

CLASS SOLVER PTY LTD CUSTOMER TERMS

INTRODUCTION

- A. Class Solver Pty Ltd (ACN 606 140 345) as trustee for the Class Solver Unit Trust (ABN 99 685 353 215) of PO BOX 2560 Rowville Victoria, Australia (**Class Solver**) is a provider of class placement software as a service.
- B. You wish to engage Class Solver to provide the Services on the terms and conditions set out in this agreement.
- C. These terms and conditions (including the schedule) constitute an agreement between You and Class Solver.

1. APPOINTMENT & TERM

- 1.1 You appoint Class Solver to provide the Services from the Commencement Date until this agreement is terminated in accordance with its terms (**Term**).
- 1.2 You acknowledge and agree that the appointment is non-exclusive and that Class Solver may be engaged by other people to provide services (including services similar to or the same as the Services).
- 1.3 Class Solver does not disclose any personally identifiable information of any student, teacher or principal to any party outside of Class Solver other than those third parties used by Class Solver to support the Class Solver platform in providing its Services. The third parties with which Class Solver contracts are bound by the same data privacy and security requirements to which Class Solver adheres (and is described in more detail in the Privacy Policy, the COPPA Privacy Policy and the California Privacy Statement, annexed hereto as Exhibits), according to these customer terms.

2. SERVICES

- 2.1 Class Solver will provide the Services (including access to the Placement Software) during the Term.
- 2.2 Class Solver may adjust the appearance, available input fields, look and feel, user experience or any other element of the Placement Software during the Term for the purpose of maintaining and improving the Services.
- 2.3 Class Solver will provide personal customer service support for all customer service questions or issues unless it notifies You otherwise. Class Solver will notify You of any additional fees that may apply to the provision of the customer service support.

3. USE OF PLACEMENT SOFTWARE

- 3.1 Class Solver grants You a worldwide, non-exclusive, non-transferable right to access and use, and permit your authorised employees or contractors to access and use, the Placement Software for class allocation purposes of Your School(s) in accordance with this agreement during the Term.
- 3.2 You may authorise certain employees or contractors of Your School to use the Services (**Authorised Users**), provided that you must only authorise those people who have a genuine need to use the Services. Users must be over 18 years of age. Unauthorised users may not be allowed to use the Services.
- 3.3 You must ensure that each Authorised User uses their own personal log-in details to access and use the Placement Software and does not use any log-in details belonging to any other Authorised User.
- 3.4 You must not allow any person to use the Placement Software unless that person has been authorised to do so and needs to do so for class allocation purposes at Your School(s).
- 3.5 Class Solver warrants and represents that it is the owner or licensee of the Placement Software and that Your use of the Placement Software and Services in accordance with this agreement will not infringe the Intellectual Property Rights of Class Solver or any of its licensors.
- 3.6 Class Solver may require Authorised Users to create usernames, passwords or other identification or authentication information to that is required for use of the Services (**Access Identification**).
- 3.7 You must ensure that Your Authorised Users keep all Access Identification safe and secure and protect it from unauthorised access, use or copying. You must notify Class Solver as soon as the safety or security of Access Information is compromised or breached.
- 3.8 Class Solver may suspend the Services if the safety or security of the Access Information is breached until the breach is rectified and any reasonably necessary back up, protection and/or security assurance testing is completed.
- 3.9 Upon the determination of a breach of security resulting in an unauthorized release of student, teacher or principal data obtained from an educational agency and maintained by Class Solver or an assignee of Class Solver in violation of applicable state or federal law, the terms of the contract between the educational agency to which the data belongs, or the data privacy and security policies of the educational agency to which the data belongs, Class Solver will notify such educational agency of the breach in the most expedient way possible and without unreasonable delay.
- 3.10 Services are not available for personal use.

4. MAINTENANCE & ACCESSIBILITY

- 4.1 You agree that Class Solver may conduct maintenance of the Software at any time, provided that Class Solver will aim to do so at times that cause minimum impact to You.

