

General Terms

Last Updated: 29th July 2024

1. Introduction

These General Terms that apply to all services delivered by Schoolbox.

2. Interpretation

These General Terms and each Service Agreement incorporate the dictionary terms in clause 42 of this document.

3. Service Agreements

- (a) Unless we agree to a different engagement process, a Service Agreement is formed if we accept a Service Order from you.
- (b) A Service Agreement is made up of:
 - (i) any Special Terms;
 - (ii) a Service Order;
 - (iii) a Statement of Work (if applicable);
 - (iv) the [Schoolbox Subscription Terms](#), [Professional Services Terms](#) and [Online Learning Course Subscription Terms](#) (as applicable to the Services ordered); and
 - (v) these General Terms;
- (c) To the extent that there is any inconsistency between the documents specified in clause 3(b), the order of precedence of the documents in clause 3(b) shall apply.

4. Counterparts and exchange

The Parties may optionally enter into a Service Agreement by signing separate copies and exchanging them by post, in person, by fax or email.

5. Charges and payment

- (a) You must pay all Charges applicable to Services.
- (b) Charges apply as specified in the Service Order or as referenced in an applicable [Rates Schedule](#), where Charges are not specified in a Service Order.
- (c) You must pay each Invoice without set off or deduction by its due date.
- (d) Overdue amounts will incur interest at the Default Rate, compounding monthly.

6. Billing Disputes

You may only dispute a Charge:

- (a) within 1 month after the date of the Invoice; and
- (b) in accordance with our dispute process in clause 31.

7. Relationship

We are an independent contractor and these General Terms or any Service Agreement does not create a partnership, joint venture or agency. No Party may enter any agreement or make any representation on behalf of another.

8. Entire Agreement

The documents that make up a Service Agreement in clause 3 are the entire agreement of the Parties with respect to its subject matter and supersedes and excludes all previous agreements, understandings, commitments, representations and warranties, whether written or verbal relating to that subject matter.

9. Variation

Subject to clause 14(b) or clause 20, a Service Agreement may only be varied by written agreement or acceptance by both Parties (including by accepting electronic notifications by us through the Schoolbox platform).

10. Assignment

- (a) Subject to Clause 10 (b) neither party may assign or novate a Service Agreement without the prior written consent of the other Party, such consent will not to be unreasonably withheld.
- (b) We may assign or novate a Service Agreement without your prior written consent where we sell or restructure any part of our business or shares.

11. No waiver

A Party that fails to exercise, delays exercise of or partially exercises a right does not waive such right.

12. Notices

- (a) We may send notices to you by Electronic Messaging.
- (b) Otherwise, any notice or consent to be given under a Service Agreement must be in writing addressed to the relevant Party at its Contact Address.

13. Governing law and courts

A Service Agreement is subject to and must be interpreted under the law of the exclusive jurisdiction of the State of Victoria, Australia and the Parties irrevocably submit to the courts of the State of Victoria.

14. Term of Service Agreements and Services

- (a) A Service Agreement:
 - (i) starts on its Service Commencement Date;
 - (ii) continues for any Contract Term;following which the Service Agreement will automatically renew for successive 12 month terms (the new Contract Term), unless terminated earlier in accordance with the terms of a Service Agreement.
- (b) In the event of any renewal of the Service Agreement following a Contract Term:
 - (i) we will notify you in advance of the expiry of the current Contract Term; and
 - (ii) the Service Agreement for the new Contract Term will be governed by the then current Service Agreement documents (under clause 3(b)(iv) and 3(b)(v)), as published on our Websites.
- (c) Where an Order Term for a relevant Service is specified for a period that ends prior to the expiry of the Contract Term, such Service will terminate automatically at the expiry of the Order Term, unless otherwise agreed between the parties.
- (d) Where a Service Order includes Professional Services, the provision of the Professional Services will continue until completion of the relevant Professional Services.

15. Consents

You must promptly obtain any third party consents necessary for us to provide Services, for example to allow us access to a data centre to install software.

16. Representatives

- (a) Each Party authorises its Representative to do anything with respect to a Service Agreement that the Party itself could do, and authorises the other Party to deal with its Representative as its fully authorised, non-exclusive agent.
- (b) A Party is deemed to know anything that its Representative knows.
- (c) A Party may replace its Representative by notice to the other.

