ul>
<b>Customer</b>	The organisation named as such in the Subscription Form of a particular Subscription.
<b>Confidential Information</b>	In relation to a Discloser, as indicated in section 9.
<b>Content</b>	The resources available to the Customer as part of the Services which may include items such as short film clips, factsheets, policy precedents, audits, quizzes, CPD session templates and alerts and which may be added or removed at any time by RBA.
<b>Control</b>	Where a person alone (and without having to refer to another person) has sufficient direct or indirect power to enable a resolution on any matter to be passed in relation to a company (or other entity other than a human being).
<b>Defaulting Party</b>	See section 17.
<b>Discloser</b>	A party (and its relevant Affiliates where indicated) in relation to its respective Confidential Information.
<b>Disputing Party</b>	See item 25.1.
<b>Fees</b>	The charges payable by the Customer to RBA according to RBA website from time to time.
<b>RBA</b>	Rachel Buckler Associates trading as Early Years Hub
<b>Intellectual Property</b>	Copyright, trade marks (whether registered or otherwise), service marks (whether registered or otherwise), patents, design rights (whether capable of registration or otherwise), registered designs, domain names, know how rights, rights in relation to databases, trade secrets, rights to take action for passing off, and all other relevant intellectual property rights as ordinarily recognised as such throughout and in any parts of the world, and in relation to the questions so listed in this definition, all registrations, pending registrations, reversions, extensions and renewals of such rights.
<b>Law</b>	<p>Any of the following applicable to a party from time to time (to be read independently)</p> <ul style="list-style-type: none"> <li>Any statute, regulation or other subordinate legislation.</li> <li>Any directive or other European instrument (to the extent it is binding on the party)</li> <li>Any treaty</li> <li>Any judgement, rule of common law or equity</li> <li>Any order of a competent court, tribunal, arbitrator or the like of any of these</li> <li>Any permit, permission (e.g. planning permission) consent, licence, statutory agreement and authorisation (or the like of any of these) required by Law and affecting the relevant person and its activities in connection with the Subscription from time to time.</li> <li>Any guidance or the like issued by authorised government bodies (whether legally binding or not)</li> <li>Anything else imposed by any governmental body (in its capacity as such) having a legally binding effect on the respective activities of any party in connection with the Subscription from time to time.</li> </ul>

Defined term	Definition
<b>Losses</b>	<ul style="list-style-type: none"> <li>All losses, damages, costs, charges and expenses incurred by the relevant party in the relevant circumstances to which the context refers, whether in tort, contract, by Law or otherwise including, where relevant, third party claims, liabilities, demands, proceedings, interest, penalties and fines, damage to property, death or personal injury, and full legal costs charged on a solicitor-Customer basis.</li> <li><b>Exception:</b> to the extent any of these are capped or excluded in these T&amp;Cs.</li> </ul>
<b>Material Breach</b>	<ul style="list-style-type: none"> <li>A breach of the Subscription by RBA (including an anticipatory breach of RBA)</li> <li>Which has significant (and not trivial) consequences for the Customer.</li> </ul>
<b>Personnel</b>	<p>In relation to a firm or other organisation:</p> <ul style="list-style-type: none"> <li>Any individual genuinely appointed or otherwise engaged by that firm or other organisation as an officer, employee, worker, consultant, trustee, governor, member of any partnership, agent, intern, seconded person, volunteer, adviser or contractor (or the like of any of these).</li> <li><b>In relation to RBA:</b> any individual genuinely appointed or otherwise engaged in any of the capacities described above <b>by a subcontractor</b> which is directly or indirectly appointed by RBA in connection with the Subscription. This includes any such subcontractor which is a human being operating as a sole trader.</li> </ul>
<b>Recipient</b>	A party in relation to the Confidential Information of the other party and/or its Affiliates.
<b>Relevant Dispute</b>	See item 25.1.
<b>Representative</b>	<p>In relation to a party, the current person (and if more than one, each of them individually) who holds that role according to the relevant Subscription Form, or his/her replacement from time to time including:</p> <ul style="list-style-type: none"> <li><b>Where the relevant individual is absent from time to time:</b> any other individual deputising for him/her, as decided by the relevant party.</li> <li><b>Where the position is vacant from time to time:</b> the Escalated Person of the relevant.</li> </ul>
<b>Services</b>	The services in relation to a particular Subscription which are described in the relevant Subscription Form.
<b>Setting</b>	A single Early Years provider issued with a Unique Reference Number by Ofsted.
<b>Subscription</b>	A subscription entered between the parties as indicated in the relevant Subscription Form.
<b>Subscription Form</b>	<p>A document which</p> <ul style="list-style-type: none"> <li>Cross-references these T&amp;Cs.</li> <li>When agreed by the Customer and EYH, evidences the relevant Subscription between them.</li> </ul> <p>As amended from time to time according to section 21 of these T&amp;Cs.</p>
<b>T&amp;Cs</b>	These terms and conditions, as amended from time to time according to section 21 of these T&Cs.
<b>Uncontrollable Circumstance</b>	As indicated in section 8.
<b>User</b>	The individual childminder or officers/employees of the same Setting as indicated in the relevant Subscription Form.

### 32. Interpretation

Except to the extent the context otherwise requires and except to the extent otherwise indicated elsewhere in these T&Cs, these T&Cs shall be interpreted as follows

- 32.1 Headings  
32.2 Reference to a party

Headings do not affect the interpretation of these T&Cs.

This is reference to any party to a Subscription as indicated in the relevant Subscription Form .  
It includes reference to that party's successors in title and permitted assignees.



32.3	Consents, approvals	<ul style="list-style-type: none"> <li>• Where consent, approval, permission or the like of a person is not to be unreasonably refused, also cannot be unreasonably delayed or subject to unreasonable conditions.</li> <li>• Where consent, approval, permission or the like of a person is to be at that person's discretion, that person <ul style="list-style-type: none"> <li>- Shall not be obliged to respond to a request for it; and</li> <li>- Shall not be obliged to give reasons for its decision (including any decision not to respond); and</li> <li>- Excludes (to the fullest extent permitted by Law) that person's liability to any person for any reason given for that decision (including any decision not to respond).</li> </ul> </li> </ul>
32.4	Definitions	<p>If a word or phrase is defined in these T&amp;Cs, its other grammatical forms have a corresponding meaning.</p>
32.5	Statutes, codes etc.	<p>Reference in these T&amp;Cs to any statute, code or the like includes reference to any amending, replacing, modifying or consolidating statute, code or the like on substantially similar subject matter.</p>
32.6	'In writing'	<ul style="list-style-type: none"> <li>• Use of the expression 'in writing' (or a similar word) includes (but is not limited to) an e-mail or facsimile message.</li> <li>• It does not include communication by telephone text messages or communication via a social media site (or the like of any of these).</li> </ul>
32.7	'Including'	<ul style="list-style-type: none"> <li>• Use of the word 'including', 'in particular', 'for example' (or a similar word) at the commencement of a list to illustrate a particular concept does not limit that concept in any way.</li> <li>• Use of the abbreviation 'etc.' at the end of a list to illustrate a particular concept does not limit that concept in any way.</li> </ul>
32.8	Other references	<ul style="list-style-type: none"> <li>• Reference to one gender refers to all genders</li> <li>• Reference to the singular includes the plural and vice versa</li> <li>• Reference to any particular type of body, firm or other entity includes reference to any other type of body, firm or other entity.</li> </ul>