

Terms of Conditions and Use

EFFECTIVE: 17th May, 2018

1. The Website, App and Service

- 1.1 These terms and conditions (**Terms**) apply to the provision and use of Boardingware International Limited's (**Boardingware, us or we**) student management software system for boarding schools and other customers, via a web application at www.boardingware.com (the **Website**) and via a native application for mobile and tablet devices downloadable from the Apple iTunes or Google Play stores (the **App**). The Website and the App, and the services and functionality provided by them are referred to collectively in these Terms as the **Service**.
- 1.2 These Terms describe the terms and conditions under which Boardingware makes the Service available to its subscription customers, and to all individuals authorised to access the Service on that customer's behalf (**you**).
- 1.3 You acknowledge and agree that by using the Service you agree to be legally bound by these Terms. If you do not agree to be bound by these Terms, then you have no right to access or use the Service.
- 1.4 If you accept or agree to these Terms on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to these Terms.
- 1.5 Our Privacy Policy applies to the handling, storage, and use of any personal information you submit to us and forms part of these Terms. You should read our Privacy Policy carefully.

2. Modification

- 2.1 Boardingware reserves the right, at its sole discretion, to modify or terminate the Service or to modify these Terms at any time and without prior notice. By continuing to access or use the Service after we have posted a modification, you are indicating that you agree to use the modified Service and/or to be bound by the modified Terms.

3. Use of the Service

- 3.1 Subject to your compliance with these Terms, Boardingware hereby grants you a non-exclusive licence, with no right to sublicense, to access and use the Service for your internal purposes, and a limited, personal, non-transferable, non-exclusive, revocable licence to use and install the App. The foregoing licence includes the right to use any documentation and other materials provided by Boardingware to enable you to access and use the Service.
- 3.2 You agree to only use the Service in a way that complies with all applicable laws and regulations, that does not infringe our rights or others' rights, and that does not inhibit or restrict other users' enjoyment of the Service. Without limiting the foregoing, you will not nor will you allow any third party to:
 - a. damage or harm the Service, or any underlying or connected network or system;

- b. modify, adapt, translate or otherwise create derivative works based on the Service;
- c. reverse engineer, de-compile, disassemble or otherwise attempt to discover the underlying ideas, algorithms, structure or organization of the Service;
- d. rent, lease, sell, assign, distribute or otherwise transfer rights in the Service, allow any third party (other than Authorised Users, your students or parents/guardians of those students) to use the Service, or otherwise commercially exploit it any way;
- e. use, post, transmit or introduce any device, software or routine that interferes or attempts to interfere with the operation of the Service;
- f. use the Service to do anything unlawful, misleading, malicious or discriminatory; or
- g. attempt to view, access, modify or copy any data or content other than that which you're expressly authorised to access.

4. Fees

- 4.1 If you wish to use the Service, you must create an account with us (an **Account**).
- 4.2 The costs to use the Service will be a monthly or annual subscription fee as set out on our Website (**Fees**). We reserve the right to increase our Fees at any time. Changes to the Fees will be effective when posted to our Website. Fees are exclusive of all taxes unless otherwise stated, and you indemnify and hold us harmless against any claims by any tax authority for any underpayment of any tax or levy, and any penalties and/or interest by you.
- 4.3 Your initial Fees are payable in advance and, thereafter, within 30 days of our invoice.

5. Account Registration

- 5.1 During the registration process, you, and/or various staff members authorised by you, will be required to provide us with certain information in order to establish a username and a password for each individual who is authorised to use the Service on your behalf (an **Authorised User**). You agree to provide accurate, current and complete information during the registration process and to update such information to keep it accurate, current and complete. Boardingware reserves the right to suspend or terminate your Account if any information provided during the registration process or thereafter proves to be inaccurate, not current or incomplete.
- 5.2 You agree that you are responsible for:
 - a. safeguarding your password(s);
 - b. ensuring that only appropriate and authorised staff members are given access to the Service;
 - c. monitoring staff usage of the Service (including by creating appropriate policies and procedures);
 - d. ensuring that logins and passwords are only used by the individual Authorised User to whom they have been issued, and are not shared with or disclosed to other individuals; and
 - e. any activities or actions under your Account, whether or not you have authorised such activities or actions.
- 5.3 If an Authorised User ceases to be employed or engaged by you, or you withdraw their authorisation to use the Service for any reason, it is your responsibility to deactivate their



login.

