

Terms & Conditions

1.1 The following terms shall have the following meanings:

"tootoot" and "tootoot" means tootoot Ltd. "Services" means any of the services provided by tootoot under these terms and conditions. "User" means You. "Dashboard" means the aggregated dashboard which displays real-time data of multiple Users. "School" means any educational institution including but not limited too: primary schools, secondary school, middle school, high school, college, university.

"Data Protection Legislation": means all applicable privacy and data protection laws including the General Data Protection Regulation ((EU) 2016/679) ("**GDPR**") and any applicable national implementing laws, regulations and secondary legislation in England and Wales relating to the processing of Personal Data and the privacy of electronic communications, as amended, replaced or updated from time to time, including the Data Protection Act 2018, the Privacy and Electronic Communications Directive (2002/58/EC) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426).

"Clause" and "schedule" means respectively clauses or schedules in this agreement unless the context shows a contrary meaning. "Now" and "today" means at the date of this agreement. "Comply with" includes "observe and perform". "Parties" means the parties to this agreement and where the context permits, their successors in title. Defined terms set forth in the Data Protection Legislation also apply to the interpretation of this agreement.

COMMENCEMENT AND TERM OF AGREEMENT

2.1 These terms and conditions are effective from the date the Services begins to be provided to the User by tootoot and form an agreement between the Parties in relation to such Services ("the Commencement Date") and subject to the right of termination contained herein they shall remain in force for a period of 36 months, unless otherwise agreed, from the Commencement Date ("the Term").

2.2 At it's own discretion, prior to The Term, tootoot can offer a trial period of up to 12 months from the date the Services begin to be provided to the User. At any point within the trial period, by phone, writing or email to the other, tootoot or the User may terminate the agreement between them under these terms and conditions before the expiry of the Trial and no Term shall be entered into.

2.3 After the trial period has passed, or as standard if there is no trial granted, tootoot or the User may, by phone, writing or email to the other, may terminate the agreement between them under these terms and conditions before the expiry of the Term. Failing the provision of such notice, the agreement between the Parties under these terms and conditions will be renewed automatically and will continue until terminated in accordance with the clause 9.1.

PERMISSION TO USE AND CONSIDERATION

3.1 tootoot grants to the User an exclusive right during the Term to use the Service in accordance with these terms and conditions and for no other purpose.

3.2 The User shall pay tootoot for the Service and where applicable for the Dashboard. The Term shall be agreed prior to the Commencement Date. The Term may be increased at the discretion of tootoot. Such increase shall take effect on each anniversary of the Commencement Date. Where The Term is not agreed prior to Commencement Date, it will default to the length outlined in 2.1.

3.3 For sales with 'Payment in Full' terms, payment of the Rental Period shall be made within 14 days of receiving an invoice, unless otherwise agreed between the Parties in advance of invoicing. Any agreed alternative payment term will be clearly stated on the invoice.

3.4 For sales without any payment in advance, payment of the Rental Period will be due within 14 days of Completion.

REFUNDS AND CANCELLATIONS

4.1 In respect of the Services, the following refund and cancellation policy will apply:-

4.1.1 If no free trial period is granted, then a "cooling off" period of 14 days from the date of order processing, during which a full refund of fees paid may be payable by tootoot to the User, in accordance with the following conditions;

- i.** Where The Service has been activated for a User, no refund will be given and any outstanding balance of The Term will be due from the User to tootoot.
- ii.** Where The Service has been agreed, but not yet activated for a User, only a partial refund will be given, equal to the invoice amount less 50% of the first-year cost of The Term.

4.1.2 If a free trial period has been granted, then a "cooling off" period of the agreed trial length from the date of order processing, during which a full refund of any fees paid may be payable by tootoot to the User, in accordance with the following conditions;

- i.** Where The Trial has completed and the User is now in The Term, no refund will be given and any outstanding balance of The Term will be due from the User to tootoot.
- ii.** Where The Trial is still in effect, any fees paid by The User will be payable by tootoot to the User in full.