- 4.2 Class Solver will provide You with updates to the Software from time to time to enhance or improve the quality, functionality or operation of the Placement Software from time to time (**Update**). Class Solver may or may not require You to accept the Update. You agree to accept the Update (if required) and provide Class Solver with any access or information required to implement an Update (if any) as and when it is required by Class Solver. You acknowledge that in the event that You fail to accept an Update, Class Solver's ability to deliver the Services may be adversely impacted.
- 4.3 If You detect a fault or interruption in the Placement Software (**Service Issue**), You must notify Class Solver of the Service Issue immediately and provide all information reasonably required by Class Solver to rectify or investigate the Service Issue, including the date, time and nature of the issue.
- 4.4 On receiving notification of a Service Issue under clause 4.3, Class Solver will investigate within a reasonable time and use best endeavours to devise and implement a solution
- 4.5 You agree and acknowledge that:
- (a) the Services may be suspended due to Force Majeure for the duration of the Force Majeure event;
 - (b) the Services are delivered in whole or in part on or via Internet connection, networks, and other software and/or devices that are not provided by Class Solver under this agreement and for which Class Solver is not responsible under this agreement or otherwise;
 - (c) the performance of the Services may be affected by such external factors as speed of connection from Your equipment to Class Solver's server(s) utilised at any given time, which factors are beyond the control of Class Solver; and
 - (d) Class Solver will not be in breach of the obligation to provide the Services, and will not be liable to You for any Loss arising in connection with any lack of availability or failure, defect, interruption or limitation of the Services arising because of a factor mentioned in this clause 4.5

5. YOUR INFORMATION

- 5.1 You own and will continue to own at all times all of Your Information. In the course of using the Service, you and other users may provide or post certain content or information which may be used by Class Solver in connection with the Service and which may be shared to third party service providers that aid us in provision of the Services. Please visit our Privacy Policy for additional information.
- 5.2 Class Solver does not sell or release the personally identifiable information of any student, principal or teacher for any commercial or marketing purposes. Class Solver will only share and use your personally identifiable information in accordance with Class Solver's current Privacy Policy.
- 5.3 Class Solver limits access to student data to those employees and third party service providers providing services to educational agencies using the Class Solver platform.
- 5.4 Class Solver limits its use of student, teacher and principal data to the provision of its services for the educational agencies with which it contracts.

- 5.5 Class Solver limits technical and physical access to student, teacher and principal data when stored or transferred, and it adheres to industry best practices. Technical safeguards concerning student data include firewalls, strong password protection, and encryption. Class Solver encrypts student data both in transit and at rest in relation to the Class Solver platform.
- 5.6 Class Solver maintains all student, teacher and principal data acquired from an educational agency in the Southern Hemisphere with which it contracts in cloud services supported by Microsoft Azure, located in the Australia. Class Solver maintains all student, teacher and principal data acquired from an educational agency in the Northern Hemisphere with which it contracts in cloud services supported by Microsoft Azure, located in the United States of America.
- 5.7 Upon executing this agreement, You grant to Class Solver a worldwide, non-exclusive, fully transferable, sub-licensable right to access and use Your Information for the purpose of providing the Services during the Term. You continually warrant that You are the owner or licensee of all Your Information; that You have all rights and consents required to provide Your Information to Class Solver; and that Class Solver's use of Your Information in accordance with this agreement will not infringe the Intellectual Property Rights or any other rights of any third party or of any of Your directors, officers, employees, contractors, agents.
- 5.8 Upon termination or expiry of this agreement, Class Solver will, subject to compliance with the Class Solver Privacy Policy and the law, return or (if directed by You) destroy Your Information in accordance with Your reasonable directions in the format requested by You (provided that conversion into that format is reasonably practical and does not require Class Solver to incur undue expense). If data is to be maintained by Class Solver for federal and/or state reporting, such data shall remain in encrypted format and stored in cloud services based in the United States of America for educational agencies located in the Northern Hemisphere and Australia for educational agencies located in the Southern Hemisphere.
- 5.9 You acknowledge and agree that Your Information was created or collected by You or on Your behalf and that the Services do not include verification of the legality, accuracy, currency or appropriateness of Your Information.

