

Cloud Services Terms

Last Updated 5th August 2020

1. Terms

These terms must be read in conjunction with our [General Terms](#) and the [Professional Services Terms](#). Definitions contained in this document have the same meaning as those in the General Terms, unless stated otherwise in Writing.

2. About

This document sets out the terms that apply to our Schoolbox Cloud Services: Schoolbox Cloud Backup Service ('SCBS') and Schoolbox Cloud Storage Service ('SCSS')

3. Definitions

In these Services Terms, unless the context suggests otherwise:

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

Change Request means a written request by either one of us to alter a Statement of Work.

Cloud service subscription means the service provided by Schoolbox Pty. Ltd. to subscribers with access to cloud backup and / or storage of their Schoolbox instance files and databases for a periodic fee.

Disaster Recovery means the plan executed by Schoolbox Pty. Ltd. to get the system backed up and into operational conditions. It also includes a recovery process to a nominated location.

Milestone means a key event contained in a Milestone Schedule, such as the completion of work or part of some work.

Milestone Schedule means a timetable of key events in the execution of a production of the deliverables or provision of the services as set out in a Statement of Work.

Parties means Schoolbox Pty Ltd and the Customer, collectively.

Rates Schedule means a schedule of our standard fees and charges located at: <https://help.schoolbox.com.au/homepage/1301>.

Recovery Time Objective (RTO) means the period from the moment the Customer communicates to Schoolbox Pty. Ltd. that they require the DR to be executed till the moment the whole backed up data is recovered.

Schoolbox Cloud Service commercial specifications refers to the webpage published by Schoolbox Pty. Ltd. containing all the relevant commercial information about the offered services such as subscription rates, definition of different Tier data levels and description of the services. This page is located at: <https://help.schoolbox.com.au/homepage/2967>

Subscription Renewal means the automatic renewal for a period of 12-months ('Subscription Term') of the cloud service/s subscription after the Subscription Initial Term ('Contract Renewal').

Service Level Agreement 'SLA' refers to the commitment between the parties.

SCBS refers to the Schoolbox Cloud Backup Service.

SCSS refers to the Schoolbox Cloud Storage Service.

Statement of Work ('SOW') means a document agreed between the parties that define the service-specific activities, deliverables and timelines. The provision of the Cloud Services is subject to the signing off of a SOW between the parties.

Subscription Initial Term means the time period of 12-months from the moment the SOW is signed by the Parties till the Contract end date.

Transfer of data means the download of content using the SCSS from the cloud storage platform

Transfer Quota means in the case of the SCST, the upper limit of the amount of content that the Customer is allowed to download per month.

\$ means, unless specified otherwise in a Service Order, currency will be listed in Australian dollars (AUD).

4. Services

4.1. Statement of Work

Schoolbox Pty. Ltd will provide the Customer with the services set out in the agreed Statement of Work.

5. Services Agreements

5.1. Service Agreement

When a Statement of Work is in a state that the parties agree to, they will sign it.

Once the Statement of Work has been signed by us:

5.1.1. There is a contract ('Service Agreement') for the supply of services in accordance with the Statement of Work, the Quote/Service Order and our General Terms; and

5.1.2. the terms of Service Agreement comprises the Statement of Work (including any special conditions), and anything else specified in our General Terms.

5.2. Independent contract

Each Service Agreement is an independent contract.

6. Service Delivery Approach

6.1. Fixed Costs

6.1.1. The cost of fixed cost services work is based on a cost estimate and scope of work contained in the agreed Statement of Work.

7. Service Changes

- 7.1. Changes to requirements
 - 7.1.1. You may, at any time, request a change to a Statement of Work by issuing a Change Request.
 - 7.1.2. Where we encounter unforeseen additional work, changes or difficulties, then we may issue you with a Change Request.
 - 7.1.3. If the change is agreed between the parties, the Statement of Work will be deemed to be amended in accordance with the agreed change.
 - 7.1.4. An amendment to a Statement of Work does not affect:
 - a. payments made to us; or
 - b. our entitlement to be paid for services provided – up to the date of amendment.
- 7.2. Upon issue of a Change Request from us, you must:
 - 7.2.1. either accept the Change Request; or
 - 7.2.2. reject the Change Request by written notice outlining the basis of the rejection.
- 7.3. If you:
 - 7.3.1. reject a Change Request, then you must meet with us within 14 Business Days of your rejection to attempt to resolve any issues with the Change Request in good faith;
 - 7.3.2. do not respond to a Change Request in writing within 14 Business days, then you are deemed to have accepted the Change Request.
- 7.4. If within 14 Business Days of meeting under clause 7.3.1, the parties cannot reach agreement, then either party may terminate the Service Agreement (on 7 days written notice) which was subject to the Change Request – termination under this clause will not affect your liability to pay for work undertaken by us up to the date of termination.

