

EduPod Terms of Service

Effective from 1st March 2020

These terms of service (**Terms**) set out the basis on which Innovating Minds CIC (company number 09998435) (**EduPod**) agrees to provide, and the customer identified in an order form (**Customer**) agrees to take and pay for access to the EduPod online platform.

1 Definitions and interpretation

- a. The definitions and rules of interpretation set out in this clause shall apply to this agreement. In this agreement:

Acceptable Use Policy	the policy applicable to the use of the Services by Authorised Users which is available at www.myedupod.com ;
Accredited User	a Customer that has received the ‘Whole School Approach Mental Health Award from Innovating Minds;
Accredited Terms	the terms and conditions for the ‘Whole School Approach Mental Health Award
Authorised Users	in respect of the relevant Services, the named users authorised by the Customer to use the Services in accordance with these terms;
Business Day	a day other than a Saturday, Sunday or bank or public holiday in England;
Online Forum	the online community forum which forms part of the Services;
Order Acceptance	the date of the last party to sign an order form or the date on which the Customer first accesses and uses the Services, whichever occurs first;
Resources	any content (including documents, guidance, results and audio-visual content), materials, toolkits or other resources provided or made available to Authorised Users through the Services;
Services	the EduPod online platform described at www.myedupod.com which includes access to the Online platform;
Statistical Data	the aggregated statistical data provided to the Customer through the Services;
Subscription Term	the period beginning on Order Acceptance and ending with the last of the Subscription Terms;
VAT	United Kingdom value added tax and any other tax imposed in substitution for it.

- b. Headings in these terms are included for convenience only and shall have no effect on interpretation.
- c. A reference to **this agreement** means the agreement between the parties comprising these terms and any terms contained in an order form.
- d. Any words that follow **include, includes, including, in particular** or any similar words and expressions shall be interpreted as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words.

- e. Unless the context otherwise requires, any obligation on the Customer shall include an obligation to ensure that its Authorised Users comply with such obligation.
- f. A reference to **writing** or **written** includes email but not any other form of electronic communication.
- g. In this agreement:
 - i. each order form entered into by the Customer shall form a separate agreement, incorporating these Terms for the respective Services (this agreement);
 - ii. in the event of any conflict between these Terms and any terms included in an order form, the order form shall take precedence.
- h. Any obligation on EduPod under this agreement to comply or ensure compliance by any person or the Services with any law shall be limited to compliance only with laws within the United Kingdom as generally applicable to businesses and to providers of software-as-a-service solutions.

2 Access to the Services

- a. Upon Order Acceptance and subject to these Terms, EduPod grants the Customer (and through the Customer, the Authorised Users) a non-exclusive non-transferable right to access and use the Services during the Subscription Term.
- b. The Customer acknowledges that the provision of access to the Services may take up to two Business Days from Order Acceptance and that use of the Services is at all times subject to the Customer's compliance with the terms of this agreement.
- c. EduPod shall use its reasonable endeavours to ensure that the Services are available during the hours of 8am to 8pm on Business Days and will ensure that any maintenance shall be undertaken outside those hours unless any maintenance is required in order to maintain the security and integrity of the Services.
- d. The Customer acknowledges that EduPod shall be entitled to modify the features and functionality of the Services. EduPod shall use reasonable endeavours to ensure that any such modification does not materially affect the use of the Services by EduPod's customers generally.
- e. The Services may be subject to delays, interruptions, errors or other problems resulting from use of the internet or public electronic communications networks used by the parties or third parties. The Customer acknowledges that such risks are inherent in cloud services and that EduPod shall have no liability for any such delays, interruptions, errors or other problems.

3 Support

- a. As part of the onboarding fee paid by the Customer, EduPod shall provide (remotely or in person, at EduPod's sole discretion):
 - i. Authorised Users with 3 hours of initial training on the whole school approach and how to use the Services;
 - ii. the mental health lead with 12 hours of consultation support during the first 12 months of the Subscription Term (which must be used on the basis of 4 hours per full school term based on 3 school terms, with any hours remaining unused at the end of a term not being carried over to the next).

