

FFT Software as a Service (“SaaS”) Terms and Conditions

These terms and conditions are the general terms and conditions as amended or replaced from time to time (“Terms and Conditions”) which apply to the software, content, resources and related services (“FFT Platform”) for:

- FFT Tutoring with the Lightning Squad Subscription Service
- FFT Success for All Phonics including Year 2 programme and Spelling with the Jungle Club.
- FFT Reading Assessment Programme
- FFT Reciprocal Reading
- FFT Literacy Programmes: initial implementation and subscription service
- FFT Value Added Service

Please read the Terms and Conditions carefully before ordering and using the FFT Platform and Services.

By ticking the box “I accept” on the Order Form, you agree to follow and be bound by the Terms and Conditions in your use of the FFT Platform and Services, whether in connection with a paid or free trial subscription.

If you are an individual entering into the Terms and Conditions on behalf of an organisation, you represent that you have authority to bind such organisation to the Terms and Conditions. If you do not have authority or you do not accept the Terms and Conditions you will be unable to use the FFT Platform and Services.

We may amend the Terms and Conditions at any time by reasonable notice. You are expected check the FFT Website from time to time to check for any amendments.

PARTIES

(1) FFT Education Ltd incorporated and registered in England and Wales with company number 03685684 whose registered office is at Unit 7, 127 Olympic Avenue, Milton Park, Abingdon, Oxon, OX14 4SA (**FFT**)

(2) the Customer as detailed on the Order Form (**Customer**)

BACKGROUND

- (A) FFT has developed and provides the FFT Platform, a cloud-based educational platform with content and resources accessible as a service over the internet.
- (B) The Customer wishes to use the FFT Platform.
- (C) FFT has agreed to provide, and the Customer has agreed to take and pay for, FFT’s services subject to the terms and conditions of this agreement.

AGREED TERMS

1. INTERPRETATION

The definitions and rules of interpretation in this clause apply in this agreement.

1.1 Definitions:

Agreement: the agreement between FFT and the Customer for the supply of Services comprising the Terms and Conditions, Order Form and Terms of Use.

Authorised Users: those Superusers and Users who are entitled to use the FFT Platform under this agreement.

Authorised Representative: the person nominated by the Customer, as having the authority to bind the Customer in all matters relating to this agreement.

Business Day: a day (other than a Saturday or Sunday) on which banks in London are normally open for general business.

Commencement Date: the date the Services are due to commence, as set out in the Order Form received by the Customer.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in Clause 11.5 or Clause 11.6.

Customer Data: the data inputted into the Software by Authorised Users and all data provided by the Customer to FFT to deliver the Services as described on the FFT Website, including the Customer’s assessment data and management information system data provide by the Customer to FFT via third parties.

Data Protection Legislation: the relevant UK Data Protection Legislation and any other applicable legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data.

Documentation: means the education content, teaching resources, pupil resources, training resources, video resources and other documents for the FFT Platform, created, owned and maintained by FFT.

Fees: the fees payable to FFT, including Training fees, Subscription fees, and any other the fees for any resources or materials as described in the Order Form.

FFT Platform: is the Software and Documentation provided to the Customer on a licensed software as a service basis, via the internet on <https://phonics.fft.org.uk>, <https://sfa.fft.org.uk>, <https://tutoring.fft.org.uk>, <https://reading.fft.org.uk>, or

<https://analytics.fftaspire.org/> (or such other internet address as FFT may notify to the Customer).

FFT Website: means <https://fft.org.uk/>

Initial Subscription Term: the initial term of the paid subscription as specified in the Order Form received by the Customer.

Normal Business Hours: means the hours between 0900hrs and 1700hrs GMT Monday to Friday excluding UK public holidays.

Order Form means FFT's online order form and Order Form to the Customer identifying the specific Services, the period that the Services are to be provided, any limitations on how and where the Services may be used and the corresponding Fees, which incorporates the Terms and Conditions, and which shall form part of this Agreement.

Renewal Period: the period described in clause 14.1.

Customer Data: any data in FFT Platform provided by the Customer or other data provided by the Customer to FFT to deliver the Services.

Services: the services to be supplied by FFT to the Customer under this Agreement including access to the FFT Platform and the supply of Software, Documentation, Setup Services, Training services and support as set out in the Order Form, the FFT Platform or the FFT Website.

Set up Services: the set up and related work referred to in the Order Form to be performed by FFT which enables the Customer to use the FFT Platform.