8. Fees and expenses

- 8.1. Your right to use a subscription service is subject to:
 - 8.1.1. your compliance with these terms;
 - 8.1.2. payment of the subscription fee.
- 8.2. Fee estimate
 - 8.2.1. Estimates may be either time and materials or fixed cost - and are estimates only and are not binding.
 - 8.2.2. We use our experience and historic data to calculate the total effort required to deliver the scope or services specified in the Schoolbox Cloud Service Statement of Work.
- 8.3. Fees
 - 8.3.1. The fees for services are calculated based on the:

- 8.3.1.1. amount of time our personnel spend providing the services;
 - 8.3.1.2. rates for those personnel as specified in the Statement of Work or, where no rates are specified, as contained in the [Rates Schedule](#); and
 - 8.3.1.3. Schoolbox Cloud Service commercial specifications.
- 8.3.2. Subscription term
Your subscription commences from the date of your Service Agreement for the Minimum Term contained in your Service Agreement, and then renews for successive 12 month Minimum Terms (unless a Service Agreement says otherwise).
- 8.3.3. Subscription fee
The subscription fee is calculated in accordance with our [Rates Schedule](#) and the Schoolbox Cloud Service commercial specifications, or as otherwise specified in a Service Order.
- 8.3.4. Expenses
You must reimburse us for any reasonable out-of-pocket expenses incurred by us in providing the services, these include bank fees, third party licence fees and any other disbursements.
Where reasonably practicable, we will obtain your approval prior to incurring reasonable out-of-pocket expenses. We may charge a margin on out-of-pocket expenses to cover processing and handling. The margin on out-of-pocket expenses shall not be greater than 25%.
- 8.3.5. Invoicing
- 8.3.5.1. We will invoice you in Australian dollars whenever fees have accrued.
 - 8.3.5.2. Invoices will be normally rendered annually or at the times specified in the agreed Statement of Work.
 - 8.3.5.3. Upon agreement of the Cloud Services Terms and sign off of the SOW by the parties for the provisioning of the Schoolbox Cloud Service/s, Schoolbox Pty. Ltd. will invoice the Customer for 100% of the subscribed Schoolbox Cloud Services fees.
- 8.3.6. Payment
You must pay all invoices in full within 30 days of its date, regardless of the date upon which you actually receive the invoice.
- 8.3.7. Default in payment
If a payment is overdue, we may, in addition to our other rights:
- 8.3.7.1. withhold delivery of services until payment is made; and
 - 8.3.7.2. take collection action, in which case you will be liable for the costs.
- 8.3.8. Round up
If the total chargeable time in any month is more than no chargeable time but less than 1 hour of time, then we may charge you for 1 hour of time.
- 8.3.9. Deposits and Prepayments

We may require a deposit or prepayment of fees and expenses at any time – where such request is made, it is a term of your Service Agreement with us.

8.3.10. Changes in Fees

We may change our fees and [Rates Schedule](#) at any time, where we notify you in writing. Increases do not apply to Statements of Work that are currently in progress.

9. Service Levels

9.1. Cloud Service Level Agreement

9.1.1. This Cloud Service Level Agreement (“SLA”) is a policy governing the use of the Schoolbox Cloud Services and is to be considered in addition to the [Schoolbox Support Policy SLA](#).

9.1.2. Where we offer a support or service level agreement, we may charge in accordance with our [Rates Schedule](#) and the Schoolbox Cloud Service commercial specifications.

9.2. Changes to the SLA

9.2.1. Schoolbox Pty. Ltd. will not modify the terms of this SLA during the initial term of the cloud service subscription;

9.2.2. If the Customer renews the subscription after the Subscription Initial Term, the version of this SLA that is current at the time of the Subscription Renewal will apply throughout your renewal term. In this instance, Schoolbox Pty. Ltd will provide at least 90 days’ notice for changes to this SLA.

9.3. Service Commitment

9.3.1. We guarantee at least 99.9% (the “Service Commitment”) availability over a given year of the backup and restore functionality of the Schoolbox Cloud service/s.

