

Digital Homework Planner (DHP): Terms and Conditions

Introduction

This Service Contract & Terms and Conditions (SCTC) is a legal agreement that describes the levels of service that the person, school or other education provider named in your registration (you) will receive from the supplier (Boomerang Education Ltd).

This Agreement forms a binding legal contract between you and Boomerang Education Ltd (Trading Division of Boomerang Media Group Ltd) incorporated and registered in England and Wales with company number 4526847 and whose registered office is at Manor House, Manor Park, Church Hill, Aldershot, Hampshire, GU12 4JU, United Kingdom (we, us, our). For the avoidance of doubt DHP is an online school planner system (the System) that allows clients to set and share homework online.

The system is a robust, secure application that will ensure that DHP is the 'go to' system for any digital planner needs for Schools, Teachers and students.

More specifically, there will be 3 main applications, connected using a central cloud system.

1. Teacher Digital Planner
2. Student Digital Planner
3. Parent overview of the Student's Application

The DHP digital planner system will enable Teachers the ability to set and manage homework and other assignments and send these to students' devices. Students will be able to view their timetables, set homework, and stay organized, with parents having the ability to have an overview of their child's homework diary.

By integration with the Schools' Management Information System (MIS) DHP will download school and student information to the teachers' and students' devices and use with further organisation tools.

To be eligible to enter this agreement you must agree to the terms of this agreement, and be a school or other education provider (the 'School') with an agreed order to purchase a licence for DHP or a school with an agreement to use DHP during a trial period.

In addition to this agreement, to use DHP you also agree to our acceptable use policy, our privacy policy and our cookie policy.

1. Your Order

- 1.1. Processing of your order will only commence once Boomerang Education Ltd has received a sales order form signed by an authorised representative of the School accepting our terms of supply.
- 1.2. Boomerang Education Ltd undertakes to produce your order as specified in the Order Confirmation, which will be sent to the School after acceptance of the order.
- 1.3. Subsequent changes to the products ordered will be accepted by telephone, email or fax and the invoice adjusted accordingly
- 1.4. All prices are quoted before VAT. VAT will be applied at the applicable rate at the time of invoice;
- 1.5. You must allow a 2-week creation window for Account set up
- 1.6. Minimum Subscription Period is 3 Years, unless you are taking part in a limited trial.
- 1.7. Boomerang Education Ltd reserves the right to amend the cost of DHP at any time upon 30 days' notice.

2. Use of DHP

- 2.1. In consideration of the fulfilment by you of the obligations imposed on you by this Agreement, we grant you a personal, non-exclusive, non-assignable, non-

transferable and non-sub licensable licence for the duration of this Agreement to use DHP and each App solely and strictly for your own use.