4 Resources and recommendations

- a. EduPod shall ensure that all Resources have been prepared using reasonable skill and care by mental health practitioners of sufficient qualification and experience.
- b. Subject to clause 4a, EduPod does not make any guarantee and the Customer acknowledges that no liability or obligation is accepted by EduPod:
 - i. that the Services shall meet the Customer's needs, whether or not such needs have been communicated to EduPod;
 - ii. that any Resources and recommendations provided through the Services will achieve any particular outcomes; or
 - iii. that the operation of the Services shall not be subject to minor errors or defects.
- c. The Services may contain hyperlinks or references to third party resources and websites (**Third Party Resources**). Any such hyperlinks or references are provided for your convenience only. We have no control over Third Party Resources and accept no legal responsibility for any content, material or information contained in them. The display of any hyperlink and reference to any Third-Party Resources does not mean that we endorse such Third Party Resources. Your use of Third-Party Resources may be governed by the terms and conditions relating to them.
- d. Subject to clauses 4a and 4b, all warranties, conditions, terms, undertakings or obligations whether express or implied and including any implied terms relating to quality, fitness for any particular purpose or ability to achieve a particular result are excluded to the fullest extent allowed by applicable law.

5 Authorised Users

- a. The Customer shall ensure that only Authorised Users use the Services and that such use is at all times in accordance with the Acceptable Use Policy. The Customer shall ensure that Authorised Users are, at all times whilst they have access to the Services, the employees or contractors of the Customer.
- b. The Customer is entitled to remove one individual as an Authorised User and replace them with another individual in, but Authorised User accounts cannot be shared or used by more than one individual at the same time.
- c. The Customer shall:
 - i. be liable for the acts and omissions of the Authorised Users as if they were its own;
 - ii. only provide Authorised Users with access to the Services and shall not provide access to anyone else; and
 - iii. ensure that each Authorised User is aware of, and complies with, the Acceptable Use Policy.
- d. The Customer shall keep confidential and not share with any third party the password or access details for the Services. If any password has been provided to an individual that is not an Authorised User, the Customer shall, without delay, disable any such passwords and notify EduPod immediately.
- e. The Customer shall comply with all applicable laws, rules, and regulations governing export that apply to the Services. The Customer shall be solely responsible for ensuring that its access, importation and use of the Services in or into any part of the country or territory in which the Customer is located complies with all export and other laws.

6 Accreditation

- a. Upon completion of the accreditation process the Customer shall become an Accredited User. Full terms and conditions can be found at www.myedupod.com
- b. The Customer agrees that EduPod may include the Customer's details on a list of Accredited Users published on its website.

7 Fees

- a. The Customer shall pay the fees and any other charges at the rates and in the manner described in an order form.
- b. The Customer shall be liable to pay for the number of Authorised Users above the number of Authorised Users specified in the order form at the then-current rates, subject to the terms of this clause 5. The fees in respect of additional Authorised Users shall not be calculated on a pro-rata basis, such that the Subscription Term shall be extended by the duration of additional Authorised User's access to the Services.
- c. EduPod shall invoice the Customer annually in advance for all fees due under this agreement, and the invoices shall be paid within 30 calendar days of the date of each invoice.
- d. All fees and charges are exclusive of VAT which shall be payable by the Customer at the rate and in the manner prescribed by law.
- e. EduPod shall have the right to charge interest on overdue invoices at the rate of 4% per year above the base rate of Bank of England, calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment whether before or after judgment.
- f. EduPod shall be entitled to increase the fees for the Services at any time by written notice to the Customer provided that EduPod shall not be entitled to increase the fees on less than four weeks' prior notice or more than once every 12 months.
- g. To the extent this agreement terminates or expires the Customer shall not be entitled to any refund or discount of Fees paid for any parts of any period during which the Services cease to be provided.