9.3.2. In the event of data recovery required by the Customer to an on-premise instance, Schoolbox Pty. Ltd. will make all reasonable efforts within its control to guarantee a 4 hour timeframe to complete a full recovery as stated in 9.4

9.3.3. The Service Commitment for data recovery will be void in the event of any of the Schoolbox Cloud Backup SLA Exclusions as stated under the clause 9.7

9.3.4. The following 2 options are available to the Customer for data recovery:

9.3.4.1. Local Recovery: restoration of the Customer Schoolbox instance to a new nominated Virtual Machine (VM).

9.3.4.2. Recovery to Schoolbox Hosted instance: partial restoration of the Customer Schoolbox instance to a Schoolbox hosted environment

in AWS. This restoration will not include the following set of data:

- Redis Database
- Rabbit data (including notifications)
- External database integration with systems such as the Customer Student Information System may be unable to be replicated.

9.3.4.3. In case the Customer selects the Recovery to Schoolbox Hosted instance option, this may incur in additional fees to be billed to the Customer in accordance with our [Rates Schedule](#) and the Schoolbox Cloud Service commercial specifications.

9.3.5. Schoolbox will use commercially reasonable efforts to make the Schoolbox Cloud service/s available as per the “Service Commitment”.

9.4. Data Recovery (Schoolbox Cloud Backup Service)

9.4.1. In the case of the SCBS, the Customer will be entitled to one full recovery within the subscription term. For additional recoveries during the period, additional charges will apply in accordance with our [Rates Schedule](#) and the Schoolbox Cloud Services commercial specifications.

9.4.2. The recovery time objective for the SCBS will be a maximum of 4 hours. This timeframe may vary depending on the Customer DNS TTL configuration at the moment of the DR.

9.4.3. In case the recovery time objective exceeds the maximum timeframe penalties may apply as defined under clause 9.5.

9.4.4. The penalties under these Terms will not apply in the event of any of the Schoolbox Cloud Backup SLA Exclusions as stated under the clause 9.7

9.5. Penalties

The following penalties apply if Schoolbox does not meet the expectations outlined in this SLA. For any action by Schoolbox that results in a Recovery Time Objective exceeding 4 hours a 5% penalty may be applied to the cloud service subscription fee.

9.6. Service monitoring

9.6.1. Schoolbox Pty. Ltd. will monitor the cloud service/s on a monthly basis for service quality and compliance purposes.

9.6.2. In the case of the SCBS, the Customer will be able to visualise the Service/s status from the Schoolbox administration STATUS OF SERVICES component: “Disaster Recovery” service.

9.6.3. In the case of the SCBS, Schoolbox Pty. Ltd. will maintain 7 daily, 4 weekly, 4 monthly and 7 yearly backups.

9.6.4. The following data will be accessible by the customer:

9.6.4.1. Current cloud allocation used

9.6.4.2. File storage (file count, disk usage, last synchronisation date/time, last synchronisation status)

9.6.4.3. Data Configuration (specific data sets backed up with their size and synchronisation date)

9.6.5. As per the Fair Use Policy under clause 10, if during the service/s monitoring, Schoolbox identifies an excessive usage of the cloud service/s, a Schoolbox Pty. Ltd. representatives may contact the Customer to mutually agree on a corrective action plan including but not limited to:

- Updating retention policies
- Identifying data to remove from the cloud that is the cause for excessive usage
- Removing old, duplicate, and/or unnecessary backups
- Evaluating of any other settings or configurations that may cause data bloat
- Agreeing on fair overage charges for the excessive usage.

9.6.6. In the case of excessive usage of data, additional fees may incur in accordance with our [Rates Schedule](#) and the Schoolbox Cloud Services commercial specifications. This could include Schoolbox Pty. Ltd. charging for the next tier of storage and transfer data usage as per the Cloud Services commercial specifications.

9.7. Schoolbox Cloud Backup SLA Exclusions

9.7.1. The Service Commitment does not apply to any unavailability, suspension or termination of the Schoolbox Cloud Backup, or any other Schoolbox Cloud Backup performance issues:

9.7.1.1. Due to factors outside our reasonable control (for example, natural disaster, war, acts of terrorism, riots, government action, or a network or device failure external to our data centers, including at your site or between your site and our data center);

9.7.1.2. Due to any technical issue with a third party, related to the provision of the service, that is outside of our control (for example, a non-operational AWS hosting service)

9.7.1.3. Due to any hardware or software issues with the Customer's Schoolbox instance that are outside of our control and not covered by the [Schoolbox Support Policy](#).