4.1.3 Cancellations will only be accepted in the following forms: a) in writing to the address shown on www.tootoot.co.uk or b) by email sent to info@tootoot.co.uk or c) by phone;

4.1.4 In the case of payment by credit or debit card, only the card used for the original payment will be refunded;

4.1.5 Refunds will be processed as soon as possible, but within 14 days of the refund being agreed by tootoot; and

4.1.6 Cancellations made after the "cooling off" period will only result in a refund at the discretion of tootoot with full invoice being due payable unless otherwise agreed.

INTELLECTUAL PROPERTY AND CONDITIONS OF USE

5.1 The User acknowledges that tootoot, the Service, and all programs, data, information and other items included in the Services constitute valuable intellectual property and trade secrets of tootoot. The User agrees to take all reasonable steps to protect the intellectual property rights ("IPR") of tootoot both during and after the Term.

5.2 The User shall not make any use of any tootoot IPR including without limitation any trade marks, service marks, business names, logos, designs or domain names of tootoot without the prior written consent of tootoot.

5.3 tootoot will indemnify the User against all claims and proceedings arising from infringement of any IPRs by reason of tootoot 's provision of the Services to the User. Provided that the User shall: (a) notify tootoot promptly in writing of any allegation of infringement; (b) make no admission relating to the infringement; (c) allow tootoot to conduct all negotiations and proceedings and give tootoot all reasonable assistance in doing so (tootoot will pay the User's reasonable expenses for such assistance); and (d) allow tootoot to modify the Services, or any item provided as part of the Services, so as to avoid the infringement, provided that the modification does not materially affect the performance of the Services.

5.4 The indemnity in clause 5.3 does not apply to infringements caused by the use of the Services in conjunction with other equipment, or software or services not supplied by tootoot or to infringements caused by designs or specifications provided by, or on behalf of, the User. The User will indemnify tootoot against all claims, proceedings and expenses arising from such infringements.

5.5 The User will procure that it will at all times comply with the restrictions on the use of tootoot and the Services set out herein or on tootoot or otherwise notified to them by or on behalf of tootoot.

5.6 None of the User, its employees or agents will use any automatic device or manual process to monitor or copy any pages of tootoot or the content contained therein other than in accordance with the proper functionality thereof nor will any of the foregoing use any device, software or routine to interfere or attempt to interfere with the proper working of tootoot.

DATA PROTECTION

6.1 The provisions of the Data Protection Schedule below shall apply in respect of Personal Data processed as part of the Services.

LIMITATION ON LIABILITY

7.1 All content, materials and information on the Site are provided on an "as is" and "as available" basis without any representation or endorsement made and without warranty of any kind whether expressed or implied, including but not limited to the implied warranties of satisfactory quality, fitness for a particular purpose, non-infringement, compatibility, security and accuracy.

7.2 To the fullest extent permitted by applicable law, tootoot will not be liable for any indirect or consequential loss or damage whatsoever (including without limitation loss of business, profits, contracts, goodwill and/or any other economic loss).

7.3 tootoot makes no warranty that the Site or any Services available on the Site will meet your requirements, that content will be accurate or reliable, that the functionality of the Site or any Services available on it will be uninterrupted or error free, that defects will be corrected or the Services or server that makes them available are free of viruses or anything else which may be harmful or destructive.

7.4 Nothing in these terms and conditions shall be construed so as to exclude or limit the liability of tootoot for death or personal injury as a result of the negligence of tootoot.

ASSIGNMENT AND SUB-LICENCE

8.1 The agreement between the Parties under these terms and conditions is personal to the User who may not without tootoot's prior written consent a) assign or dispose of it; b) part with any interest in it; or c) grant any lease or licence or delegate any of the rights conferred by it.

TERMINATION

9.1 In addition to both Parties rights under clause 2.1, tootoot may at any time by written notice, terminate this agreement or suspend its performance of all or any of its obligations under it immediately and without liability for compensation or damages if the User –

- (a)** commits a material breach of these terms and conditions and if such breach (if capable of being remedied) remains un-remedied fourteen days after being called to the attention of the User in writing by tootoot; or
- (b)** becomes or is declared insolvent or a resolution is passed for the winding up of the User or the User convenes a meeting of its creditors or makes or proposes to make any arrangement or composition with its creditors or becomes subject to any other insolvency procedure in any jurisdiction or any person takes any step to appoint an administrator or a liquidator, an

administrative receiver, a receiver, manager, trustee, custodian or analogous officer is appointed (whether out of court or otherwise) in respect of all or any part of its property, undertaking or assets or which entitle the court to make a winding up or bankruptcy order.

