

The following Terms and Conditions apply to the Services (defined below) delivered by **Milk Student Planners Limited**, a limited liability company registered in England, No. 08777889 (“We” “Us” “Our”) to

(School/College Name)

(Address)

(“You” “Your” “School”) By accepting these terms You agree to the following:

**1 HOW THE AGREEMENT IS FORMED AND TERM**

- 1.1 The Agreement shall begin when You (or your authorised representative) sign and date these Terms and Conditions or upon the commencement of the Services.
- 1.2 The Agreement shall commence as set out in clause 1.1 and shall continue for a period of 12 months.

**2 WHAT IS BEING SUPPLIED**

- 2.1 We are to supply, install, monitor and use the platform known as Zinet Connect (“Platform”) to enable us to import information from Your management information system to deliver and allow You to use the website/mobile application known as ‘Milk Student Planner System’ (“Services”).
- 2.2 Certain services are provided by Milk Student Planners Ltd as standard as part of the set up process and/ or on a recurrent basis.

**3 DELIVERY**

- 3.1 The Services shall be performed remotely or at such other place as is agreed by Us in writing prior to the performance of the Services.
- 3.2 You shall supply Us in good time with any instructions or other information required to enable Us to perform the Services.

**4 CO-OPERATION AND USE OF THE SERVICES**

- 4.1 You shall liaise and co-operate with any person made known to You by Us, who may at any time have an interest in the Services or any part of them. You also agree to provide such persons with all information in connection with the Services as We may require.
- 4.2 If You become aware of any matter arising out of the performance or delivery of the Services which affects the interests of any such persons You shall further notify Us.
- 4.3 You agree to use the Services for lawful purposes only, and agree not to use the Services:
  - 4.3.1 In any way that breaches any applicable local, national or international law or regulation;
  - 4.3.2 In any way that infringes our or other users of the Site’s copyright or other Intellectual Property Rights (defined below).
  - 4.3.3 To undermine the Services we may provide;
  - 4.3.4 To reverse engineer, decompile, disassemble, decipher or otherwise attempt to derive the source code for any underlying code used in the provision of the Services; and
  - 4.3.5 Not to reproduce, duplicate, copy, sub-licence, broadcast, distribute, sell, rebrand, modify, create derivative works or re-sell any part of the Services or any contents or information provided through the Services in contravention of the provisions of these Terms and Conditions.

**5 PRICE**

- 5.1 The price of the Services shall be £2,100 (“Fee”).

**6 PAYMENT**

- 6.1 The Customer agrees to pay to Milk Student Planners Ltd the Fees as specified or as revised in accordance with the terms of this Agreement.
- 6.2 Milk Student Planners Ltd shall invoice the annual equivalent Fee upon execution of the Agreement, and each annual equivalent Fee thereafter on the anniversary of this agreement, until it expires.
- 6.3 Exclusion of VAT - The prices detailed in this Agreement exclude Value Added Tax. Value Added Tax will be added to invoices at the rate then in force and shall be paid by the Customer in addition to the agreed Fees.
- 6.4 All payments due under this Agreement shall be payable in pounds sterling in cleared funds into the bank account nominated by Milk Student Planners Ltd within fourteen days from the date of Milk Student Planner’s Ltd relevant invoice. No counterclaim or set-off by the Customer may be deducted from any payment due to Milk Student Planners Ltd on any account whatsoever without the express prior written consent of Milk Student Planners Ltd.

**Bank:** HSBC **Sort Code:** 40-19-18  
**Name:** Milk Student Planners Ltd **Account:** 11525913

- 6.5 Payment is of the Essence - For the avoidance of doubt, failure to pay any sum due in accordance with this Agreement shall be deemed a material violation and the provisions of clause 9.3 (Termination of Service by Milk Student Planners Ltd) may be invoked.
- 6.6 Further Recourse on Late Payment - Without prejudice to any other right or remedy available to Milk Student Planners Ltd, if the Customer fails to pay any sum due under this Agreement within the agreed period, Milk Student Planners Ltd shall be entitled at its sole discretion to: (i) charge the Customer interest (both before and after any judgement) and compensation on any overdue amounts on at the rate laid down under the Late Payment of Commercial Debts Act 1998, as amended. Customer shall be responsible for all costs incurred by Milk Student Planners Ltd in order to recover due payments, including without limitation all professional fees and legal costs; (ii) suspend all access to the Services by the Customer until the payment is made. Customer Obligations, including without limitation payment obligations, are not affected by such a suspension. Following such a suspension, Milk Student Planners Ltd may at its sole discretion require that the Customer agrees to revised payment terms for the Fees prior to any resumption of access to the Services.
- 6.7 Disputed Invoices - In the event that the Customer disputes an invoice it shall do so in writing providing proper details to Milk Student Planners Ltd of the nature of and reason for the dispute within fourteen (14) days of receipt of the invoice. Customer shall not unreasonably dispute any invoice. Full details of the basis of the dispute shall be provided prior to payment of the invoice which must be made within the payment period provided for in this Agreement. Within fourteen days of such notification, the parties will meet to resolve the matter. If the matter is not resolved at that meeting, the matter will be referred to the parties’ Managing Directors/CEOs. If notification of a dispute is not made in accordance with this clause 6.7, payment by the Customer shall be deemed final.

