



**MASTER SERVICE TERMS**



## Apricot Online Limited

### Contents

MASTER SERVICE TERMS .....	3
1. Definitions and Interpretation.....	3
2. Basis of Contract .....	3
3. Provision of Services and Apricot's Obligations .....	4
4. Client's Obligations .....	4
5. Contract Price .....	5
6. Payment.....	6
7. Intellectual Property .....	6
8. Termination .....	7
9. Effects of Termination.....	7
10. Confidentiality .....	7
11. Limitation of Liability.....	8
12. Data Protection .....	8
13. Force Majeure.....	9
14. Entire Agreement .....	9
15. Assignment and Other Dealings Prohibited .....	9
16. Waiver .....	9
17. Severance .....	10
18. Third Party Rights.....	10
19. Notices .....	10
20. Governing Law and Jurisdiction .....	10

### Schedule

1. Services and Pricing .....	11
2. Data Protection .....	12



## MASTER SERVICE TERMS

### 1. Definitions and Interpretation

1.1 In these Terms the following words have the following meanings:

**Apricot:** means Apricot Online Limited, a company incorporated and registered in England and Wales with company number 07568449 whose registered office is at 3 Fairview Court, Fairview Road, Cheltenham, Gloucestershire, GL52 2EX;

**Business Day:** a day other than Saturday, Sunday and public holidays in England;

**Client:** means a person, firm, company or organisation that purchases the Services from Apricot;

**Contract:** any contract between Apricot and the Client for the provision of Services, incorporating these Terms and the Order;

**Data Protection Legislation:** the Data Protection Act 2018 and all other applicable legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

**Order:** the Client's order for the Services as set out in the Client's completed Student Information and Risk Assessment (SIRA) referral form;

**SIRA:** the Student Information and Risk Assessment Form to be completed by the Client in respect of each Student;

**Services:** the live online services and interactive learning and educational packages agreed in the Contract to be provided to the Client by Apricot pursuant to an Order;

**Student:** an individual for whom the Services are obtained for the use of;

**Teacher:** an individual of suitable qualifications, and having completed the appropriate background checks, appointed by Apricot to administer the lessons to Students as part of the Services as set out in Schedule 1.

1.2 Unless the context otherwise requires in this Contract:

- (a) each gender includes the others;
- (b) the singular includes the plural and vice versa;
- (c) references to this Contract includes its Schedules, as amended;
- (d) references to persons include individuals, unincorporated bodies, government entities, companies and corporations;
- (e) Term headings do not affect their interpretation;
- (f) general words are not limited by example; and
- (g) references to legislation include any modification or re-enactment thereof.

### 2. Basis of Contract

2.1 This Contract shall commence upon Apricot's acceptance, whether written or oral, of the Client's completed SIRA form ("**Commencement Date**").



- 2.2 In the absence of any express agreement in writing to the contrary, each Order for a Student's enrolment for Services shall continue, unless terminated earlier in accordance with clause 8 (Termination) for a minimum period of six weeks ("**Minimum Period**").
- 2.3
- 2.4 Subject to any variation under Term 2.2, the Contract will be subject to these Terms to the exclusion of all other terms and conditions (including any terms or conditions which the Client purports to apply under any Order, confirmation of Order, specification or other document whatsoever and whenever).
- 2.5 Any variation to these Terms and any representations about the Services shall have no effect unless expressly set out in writing and executed by an authorised representative of Apricot.
- 2.6 Each Order for Services by the Client from Apricot shall be deemed to be an offer by the Client to purchase Services subject to these Terms.
- 2.7 No Order placed by the Client shall be deemed to be accepted by Apricot until a written acknowledgement of Order is issued by Apricot and the relevant SIRAs for each Student have been provided to Apricot. Any Order shall be accepted entirely at the discretion of Apricot. If an Order has been placed by the Client outside of the notification period for enrolment for that Service (as set out in Schedule 1 or otherwise at the discretion of Apricot), the acceptance of the Order is entirely at the discretion of Apricot.
- 2.8 The Client can only cancel an Order (or any part of an Order) which Apricot has already accepted with Apricot's prior agreement in writing. Apricot is not bound to agree to any such cancellation and may complete such Order even if the Client purports to cancel it.
- 2.9 Any samples, drawings, descriptive matter or advertising issued by Apricot, and any descriptions or illustrations contained in Apricot's catalogues, leaflets or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

### **3. Provision of Services and Apricot's Obligations**

- 3.1 Apricot shall provide the Services to the Client in accordance with the Order in all material respects. The Services available for purchase by the Client are set out in Schedule 1, and are subject to the lesson schedules and term times as set out in Schedule 2.
- 3.2 Apricot shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance.
- 3.3 Apricot shall have the right to make any changes to the Services, including, without limitation, those which are necessary to comply with any applicable law or safety requirement, and Apricot shall notify the Client in any such event.
- 3.4 Apricot warrants to the Client that the Services will be provided using reasonable care and skill.
- 3.5 Whilst the Services aim to improve the education of Students, Apricot does not warrant or guarantee that the Services will do so. The Client acknowledges and agrees that it is entirely responsible for facilitating the education of the Students.