17. Service commencement

We will commence delivery of a Service on or within a reasonable time after the last of:

- (a) the date specified in a Service Agreement; or
- (b) the expiry of 14 days from the date of a Service Agreement;

18. Service Standards

- (a) We will provide the Services with due care and skill and in accordance with an applicable Service Agreement and Law applicable to the provision of the Services by us.

- (b) Whilst we endeavour to avoid interruptions to Services, we do not warrant that Services will be free of errors, faults or interruptions.
- (c) We are not liable for Service faults or interruptions due to Off-Net Events.
- (d) We will use reasonable efforts to carry out Scheduled Maintenance at times chosen to minimise disruption to you.

19. **Service suspensions**

We may suspend a Service in whole or part:

- (a) where we reasonably believe that we must do so in order to comply with the Law;
- (b) to protect people, property or a network;
- (c) where we believe your credential have been compromised;
- (d) in the event of an emergency,
- (e) for Scheduled Maintenance (on at least 3 days' written notice);
- (f) if you (or anyone you allow to use a Service) breach our [Acceptable Use Policy](#);
- (g) if you cease carrying on business;
- (h) if you do not pay a security requested under clause 21, within 7 days of a request;
- (i) if you do not cure a Default within 14 days (after receiving written notice of Default);
- (j) as it reasonably requires to allow investigation of any potential breach of a Service Agreement; or
- (k) with your prior consent.

20. **Price variations**

We may vary our Charges:

- (a) upon expiry of the current Contract Term by providing at least 90 days' written notice to you prior to the expiry of that Contract Term. Any changes to the Charges will be varied in accordance with our Rates Schedule; or
- (b) during the Contract Term if you request and agree to a variation to the quantity of any Services (i.e. the of number of users) or a variation to the Services provided by us;

21. **Security**

We may require security (including by way of cash or bank guarantee) if you suffer an Insolvency Event, fail to pay an Invoice by its due date or following a credit review of you.

22. **Other obligations**

22.1 You must:

- (a) comply with the terms of a Service Agreement;
- (b) not allow a Service to be used in a way that is contrary to Law or is a nuisance;
- (c) comply with all Laws including Privacy Laws;
- (d) give us all information, cooperation and assistance reasonably required for the purposes of a Service Agreement;
- (e) follow our reasonable directions in so far as they are reasonably required to enable us to comply with the terms of a Service Agreement;
- (f) maintain all permissions required for the use of a Service;
- (g) comply with any Acceptable Use Policy issued by us;
- (h) respond to our requests and communications promptly;
- (i) not solicit any employee or contractor of ours to become an employee or contractor of yours; and
- (j) ensure that your People do nothing that would breach a Service Agreement if done by you.
- (k) obtain consent from an End User prior to the End User disclosing Personal Information to us, any Third Party Services provider or providing Personal Information directly via the Platform.
- (l) warrant that consent was acquired from the End User to collect, hold, use and disclose all Personal Information of the End User that is held by the Customer and which may be shared with us and applicable Third Party Service providers.

22.2 We must:

- (a) comply with the terms of a Service Agreement;
- (b) comply with all Laws applicable to the provision of the Services by us including applicable Privacy Laws;
- (c) provide the Customer with appropriate information, cooperation and assistance in accordance with the scope of the Services;
- (d) maintain all permissions and licenses required for the provision of a Service by us;
- (e) respond to the Customer's requests and communications promptly; and
- (f) not solicit any employee or contractor of the Customer to become an employee or contractor of us.

23. Mutual Termination Rights

23.1 Neither party may terminate a Service Agreement:

- (a) during its Contract Term; or
- (b) where a Service Agreement only relates to the provision of Professional Services, following the Service Commencement Date,

except under clause 23.3, as specified in a Service Order or applicable Schoolbox Subscription Terms or as mutually agreed in writing between the parties.

23.2 Either party may terminate a Service Agreement by providing at least 90 days' written notice prior to the expiry of the current Contract Term, in which case the termination will be effective upon the expiry of that Contract Term. Where an Order Term for a relevant Service is specified for a period that ends prior to the expiry of the Contract Term, such Service will terminate automatically at the expiry of the Order Term, unless otherwise agreed between the parties.