9.7.1.4. Caused by your use of a Service after we advised you to modify your use of the Service, if you did not modify your use as advised;

9.7.1.5. That result from your unauthorized action or lack of action when required, or from your employees, agents, contractors, or vendors, or anyone gaining access to our network by means of your passwords or equipment, or otherwise resulting from your failure to follow appropriate security practices;

9.7.1.6. That result from faulty input, instructions, or arguments (for example, requests to access files that do not exist);

- 9.7.1.7. That result from your attempts to perform operations that exceed prescribed quotas or that resulted from our throttling of suspected abusive behavior;
- 9.7.1.8. For licenses or subscriptions not paid for at the time where access to the cloud service/s is required by the Customer.

10. Fair Use Policy

- 10.1. These Fair Use Policy for the SCBS and SCSS must be read in conjunction with the Schoolbox Pty. Ltd. [Acceptable Use Policy \(AUP\)](#).
- 10.2. In order to safeguard the network and facilities as well as to prevent fraud and abuse of the cloud services relative to their intended target use and market, your usage will be subject to the terms of Schoolbox Cloud Services Fair Use Policy as defined in this document.
- 10.3. The fair use policy governs cloud backup and storage utilization. If use of the services exceeds the fair use limits, you will be in violation of this fair use policy and will be subject to suspension of the cloud services and overage fees, as governed by this policy.
- 10.4. Schoolbox Pty. Ltd. will monitor your usage to ensure compliance as detailed under clause 9.6. We will determine from time to time what is deemed excessive usage in relation to typical uses of the cloud service/s.
- 10.5. Schoolbox will provide recommendations on cloud storage space to subscribe for based on current and historical consumer behaviour and usage of the cloud backup services, and if amended, will be posted on the relevant Schoolbox Cloud Services commercial specifications.
- 10.6. Schoolbox reserves the right to suspend your cloud services if you are in violation of the policy. In all cases, Schoolbox reserves the right to terminate the cloud services contract and delete the cloud resources utilized by the customer with usage exceeding the fair use policy with 90-day notice, if usage is not brought into compliance with this policy during such notice period. Resource utilization must be below fair use limits for a continuous 60 days before a breach of the fair use policy is considered cured.
- 10.7. Fair use limits:
 - 10.7.1. Used Cloud Backup Storage is equal to the aggregate amount of data stored in S3 AWS bucket after migration of the storage and database components from your Schoolbox instance, including the following set of data:
 - MySQL Database
 - Schoolbox storage files
 - Redis Database
 - /etc directory
 - Schoolbox configuration file

- 10.7.2. Upon agreement of the SOW, the Customer subscribes to a specific Schoolbox cloud service/s data storage and data transfer (in the case of SCSS) Tier as defined in the cloud services commercial specifications.
- 10.7.3. Fair Use is considered when your storage size and data transfer size remains within the selected Tier during the subscription term.
- 10.7.4. The fair use policy is violated if Used Cloud Backup Storage exceeds Fair Use as defined in 10.6.3. In this instance this may incur in additional fees to be billed to the Customer in accordance with our [Rates Schedule](#) and the Schoolbox Cloud Service commercial specifications.

11. Termination and Suspension

In addition to our other rights under the Service Agreement, we may:

- 11.1. suspend your subscription where:
 - 11.1.1. we believe your credentials have been compromised;
 - 11.1.2. during maintenance or updates or upgrades;
 - 11.1.3. where you have failed to pay us money by the due date; or
 - 11.1.4. you agree.

- 11.2. terminate your subscription where:
 - 11.2.1. you fail to pay money within 14 days of it being due;
 - 11.2.2. you are insolvent, or are otherwise placed into liquidation or have an administrator or controller
 - 11.2.3. you breach any term of this agreement; or
 - 11.2.4. you cease carrying on business; or
 - 11.2.5. we give you 90 days written notice to terminate at will.

- 11.3. You may terminate your Service Agreement where:
 - 11.3.1. we are insolvent, or are otherwise placed into liquidation or have an administrator or controller appointed or a receiver appointed, or have a receiver and manager appointed; and
 - 11.3.2. you give us written notice of termination 30 days before the end of the Contract Renewal date – in which event the termination takes effect upon the expiry of the subscription term.

- 11.4. Neither party may terminate a Service Agreement during its Minimum Term except as permitted by these terms, or mutually by written agreement.