CONSEQUENCES OF TERMINATION

10.1 On the termination of the agreement between the Parties under these terms and conditions, the User shall at his own expense promptly withdraw and return to tootoot or otherwise dispose of, as tootoot instructs, all samples, publicity material or other documents relating to tootoot which the User has in its possession or under its control.

10.2 The expiration or earlier termination of the agreement between the Parties under these terms and conditions shall not affect (a) such of the provisions that are expressed to operate or have effect afterwards; or b) any right of action already accrued to either party in respect of any breach of this agreement by the other party.

10.3 The User shall as promptly as reasonably practicable after the termination, and in any event within 7 days of the date of termination, remove tootoot from all samples, publicity materials, documents or any web or internet site.

FORCE MAJEURE

11.1 tootoot shall not be liable for any failure in the performance of any of its obligations under these terms and conditions caused by factors outside its control.

ENTIRE UNDERSTANDING

12.1 These terms and conditions are the exclusive statement of the agreement between the Parties related to the subject matter hereof. It supersedes all understandings and prior agreements, whether oral or written, between the Parties in respect of the subject matter hereof. The Parties both agree that they did not rely on any statement made by the other party before agreeing to these terms and conditions and hereby waives any remedy which might otherwise be available to them in respect of any untrue statement (whether made innocently or negligently) before agreeing to these terms and conditions.

LAW AND JURISDICTION

13.1 These terms and conditions shall be governed by and construed in accordance with the laws of England, and the rules and regulations of any intermediary organisation or entity through which any Services are provided, as any of the same may be amended from time to time, and the User acknowledges that use of a Service following any amendment shall be deemed to be the User's consent to such amendment. The User hereby irrevocably submits to the exclusive jurisdiction of the courts of England over any action or proceeding relating to these terms and conditions.

13.2 tootoot makes no claim that the Site is appropriate for access or use in any particular jurisdiction, and cannot be held responsible for non-compliance with any local laws or regulations in relation to the contents or the Sites. Access and/or use of the Sites and their contents is at the User's own risk, and the User is responsible for compliance with the laws of any jurisdiction to which the User is subject.

NOTICES

14.1 Any notice given under these terms and conditions shall be in writing and may be served:-

- a) by registered mail to the address provided to tootoot at the commencement date; b) by e-mail provided to tootoot at the commencement date

14.2 At Each party's address for the service of notice shall be its above mentioned address or such other address as it specifies by notice to the other notice shall be deemed to have been served:-

- a) if served by registered mail 48 hours after it was posted; and b) if it was served by e-mail at the time of transmission.

GENERAL

15.1 Except as expressly provided for in these terms and conditions no variation or amendment these terms and conditions or oral promise or commitment related to it shall be valid unless committed to writing and signed by or on behalf of both Parties.

15.2 If any provision of these terms and conditions is declared invalid or unenforceable, such provision shall be struck out and the remaining provisions shall remain in full force and effect.

15.3 The headings are for convenience of reference and shall not affect the construction or interpretation of these terms and conditions.

15.4 A third party who is not a party to the agreement made under these terms and conditions has no right under the Contract (Rights of Third Parties) Act 1999 (the "Act") to enforce any term of these terms and conditions but this does not affect any right or remedy of a third party which exists or is available apart from the Act.

DATA PROTECTION SCHEDULE

1 PERSONAL DATA TYPES AND PROCESSING PURPOSES

- 1.1 The User and Tootoot acknowledge that for the purpose of the Data Protection Legislation, the User is the controller and Tootoot is the processor.
- 1.2 The User retains control of the Personal Data and remains responsible for its compliance obligations under the applicable Data Protection Legislation, including providing any

required notices and obtaining any required consents, and for the processing instructions it gives to Tootoot.

1.3 Regarding processing conducted pursuant to this agreement:

1.3.1 Subject matter of processing: the supply and use of Tootoot's platform and app.

1.3.2 Duration of Processing: the term of this agreement plus a retention of 4 years after termination of this agreement or less if instructed by the User.