23.3 Either party may terminate a Service Agreement by written notice to the other party if:

- (a) the other party is in Default and fails to remedy a Default within 14 days of receiving written notice of Default;
- (b) the other party becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of Insolvency Event; and
- (c) the parties cannot agree to a Change Request after following the agreed process, by providing 7 days' notice, where a Service Agreement relates solely to Professional Services.

24. Early Termination – Us

In addition to any other termination rights under these General Terms, we may terminate a Service Agreement by notice if:

- (a) it ceases to be feasible to provide a Service (in which case we will provide the Services for the Contract Term, following which we will reasonably attempt to provide you at least 6 months' prior written notice);
- (b) we are acquired by a third party (in which case we will provide the Services for the Contract Term, following which we will reasonably attempt to provide you at least 6 months' prior written notice of termination);
- (c) we are required to do so by Law or an authority;
- (d) you undergo a Change of Control or purport to assign interest in a Service Agreement without our written consent; or
- (e) if you request Early Termination, in which case you will be required to pay an Early Termination Charge.

25. Early Termination – You

In addition to any other termination rights under these General Terms, you may terminate a Service Agreement by notice if:

- (a) a Service we provide you is subject to three or more individual Level 1 - Urgent (Critical) incidents (as defined by clause 5.1 of the [Schoolbox Support Policy](#)) in any calendar month which are caused solely by any act or omission of ours (excluding Scheduled Maintenance).

26. GST

- (a) Charges are exclusive of GST (as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)) or value added tax in your relevant jurisdiction, unless stated otherwise.

(b) We may invoice, and you must pay, applicable GST or value added tax in addition to Charges.

27. Confidentiality

Each party must keep the other's Confidential Information confidential except for disclosures:

- (a) to its staff, contractors and professional advisers to the extent they reasonably need to know it;
- (b) authorised by a Service Agreement; or
- (c) required by Law –

provided that a disclosing Party takes all reasonable steps to ensure that the disclosee maintains the confidentiality of the disclosed information. To avoid any doubt, Confidential Information includes our pricing and the other terms of a Service Agreement.

28. Authorities

You authorise us to:

- (a) make any disclosure of information about you required by a government authority or by Law;
- (b) deal with Personal Information in accordance with our Privacy Policy and in accordance with Privacy Laws; and
- (c) do any act on your behalf reasonably required to provide a Service to you.

29. Indemnities

29.1 You agree to indemnify us against:

- (a) any Loss suffered by us arising in connection with a negligent or wrongful act by you or your People or a material breach of a Service Agreement by you; and
- (b) any Claim by you, your People, or a third party arising out of your (or your People's) use of the Services (including any Claim by a third party that the Services infringe their IP Rights) except to the extent the Claim arises from a negligent or wrongful act by us or our People or a breach of a Service Agreement by us.

29.2 We agree to indemnify you against any Claim against you that the Services infringe the IP Rights of a third party except to the extent the Claim was caused or contributed to by an act or omission of you or your People or a breach of a Service Agreement by you or your People.

29.3 Clause 29.2 will not apply to the extent the infringement or Claim is caused by:

- (a) your failure to promptly provide us with written notice of such a Claim;
- (b) your failure to give us sole control of the defence and settlement of such a Claim against you; or
- (c) your failure to provide us with all reasonable assistance in relation to the defence and settlement of such a Claim.

30. Liability

30.1 Non-excludable rights under the Australian Consumer Law

- (a) The Australian Consumer Law (ACL) in the Competition and Consumer Act 2010 (Cth) and other similar consumer protection laws and regulations may imply certain rights, consumer guarantees, warranties or remedies relating to the Services which cannot be excluded, restricted, qualified or modified by us (Non-Excludable Rights). Nothing in this Agreement excludes or attempts to exclude then your Non-Excludable Rights as a consumer under the ACL.
- (b) To the extent permitted by law, any representation, warranty, guarantee, rights, remedies condition or undertaking that may be implied in a Service Agreement by legislation, common law, equity, trade, custom or usage or otherwise is expressly excluded.
- (c) If a supply by us under a Service Agreement is a supply of goods or services to a consumer within the meaning of the ACL, to the extent that the ACL permits us to limit our liability, then our liability is limited to:
 - (i) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
 - (ii) in the case of goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired

- 30.2 Subject to your right of termination under clause 25, where a service level applies to a Service, your rights and remedies in connection with a failure to meet a service level target or any breach of the relevant Service Agreement are limited to the service level credits (if applicable) as set out in the [Schoolbox Support Policy](#).
- 30.3 TO THE EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES (INCLUDING DIRECTORS, OFFICERS AND EMPLOYEES) HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO A SERVICE AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION, DATA LOSS OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 30.4 TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES (INCLUDING DIRECTORS, OFFICERS AND EMPLOYEES) ARISING OUT OF OR RELATED TO A SERVICE AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY THE CUSTOMER UNDER A SERVICE AGREEMENT (FOR THE SERVICES WHICH RELATE TO THE LIABILITY) IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS UNDER THESE TERMS.
- 30.5 A party's liability under a Service Agreement will be reduced to the extent that the other party caused or contributed to the relevant liability or the act giving rise to the liability.
- 30.6 A party which incurs a loss under a Service Agreement must take reasonable steps to avoid or minimise the loss.

31. **Disputes**

- (a) Each Party must appoint a senior officer to negotiate resolution of any dispute.
- (b) If negotiations are not successful within 14 days, the dispute may be referred to mediation before an independent mediator – the costs of which must be borne in equal shares by the Parties.
- (c) Despite anything else, a Party may seek urgent interlocutory relief from a court.
- (d) The parties must perform the Service Agreement despite a dispute.

32. **Force Majeure**

We are excused from our obligations under the Service Agreement to the extent that Force Majeure prevents or hinders it.

33. **Agents**

We may delegate our roles and responsibilities to an agent or subcontractor but are liable for their performance as if there was no delegation.

34. **Reading down**

A term that is invalid, illegal or unenforceable shall be read down, to the point of severance if necessary.

35. **Commission, rebates and out of pocket expenses**

- (a) We may pay or receive commissions or rebates in connection with a Service Agreement.
- (b) You must pay (and must not set off or deduct from our fees) all bank fees incurred in making payments to us under a Service Agreement.
- (c) You must pay all out of pocket expenses that we incur in providing services to you, provided that where they exceed \$500, we will first obtain your consent.

36. **Obligations after termination of Service Agreement**

When a Service Agreement ends for any reason:

- (a) we may Invoice Charges not previously Invoiced;
- (b) you must pay all Invoices by their due date/s;
- (c) you must within 7 days return any of our property that you hold;
- (d) accrued rights and obligations survive;
- (e) Surviving Clauses including clauses 5, 6, 13, 22.1(g) (i), 27, 28, 29, 31, 32, 36, 37, 40 and 41 survive – and otherwise the Service Agreement is at an end for all purposes.

37. Policies

You must always comply with;

- (a) Our [Acceptable Use Policy](#).
- (b) lawful directions we may issue;
- (c) instructions, documentation or other technical requirements; and
- (d) applicable Laws.
- (e) Where we agree to provide support, then we will do so in accordance with our [Schoolbox Support Policy](#) which applies to your particular product.
- (f) We may amend our existing policies or introduce new policies from time to time. Where we do, we will give 14 days prior notice and make the amendments visible on one or more of our Websites or any subdomain of our Websites.

38. Security

- (a) We will implement the relevant security measures as set out in our [Security Measures](#) statement, as amended from time to time.
- (b) We will comply with our [Where is my Schoolbox instance located?](#) statement, as amended from time to time.
- (c) We may specify security protocols and procedures from time to time, you must comply with all such protocols and procedures.
- (d) You must use your best endeavours to maintain the security and confidentiality of usernames and passwords at all times.
- (e) You acknowledge that connection to the internet carries inherent security risks, and the nature of this service is that it requires transmission of data (including Your Data) over the internet, where it may be lost, altered, or intercepted.
- (f) Connection of computers and servers to the internet carries with it:
 - (i) security risks including hacking, viruses, trojans and other malware; and
 - (ii) risks of data interception.
- (g) You are solely responsible for (and release us from responsibility for) implementing appropriate measures to protect Your Data including the use of appropriate backup facilities to protect your data.
- (h) We agree:
 - (i) to comply with the Privacy Laws applicable to our handling of Your Data;
 - (ii) to promptly notify you upon becoming aware of any actual or suspected Data Breach with respect to Your Data (and in particular any Personal Information) which is the subject of a Service Agreement in accordance with our [Security Measures](#) statement;
 - (iii) that subprocessors engaged by us who have or will potentially have access to Your Data will be listed in our [Subprocessor List](#) as updated from time to time; and
 - (iv) we will put in place relevant Data Processing Addendums with third party processors who may handle Your Data who are specified as "subprocessors who support delivery of the Schoolbox Services" as set out in our [Subprocessor List](#).