- 2.2. You agree not to access (or attempt to access) any part of DHP by any means other than through the interface that is provided by us. You specifically agree not to access (or attempt to access) any part of DHP through any automated means, including use of scripts, robots, spiders, scrapers or web crawlers. You agree that you will not (a) take any action that imposes, or may impose (in each case in our sole discretion) an unreasonable or disproportionately large load on our infrastructure; (b) copy, duplicate, reproduce, rent, lease, loan, sell, trade, resell, modify, create derivative works, distribute or publicly display any part of DHP without prior written consent from us and any third party determined by us as appropriate; (c) interfere or attempt to interfere with the proper working of DHP or any activities conducted via DHP; (d) bypass any measures we may use to prevent or restrict access to DHP; and (e) attempt to reverse engineer, decompile or otherwise seek to obtain access to the source code in DHP and/or any App.
- 2.3. You agree that you will not engage in any activity that interferes with or disrupts DHP, or the servers and networks which are connected to DHP.
- 2.4. User Content - we may offer you the ability to store information on DHP, such as text, images, audio & video etc. (any and all such content, together with all other content provided by you in your use of DHP User Content). This facility is provided for convenience only and should not be relied upon as the sole repository of any important information. It is your responsibility to back-up and keep your own copy of any User Content you wish to keep. We cannot be held liable for any loss of User Content. User Content cannot be retrieved and will not be supplied if an account is inactive or terminated. Upon termination of this Agreement, including by your cancelling your DHP account, you will immediately lose access to any stored User Content. We will endeavour to retain User Content for at least three months following account closure, however this cannot be guaranteed. Where available, User Content can be recovered during this period by taking out a new subscription.
- 2.5. You agree that you are solely responsible for (and that we have no responsibility to you or to any third party for) any User Content and for the consequences of your actions (including any loss or damage which we may suffer) by doing so.
- 2.6. By uploading any User Content you represent and warrant that:
You have the lawful right to reproduce and distribute such User Content;
the uploading, downloading, posting, emailing or transmission by any other means of the User Content will not constitute or encourage a criminal offence, violate the rights of any party or otherwise create liability or violate any local, state, national or international law; and
the User Content posted by you will not be objectionable, unlawful, harmful, threatening, abusive, vulgar, harassing, defamatory, obscene, pornographic, indecent, inflammatory, libellous, tortious, hateful, or racially, ethnically or otherwise objectionable, or invasive of another's rights including rights of celebrity, privacy and intellectual property.
- 2.7. You shall indemnify us, without limitation and upon demand, against any cost, damages or expenses (including reasonable legal expenses) that may be incurred by us in respect of any claim or action that the operation or use of any User Content infringes intellectual property rights or is otherwise unlawful or objectionable.
- 2.8. Account Misuse - we reserve the right to close without warning any accounts being used for any purpose deemed by us, in our sole discretion, as breaching any term of this Agreement. Possible forms of misuse include, but are not restricted to the following:
data theft - information provided by us is for the benefit of the individual subscriber only, and must not be shared, published, or otherwise disseminated in any way;
- 2.9. Incorrect information - if the information you provide about yourself is false or incorrect you may be denied access to your account or your account may be closed. This applies in particular to the sign-up process where the use of a false or

inaccurate email address, or one which cannot receive emails from us, will render you unable to activate your account, for which we accept no responsibility and for which no refunds will be issued. No refunds will be given for any accounts closed due to misuse;

post or transmit through DHP any User Content in breach of clause 2.7 above;

and/or

post or transmit through DHP opinions that are vulgar, crude, sexist, racist, unproven or unfounded allegations (especially of wrongdoing) or otherwise offensive.

2.10. You grant us the right to audit your use of DHP, so as to ensure compliance by you with this Agreement.

2.12. Boomerang Education have the right to remove any user content, if it does not comply with content standards in breach of this agreement.

2.13. You acknowledge and agree that DHP is passive and a host for user content. Any views expressed by other users do not in any way represent the views or values of Boomerang Education Ltd.

3. Beta Trial Access to DHP

3.1. Trial users agree to use DHP, acknowledging that DHP is in its infancy and some parts are still in development.

3.2. During the trial period, this agreement may be terminated immediately by Boomerang Education if the trial user is deemed to be in breach of any obligations under this agreement.

3.3 If termination or expiration occurs, the Trial user shall delete all electronic copies of any part of DHP within two business days.

3.4. Boomerang Education has no liability for any data loss on DHP, and the trial user agrees that it has sole responsibility for protecting its data during the evaluation of DHP.

4. Liability

4.1. You acknowledge and agree as reasonable that there may be occasions when, due to unforeseen technical difficulties that may affect the internet in general, or other equipment, DHP may be unavailable. We make no representation that DHP will be available at all times and we accept no liability for any temporary unavailability, for which no refunds will be made.

4.2. We accept no responsibility for and cannot be held liable for any losses arising from loss of data or the compromising of sensitive data as a result of actions beyond our control, including (but not limited to) hardware failure, software failure, or malicious attacks by third parties. In particular, you understand and acknowledge as reasonable that we shall not be liable to you for any claim, loss, liability and/or expense whatsoever which directly or indirectly results from the misuse of your financial information provided by you to us provided that this limitation of liability shall not apply to any fraudulent action on our part, or to any type of liability the limitation of which is not permitted by virtue of clause 4.6 of this Agreement.

4.3. We cannot be held liable for any errors or inaccuracies in our databases, or any loss that may arise from your acting on information provided by us. Inclusion does not constitute recommendation and any action you undertake in relation to any information provided by us is undertaken entirely at your own risk. No refunds can be given for the provision of inaccurate information.