Software: FFT's proprietary software in machine-readable object code form only, including any error corrections, updates, upgrades, modifications and enhancements.

Subscription Term: has the meaning given in Clause 14.1 being the Initial Subscription Term together with any subsequent Renewal Periods.

Training: the training of Authorised Users referred to in the Order Form to be performed by FFT

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

User Account is a unique, non-transferable username and password assigned to a User which provides the User access to the FFT Platform.

User is an individual person who has been provided a User Account in accordance with this agreement.

1.2 Rules of Interpretation

- a) Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, include the singular.
- b) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- c) A reference to a statute or statutory provision is a reference to it as, as amended or replaced from time to time.
- d) A reference to **writing** or **written** includes e-mail provided that in the case of the Customer, e-mail has been sent by the Authorised Representative.
- e) If there is an inconsistency between any of the provisions in the main body of this agreement and the Order Form, the provisions in the main body of this agreement shall prevail.

2. SOFTWARE LICENSE

2.1 FFT hereby grants to the Customer on and subject to the Terms and Conditions of this Agreement a non-exclusive, non-transferable licence to allow Authorised Users to access the FFT Platform for the Subscription Term.

2.2 The Customer shall use the FFT Platform and Services for education purposes, including (without limitation) the purpose of improve pupil outcomes, but specifically excluding commercial purposes, including (without limitation) the sale and transfer or licensing to a third party of, for consideration (of any amount), the Software, Documentation or the FFT Platform.

2.3 The rights provided under this Clause 2 are granted to the Customer only for the specific scope set out in the Order Form.

3. CONDITIONS OF LICENSE

3.1 The Customer shall not:

- a) copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software; or
- b) reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
- c) access all or any part of the Software, Documentation or Services in order to build a product or service which competes with the Software and/or the Services; or
- d) use the Software, Documentation or Services to provide services to third parties.

3.2 The Customer shall:

- a) appoint an Authorised Representative, who shall have the authority to contractually bind the Customer on all matters relating to this agreement;
- b) provide FFT with the information necessary to perform the Services as identified in the Order Form;
- c) be responsible for appointing and supervising Users who will undertake support and administration duties for day-to-day matters on behalf of the Customer relating to the FFT Platform, including the creation of new User Accounts, Customer Contract set up, and maintenance of User roles and permissions ("Superusers"). FFT will provide Training for Superusers

- in accordance with the Order Form but will not assume any responsibility for their acts or omissions;
- d) provide all minimum hardware, web-browser and software configuration requirements specified by FFT and the network connections and telecommunications links to the internet and other things necessary to access the Services. FFT shall not assume any responsibility for any problems, delays, delivery failures, nor any loss or damage arising from the Customer's use of such hardware or failure of such telecommunication links or other things; and
 - e) implement appropriate measures to prevent and report any unauthorised use of the Services, ensure that Authorised Users keep their User Account credentials secret and do not expose the Services to viruses or unlawful, harmful or infringing content or activity.

4. SERVICES

- 4.1 FFT shall, during the Subscription Term, provide the Services to the Customer on and subject to the Terms and Conditions of this Agreement.
- 4.2 FFT shall:
- a) ensure that the FFT Portal is 99.5% available 24 hours a day, 7 days a week, excluding any planned maintenance and loss of internet connectivity between the FFT Platform and the Customer;
 - b) use commercially reasonable endeavours to provide the Customer with at least 24 hours' notice in advance of any planned or unscheduled maintenance works by placing a notice on the FFT Platform or the FFT Website (as the case may be);
 - c) in addition to the FFT Platform (available 24/7 in 4.2.a) provide the Customer with the other Services during Normal Business Hours including access to FFT support (by email/phone) and Training services
 - d) back up the FFT Platform daily for 30 days in accordance with its archiving and back-up procedures;
 - e) use reasonable commercial endeavours to restore any FFT Platform data which is lost or damaged by FFT; and
 - f) comply with its data privacy and security policies in respect of the FFT Platform.

5. CUSTOMER DATA

- 5.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of such Customer Data. FFT shall have a non-exclusive license to store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required in connection with this Agreement and also for research and evaluation purposes.
- 5.2 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against FFT shall be for FFT to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by FFT.