**7 CONFIDENTIALITY**

- 7.1 All information of a confidential nature whether disclosed by Us, You or any third party at the School (“Confidential Information”) shall be treated as confidential to the party disclosing the Confidential Information.
- 7.2 Neither party shall use or disclose any Confidential Information of the other party without the agreement in writing of the other party unless:
  - 7.2.1 required to disclose such information by law;
  - 7.2.2 or where such Confidential Information could bring into question the professionalism of an employee of the School.

## 8 INTELLECTUAL PROPERTY

- 8.1 Intellectual property rights means all patents, rights to inventions, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, database right, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world ("Intellectual Property Rights").
- 8.2 You acknowledge that we are the owner or licensee of all Intellectual Property Rights used in connection with the Services.
- 8.3 Nothing in these Terms and Conditions assigns, licences or otherwise transfers any Intellectual Property Rights owned or licensed by Us to You, save as necessary for the You to receive the Services.
- 8.4 You assign to Us by way of present and future assignment, all Intellectual Property Rights developed under or arising from the Agreement and you shall ensure that such assignment includes all Intellectual Property Rights in relation to the Agreement owned by Your employees, consultants, contractors and sub-contractors.
- 8.5 Where required You shall grant Us a non-exclusive perpetual, worldwide licence to use Your Intellectual Property Rights solely to such extent as is necessary to enable Us to provide Services in relation to the Agreement.

## 9 TERMINATION AND SUSPENSION

- 9.1 We reserve the right to suspend the provision of the Services in the event that:
- 9.1.1 We are required to do so by law;
  - 9.1.2 You have committed a breach of this Agreement;
  - 9.1.3 You have failed to make payment of a sum due on the due date for payment in accordance with this Agreement;
  - 9.1.4 upon giving You reasonable notice, We need to undertake maintenance to the Services.
- 9.2 This Agreement shall terminate automatically upon the expiration of 12 months from the commencement of this Agreement.
- 9.3 We can terminate the Agreement by giving You 30 days notice in writing.
- 9.4 You shall be able to terminate the Agreement, at any point within the first 30 days of this Agreement, by giving Us notice in writing. Where You terminate this Agreement in the first 30 days in accordance with this clause 9.4 we shall refund to You any sums You may already have paid to Us under this Agreement less a £250.00 set up cost already incurred by Us in the provision of the Services. Where You have terminated this Agreement in the first 30 days in accordance with this clause 9.4 and You have not yet paid any sums due under this Agreement We shall invoice You for the £250.00 set up fee and this shall be payable upon receipt.
- 9.5 We shall have the right to terminate the Agreement immediately in the event that we no longer have access to the Platform or the Services.
- 9.6 Either party shall have the right at any time by giving notice in writing to the other to terminate the Agreement immediately:
- 9.6.1 If the other party commits a material breach of any of the terms of the Agreement;
  - 9.6.2 If the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - 9.6.3 if the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
  - 9.6.4 if a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the other party; or
  - 9.6.5 any event occurs, or proceeding is taken, with respect to the other if any jurisdiction to which it is subject that has an effect equivalent or similar to any of the