39. Data

- 39.1 All data entered by you into Schoolbox or any Service of ours is confidential unless you make it available for public use.
- 39.2 You retain ownership in Your Data subject to the terms of this Agreement, in addition to our rights in clause 39.8, you grant us a non-exclusive, worldwide, royalty-free right to use, handle, store, modify and create derivative works of Your Data, to the extent necessary to provide our services to you.
- 39.3 You agree that we will collect, use, disclose, store, and handle Your Data in accordance with our [Privacy Policy](#), including to:
 - (a) using your de-identified data for statistical, audit, compliance and marketing purposes;
 - (b) Send you promotional, marketing material or information updates, including by way of email delivery; and
 - (c) disclose this information to our Related Entities (as defined by section 9 of the *Corporations Act 2001 (Cth)*).

- 39.4 If and to the extent that you have entered into a DPA with Schoolbox, you agree that:
- (a) we will process Your Data in accordance with the terms of the DPA; and
 - (b) you will comply with your obligations under the DPA.
- 39.5 Subject to clause 39.10, we will return Your Data held by us under a Service Agreement in its current format within a reasonable period following termination of a Service Agreement (Data Return).
- 39.6 Subject to clause 39.10, within 7 days of the Data Return, we must delete all of Your Data that remains on our servers and facilities, and you release us from any claim for loss or damage for doing so.
- 39.7 It is your sole responsibility to maintain a backup of your Your Data, unless you enter into a Service Agreement for professional services, to have us copy your Your Data, and provide it to you.
- 39.8 Subject to clause 40.3, all data entered into Schoolbox remains your property.
- 39.9 We may compile and use de-identified, aggregate and statistical information related to the performance of Services, provided that such information does not incorporate any of Your Data, or identify either You, or End Users, or any of Confidential Information.
- 39.10 Subject to clause 39.4, we may retain copies of Your Data or any records or data used / obtained under these General Terms as may be required by Law (including for auditing purposes).

40. Intellectual Property

- 40.1 All IP Rights in Schoolbox and our Services are owned by us, or where relevant our licensors. You must not:
- (a) do anything which may infringe, jeopardise or challenge such rights; and
 - (b) commercialise or attempt to commercialise such rights.
- 40.2 Subject to clause 39.1, we own all IP Rights and intellectual property (including derivative works) which arise from your use of Schoolbox, except for Your Data.
- 40.3 We own all customisations, modifications, enhancements, adaptations, and updates to Schoolbox.
- 40.4 Schoolbox and the Schoolbox logo are trademarks of Schoolbox Pty Ltd. Other trademarks that may appear on our website are the property of our respective licensors.
- 40.5 You must not use any trademark without the prior written consent of the relevant owner.
- 40.6 Except to the extent of any licence expressly granted to you, you obtain no interest in our IP Rights under a Service Agreement.
- 40.7 Subject to clause 40.8, we own all IP Rights relating to a Service, including knowhow and improvements developed in the course of a Service Agreement.
- 40.8 As set out in clause 39.2, you retain all ownership (including IP Rights) in Your Data.
- 40.9 You grant us a worldwide, perpetual, irrevocable, royalty-free licence to use and incorporate into our services any suggestion, enhancement request, recommendation, correction or other feedback provided by you or your End Users relating to the operation of the Services.