4.4. Delay in delivery and non-delivery - We will not be liable to you for any delay and/or failure to fulfil any obligation imposed on us by this Agreement where such delay or failure is due to circumstances beyond our control or the control of our sub-contractors and agents, including but not restricted to war, electricity power failure, utilities failure, failure of telecommunications links, failure of transport infrastructure,

fire, flood, government act, act of God, legislative constraints, strikes, labour disputes or malicious damage involving employees.

- 4.5. To use DHP' services you will need certain equipment and software not supplied by us. These include a smartphone, tablet, desktop computer, an internet connection, and the necessary software to browse the internet and access emails. DHP is designed for and tested on standard hardware/operating systems. Performance on other systems cannot be guaranteed, and you accept and acknowledge as reasonable that we give no representation, warranty and/or undertaking that DHP can be used with any configuration of computer, software, and settings. The necessary programs to utilise DHP are available for free on the internet, and as such no refund can be made for any failure of your own equipment to receive, process, and correctly display DHP. If you are unable to access all or part of DHP because you do not have access to any necessary software or equipment, this shall not constitute a breach of this Agreement by us and we shall not be liable for any loss, damage or expense which may result from your inability to access DHP.
- 4.6. Nothing in this Agreement, including this clause 3, shall exclude or limit any warranty or liability which may not be lawfully excluded or limited by applicable law, including liability for fraud or for death or personal injury caused by our negligence.
- 4.7. There are no conditions, warranties, representations or other terms, express or implied, that are binding on us except as specifically stated in this Agreement (including implied warranties and conditions of merchantability, fitness for a particular purpose and non-infringement). Any condition, warranty, representation or other term concerning the supply and/or operation of DHP and/or any App which might otherwise be implied into or incorporated in this Agreement, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law.
- 4.8. You expressly understand and so agree that your use of DHP is at your sole risk and that DHP is provided "As Is" and "As Available."
- 4.9. In particular, we, our subsidiaries and affiliates, and our licensors, do not represent or warrant to you that:
 - 4.9.1. your use of DHP (including its use in conjunction with any other software) will meet your requirements, that your use of DHP will be uninterrupted, timely, secure or free from error or that defects in the operation or functionality of DHP provided to you will be corrected; and
 - 4.9.2. any information obtained by you as a result of your use of DHP will be accurate or reliable; and
 - 4.9.3. That defects in the operation or functionality of the DHP will be corrected, rectified, or remedied.
- 4.10. Any material downloaded or otherwise obtained or accessed through the use of DHP is done at your own discretion and risk, and you will be solely responsible for any damage, loss, or prejudice to your computer system or other device or loss of data that result from the download or access of any such material.
- 4.11. No advice or information, whether oral or written, obtained by you from us or any of our subsidiaries, affiliates, officials, employees, or personnel, or through or from DHP shall create any warranty not expressly stated in this Agreement. We shall

not be under any liability whatsoever in respect of any inaccuracies or omissions in DHP. All such liability is excluded by us to the fullest extent permitted by law.

- 4.12. You expressly understand and agree that we and our licensors shall not be liable to you for:
- 4.12.1. any direct, indirect, special, incidental or consequential loss or damage which may arise in respect of DHP, any App and/or its use or non-availability;
 - 4.12.2. loss of profit, business revenue, goodwill and anticipated savings;
 - 4.12.3. any trading or other losses which you may incur as a result of use of or reliance upon any content;
 - 4.12.4. the deletion of, corruption of, or failure to store, any content and other communications data maintained or transmitted by or through your use of DHP and/or any App; or
 - 4.12.5. any effect which use of DHP may have on any software you use.
- 4.13. Subject to the clauses above, the aggregate liability of us in respect of any loss or damage suffered by you and arising out of or in connection with the use of DHP by you and/or any third party shall not exceed the amount of the total fees actually paid by you to us in the twelve months preceding the date of the your claim.

5 Data Protection

All data handled by Boomerang Education Ltd, is used in accordance to its privacy policy.

