



Digital Student Engagement – ZeeMee Terms and Conditions

1. **ZeeMee Services.** These terms and conditions (“**ZeeMee Terms**”) apply to a party (the “**Client**”) acquiring ZeeMee services through an authorized reseller (“**Reseller**”). Subject to these ZeeMee Terms, ZeeMee will provide and make available ZeeMee Community Pro (“**Services**”) through software-as-a-service (“**SaaS**”) services as well as supported mobile applications (“**Apps**”) to Client for the period stated in Client’s order and agreement with Reseller (the “**Term**”), not to exceed three (3) years. Client agrees that its use of the Services is subject to these ZeeMee Terms as well as the restrictions on permitted use of the Services in ZeeMee’s posted Terms of Use at www.zeemee.com/terms_of_use and incorporated herein by reference. In the event of a conflict between these ZeeMee Terms, the posted Terms of Use, and Client’s order and agreement with Reseller, these ZeeMee Terms will govern and control, but only with respect to the Services provided by ZeeMee.

Client will upload, or otherwise provide to ZeeMee in an agreed electronic format, information (“**Student Information**”) on individuals in Client’s funnel that are at a stage of prospective, inquiry, applicant, accepted, and/or enrolled student (“**Student**”) and other information as necessary and reasonably requested for ZeeMee to perform the Services. ZeeMee may use the Student Information to promote, market to, and offer the Students access to Services specifically configured by ZeeMee for Client’s Students. If Students opt to use such Services, they must first enter into a separate contractual terms of service (“**TOS**”) with ZeeMee that may provide for authorization by Students of additional lawful uses of Student Information and other information they provide to or that is collected by ZeeMee as disclosed in ZeeMee’s privacy policy.

Client agrees that it will only make lawful use of the Services, and in the case of messages or other communications made through use of the Services that includes, but is not limited to, compliance with the CAN SPAM Act of 2003, the Telephone Consumer Protection Act, and the Do-Not-Call Implementation Act (or any similar or analogous anti-spam, data protection, or privacy legislation in any other jurisdiction).

2. **ZeeMee Responsibilities.** ZeeMee will provide online Services available seven days per week, 24 hours per day (excluding scheduled maintenance downtime) with availability of 99%, measured monthly. From time to time, ZeeMee may schedule downtime for the Services to perform maintenance. ZeeMee will notify Client in advance of any scheduled maintenance downtime.

ZeeMee will implement security measures that are no less rigorous than industry standards to protect Student Information and Client’s confidential data, and will comply with applicable data protection and privacy laws, including without limitation the Family Educational Rights and Privacy Act (“**FERPA**”), 20 U.S.C. § 1232g. Clients with Student Information that is subject to the EU General Data Protection Regulation 2016/679 (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016) (“**GDPR**”) additionally agree to the terms of the Data Processing Addendum posted at www.zeemee.com/dpa as a condition of providing EU Student Information to ZeeMee for processing.

ZeeMee will provide reasonable telephone and online maintenance and support services to Client’s authorized personnel during ZeeMee’s normal business hours.