41. Third Party Services

- 41.1 In order to provide our Services, we use Third Party Support Services which are inbuilt into our Schoolbox platform. We will put in place relevant Data Processing Addendums with Third Party Support Service providers who may handle Your Data.
- 41.2 Where we use Third Party Support Services:
- (a) we will provide you with at least 28 days' written notice of any Third Party Support Services used in relation to the provision of the Services;
 - (b) to the extent that the use of such Third Party Support Services results in a transfer of Your Data outside the country where we are providing you with Services, we will take any such steps as are reasonable in the circumstances to ensure the Third Party Support Services provider has appropriate and sufficient measures in place to comply with the relevant Privacy Laws in the country you are located, or is subject to equivalent privacy laws or binding schemes.

- 41.3 At your discretion, you may elect to use services, products or software of third parties that we re-sell to you or you choose to integrate or use in connection with our Services, we refer to these as Third Party Services. A non-exhaustive list of Third Party Services that you may elect to integrate with the Services are specified in our [Subprocessor List](#).
- 41.4 If you purchase Third Party Services from us that we re-sell on behalf of third party providers:
- (a) we will:
 - (i) specify this in your Service Order;
 - (ii) notify you; and
 - (b) we will invoice you for those Third Party Services directly.
- 41.5 Where you elect to use Third Party Services, you acknowledge and agree that:
- (a) those Third Party Services are provided subject to (i) their own terms of use and privacy policy; and (ii) any of our specific terms that address our supply or facilitation of those Third Party Services to you including the relevant Third Party Services terms set out in Annexure A of the Schoolbox Subscription Terms as applicable.
 - (b) we may be required to disclose Your Data to the provider of Third Party Services in order to facilitate the provision of those services or the services we provide;
 - (c) you release us from any Claim arising from your use of Third Party Services;
 - (d) other than anything we expressly represent to you in a Service Agreement with you, we do not make any representation or warranty about Third Party Services or their performance;
 - (e) you have consented to the use of any Third Party Services that you chose to use and are solely responsible for conducting your own due diligence in relation to the Third Party Service provider, including in relation to their security and privacy measures in compliance with relevant Privacy Laws and any overseas transfer of Your Data. Where a Third Party Service Provider is listed in our [Subprocessor List](#), we will use our reasonable commercial endeavours to provide you with any relevant privacy and security information regarding the Third Party Service provider.

42. Dictionary

Acceptable Use Policy means our Acceptable Use Policy accessible via <https://schoolbox.com.au/legal/acceptable-use-policy/>, as amended from time to time.

Administrator means an individual authorised to use a Service as an administrator, presenter, or support staff as identified through a unique login.

Affiliate means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership of control of more than 50% of the voting interests of the subject entity.

Business Day means a day that is not a Saturday, Sunday or public holiday observed in Victoria, Australia.

Business Hours means between the hours of 9am to 5pm AEST on a Business Day (adjusted for daylight savings).

Extended Business Hours means between the hours of 8:30am to 6:00pm AEST on a Business Day (adjusted for daylight savings).

Change of Control means, in relation to a corporation, that without our prior written consent: (a) a relevant interest (as defined in the *Corporations Act 2001*) in more than 25% of the securities of the corporation that in normal circumstance entitle the holder to vote or participate at a meeting of the members of the corporation or to vote or participate in the election or appointment of directors of the corporation, passes to a person or persons who did not have such relevant interest at the time the Service Agreement was entered into; or (b) the ability to control or the actual control (irrespective of whether such control is exercisable on a passive or active basis and irrespective of whether such control is exercisable solely or jointly or directly or indirectly) of the management and policies of the corporation passes to a person or persons who did not have such ability or actual control at the date the Service Agreement was entered into.

Charges means any charge or fee applicable to Services (exclusive of any Taxes or withholdings except where otherwise stated).

Claim means any claim, demand, action, proceeding or legal process (including by way of set off, cross-claim or counterclaim).

Confidential Information means all written and/or oral information identified by a party as confidential or otherwise reasonably understood as confidential by its nature and includes the terms of a contract, network designs, customer lists, contact lists, and other information which by its nature is confidential and which is not in the public domain otherwise than by a breach of this clause.

Contact Address means, in relation to a party, the postal or business address, fax number, email address or other address or identifier most recently notified as the party's address for communications (being as notified in a Service Agreement, until further notice.)

Contract Term means the period specified in the Service Order and may be referred to as the period from the Contract Start Date and Contract End Date.

Customer means the entity or person specified in a Service Agreement.