1.3.3 Nature of Processing: Storage of persona data, transfer of personal data between the User and its pupils, students, members, or employees (as the case may be)

1.3.4 Business Purposes: the provision of the Services to the User for the benefit of its pupils, students, members, or employees (as the case may be)

1.3.5 Personal Data Categories: depending on how the Services are used and what the Users specific instructions are the following categories may apply to each data subject:

- (a) full name,
- (b) gender,
- (c) date of birth,
- (d) email address (for non-educational establishments only),
- (e) National Insurance Number (for non-educational and non-sporting establishments only),

In respect of educational establishments only:

- (f) year group,
- (g) special educational needs requirements,
- (h) English as a second language needs,
- (i) Free school meals entitlement,
- (j) Pupil premium,
- (k) Gifted and talented provision,

(l) Child in Care needs,

(m) Religion.

1.3.6 Data Subject Types: pupils, students, members, or employees (as the case may be) of the User who sign up to use Tootoot's platform and app.

2 PROVIDER'S OBLIGATIONS

2.1 Tootoot will only process the Personal Data to the extent, and in such a manner, as is necessary for the provision of the Services in accordance with this agreement and/or the User's written instructions except where otherwise required by applicable law (and shall inform the User of that legal requirement before processing unless prohibited by that applicable law on important grounds of public interest).

2.2 Tootoot will notify the User if, in its opinion, the User's instruction would not comply with the Data Protection Legislation and shall be entitled to cease to provide the relevant services until appropriate amended instructions are received.

2.3 Tootoot will maintain the confidentiality of all Personal Data and will not disclose Personal Data to third parties unless the User or this agreement specifically authorises the disclosure, or as required by law. If a law, court, regulator or supervisory authority requires Tootoot to process or disclose Personal Data, Tootoot will first inform the User of the legal or regulatory requirement and give the User an opportunity to object or challenge the requirement, unless the law prohibits such notice.

2.4 Tootoot will reasonably assist the User with meeting the User's compliance obligations under articles 32 to 36 of the GDPR (and any similar obligations under Data Protection Legislation), taking into account the nature of Tootoot's processing and the information available to Tootoot, including in relation to Data Subject rights, data protection impact assessments and reporting to and consulting with supervisory authorities under the Data Protection Legislation.

3 PROVIDER'S EMPLOYEES

3.1 Tootoot will ensure that all employees are informed of the confidential nature of the Personal Data and are bound by confidentiality obligations and use restrictions in respect of the Personal Data.

4 SECURITY

4.1 Tootoot will at all times implement appropriate technical and organisational measures against unauthorised or unlawful processing, access, disclosure, copying, modification, storage, reproduction, display or distribution of Personal Data, and against accidental or

unlawful loss, destruction, alteration, disclosure or damage of Personal Data. Tootoot will document those measures in writing and periodically review them to ensure they remain current and complete.

4.2 Tootoot will implement such measures to ensure a level of security appropriate to the risk involved, including as appropriate:

4.2.1 the pseudonymisation and encryption of personal data;

4.2.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;

4.2.3 the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and

4.2.4 a process for regularly testing, assessing and evaluating the effectiveness of security measures.

5 PERSONAL DATA BREACH

5.1 Tootoot will promptly and without undue delay notify the User if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable. Tootoot will restore such Personal Data at its own expense.

5.2 Tootoot will promptly and without undue delay notify the User if it becomes aware of:

5.2.1 any accidental, unauthorised or unlawful processing of the Personal Data; or

5.2.2 any Personal Data Breach.

6 CROSS-BORDER TRANSFERS OF PERSONAL DATA

6.1 Tootoot (or any subcontractor) must not transfer or otherwise process Personal Data outside the European Economic Area ("**EEA**") without obtaining the User's prior written consent.