8 Intellectual Property Rights

- a. All Intellectual Property Rights in and to the Resources, Services and Statistical Data shall belong to and shall remain vested in EduPod. To the extent that the Customer acquires any Intellectual Property Rights in the Resources, Services and/or Statistical Data, the Customer shall assign or ensure the assignment of such Intellectual Property Rights with full title guarantee to EduPod or such third party as EduPod may elect.
- b. EduPod grants to the Customer a non-exclusive non-transferable and non-sublicensable right to copy and use (but not modify) the Resources and Statistical Data for its own purposes only.
- c. Except for the rights expressly granted in these Terms, neither the Customer nor any Authorised User shall acquire in any way any title, rights of ownership, or Intellectual Property Rights of whatever nature in the Resources, Services or Statistical Data and no Intellectual Property Rights of either party are transferred or licensed as a result of this agreement.
- d. This clause 8 shall survive the termination or expiry of this agreement.

9 Personal data

Apart from the names and email address of Authorised Users, the Customer shall not input or upload any personal data to the Services and the Customer agrees that where it does so, EduPod shall not be deemed to be a processor of such personal data. If EduPod identifies that any personal data has been input or uploaded to the Services, the Customer shall delete such personal data immediately on receiving written notice by EduPod. In this clause 9, the terms **personal data** and **processor** have the meanings given to them under Regulation (EU) 2016/679, the General Data Protection Regulation.

10 Confidential Information

- a. Each party shall take all reasonable steps to ensure that the any information provided by the other party that is proprietary or confidential (whether marked as such or whether such information ought reasonably to be treated as confidential) (**Confidential Information**) to which it has access is held in confidence and shall not make it available to any third party, or use it for any purpose other than the implementation of this agreement.
- b. Confidential Information shall not without the prior written consent of the other's party be disclosed, copied or modified other than as necessary for the performance of its express rights and obligations under this agreement. This clause 10 shall not apply to information which:
 - i. is or comes into the public domain through no fault of the Customer, its officers, employees, agents or contractors;
 - ii. is lawfully received by the Customer from a third party free of any obligation of confidence at the time of its disclosure;
 - iii. is independently developed by the Customer, without access to or use of such information; or
 - iv. is required by law, by court or governmental or regulatory order to be disclosed provided that the Customer, where possible, notifies EduPod at the earliest opportunity before making any disclosure.
- c. A party shall give notice to the other party of any unauthorised use, disclosure, theft or loss of the Confidential Information immediately upon becoming aware of the same.
- d. This clause 10 shall survive the termination or expiry of this agreement for a period of 5 years.

11 Limitation of liability

- a. Subject to clause 11b, EduPod's aggregate liability in respect of the provision of the Services (however arising under or in connection with this agreement) shall not exceed an amount equal to the fees actually paid by the Customer in the 12-month period immediately preceding the first incident giving rise to any claim under this agreement (except in the case of any free or trial version of the Services to which the Customer is granted access, in respect of which EduPod accepts no liability whatsoever).
- b. EduPod shall not be liable for any consequential, indirect or special losses, direct or indirect loss of profit, destruction, loss of use or corruption of data, loss or corruption of software or systems, loss or damage to equipment, loss of use, loss of production, loss of contract, loss of opportunity, loss of savings, discount or rebate (whether actual or anticipated) and/or harm to reputation or loss of goodwill.
- c. This clause 11 shall survive the termination or expiry of this agreement.

12 Suspension

- a. EduPod may suspend access to the Services to all or some of the Authorised Users if:
 - i. EduPod suspects that there has been any misuse of the Services or breach of this agreement or the Acceptable Use Policy; or
 - ii. the Customer fails to pay any sums due to EduPod by the due date for payment and has not paid such sums within a period of five Business Days of receiving written notice from EduPod.
- b. All fees shall remain payable during any period of suspension despite the fact that Customer or some or all of the Authorised Users may not have access to the Services.