Data Breach means a means any incident in respect of the Your Data (including in respect of Personal Information held or stored by us on your behalf) (Data) that results in:

- (a) a notifiable or eligible data breach under applicable Privacy Laws;
- (b) the Data having been misused, interfered with, corrupted or subject to unauthorised access, modification or disclosure;
- (c) unauthorised access to the Data, storage device or computer network in which such information is stored;
- (d) that Data or the storage device or computer system on which such information is stored being lost or misplaced; or
- (e) any part of the Data becoming corrupted, not accessible, incorrectly modified or deleted as a result of loss, unauthorised disclosure or unauthorised access.

Default means a breach of these Terms or a Service Agreement (including non-payment of an Invoice) for which either party has issued a Default notice outlining the breach.

Default Rate means a rate which is 2% higher than the penalty rate fixed under s3 of the *Penalty Interest Rate Act 1983 (Vic)* from time to time.

DPA means the Data Processing Agreement between you and Schoolbox (if applicable).

Early Termination means termination of a Service Agreement before the end of any Contract Term and/or Order Term, except where you terminate a Service Agreement under clause 23.3.

Early Termination Charge means an amount equal to a genuine pre-estimate of the loss that would be suffered by us as a result of the early termination of the Service Agreement, taking into account any discount on our Charges provided, outstanding disbursements payable by you, our implementation costs, and any stranded costs and expenses incurred by us including remaining fees for Third Party Services purchased by us in relation to the provision of Services for the Contract Term or Order Term.

Electronic Messaging means Email, Fax, SMS and MMS.

End User means an individual who is a student, parent, teacher, employee, consultant, contractor, and/or agent of the Customer who is lawfully authorised by the Customer to use the Schoolbox Service(s), and for whom a user identification and password to access the Schoolbox Services exists.

Force Majeure means an event or circumstance beyond the reasonable control of a party to these General Terms, including but not limited to war, riots, civil unrest, fire, flood, cyclone, typhoon, earthquake, lightning, explosion, strikes, lockouts, slowdowns, prolonged shortage of energy supplies, epidemics, pandemics and acts of state or governmental action prohibiting or impeding any party from performing its obligations under these General Terms.

General Terms means this document.

Insolvency Event means in relation to a person, means the happening of any one or more of the following events: (a) the person being unable to pay their debts as and when they fall due; (b) a receiver, receiver and manager, administrator, liquidator, trustee for creditors or trustee in bankruptcy or analogous person being appointed over the person's undertaking or assets or any of them; (c) if the person is a natural person, an application and filing for bankruptcy being made in respect of the person; or (d) if the person is a corporation – (i) an application for winding up or other process seeking orders which, if granted, would render the person an externally-administered body corporate being filed and not being withdrawn within 20 Business Days; (ii) the person being or becoming the subject of an order, or a resolution being passed, for the person's winding up or dissolution; or (iii) the person entering into, or resolving to enter into, a deed of company arrangement, or an arrangement, composition or compromise with, or assignment for the benefit, of its creditors generally or any

class of creditors, or proceedings being commenced to sanction such a deed of company arrangement, or arrangement, composition or compromise, other than for the purposes of a bona fide scheme of solvent reconstruction or amalgamation.

Invoice means a statement of Charges that have accrued and/or are payable in advance.

IP Rights means all industrial and intellectual property rights of any kind which may subsist in Australia or anywhere else in the world, including without limitation: (a) patents, copyright, rights in circuit layouts, designs, trademarks (including goodwill in those marks) and domain names; (b) any application or right to apply for registration of any of the rights referred to in paragraph (a) of this definition; and (c) all rights of a similar nature to any of the rights in paragraphs (a) or (b) of this definition – whether or not such rights are registered or capable of being registered; and (d) future IP Rights.

Law means laws applicable to Schoolbox's provision of the Services in the jurisdiction where the Services are being provided to the relevant Customer.

Loss means loss or damage suffered by a person and arising in connection with or out of a Service Agreement or any supply made under them (whether pleaded in contract, tort, breach of statutory duty or on any other basis, and whether arising from acts or omissions, and whether or not loss or damage the risk of which another person was or should have been aware), including but not limited to an obligation to contribute to or indemnify against loss or damage suffered by a third party.