6.2 Notwithstanding paragraph 6.1, the User hereby consents to Personal Data being sent to the following sub-contractors:

6.2.1 Intercom Inc. who provide live chat support services for the Services and who are located in the USA; and

6.2.2 Slack Technologies Inc. who provide company communication tools and who are located in the USA.

7 SUBCONTRACTORS

7.1 Tootoot may only authorise a third party (subcontractor) to process the Personal Data if:

7.1.1 the User is provided with an opportunity to object to the appointment of each subcontractor within 7 (seven) days after Tootoot supplies the User with full details regarding such subcontractor;

7.1.2 Tootoot enters into a written contract with the subcontractor that contains terms substantially the same as those set out in this agreement, in particular, in relation to requiring appropriate technical and organisational data security measures; and

7.1.3 Tootoot maintains control over all Personal Data it entrusts to the subcontractor.

7.2 If the User:

(a) objects to the appointment of any subcontractor within the timescale referred to in paragraph 7.1.1 then Tootoot shall ensure that no Personal Data that it is processing on behalf of the User is transferred to such subcontractor and this agreement shall automatically terminate one month after receipt of such objection by Tootoot on a no fault basis for either party; or

(b) does not object to the appointment of any subcontractor within the timescale referred to in paragraph 7.1.1 then they are deemed to have agreed to the engagement of that subcontractor.

7.3 Those subcontractors approved as at the commencement of this agreement are as set out in paragraph 6.2 above and, additionally, Digital Ocean LLC and Amazon.com Inc who together provide hosting services for our platform and app who are both US companies but who keep all personal data on servers at data centres respectively based in the UK and throughout the EEA (and who do not transfer such data to the US at any time).

7.4 Where the subcontractor fails to fulfil its obligations under such written agreement, Tootoot remains fully liable to the User for the subcontractor's performance of its contract obligations.

7.5 The Parties consider Tootoot to control any Personal Data controlled by or in the possession of its subcontractors.

8 SENSITIVE PERSONAL DATA

- 8.1 Tootoot does not expect to regularly process sensitive personal data on behalf of the User but where it is requested to do so by the User from time to time, the User shall ensure that prior to making such request it has sufficient consent to the processing from the relevant data subject including (but not limited to) ensuring that the consent is freely given (so giving of the consent must not be a pre-condition of the data subject being entitled to use Tootoot's platform an app), specific and informed (so the data subject must be advised that the data will be sent to Tootoot and its sub-processors, why it has been sent, and what data will be send) and an unambiguous indication of consent.
- 8.2 If the consent referred to in paragraph 8.1 is withdrawn at any time then the User must notify Tootoot immediately, following which Tootoot will cease processing such sensitive personal data.
- 8.3 The User shall indemnify Tootoot against any losses, claims, damages, liabilities, fines, sanctions, interests, penalties, costs, charges, expenses, compensation paid to data subjects, demands and legal and other professional costs (calculated on a full indemnity basis and each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the customer of its obligations under paragraphs 8.1 or 8.2.

9 COMPLAINTS, DATA SUBJECT REQUESTS AND THIRD PARTY RIGHTS

- 9.1 Tootoot will, at no additional cost, take such technical and organisational measures as may be appropriate, and promptly provide such information to the User as the User may reasonably require, to enable the User to comply with:
- 9.1.1 the rights of Data Subjects under the Data Protection Legislation, including subject access rights, the rights to rectify and erase personal data, object to the processing and automated processing of personal data, and restrict the processing of personal data; and
- 9.1.2 information or assessment notices served on the User by any supervisory authority under the Data Protection Legislation.

10 DATA RETURN AND DESTRUCTION

- 10.1 At the User's request, Tootoot will give the User a copy of or access to all or part of the User's Personal Data in its possession or control in the format and on the media reasonably specified by the User.

10.2 On termination of this agreement for any reason or expiry of its term, Tootoot will securely delete or destroy or, if directed in writing by the User, return and not retain, all or any Personal Data related to this agreement in its possession or control.

10.3 If any law, regulation, or government or regulatory body requires Tootoot to retain any documents or materials that Tootoot would otherwise be required to return or destroy, it will notify the User in writing of that retention requirement, giving details of the documents or materials that it must retain, the legal basis for retention, and establishing a specific timeline for destruction once the retention requirement ends.

11 AUDIT

11.1 Tootoot shall, in accordance with the Data Protection Legislation, make available to the User such information that is in its possession or control as is necessary to demonstrate Tootoot's compliance with the obligations placed on it under this agreement and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent provisions of any Data Protection Legislation), and allow for and contribute to audits, including inspections, by the User (or another auditor mandated by the User) for this purpose (subject to a maximum of one audit request in any 12 month period under this paragraph 11).