6 DATA PROTECTION

- 6.1 The parties acknowledge that in utilising the Services the Customer may input into the FFT Platform the personal data relating to pupils and users (data subjects), described and for the purposes set out in the data processing information provided on the FFT Website. The parties further acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and FFT is the processor of such personal data. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. FFT may, at any time on not less than 20 Business Days' notice, revise this Clause 7 to comply with any changes to the Data Protection Legislation
- 6.2 FFT shall, in relation to any personal data processed in connection with the performance by FFT of its obligations under this agreement:
- a) process that personal data only on the documented written instructions of the Customer unless FFT is required by law to do so. If FFT is required to carry out additional processing by law, it will inform the Customer before the processing takes place (unless the law prohibits this);
 - b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - c) not transfer any personal data outside of the European Economic Area and the United Kingdom unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled: (i) the Customer or FFT has provided appropriate safeguards in relation to the transfer; (ii) the data subject has enforceable rights and effective legal remedies; (iii) FFT complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and (iv) FFT complies with reasonable

- instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- d) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - e) notify the Customer without undue delay on becoming aware of a personal data breach;
 - f) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by law to store the personal data;
 - g) without prejudice to the generality of Clause 11, will ensure anyone it authorises to process the personal data is subject to an appropriate commitment of confidentiality; and
 - h) maintain complete and accurate records and information to demonstrate its compliance with this Clause 7 and allow for compliance audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of FFT, an instruction infringes the Data Protection Legislation.

6.3 The Customer consents to FFT appointing a third-party processor of personal data under this agreement as reflected in FFT's online Privacy Policy. FFT confirms that it will enter into a written agreement with any third-party processor, incorporating terms which reflect and will continue to reflect the requirements the Data Protection Legislation. FFT will remain liable to the Customer for any failure of a sub-processor to meet its Data Protection obligations, as set out herein.

6.4 When appointing a new third-party processor of personal data FFT will give the Customer reasonable advance notice of such appointment so that consent may be provided.

7. CHARGES AND PAYMENT

7.1 The Customer shall pay to FFT the Fees referred to in the Order Form and FFT shall invoice the Customer the Fees on the dates and frequency set out in the Order Form.

7.2 The Customer's subscription fee to the FFT Platform referred to in the Order Form shall commence on the Commencement Date and shall continue until the Services have been completed or termination of this agreement in accordance with Clause 14.

7.3 All Fees payable by Customer are expressed as net amounts in pounds sterling. Fees are exclusive of any and all taxes which may apply including VAT. Where VAT is to apply the Customer shall in addition pay an amount equal to any VAT chargeable on the Fees on delivery of a VAT invoice.

7.4 Each invoice is due and payable 30 days after the invoice date. If FFT has not received a due payment it may remind the Customer by giving notification. If a due payment is not made within 14 days after this reminder notification and the invoice is not disputed in good faith, then without prejudice to any other rights and remedies of FFT:

- (a) FFT shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of the Bank of England, commencing on the due date and continuing until fully paid, whether before or after judgment.

8. CHANGE CONTROL

8.1 If the Customer wishes to change the scope of the Services, it shall submit details of the requested change to FFT in writing. FFT is under no obligation to proceed with the requested change. Within two weeks of receiving the requested change FFT shall either:

- (a) submit a new Order Form to the Customer for acceptance; or
- (b) inform the Customer that it is unwilling to change the scope of Services, stating its reasons.

8.2 If the Customer accepts a new Order Form all previous Order Forms are superseded and the scope of Services are changed accordingly.

9. PROPRIETARY RIGHTS

9.1 The Customer acknowledges and agrees that FFT and/or its licensors owns all intellectual property rights in the FFT Platform and Services, including without limitation the Software, the Documentation and any other materials which FFT has created or may create in connection with the Services, together with any suggestions, ideas, feedback, enhancements or other information provided by the Customer, Users or Superusers in connection with the Services. This agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, Services or any related documentation, including the Documentation.

9.2 FFT confirms that it has all the rights in relation to the Software and Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

10. CONFIDENTIALITY

- 10.1** Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not include information that:
- (a)** is or becomes publicly known other than through any act or omission of the receiving party; or
 - (b)** was in the other party's lawful possession before the disclosure; or
 - (c)** is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d)** is independently developed by the receiving party, which independent development can be shown by written evidence.
- 10.2** Subject to Clause 11.4, each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 10.3** Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 10.4** A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.5** The Customer acknowledges that any material provided to or accessible by the Customer in connection with the Services and this agreement, including without limitation the Software, Training and Documentation constitutes FFT's Confidential Information.
- 10.6** FFT acknowledges that the Customer Data is the Confidential Information of the Customer, subject to the provisions of Clause 6.2.
- 10.8** The above provisions of this Clause 11 shall survive termination of this agreement, however arising.