Off-Net Events means any event or circumstance that occurs outside our network, or involving infrastructure owned or operated by any of our suppliers or other third parties (including you).

Online Learning Course Subscription Terms means our Online Learning Course Subscription Terms accessible via <https://schoolbox.com.au/legal/online-learning-course-subscription-terms/>, as amended from time to time.

Order Term means the period from the Order Start Date to the Order End Date for a specific Service as set out in a Service Order.

Party means a party to a Service Agreement and Parties has the corresponding meaning.

People means, in relation to a Party, the Party's management, employees, contractors and agents and, in relation to you, anyone who uses or accesses a Service on your account.

Personal Information has the meaning in our Privacy Policy, being any information or opinion about an individual who is identified or identifiable.

Plan Schedule means plan descriptions, included features, usage guides and policies, as updated from time to time, accessible via our Websites.

Privacy Laws means the applicable laws in relation to privacy and data protection that apply to the provisions of the services and the handling of personal information in the jurisdiction where we are providing the Services to a relevant Customer.

Privacy Policy means our Privacy Policy accessible via <https://schoolbox.com.au/legal/privacy-policy/>, as amended from time to time.

Production Instance means the server (including both software and hardware) where your on-Premise or hosted subscription service is installed and running as your live instance. **Non-Production Instances** are any other server where Schoolbox is installed, including but not limited to a testing, staging or other installation of Schoolbox, which is not your Production Instance.

Professional Services means the professional services specified in your Service Order, as applicable.

Professional Services Terms means our Professional Terms accessible via <https://schoolbox.com.au/legal/professional-services-terms/>.

Rates Schedule means, in relation to a Service, the charges or fees applicable to that Service as notified to you by us on or prior to the formation to the applicable Service Agreement, as amended from time to time in accordance with a Service Agreement and made available online at <https://help.schoolbox.com.au/homepage/1301> or <https://schoolbox.com.au/pricing/>.

Representative means a person who is properly authorised to represent a party.

Scheduled Maintenance means maintenance, upgrade, adjustment or repair of equipment, software, a network or anything else used to deliver a Service in accordance with our planned maintenance program as updated from time to time.

Schoolbox Support Policy means our Schoolbox Support Policy accessible via <https://schoolbox.com.au/legal/schoolbox-support-policy/>, as amended from time to time.

Security Measures means our Security Measures document accessible via <https://schoolbox.com.au/legal/security-measures/> as amended from time to time.

Service means a service provided by us to you, and as detailed in, a Service Agreement.

Service Agreement means an agreement as defined under clause 3 of the General Terms.

Service Commencement Date means the date when we make a service available for use, or such later date as may be specified in a Service Agreement.

Service Order means an Order Form, Quote or Estimate after we have accepted the order for Services contained in it.

Subprocessor List means our Subprocessor List accessible via <https://schoolbox.com.au/legal/subprocessor-list/>, as amended from time to time.

Schoolbox Subscription Terms means our Schoolbox Subscription Terms accessible via <https://schoolbox.com.au/legal/schoolbox-subscription-terms/>, as amended from time to time.

Special Terms means any special terms and conditions agreed in writing in a Service Order or a Statement Of Work under Special Conditions.

Third Party Services means products and services provided by third parties that you have selected and approved for use in connection with the Services by either purchasing such products and service from us that we re-sell on behalf of third party providers or choosing to integrate third party products or services with the Services.

Third Party Support Services means third party products and services that are inbuilt into the Schoolbox platform (specified as subprocessors who support delivery of Schoolbox Services in our [Subprocessor List](#)).

Your Data means any data, content, text, messages, communications, code, video, images or other materials of any type that you (or someone you direct), Administrators, and End-Users upload, submit or otherwise transmit to or through this service, which may include, without limitation, Personal Information.

'You', and Your' is a reference to the Customer.

'We', 'Us' and 'Our' is a reference to Schoolbox Pty Ltd ACN 135 115 507

Websites means our websites located at <https://schoolbox.com.au>, <https://schoolbox.education> and <https://help.schoolbox.com.au>.

Where is my Schoolbox instance located? Statement means our Where is my Schoolbox instance located? Statement accessible via <https://schoolbox.com.au/legal/where-is-my-schoolbox-instance-located/>, as amended from time to time.