events mentioned in clause 9.6.2 to clause 9.6.5 (inclusive); or

- 9.6.6 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of their business; or
  - 9.6.7 there is a change of Control of the other party.
- 9.7 Where the Agreement is terminated, all rights, duties and the Terms and Conditions that expressly or impliedly have effect after termination will continue to be enforceable despite termination.
- 9.8 Suspected Violations - Milk Student Planners Ltd reserves the right to investigate complaints relating to use of the Services by Customer, Users, or someone using Services associated with Customer's Account, or any potential violation of the terms of this Agreement (including but not limited to the Acceptable Use Policy or Attachments). Notwithstanding any other terms, policies, or other rights available, Milk Student Planners Ltd may take any action it deems appropriate, including without limitation, disclosing information to enforcement agencies. In addition to any other remedies available to it, Milk Student Planners Ltd reserves the right to:
- 9.8.1 restrict Customer's access to or terminate any of the Services, as described above;
  - 9.8.2 require the removal of offending Customer Data; or
  - 9.8.3 exercise other rights and remedies available at law or in equity.
  - 9.8.4 Except for an emergency as determined by Milk Student Planners Ltd or as may otherwise be required by law, before undertaking the remedies described in clauses 9.4 (Termination of Services by Milk Student Planners Ltd) and 9.5 (Suspected Violations), Milk Student Planners Ltd will attempt to notify the Customer by any reasonable practical means under the circumstances. Customer is required to immediately backup Customer Data or, where possible, demonstrate to Milk Student Planners Ltd that the violation has been remedied. Customer must take such action at most within three business days.

- 9.9 Termination by Customer - Customer may terminate this Agreement by serving 30 days written notice of termination in advance if Milk Student Planners Ltd repeatedly fails to observe or perform any serious material term or condition of this Agreement, including any Attachment, and such breach (if capable of remedy) continues for thirty (30) days after receipt of a written notice from Customer specifying the breach and requiring the same to be remedied.

- 9.10 Survival. Any terms of this Agreement that by their nature extend beyond the termination of Services remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

## 10 CONSEQUENCES OF TERMINATION

- 10.1 Upon termination of this Agreement you agree to:
- 10.1.1 Immediately cease use of the Services;
  - 10.1.2 Pay all outstanding sums owed to Us; and
  - 10.1.3 Where we request, to delete all software (including but not limited to set up and installation files) from Your Services, Devices and Computers.
- 10.2 We will take steps to ensure that all Your use of the Services is terminated.

## 11 OUR LIABILITY TO YOU

- 11.1 Nothing in these Terms and Conditions shall limit or exclude our liability for anything which cannot be excluded by law (including but not limited to death or personal injury caused by our negligence or fraud or fraudulent misrepresentation).
- 11.2 Except as expressly and specifically provided in this Agreement:
- 11.2.1 You assume sole responsibility for results obtained from Your use of the Services, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Us by You in connection with the Services;

11.2.2 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; and

11.2.3 the Services are provided to You on an 'as is' basis.

11.3 We shall under no circumstances be liable for any loss You suffer, where you have modified or varied the Services being provided to You.

11.4 We shall under no circumstances whatsoever be liable to you whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or indirect or consequential loss arising under or in connection with the Agreement.

11.5 Our total liability to you in respect of all other losses arising under or in connection with the Agreement whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the lesser of £100,000 or the payment you have made for the Services in the last 12 months.

11.6 We are unable to make any representations, warranties or guarantees, whether express or implied, that the content on the Services provided through, derived from or reliant upon another source or created or updated by third parties is accurate, complete or up-to-date.

11.7 We cannot guarantee that the Services will not be uninterrupted or delayed, and cannot be held liable for any loss you suffer as a result of interruptions or delays.

11.8 We cannot guarantee that the Services will produce your desired result or be what you expected and we cannot be held liable for this.

11.9 Whilst we will use our reasonable endeavours to ensure that all necessary steps are taken to safeguard the data You provide in accordance with the Services, You are responsible for the back up of all data you own, and we cannot be held responsible for the loss or corruption of your data through the Services.

11.10 We will exercise reasonable care to ensure that the Services are free of any viruses, errors and bugs and will indemnify you for any loss suffered as a result of our failure to exercise such reasonable care. In the event that we have exercised such reasonable care but you experience viruses, errors or bugs we will not be responsible or liable for any loss suffered and this will not constitute a breach of this Licence.

## 12 EVENTS OUTSIDE OUR CONTROL

12.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these Terms and Conditions that is caused by an Event Outside our Control.

12.2 An Event Outside our Control means any act or event beyond our reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war whether declared or not or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks ("Event Outside our Control").

12.3 If an Event Outside our Control takes place that affects the performance of our obligations under these Terms:

12.3.1 We will contact you as soon as reasonably possible to notify you; and

12.3.2 Our obligations under these Terms and Conditions will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside our Control. Where the Event Outside our Control affects our performance of Services to you, we will restart the Services as soon as reasonably possible after the Event Outside our Control is over.