3. **Termination.** These ZeeMee Terms will commence upon Client's acceptance of them and continue for the Term unless (i) earlier terminated under Client's order and agreement with Reseller, or (ii) earlier terminated by Client or ZeeMee for the material breach of the ZeeMee Terms by the other party that remains uncured after thirty (30) days' prior written notice. Upon any termination or expiration of the ZeeMee Terms, Client shall have no further right to access the Services, Client shall remain liable for unpaid and accrued charges due, and Sections 3, 4, 6-9 of the ZeeMee Terms shall survive. Should these ZeeMee Terms early terminate for any reason, ZeeMee may, at its option, continue to provide portions of Services to the Students for a wind-down period (not to exceed 60 days) during which Client shall not be required to provide any additional Student Information to ZeeMee, and ZeeMee shall not be required to provide Client access to any features within the Services.
4. **Confidentiality.** ZeeMee agrees not to use or disclose Student Information or private communications made through the Services except with its employees, agents, partners and contractors for the purposes of these ZeeMee Terms and as authorized in writing by Client or by Students (or their legal guardian as applicable) or as required by law.
5. **Publicity.** College grants ZeeMee a limited, non-exclusive, royalty-free, right to use College's names, marks, and logos on online pages maintained by ZeeMee under these ZeeMee Terms for College, and for publicity and marketing, and also to identify College as a ZeeMee customer; provided that ZeeMee will comply with any trademark guidelines and directions as provided by College.
6. **Limitation of Liability.** SUBJECT TO SECTION 7 ("WARRANTY DISCLAIMER") AND EXCLUDING SECTION 8 ("CLIENT RESPONSIBILITY FOR STUDENT INFORMATION"), IN NO EVENT WILL EITHER PARTY (OR ITS LICENSORS, RESELLERS, OR SUPPLIERS) BE LIABLE IN CONNECTION WITH THE ZEEMEE TERMS OR ANY CLAIMS (INCLUDING NEGLIGENCE) ARISING UNDER OR RELATING TO THE ZEEMEE TERMS, FOR (I) ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, (II) ANY AMOUNT, IN THE AGGREGATE, IN EXCESS OF THE AMOUNTS PAID AND/OR PAYABLE FOR THE SERVICES IN THE TWELVE (12) MONTH PERIOD PRECEDING THE APPLICABLE CLAIM (OR, IF GREATER, ONE THOUSAND DOLLARS (\$1,000)), AND (III) IN THE CASE OF ZEEMEE, THE DELAY OR INABILITY OF CLIENT TO USE THE COMMUNITY OR ANY OTHER SERVICES PROVIDED IN CONNECTION WITH THE ZEEMEE TERMS, INCLUDING WITHOUT ERROR OR OMISSION IN THE SERVICES, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOST SALES.
7. **Warranty: Disclaimer.** Each party represents to the other it has all rights necessary to consent to these ZeeMee Terms, and to perform its obligations hereunder and it will use commercially reasonable efforts to perform such obligations in a professional manner consistent with industry standards. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 7, THE SERVICES, COMMUNITY, AND ANY OTHER DELIVERABLES PROVIDED IN CONNECTION WITH THESE ZEEMEE TERMS ARE PROVIDED BY ZEEMEE "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND, AND ZEEMEE HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE SUBJECT MATTER HEREUNDER, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING ZEEMEE DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED. CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY IS TO TERMINATE THE ZEEMEE TERMS AFTER ALLOWING A CURE PERIOD IN ACCORDANCE WITH SECTION 3 AND RECEIVE A PRO-RATA REFUND FROM ZEEMEE OF ANY UNUSED SUBSCRIPTION FEES RECEIVED BY ZEEMEE FOR THE REMAINDER OF THE TERM IN WHICH WARRANTY BREACH OCCURRED.

8. **Client Responsibility for Student Information.** Client represents and warrants at all times that it has (i) the authorization to provide the Student Information to ZeeMee for use as provided under these ZeeMee Terms, including without limitation, authorization as may be required pursuant to FERPA, and regulations thereunder, (ii) sufficient authorization to permit ZeeMee to send emails, SMS/MMS texts and other communications to Students for the purposes of ZeeMee providing the Services, and further Client, to the extent permitted by law, agrees to defend and hold ZeeMee and its directors, officers, employees and agents harmless to the full extent permitted by law from any and all third-party claims alleging a breach by Client of any duties not to disclose Student Information to ZeeMee for use as authorized under these ZeeMee Terms.
9. **Miscellaneous.** If any provision of this Agreement is deemed unlawful, void or unenforceable by a court of competent jurisdiction, that provision shall be deemed severable from the ZeeMee Terms. These ZeeMee Terms are governed by the laws of the State of New York, without regard to the conflicts of laws provisions thereof, unless different laws of a state within the United States are specified in Client's agreement with Reseller, in which case these ZeeMee Terms are governed by the laws of that jurisdiction. ZeeMee has the right to assign its rights and obligations under these ZeeMee Terms without the consent of Client. A party's delay or failure to exercise any right or remedy will not result in a waiver of that or any other right or remedy.