11. INDEMNITY

- 11.1** The Customer shall defend, indemnify and hold harmless FFT against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Software or Services, provided that:
- (a)** the Customer is given prompt notice of any such claim;
 - (b)** FFT provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (c)** the Customer is given sole authority to defend or settle the claim.

12. LIMITATION OF LIABILITY

- 12.1** This Clause 13 sets out the entire financial liability of FFT (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- (a)** arising under or in connection with this agreement;
 - (b)** in respect of any use made by the Customer of the Services or the Software, or any part of them; and
 - (c)** in respect of any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 12.2** Except as expressly and specifically provided in this agreement:
- (a)** the Customer assumes sole responsibility for results obtained from the use of the Software and the Services by the Customer and Authorised Users, and for conclusions drawn from such use. FFT shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to FFT by the Customer in connection with the Services, or any actions taken by FFT at the Customer's direction; and
 - (b)** all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement.
- 12.3** Nothing in this agreement excludes the liability of FFT:
- (a)** for death or personal injury caused by FFT's negligence; or
 - (b)** for fraud or fraudulent misrepresentation.
- 12.4** Neither party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses, or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising under this agreement.

- 12.5** FFT's total aggregate liability in contract (including in respect of the indemnity at Clause 12.1), tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited total Fees paid by the Customer to FFT under this Agreement.

13. TERM AND TERMINATION

- 13.1** This Agreement shall commence on the Commencement Date and shall continue for the Initial Subscription Term, unless terminated earlier in accordance with clause 14.3. The Initial Subscription Term shall be automatically renewed for successive periods of 12 months (each a Renewal Period), unless:
- a)** either party notifies the other party of termination, in writing, least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case the Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
 - b)** otherwise terminated in accordance with the provisions of this Agreement.
- The Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.
- 13.2** Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 21 days after being notified in writing to do so; if the other party is insolvent or unable to pay its debts, suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business and/or or an administrative receiver is appointed over the assets of the other party.
- 13.3** On termination of this agreement for any reason:
- (a)** all licences granted under this agreement shall immediately terminate;
 - (b)** each party shall return and make no further use of any property, materials and other items (and all copies of them) belonging to the other party;
 - (c)** FFT may destroy or otherwise dispose of any of the Customer Data in its possession unless FFT receives, no later than 30 days after the effective date of the termination of this agreement, a written request, for the delivery to the Customer of the then most recent back-up of the Customer Data. FFT shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at the date of termination; and
 - (d)** any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

14. FORCE MAJEURE

- 14.1** Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network or the internet, act of God, acts of government, epidemics, pandemics or outbreak of communicable disease, quarantines; national or regional emergencies; war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm acts of terror, strikes, telecommunications or network failures or delays, computer failures involving hardware or software not within FFT's possession or reasonable control and acts of vandalism (including malicious cyber-attack), provided that the party claiming relief has taken reasonable technical measures to anticipate such eventualities.
- 14.2** Written notice of a party's failure or delay in performance due to force majeure must be given to the other party no later than five (5) business days following the force majeure event commencing, which notice shall describe the force majeure event and the actions taken to minimise the impact thereof. All dates under this agreement affected by force majeure shall be tolled for the duration of such force majeure. The parties hereby agree, when feasible, not to cancel but reschedule the pertinent obligations and deliverables for mutually agreed dates as soon as practicable after the force majeure condition ceases to exist.

15. MISCELLANEOUS

- 15.1** This agreement constitutes the entire agreement between the parties.
- 15.2** No variation of this agreement shall be effective unless it is in writing and signed by the parties (or FFT and the Authorised Representative).
- 15.3** Any notice required to be given under this agreement shall be in writing and shall be delivered by e-mail with a copy sent by recorded delivery post to the other party at its registered office or the address set out in this agreement.

- 15.4** A waiver of any right under this agreement is only effective if it is in writing.
- 15.5** Except as expressly provided for in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 15.6** The Customer shall not, without the prior written consent of FFT, assign, transfer, charge, sub-contract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under this agreement.
- 15.7** Nothing in this agreement is intended to, or shall be deemed to, establish any partnership, agency or joint venture between any of the parties. The Customer may not make any commitment to third parties on behalf of FFT.
- 15.8** This agreement does not give rise to any rights under the UK Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

16. GOVERNING LAW & JURISDICTION

This agreement is governed by, and construed in accordance with, the laws of England & Wales. The parties irrevocably agree that the courts of England & Wales have exclusive jurisdiction in connection with this agreement.