### **4. Client's Obligations**

- 4.1 The Client shall:
- (a) ensure that the terms of the Order are complete and accurate;
  - (b) co-operate with Apricot in all matters relating to the Services;



- (c) provide Apricot with such information and materials as Apricot may reasonably require in order to provide the Services, and ensure that such information is accurate in all material respects; and
    - (d) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start.
  - 4.2 The Client shall comply with the relevant notice periods for enrolment for the Services, as set out in Schedule 1. If such notice periods are not complied with, any enrolment for the Services shall, in accordance with Term 2.4, be entirely at the discretion of Apricot.
  - 4.3 All lessons for Students as part of the Services must be conducted under the observation of the Client, and/or any of their appropriate representatives, including parents or guardians.
  - 4.4 If any formal lesson observations are to take place, the Client must notify Apricot in advance of the lesson. Any formal lesson observations shall be conducted in accordance with the National Union of Teachers guidelines, in particular and without limitation, that Teachers are entitled to five days' notice of any observation, with a limit of three hours of observation for any one Teacher in any performance cycle. Any information regarding observations is confidential information of Apricot pursuant to Term 10, and shall not be shared without the prior written approval of Apricot. The Client shall inform Apricot in writing as to who the information is to be shared with, and for what purpose, when seeking such approval from Apricot.
  - 4.5 If the Client receives notification of a lesson observation by OFSTED, the Client shall, as soon as possible, notify Apricot of such a lesson observation.
  - 4.6 With the exception of home access, the Client shall provide all Students with a suitable work space in which the Student is to complete the lessons as part of the Services, and shall provide all relevant materials and equipment as necessary. For the avoidance of doubt, Apricot shall not provide any materials or equipment in order for the Students to use the Services. The Client is solely responsible for the health and safety of any Students within their work space. For the avoidance of doubt and subject to Term 11.1, Apricot is not responsible for the health and safety of any Students accessing the Services at home.
  - 4.7 The Client shall complete a SIRA as provided by Apricot to the Client for each new Student to begin the provisioning process. Each party shall comply with their data protection requirements under Term 12 in this regard.
  - 4.8 If the Client wishes to replace a Student, the Client shall give written notice, and provide a SIRA for any new Student, to Apricot no less than two Business Days before the Student is to begin using any of the Services.
  - 4.9 The Client acknowledges that any Teachers can be replaced by Apricot at little or no notice to the Client. Apricot shall use all reasonable endeavours to provide suitable replacement Teachers, and/or reschedule any timetabled lessons as provided in the Services.
  - 4.10 The Client acknowledges that it is entirely responsible for the behaviour of the Students who use the Services. Emotional, verbal or physical abuse towards Teachers, or any of Apricot's consultants, contractors, agents or employees, shall not be tolerated, and may result in Apricot requesting the removal of any such Student from their use of the Services, or Apricot terminating the Contract. The Client is permitted to replace the relevant Student, but shall not be entitled to a refund of any of the price paid for the Services used by that Student.
  - 4.11 The Client shall ensure that any user names and/or passwords created by or on behalf of Students for the use of the Services are generic, and do not contain any obscene, offensive, hateful or inflammatory words. The Client is responsible for ensuring the security of any such user names and/or passwords.
- 5. Contract Price**
- 5.1 Unless otherwise agreed by Apricot in writing, the prices for Services shall be the prices as set out on Apricot's website, which may vary from time to time.



- 5.2 Unless otherwise agreed in writing, the price for the Services shall be exclusive of any value added tax or other similar taxes or levies or insurance, all of which amounts the Client shall pay, where appropriate, in addition when it is due to pay for the Services.

## **6. Payment**

- 6.1 Payment of the price for the Services is due within 30 days after the date of invoice issued by Apricot.

- 6.2 Time for payment shall be of the essence.

- 6.3 The Client shall make all payments due under the Contract without any deduction, whether by way of set-off, withholding, counterclaim, discount, abatement or otherwise.

- 6.4 The Client shall make payments to Apricot by electronic transfer. If the Client wishes to make payment by an alternative means, the Client shall agree such payment method with Apricot, and Apricot may make an additional charge for such payment method where appropriate.

- 6.5 If any sum due from the Client to Apricot under the Contract or any other contract is not paid on or before the due date for payment, then all sums then owing by the Client to Apricot shall become due and payable immediately and, without prejudice to any other right or remedy available to Apricot, Apricot shall be entitled to:

- (a) cancel or suspend its performance of the Contract or any Order, including suspending provision of the Services until arrangements as to payment or credit have been established which are satisfactory to Apricot;
- (b) appropriate any payment made by the Client to such of the Services (or any products supplied under any other contract between the Client and Apricot) or as Apricot may think fit;
- (c) suspend the Services, or suspend access to the Services; and
- (d) charge the Client
  - (i) interest calculated on a daily basis on overall amounts (both before and after judgment) until actual payment at a rate of 4% per annum above the base lending rate of the Bank of England prevailing from time to time until payment is made in full;
  - (ii) and the cost of obtaining judgment or payment to include all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure.