6. CLASS OPTIONS

- 6.1 Class Solver will provide options for possible class allocation outcomes in connection with the Services (**Class Options**).
- 6.2 You acknowledge that Class Options are generated using Your Information and that Class Solver relies on Your Information (and the currency, accuracy and completeness of Your Information). You also acknowledge that Class Solver will not solicit or rely on any information provided by any parent, child or other person who is not an Authorised User.
- 6.3 You must assess the Class Options in the individual context of Your School(s) and its (or their) students, parents and teachers. It is Your choice whether to implement the Class Option in whole or in part.

- 6.4 You acknowledge and agree that You have access to knowledge, contact, communications and information that is additional to the information that is entered into the Placement Software. You also acknowledge and agree that you have access to independent consultants, resources and other professional advisers to assist with assessing or implementing any Class Option.
- 6.5 You agree that You are solely responsible for implementing or not implementing a Class Option and that each decision and action You take is taken independently and having regard to the unique circumstances known to You.

7. FEES & PAYMENT

- 7.1 Class Solver's standard pricing applies as notified to you on a per student per School Allocation Year. The total cost will be based on the number of students enrolled at Your School regardless of the number of students uploaded to the Placement Software (**Fees**).
- 7.2 You must pay the Fees.
- 7.3 Class Solver will provide a tax invoice for the Fees and you must pay the Fees by the due date and by the method set out on the invoice.
- 7.4 You agree that all Fees not paid in full on the due date are debts due and payable immediately. You agree to pay all of Class Solver's reasonable costs of recovering such debts (which may include dishonour fees, debt collection and/or legal fees).
- 7.5 Class Solver may adjust Fees annually by a reasonable amount by giving you written notice prior to the Commencement Date.
- 7.6 Class Solver may in its sole discretion provide discounts to the Fees as part of advertised promotions or marketing (**Discount Promotions**). The terms and conditions of any Discount Promotions will be provided on the Class Solver website or as otherwise notified to You in writing.
- 7.7 If Class Solver is required to complete work or provide additional resources that are not within the scope of the Services, Class Solver will notify You of any additional fees that may apply.
- 7.8 Subject to clauses 4.1, 4.5 and 9.2, Class Solver agrees to refund the Fees to You in full if:
- (a) You are (acting reasonably) not satisfied with the Services and/or the Placement Software at any time prior to the Refund Deadline Date; and
 - (b) You have notified Class Solver of Your concerns at least 7 days prior to the Refund Deadline Date; and
 - (c) Class Solver have not resolved Your concerns within a reasonable timeframe.

Refund Deadline Date means

- (i) if You are located in the United States of America or Canada, 10 June of the relevant School Allocation Year; or

- (ii) if You are located in Australia, New Zealand or elsewhere in the world, 10 December of the relevant School Allocation Year.

7.9 If you refer a third-party school to Class Solver (**Referred School**) and that school engages Class Solver to deliver services to it, Class Solver may at its sole discretion provide You with a discount nominated by Class Solver per Referred School from the Fees payable by You in the following School Allocation Year (**School Referral Bonus**).

7.10 You acknowledge and agree that:

- (a) terms and conditions of any School Referral Bonus will be provided on any relevant advertising material or at the Class Solver website; and
- (b) application of the School Referral Bonus is at all times at the sole discretion of Class Solver.

8. GST

8.1 Except where this agreement states otherwise, if you are located in Australia, each amount payable by a party under this agreement in respect of a taxable supply by the other party is expressed as a GST exclusive amount and the recipient of the supply must, in addition to that amount, and at the same time, pay to the supplier the GST payable in respect of the supply.

8.2 A party's obligation to pay an amount under this agreement is subject to a valid tax invoice being delivered by the other party.

9. WARRANTIES, REPRESENTATIONS & INFORMATION

9.1 Class Solver continually warrants and represents to You that Class Solver will provide the Placement Software and the Services exercising all due care and skill and will comply with all applicable laws in performing its obligations under this agreement.

9.2 The Placement Software is designed for Desktop use. Class Solver does not make any warranties to You that the Placement Software will be available in any other format or via any particular Desktop web-browser.