- 5.4 You must immediately notify Boardingware of any unauthorised use of your Account by emailing security@boardingware.com.

6. Provision of information about students

- 6.1 You agree that you will only provide personal information to us about a child under 16 years old where you have obtained parental or guardian's prior consent to disclose that child's personal information to third parties such as Boardingware.
- 6.2 You must notify us immediately if any parental or guardian consent is withdrawn, or you discover that prior consent has not been given.

7. Security, Customer Data and Personal Information

- 7.1 In this clause 7, **Customer Data** means the data generated by any Authorised User in the course of using the Service.
- 7.2 You hereby grant to us a worldwide, non-exclusive, royalty-free, transferable, irrevocable licence to access, use, store, modify, copy and communicate the Customer Data for the sole purpose of:
- a. enabling Boardingware to perform its obligations, and exercise its rights, under these Terms;
 - b. providing, updating, improving and protecting the Service, our software and the Website;
 - c. communicating with Authorised Users by responding to its requests, comments and questions and to send emails and other communications relating to the Service to Authorised Users;
 - d. complying with all applicable laws and regulations;
 - e. better understanding how the Authorised Users are using the Service and our software;
 - f. delivering tailored advertising via the Software;
 - g. verifying the identity of individuals to access the Service;
 - h. providing all technical and implementation support;
 - i. carrying out training or marketing relating to the Service;
 - j. communicating new or updated services on offer in relation to the Service; and
 - k. delivering automated decision making, including profiling,
- l. and for no other purposes.
- 7.3 Boardingware agrees to comply with its following policies in force from time to time (all of which are available on the Website):
- a. Privacy Policy.
 - b. Cloud Security Whitepaper.
 - c. Information Security Whitepaper.



- 7.4 Boardingware agrees that:
- a. it is committed to preserving security in relation to the Service; and
 - b. data privacy is recognised as paramount to Boardingware and it will not be reduced or compromised by unilateral decisions made by Boardingware.
- 7.5 Boardingware will regularly monitor its compliance with its obligations under this clause 7.
- 7.6 You hereby indemnify Boardingware (and its representatives) against all liabilities, damages, expenses and losses (including all legal costs) arising from any claim that the Customer Data, or any use of it in accordance with these Terms, infringes any third party's intellectual property or any other applicable laws or privacy rights.
- 7.7 To the extent that Customer Data constitutes personal information (as defined by the Privacy Act 1993) or is otherwise protected by applicable privacy and/or data protection laws, it will be stored and managed strictly in accordance with Boardingware's policies specified in clause 7.3 above . You acknowledge that, in holding, storing and using such personal information, Boardingware is acting as a service provider and (except as expressly set out in these Terms) it does not control or determine the purposes for which that personal information is processed.
- 7.8 Customer Data (including personal information) will be stored by Boardingware on secure servers which are located in Ireland (in the European Union), Virginia, United States of America and/or Sydney, Australia.
- 7.9 Any enquiries relating to security, customer data or personal information in respect of the Service should be submitted to Boardingware's data and personal information controller at privacy@boardingware.com.

8. Ownership

- 8.1 The App and the Service are protected by copyright, trademark, and other laws of New Zealand and foreign countries. You agree that Boardingware and its licensors exclusively own all right, title and interest in and to the App and the Service, including all associated intellectual property rights. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the App or the Service.

9. Termination and Account Cancellation

- 9.1 If you breach any of these Terms, Boardingware will have the right to suspend or disable your Account at its sole discretion and without prior notice to you. No refund or other credit is payable to you on cancellation unless we agree otherwise.
- 9.2 Subject to these Terms, you may cancel your Account at any time on providing not less than 30 days' written notice to us by sending an email to support@boardingware.com. Upon any cancellation of your Account, you must promptly destroy all originals and copies of the App in your possession or control and cease any further use of the Service.
- 9.3 If you cancel your Account before the end of your current prepaid month, your cancellation will take effect immediately and you will not be charged again by us. You will not be entitled to a refund for any Fees that you have already paid and cancellation of your Account is not effective unless and until no money is owing on your Account.
- 9.4 All of your data and content may be deleted from our systems immediately upon cancellation of your Account. This content cannot be recovered once your Account is cancelled. We are not liable for any loss or damage following, or as a result of, the cancellation of your Account.