- 5.1. DHP uses the School's contact details to process orders and to keep the School informed of its products;
- 5.2. DHP abides by the Data protection Act 1998 and will not sell or rent the Institution's information to third parties.
- 5.3. The school shall provide certain information to Boomerang Education Ltd, regarding students, teachers and parents. This information will include, but not limited to, names, contact details and student information such as academic grades, SEN information, FSM status. The school shall allow access to their Student, Teacher and parent data from the school MIS, for the term of the agreement. The school will also be able to provide some information to Boomerang Education Ltd via a csv file, which can then be input into the application's database. Before any of this information is transferred to Boomerang Education Ltd, the school must confirm that it has the required permissions and rights to do so.

6 Intellectual Property

- 6.1. While we grant you a licence in accordance with clause 2 to use DHP, all intellectual property rights belongs to Boomerang Education.
- 6.2. You acknowledge and accept as reasonable that we shall have no liability whatsoever to you for any loss, claim, damages and/or expense of any kind arising whether directly or indirectly out of the termination of use by you and/or by any third party of DHP and each App upon termination of this Agreement (each such loss, claim, damages and/or expense a Termination Loss). We recommend that you protect yourself against any Termination Loss by inserting appropriate provisions into your terms of use with any user of your Apps, and you undertake to indemnify and keep us indemnified against any and all Termination Losses.
- 6.3. Accordingly, you acknowledge and agree that we (or our licensors) own all legal right, title and interest in and to DHP, including any intellectual property rights which subsist in DHP (whether those rights happen to be registered or not, and wherever in the world those rights may exist), excluding User Content. You further acknowledge

that DHP may contain information which is designated confidential by us and that you shall not disclose such information without our prior written consent.

- 6.4. Unless you have agreed otherwise in writing with us, nothing in this Agreement gives you a right to use any of our trade names, trademarks, service marks, logos, domain names, and other distinctive brand features. You agree that you shall not remove, obscure, or alter any proprietary rights notices (including copyright and trade mark notices) which may be affixed to or contained within DHP.
- 6.5. Any copies of material copied or downloaded from DHP must not be modified.
- 6.6. You must always acknowledge Boomerang Education as authors of DHP.
- 6.7. You must not use any content of DHP for commercial purposes without obtaining a licence for this purpose from us.
- 6.8. All trademarks and logos contained in DHP are owned by us or third party partners of Boomerang Education. You must not use, modify, publish, commercially exploit any DHP trademarks and logos without prior written consent of Boomerang Education.

7 Territory and Geographical Coverage

- 7.1. DHP will be available from any PC, laptop, tablet or mobile device with an active Internet connection globally, where local law allows.

8 Dates and Reviews

- 8.1. This agreement will be effective from the date inscribed on the signed DHP purchase order and will be effective for the term (the Term) described in that purchase order.
- 8.2. This agreement may be reviewed at any time during the Term by DHP. Any changes proposed to the SCTC will be communicated to the Client at least one month prior to coming in to effect and all changes will be subject to mutual agreement with the Client in advance.

9 Supplier responsibilities

- 9.1. Boomerang Education Ltd will provide and maintain the System used by the School during the Term.
- 9.2. Additionally, Boomerang Education Ltd will:
 - 9.2.1. Respond to relevant support requests within 24 hours.
 - 9.2.2. Take steps to escalate and resolve issues within 3 working days.
 - 9.2.3. Maintain good communication as and when required by the Client throughout the Term.
 - 9.2.4. From time to time upgrade the CMS and system in line with developments in the marketplace and with upstream software upgrades such as iOS and Android, etc. We will notify the Client in advance when these upgrades are due to take place.

10 Client responsibilities

- 10.1. The Client is required to use the System as intended. (as detailed in the DHP User Guide, supplied to clients on receipt of a signed purchase order).
- 10.2. Additionally, the client will:
 - 10.2.1. Notify Boomerang Education Ltd of issues or problems in a timely manner.
- 10.3. Boomerang Education reserve the right to refuse duplicate accounts for any user of DHP. If a duplicate account is identified, the accounts will be closed or merged without notification.

11 Support Availability

Support availability specific to the services covered in this agreement are as follows:

- 11.1. Email Support: DPHelp@boomerang-ed.com
08:30 to 18:00 Monday – Friday

Emails received outside of office hours will be collected, however no action can be guaranteed until the next working day.