9.3 You continually warrant and represent to Class Solver that You:

- (a) are able to pay Your debts as and when they fall due;
- (b) will comply with all applicable laws in your use of the Services,
- (c) you have the legal right to provide all of Your Information during the Term and are not breaching any legal obligation in providing Your Information or any part of it;
- (d) will not copy, transfer, transmit, or otherwise provide access to the Placement Software to any unauthorised party and will not seek to reverse-engineer or reproduce any component of the Placement Software (including source code) for your own benefit or for any other purpose; and
- (e) will provide all information that is reasonably necessary to assist Class Solver to provide the Services.

10. PRIVACY

- 10.1 Class Solver will at all times comply with the Australian Privacy Principles and the Privacy Act, as well as any applicable United States federal and state law including the Family Educational Rights and Privacy Act of 1974, the Children's Online Privacy Protection Act of 1998. Please refer our Privacy Policy.
- 10.2 If You are in Australia, You must comply with the Australian Privacy Principles and the Privacy Act.
- 10.3 Class Solver will comply with its Privacy Policy in connection with performing the Services.
- 10.4 You must have all necessary consents to disclose and/or provide any personal information contained in Your Information, and you warrant that you have procured those consents.

11. CONFIDENTIALITY

- 11.1 In this clause 10, "Confidential Information" means all data, records, information (including without imitation Your Information), copyright, registered and unregistered trade marks, logos, registered and unregistered designs, patents, trade secrets, ideas, concepts, know how, knowledge and any other information, whether in writing or otherwise of or concerning a party or its employees, agents, or contractors under, in contemplation of or in connection with the Services, and "Confidential Information" includes the terms of this agreement.
- 11.2 Class Solver maintains the confidentiality of all educational records containing the personally identifiable data of any student, teacher or principal in accordance with federal and state law and with any applicable policies on data security and privacy maintained by the educational agenc(ies) with which Class Solver contracts. Class Solver provides training to any of its officers and employees prior to those officers and employees gaining access to student, teacher or principal data received by an educational agency. The content of the training program covers applicable U.S. state and federal law governing confidentiality of data, as well as applicable Australian law.
- 11.3 Each party acknowledges that it may receive Confidential Information of the other party and agrees to keep that Confidential Information secret, protect and preserve its confidential nature, and not use it or disclose it to any person (or allow or assist or make it possible for any person to observe or have access to it), except to the extent necessary to provide or use the Services (as appropriate) in accordance with this agreement, to obtain professional advice in relation to the Services, to comply with this agreement, or as required by law.
- 11.4 The provisions of this clause 10 continue in force notwithstanding completion of the Services or the termination of this agreement.

12. INTELLECTUAL PROPERTY

- 12.1 Nothing in this agreement affects the ownership of any Intellectual Property Rights owned by either party before this agreement or independently of this agreement or the Services.
- 12.2 All Intellectual Property Rights created for the purposes of, or arising as a result of, the performance of the Services (including all Intellectual Property Rights in and to

the Placement Software) (**Services IP**) will be owned by Class Solver, unless otherwise agreed in writing by the parties. Subject to payment of the Fees in accordance with clause 7, Class Solver grants You a personal, irrevocable, non-exclusive and royalty-free licence to use the Services IP for Your internal class allocation purposes only.

13. THIRD PARTY RESOURCES

- 13.1 You acknowledge that the Placement Software may contain software or other content sourced from third parties (such as open source solvers, interface systems, etc.).
- 13.2 You acknowledge and agree that Class Solver does not provide or control the software or content provided by any third party. As such, Class Solver is not liable for the acts or omissions of any third party or their content or software.