10. Disclaimers

- 10.1 We will try to promptly address (during normal business hours in New Zealand) all technical issues that arise in connection with the Service, however there may be times when the Service is inaccessible.
- 10.2 The Service is provided on an “as is”, and “as available” basis without warranty of any kind, either express or implied and your use of the Service is entirely at your sole risk. Without limiting the foregoing, and to the fullest extent permitted by law, Boardingware disclaims any implied warranties of merchantability, fitness for a particular purpose and non-infringement, and any warranties arising out of course of dealing or usage of trade. Boardingware makes no warranty that the Service will meet your requirements or expectations or be available on an uninterrupted, secure, or error-free basis. No advice or information, whether oral or written, obtained from Boardingware or through the Service will create any warranty not expressly made herein.

11. Indemnity

- 11.1 You agree to indemnify and hold Boardingware, its officers, directors, employees and agents, harmless from and against any claims, liabilities, damages, losses, and expenses, including, without limitation, reasonable legal and accounting fees, arising out of or relating to: (i) your breach of these Terms; (ii) your violation of applicable laws, rules or regulations in connection with your use of the Service; or (iii) any claim that Boardingware’s possession or use of personal information in accordance with these Terms breaches any applicable privacy laws or any individual(s)’s rights.

12. Limitation of Liability

- 12.1 You acknowledge and agree that, to the maximum extent permitted by law, the entire risk arising out of your access to and use of the service remains with you. Neither Boardingware nor any other party will be liable for any indirect, special, punitive, exemplary or consequential damages, or for any lost profits, lost revenue, loss of data or loss of goodwill, or for the cost of procuring substitute service arising out of or in connection with these Terms or from the use of or inability to use the Service, whether based on warranty, contract, tort (including negligence), product liability or any other legal theory, and whether or not Boardingware has been informed of the possibility of such damage.
- 12.2 We may use third party suppliers to provide necessary hardware, software, networking, connectivity, storage and related technology required to provide the service. The acts and omissions of those third party suppliers may be outside of our control, and we do not accept any liability for any loss or damage suffered as a result of any act or omission of any third party supplier.
- 12.3 In no event will Boardingware’s aggregate liability arising out of or in connection with these Terms or from the use of or inability to use the service exceed the total Fees paid by you to Boardingware in the 12 months preceding a claim.

13. Governing Law and Jurisdiction

- 13.1 These Terms are governed by New Zealand law and you submit to the exclusive jurisdiction of the New Zealand courts for any matter or dispute arising in relation to these Terms.

14. Entire Agreement

- 14.1 These Terms, including the Privacy Policy, constitute the entire and exclusive understanding and agreement between Boardingware and you regarding the Service, and these Terms



supersede and replace any and all prior oral or written understandings or agreements between Boardingware and you regarding the Service or use of the Website and/or App.

15. Assignment

- 15.1 You may not assign or transfer this Agreement, by operation of law or otherwise, without Boardingware's prior written consent. Any attempt by you to assign or transfer this Agreement, without such consent, will be null and of no effect. Boardingware may assign or transfer this Agreement, at its sole discretion, without restriction. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their successors and permitted assigns.

16. Notices

- 16.1 Any notices or other communications permitted or required hereunder, including those regarding modifications to these Terms, must be in writing and given via email or by posting to the Website. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted.

17. General

- 17.1 The failure of Boardingware to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorised representative of Boardingware.
- 17.2 Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.
- 17.3 If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.
- 17.4 If there is a dispute between you and us in relation to these Terms that remains unresolved for more than 30 days:
- a. we may, by notice to you, refer the dispute to mediation in accordance with the LEADR New Zealand Incorporated standard mediation agreement; and
 - b. following such referral to mediation, neither of us may commence court or arbitration proceedings in relation to the dispute until the mediation procedure is complete, provided that nothing in this clause shall affect our respective right to seek interlocutory and/or injunctive relief.
- 17.5 The headings used throughout these Terms are provided for your convenience and do not affect the meaning of these Terms.
- 17.6 The contra proferentem rule shall not apply in respect of the construction of these Terms.