12.4 Either party may cancel the Services if an Event Outside our Control takes place and continues for longer than 14 days in accordance with each party's termination rights in clause 9.

## 13 NON SOLICITATION

13.1 The parties agree that neither of them will either on their own account or in association with any person, firm, company or organisation, or otherwise and whether directly or indirectly during, or for a period of 12 months from, the end of the term of this Agreement, solicit or entice away or attempt to entice away

or authorise the taking of such action by any other person, employee or contractor of the other party who has worked on providing the Services provided under this Agreement at any time during the term of this Agreement.

## 14 GENERAL TERMS

14.1 Entire Agreement – The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings.

14.2 Variation - No variation of this Agreement shall be effective unless it is in writing and signed by all parties.

14.3 Waiver - Failure to exercise, or any delay in exercising, any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.

14.4 Assignment - You shall not assign or subcontract the Agreement or any part of it without Our prior written consent. In the event that any unauthorised sub-contractor or services are assigned to any unauthorised third parties We shall no liability and You shall indemnify Us for any loss we suffer. We may transfer Our rights and obligations under this Agreement, or any part of it to any other party.

14.5 Severance – If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

14.6 Notices - All notices required to be sent hereunder to Milk Student Planners Ltd shall be in writing and shall be deemed to have been given three business days after being mailed by first class mail to the address in the footer section of this agreement. Milk Student Planners Ltd will send notices to Customer to the email address identified in the Cloud Services Agreement. Subject to the foregoing, Customer and Milk Student Planners Ltd consent to the use of electronic means, email, and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing.

14.7 No partnership - Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

14.8 Third parties -This Agreement is made for the benefit of the parties to it and their successors and permitted assignees and is not intended to benefit, or be enforceable by, anyone else. This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

14.9 Governing Law - This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation including non-contractual disputes or claims shall be governed by and construed in accordance with the law of England and Wales.

14.10 Jurisdiction - The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation including non-contractual disputes or claims.

14.11 Purchase Orders - In the event that the Customer issues purchase orders which refer to the Services, or Content or any part thereof, such purchase orders shall be regarded as for the administrative convenience of the Customer only, and any terms and conditions attached to such purchase orders shall not form part of this Agreement nor be regarded as superseding this Agreement.

14.12 Publicity - Milk Student Planners Ltd may cite the Customer publicly as one of its customers (along with a brief description of the services provided) in its sales and marketing material without further reference to Customer. With the prior consent of the Customer, Milk Student Planners Ltd may also issue press releases concerning the services, hyperlink to Customer website,

use materials produced under this Agreement in case studies or award competitions and/or use such materials in its investor relations material.

## 15 CONTENT, FEEDBACK AND CUSTOMER DATA

- 15.1 Content - Milk Student Planners Ltd and its licensors retain all right, title, and interest in the Services and/or the Content. In the event that Milk Student Planners Ltd agrees to provide customisations to the Services and/or Content, whether or not specifically commissioned by the Customer, Milk Student Planners Ltd and its licensors retain all right, title, and interest in such customisations.
- 15.2 Feedback - Milk Student Planners Ltd shall own all right, title and interest in and to the Feedback. Customer hereby irrevocably assigns to Milk Student Planners Ltd all right, title, and interest in and to the Feedback and agrees to provide Milk Student Planners Ltd with any assistance Milk Student Planners Ltd may request to document, perfect, and maintain Milk Student Planners Ltd' rights in the Feedback.
- 15.3 Customer Data - Customer retains all right, title, and interest in Customer Data. By any party using Customer's account and adding, creating, installing, uploading, or transferring Customer Data for use in conjunction with the Services, Customer grants Milk Student Planners Ltd and its hosting suppliers (Amazon Web Services UK Ltd and Rackspace UK Ltd) a non-exclusive, royalty-free, paid-up, transferable license and approval to host, cache, copy, (in UK only) and display Customer Data, for the purpose of and in conjunction with providing the Services for the term of this Agreement. Customer represents that Customer has and will keep in effect during Customer's use of the Services, all licenses and approvals necessary to grant Milk Student Planners Ltd and its hosting suppliers (Amazon Web Services UK Ltd and Rackspace UK Ltd) these rights and that they will be provided at no charge to Milk Student Planners Ltd. Customer is responsible for complying with the terms of any such license agreements including entitlements and permitted uses. Customer represents that by adding, creating, installing, uploading, or transferring Customer Data, or using APIs to do any of the foregoing, for use in conjunction with the Services, Customer is not exceeding any specified entitlement or permitted use or violating applicable license agreements or applicable laws. Customer agrees to reimburse Milk Student Planners Ltd for any reasonable costs and other amounts that Milk Student Planners Ltd may incur from Customer's failure to obtain these licenses or approvals.
- 15.4 Customer Data Responsibilities - Customer is responsible for all Customer Data, including selection, creation, design, usage, licensing, maintenance, testing, backup, and support. Customer is also responsible for any Personal Data or any information Customer considers confidential that is included in the Customer Data. Customer acknowledges that Milk Student Planners Ltd does not control the transfer of data over telecommunications facilities, including the Internet.
- 15.5 Customer Data Confidentiality. Where Customer Data is clearly identified as Customer Confidential Information, Milk Student Planners Ltd will:
- 15.5.1 use the same care and discretion to avoid disclosure of such Customer Confidential Information as it uses to avoid disclosure of its own similar information;
  - 15.5.2 disclose Customer Confidential Information only to its employees or employees who have a need to know to provide the Services; and
  - 15.5.3 disclose Customer Confidential Information to subcontractors who have a need to know to provide the Services and Milk Student Planners Ltd will have appropriate agreements in place with its subcontractors to meet the confidentiality obligations as set forth in this section. Milk Student Planners Ltd may disclose Customer Confidential Information to the extent required by law. However, Milk Student Planners Ltd will, to the extent possible, give the Customer prompt notice to allow Customer a reasonable opportunity to obtain a protective order.
- 15.6 Milk Student Planners Ltd is under no obligation for any information Customer identified as Customer Confidential Information that is:

- 15.6.1 already in Milk Student Planners Ltd' possession without obligation of confidentiality;
- 15.6.2 developed independently;
- 15.6.3 obtained from a source other than the exposure during the provision of the Services without obligation of confidentiality;
- 15.6.4 publicly available through no fault of Milk Student Planners Ltd; or
- 15.6.5 disclosed by Customer to another without obligation of confidentiality.

- 15.7 Milk Student Planners Ltd is free to use in its business activities the ideas, concepts and know-how contained in any Customer Data which are retained in the memories of Milk Student Planners Ltd employees who have had access to the Customer Confidential Information during the performance of the Services.

## 16 DATA PROTECTION AND PRIVACY

- 16.1 Compliance with law - both parties warrant that they will duly observe all their obligations under the data protection act 1998. In this clause 16, the terms "process", "processing" and "personal data" shall be understood in their meanings as assigned by the data protection act 1998 as amended.
- 16.2 Data Controller - Customer is and shall remain the data controller of the Customer Data it uploads or provides as part of the Services. Milk Student Planners Ltd is a service provider to Customer and has the role of data processor. Milk Student Planners Ltd does not own or otherwise act as data controller of the Customer Data. It is Customer's responsibility to verify that the security and privacy protections offered by the Services are adequate and in compliance with all applicable laws governing the type of data included in the Customer Data which is uploaded in or provided to the Services.
- 16.3 Data Processing - Without limiting Clause 15.1, if the Customer passes to Milk Student Planners Ltd, or otherwise gives Milk Student Planners Ltd access to, Personal Data under this Agreement:
- 16.3.1 Milk Student Planners Ltd will not Process Personal Data held by it under this Agreement except in accordance with this Agreement or otherwise on the instructions of the Customer.
  - 16.3.2 Milk Student Planners Ltd will acquire no rights or interest in the Personal Data and will return such Personal Data to the Customer on demand.
  - 16.3.3 Milk Student Planners Ltd will implement appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of or damage to Personal Data.
  - 16.3.4 Milk Student Planners Ltd will ensure that its employees will maintain proper records of the Processing of any Personal Data received from the Customer or from a third party on behalf of the Customer.
  - 16.3.5 Milk Student Planners Ltd will not transfer Customer's Customer Data, including Customer's Personal Data, outside of the United Kingdom without the written approval of the Customer.
- 16.4 Collection of Personal Data - Customer's access to the Services is via a Milk-controlled website. As such, Customer's interaction with the website, and any Personal Data that may be collected by the website, is governed by the Milk Student Planner System Privacy Policy <http://www.milkstudentplanner.com/privacy-policy/>

I CONFIRM I HAVE READ AND ACCEPTED THESE TERMS AND  
CONDITIONS:

SIGNED BY (PERSON OF AUTHORITY)

POSITION (SLT / BUSINESS MANAGER)

ON BEHALF OF (SCHOOL/COLLEGE)

DATE