14. TERMINATION

- 14.1 Prior to the start of the second Access Period, you may terminate this agreement for any reason by giving Class Solver written notice.
- 14.2 Either party may terminate this agreement at any time and for any reason by giving 30 days' written notice of termination. , Fees will not be refundable if You terminate under this clause 14.2 and you have activated the Placement Software at the date of termination, but Class Solver may refund all or part of the Fees paid in respect of the remaining period of the Term at its sole discretion.
- 14.3 Either party may terminate this agreement immediately upon notice to the other party (the **Defaulting Party**) if:
- (a) if You are in Australia, the Defaulting Party breaches the Australian Privacy Principles and the Privacy Act in a way that cannot be remedied or, if it can be remedied, is not remedied within 30 days of the Defaulting Party receiving a notice from the other party to rectify the breach;
 - (b) the Defaulting Party or any of its employees, agents or representatives commits an act of fraud, dishonesty, serious misconduct or infringement of the Intellectual Property Rights of the other party in connection with this agreement; or
 - (c) the Defaulting Party becomes insolvent within the meaning of the Corporations Act.
- 14.4 Class Solver may terminate this agreement immediately if You:
- (a) fail to pay on or by the due date for payment any Fees due in accordance with this agreement; or
 - (b) cease to provide within a reasonable time any information or assistance reasonably necessary for Class Solver to provide any part of the Services.
- 14.5 Upon expiration of the contract with an educational agency, Class Solver will export all student, teacher and principal data remaining in its possession to the educational

agency with which it contracted and/or securely delete any copy of the student, teacher and principal data remaining in its possession or control. If data is to be maintained by Class Solver for federal and/or state reporting, such data shall remain in encrypted format and stored in cloud services based in the Australia for educational agencies located in the Southern Hemisphere and the United States of America for educational agencies located in the Northern Hemisphere.

15. LIABILITY

- 15.1 To the maximum extent permitted by law, Class Solver provides the Services “as is”.
- 15.2 Class Solver limits its liability to You:
- (a) if You are located in Australia, under any applicable consumer guarantees in the Australian Consumer Law in relation to the supply:
 - (1) of services to either, at Class Solver’s discretion, the supply of the relevant Services again or the payment of the cost of having those Services supplied again; and
 - (2) of goods to either, at Class Solver’s discretion: (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of the goods; (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or (iv) the payment of the cost of having the goods repaired; or
 - (b) for breach of agreement, negligence, breach of statutory duty or any other cause of action other than a breach of an applicable consumer guarantee (regardless of how that liability is caused including without limitation the negligence or breach of Class Solver), arising under this agreement or related to the Placement Software or Services, in aggregate to the total Fees paid by You in the preceding School Allocation Year.
- 15.3 Nothing in this agreement will limit a party’s liability to any claims or other losses based on or arising from personal injury or death.
- 15.4 You agree that Class Solver will not be liable for any loss or damage arising in connection with (a) Your misuse of the Placement Software, Services or any Class Options; (b) any illegality, inaccuracy, obsolescence or inappropriateness of Your Information.
- 15.5 Each party (**Indemnifying Party**) indemnifies the other party (**Indemnified Party**) for any loss, damage, cost or expense incurred as a result of the:
- (a) any infringement by the Indemnifying Party of the Intellectual Property Rights of the Indemnified Party, its licensors or any third party; or
 - (b) any breach by the Indemnifying Party of the Australian Privacy Principles or any applicable Privacy Law, except to the extent that the breach was caused by the acts or omissions of the Indemnified Party.

- 15.6 You agree that Class Solver will not be liable for any consequential, collateral, special, incidental, indirect, exemplary or punitive damages, including, without limitation, loss of profits or revenue, loss of opportunity or use, damage, loss or destruction of data, costs of cover, costs of delay, however caused and based on any theory of liability, for any claims or causes of action arising out of or related to this agreement or the Services.
- 15.7 To the maximum extent permitted by law, the limitations in this clause 15 will apply even if a party has been informed of the possibility of such damages.

16. DISPUTE RESOLUTION

- 16.1 A party must not commence court proceedings in relation to a dispute until it has exhausted the procedures in this clause 16, unless the party seeks urgent injunctive or interlocutory relief.
- 16.2 If a dispute arises between the parties, either party may give notice of the dispute (**Dispute Notice**) to the other party. If a Dispute Notice is given:
- (a) Your representative and Class Solver's representative must negotiate as soon as possible in an effort to resolve the dispute;
 - (b) if the dispute is not resolved within 7 days of the Dispute Notice being given, the Managing Directors (or equivalent) of the parties must meet by phone or in person (whichever is most practical) to resolve the dispute within 14 days; and
 - (c) if the dispute is not resolved within 21 days of the Dispute Notice being given, Class Solver will instruct the President of the Law Institute of Victoria to appoint an independent mediator to resolve the dispute by mediation and the parties must participate in the mediation in good faith.
- 16.3 The parties must continue to perform their obligations under this agreement despite the existence of a dispute or any steps being taken under this clause 16.