12 Response & Resolution

- 12.1. It is intended that the DHP System will operate 24/7. However as with the majority of Internet and IT based systems there are occasional outages and downtimes often beyond the operational control of Boomerang Education.
- 12.2. If the system is unavailable or has technical issues, that Boomerang Education is responsible for, then the resolution period is one week or less for each occurrence. If the system is down for longer than 1 week then DHP will refund the relevant proportion of your annual subscription for each week and part thereof, excluding the first week.
- 12.3. Downtime will be measured at the end of each subscription year and will automatically be credited back to your bank account in the event that compensation is due.
- 11.4. You acknowledge that DHP may not be clear of errors or bugs, and this shall not result in a breach of this agreement.

13 Cancellation, Termination and Renewal Terms

- 13.1. The school has the right to cancel within 30 days from when the school's subscription starts. This date will be notified to the school by Boomerang Education. In this case the deposit paid is not refundable due to the work that has gone into developing the CMS and data connections for the school.
- 13.2. Beyond 30 days from the school's account going live the school may cancel their subscription at any time in writing. In the event of cancellation, Boomerang Education Ltd reserves the right to close any Account and/or to terminate any Subscription and/or to suspend the availability of DHP immediately and without notice if (i) bankruptcy or other insolvency proceedings are brought against the Client, (ii) you are unable to pay your debts as they fall due, fail to make payments which become due, (iii) you are no longer able lawfully to access DHP services. In the event that access to DHP is stopped for whatever reason, any information which is stored about the Client and /or any nominated user(s) on our CMS will be deleted.
- 13.3. On termination of the agreement at the termination date and/or within 30 days of non-payment of the subscription fees during the Term, DHP will have the right to terminate the Client's access to DHP. Boomerang Education will however make a reasonable attempt to contact the School in advance of this action to confirm the situation
- 13.4. Boomerang Education will be responsible for contacting the School not less than 3 months prior to end of the Term to discuss the renewal of the agreement.

14 Exclusions

- 14.1. This agreement is written in a spirit of partnership. Boomerang Education will always do everything possible to rectify every issue in a timely manner.
- 14.2. However, this SCTC does not apply to:
 - 14.2.1. Any software or services not described in this agreement.
 - 14.2.2. Software, hardware and services not managed by the supplier.
- 14.3. Additionally, the terms of this SCTC do not apply when:
 - 14.3.1. The problem has been caused by the Client using software or services in a way that is not recommended.
 - 14.3.2. The Client has made unauthorised changes to the configuration or set up of affected equipment, software or services.
 - 14.3.3. The Client has prevented the supplier from performing required maintenance and updates.
 - 14.3.4. The issue has been caused by unsupported equipment, software or other services.

15 Confidentiality

- 15.1. Both Parties declare that during this Agreement and after its termination, to observe secrecy with regard to all confidential information granted by the opposite party in the context of their cooperation.
- 15.2. Confidential information consists, but is not limited to company and/or financial data, specifications, software programs, examples, pictures, diagrams, drawings and/or other documents as well as oral given information by presentation, demonstration or otherwise, both in material and immaterial appearance.
- 15.3. Confidential Information is also information:
 - 15.3.1. Which the confidential nature is made known to the receiving party or;
 - 15.3.2. Which the receiving party knows or should reasonably know that the information has a confidential nature.
- 15.4. Both parties hereby declare that they will take reasonable measures to ensure secrecy of confidential information. Both parties shall keep their circle of employees or third persons who have access to the received confidential information, as restricted as possible and parties shall also obligate their employees and third parties concerned, to maintain secrecy.

16 Force majeure

- 16.1. Not with standing anything contained in these terms and conditions we shall not be liable for failure or delay in performing any of our obligations because of any cause beyond our reasonable control (including but not limited to (i) decision of any court or other judicial body of competent jurisdiction, (ii) unavailability of equipment, power, or other commodity, (iii) failure or non-availability of Internet or telecommunications facilities, computer hardware or software, (iv) act of God, war, riot, terrorist attack, civil commotion, malicious damage, fires, flood, or storm (v) strikes or other industrial disputes (whether involving our workforce or that of any other party) or (vi) acts of government or other prevailing authorities or default of suppliers, sub-contractors, or other third parties.

17 Prevailing Law

- 17.1. This Agreement shall be construed according to and shall be governed by English Law and shall be subject to the jurisdiction of the English Courts