13 Renewals

- a. On expiry of the Subscription Term indicated in the order form, this agreement shall continue and automatically renew for a further period of twelve months (**first Renewal Date**) and thereafter renew for a further period of twelve months on each anniversary of the first Renewal Date.
- b. If either party wishes for the Subscription Term to expire on the next Renewal Date, it may cause the Services to expire on that Renewal Date by notice provided such notice is served at least 30 days prior to that Renewal Date. If notice is not served within the timeframes set out in this clause 14b, this agreement shall renew at the next Renewal Date in accordance with clause 14a.

14 Term and termination

- a. This agreement shall come into force on Order Acceptance and, unless terminated earlier in accordance with its terms, shall continue for the duration of the Subscription Term after which it shall automatically expire.
- b. Either party may terminate this agreement immediately at any time by giving notice in writing to the other party if:
 - i. the other party commits a material breach of this agreement and such breach is not remediable;

- ii. the other party commits a material breach of this agreement which is not remedied within 10 Business Days of receiving written notice of such breach; or
- iii. the other party has failed to pay any amount due under this agreement on the due date and such amount remains unpaid within 14 calendar days after the other party has received notification that the payment is overdue.

15 Consequences of termination

- a. Immediately on termination or expiry of this agreement, the rights granted by EduPod under this agreement shall terminate and the Customer shall:
 - i. stop using the Services; and
 - ii. destroy and delete or, if requested by EduPod, return any copies of any EduPod's Resources and Statistical Data that is in its possession or control.
- b. Termination or expiry of this agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination or expiry and shall not affect any provision of this agreement that is expressly or by implication intended to continue beyond termination.

16 Notices

- a. Any notice given by a party under this agreement shall be in writing and in English, signed by, or on behalf of, the party giving it (except for notices sent by email) and sent to the relevant party at the address set out in the order form.
- b. Notices may be given, and are deemed received: if delivered by hand, on receipt of a signature at the time of delivery; if sent by first-class post, at 9.00 am on the second Business Day after posting; and if sent by airmail or other international delivery, at 9.00 am on the fourth Business Day after posting; or, if sent by email, at the time of transmission.
- c. This clause 16 does not apply to notices given in legal proceedings or arbitration.

17 General

- a. Entire agreement: This agreement constitutes the entire agreement between the parties and supersedes all previous agreements, understandings and arrangements between them in respect of its subject matter, whether in writing or oral. Each party acknowledges that it has not entered into this agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this agreement.
- b. Variation: No variation of this agreement shall be valid or effective unless it is made in writing, refers to this agreement and is duly signed or executed by, or on behalf of, each party.
- c. Assignment and sub-contracting: Except as expressly provided in this agreement, EduPod may at any time assign, sub-contract, sub-licence (including by multi-tier), transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under this agreement. Except as expressly permitted by this agreement, the Customer shall not assign, transfer, sub-contract, sub-licence, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under this agreement (including the licence rights granted), in whole or in part, without EduPod's prior written consent.

- d. No partnership or agency: The parties are independent and are not partners or principal and agent and this agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. Neither party shall have, nor shall represent that it has, any authority to make any commitments on the other party's behalf.
- e. Severance: If any provision of this agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this agreement shall not be affected.
- f. Waiver: No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy. No single or partial exercise of any right, power or remedy provided by law or under this agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.
- g. Third party rights: A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions.
- h. Authority: Each party represents and warrants to the other that it has the right, power and authority to enter into this agreement and grant to the other the rights (if any) contemplated in this agreement and to perform its obligations under this agreement.
- i. International business: This agreement applies in countries outside the United Kingdom and its territories. The parties may negotiate in good faith any supplemental terms required by local law.
- j. Governing law and Jurisdiction: This agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales, and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with this agreement.