17. GENERAL

- 17.1 **Subcontractors:** You agree that Class Solver may engage subcontractors or other professional consultants to assist Class Solver to provide the Services.
- 17.2 **Assignment:** A party may by written notice to the other party assign, transfer, subcontract or otherwise dispose of, in whole or in part, its rights under this agreement.
- 17.3 **Variation:** This Agreement may only be amended or modified in writing signed by the parties.
- 17.4 **Announcements:** You agree that Class Solver may refer to you as its customer and/or include Your School name and/or logo on the Class Solver website, promotional materials and/or other publicly available materials. Otherwise, neither party is permitted to make or authorise any public announcement or communication relating to this agreement without the prior written consent of the other party.
- 17.5 **Notices:** Any notice or demand to be given or made under this agreement must be in writing (including without limitation by email) signed by a party's authorised representative.

17.6 **Governing law:** This Agreement is governed by the laws of Victoria, Australia and the parties agree to hear any dispute in relation to this Agreement in the federal or state courts sitting in Victoria, Australia.

17.7 **Entire agreement:** It is expressly acknowledged, by and between the parties, that the terms and conditions set out in this agreement contain the entire agreement concluded between the parties.

18. DEFINITIONS

18.1 In this agreement all capitalised terms are as defined in the schedule or the body of the agreement and:

Access Period means:

- (a) if You are located in the United States of America, Canada or elsewhere in the Northern Hemisphere, the period commencing on:
 - (i) for the first year of the Term, the Commencement Date; and
 - (ii) for each year after the first year of the Term, 1 January, and ending on 31 December of the following year.
- (b) if You are located in Australia, New Zealand or elsewhere in the Southern Hemisphere, the period commencing on:
 - (i) for the first year of the Term, the Commencement Date; and
 - (ii) for each year after the first year of the Term, 1 July, and ending on 30 June of the following year.

Agreement means these terms and conditions and any schedule or annexure.

Australian Consumer Law means the law contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* (as amended from time to time).

Australian Privacy Principles means the Australian Privacy Principles (as amended from time to time) contained in Schedule 1 of the Privacy Act.

Corporations Act means the *Corporations Act 2001 (Cth)* (as amended from time to time).

Force Majeure means any act or event caused by any factor that is not within the reasonable control of Class Solver, including without limitation, act of God; war; national emergency; cyber-attack; explosion; epidemics/pandemics, damage to telecommunications infrastructure; Internet service or Class Solver failure or delay.

GST has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Intellectual Property Rights means all present and future intellectual property or other rights, including copyright, trade mark, designs, patents, circuit layouts,

business or domain names, inventions, know-how, confidential information and trade secrets, or moral rights arising anywhere in the world and whether registered or unregistered.

Personal Information has the meaning given to it in the Privacy Act.

Placement Software means Class Solver's software, known as the Placement Software, and all content, code, applications and processes contained and made available by Class Solver.

Privacy Act means the *Privacy Act 1988 (Cth)* (as amended

from time to time). **School Allocation Year:**

- (a) if You are located in Australia or New Zealand, means the period up to the commencement of the first term of the following school year in the relevant state or territory of Australia or New Zealand;
- (b) if You are located in the United States of America, means the period up to the commencement of the first term of the following school year in the relevant state of the United States of America; and
- (c) if You are located in Canada, means the period up to the commencement of the first term of the following school year in the relevant territory or province in Canada; and

Services means services assisting You to organise and monitor the placement of Your students across offered classes and providing access to Placement Software.

Your Information means all documents, data, records and information relating to You or Your institution provided to Class Solver in connection with the Services, including without limitation any Personal Information or other information of or in relation to your students and records.