## **7. Intellectual Property**

- 7.1 Any intellectual property rights (including any patent, copyright, database right, moral right, design right, registered design trade mark, service mark, domain name, know-how, utility model, unregistered design or where relevant any application or any such right or other industrial or intellectual property right subsisting in any part of the world) created by Apricot in the course of the performance of the Contract or otherwise in the provision of the Services shall remain the property of Apricot.

- 7.2 Apricot grants the Client, for the term of the Contract, a non-exclusive, non-transferable, revocable licence to use the Services for the purpose of the educational and learning objectives for the Students, on the terms of the Contract.



## 8. Termination

- 8.1 Upon expiry of the Minimum Period set out in clause 2.1 above, either party may terminate the relevant Order for Services by giving 48 hours prior written notice to the other.
- 8.2 Notwithstanding clause 8.1, this Contract may be terminated by either party by giving written notice to the other party if:
- (a) the other commits a material breach, or a series of breaches resulting in a material breach, of the Agreement and such breach is not remediable, or is not remedied within 14 days written notice to do so; or
  - (b) the other petitions for bankruptcy or passed a resolution for winding up or for the appointment of an administrator, or a liquidator or administrator is appointed in relation to the other, or a winding up order is made in relation to the other; or
  - (c) a trustee in bankruptcy, receiver or administrative receiver is appointed in relation to the other or any of its assets; or
  - (d) the other compounds with, or makes an application to court for protection from, its creditors generally; or
  - (e) the other takes or suffers any similar action in any jurisdiction; or
  - (f) the other ceases or threatens to cease to carry on business.
- 8.3 Without limiting its other rights or remedies, Apricot shall have the right to terminate the Contract by giving the Client two months' written notice.

## 9. Effects of Termination

- 9.1 Termination of the Contract, however caused, shall be without prejudice to any rights or liabilities accrued at the date of termination.
- 9.2 On termination of the Contract for any reason:
- (a) the Client shall immediately pay to Apricot all of the Client's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Apricot shall submit an invoice, which shall be payable by the Client immediately on receipt;
  - (b) if the Client is in possession of any materials which belong to Apricot, the Client shall, at Apricot's option, either return the materials to Apricot, or delete or destroy such materials and confirm to Apricot that it has done so; and
  - (c) Terms which expressly or by implication have effect after termination shall continue in full force and effect.

## 10. Confidentiality

A party (the "**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (the "**Disclosing Party**"), its employees, agents or subcontractors, and any confidential information concerning the Disclosing Party's business or its products or services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This Term 10 shall survive termination of the Contract.



## **11. Limitation of Liability**

- 11.1 Nothing in these Terms shall limit or exclude the liability of either party for:
- (a) death or personal injury caused by its negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) or any other matter that cannot be lawfully excluded.
- 11.2 Subject to Term 11.1, Apricot shall in no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of revenue, loss of business (whether direct or indirect) or any indirect or consequential loss arising under or in connection with the Contract.
- 11.3 Apricot's total liability to the Client in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the payments made by the Client to Apricot in the preceding 12 month period in respect of any one incident or any series of incidents arising from a common cause.
- 11.4 Subject to Term 11.1, Apricot shall accept no responsibility for the safety of the Students for whom the Client purchases the Services. The Client acknowledges and accepts that the Students are entirely the responsibility of the Client, and shall take all reasonable steps to ensure the safety of the Students during the term of this Contract. The Client shall indemnify Apricot in respect of all losses, damages, costs (including legal fees) and expenses made or awarded against or otherwise incurred by Apricot as a result of or in connection with any claim relating to the safety of, or responsibility for, the Students.

## **12. Data Protection**

- 12.1 Each party shall comply with its respective obligations under the provisions of the Data Protection Legislation and references in this Clause to "data processor", "data controller", and "personal data" shall have the meanings as defined in the Data Protection Act 2018.
- 12.2 Where either party, or any of its sub-contractors, as part of the fulfilment of its obligations under this Contract, processes personal data as a data processor on behalf of the other party acting as data controller, the data processor shall, and shall procure that its sub-contractors shall:
- (a) act only on instructions from the data controller when processing personal data provided to it under this Contract, and keep records of all such processing;
  - (b) take reasonable steps to ensure the reliability of its staff or consultants who have access to personal data;
  - (c) at all times take all appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and
  - (d) not transfer any personal data outside the United Kingdom without the data controller's prior written consent and the following conditions are fulfilled:
    - i) appropriate safeguards have been provided in relation to the transfer;
    - ii) the data subject has enforceable rights and effective legal remedies;
    - iii) Apricot complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
    - iv) Apricot complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of Personal Data;



- (e) assist the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Client without undue delay on becoming aware of a personal data breach;
- (g) at the written direction of the Client, delete or return personal data and copies thereof to the Client on termination of the Contract unless required by applicable law to store the personal data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause.

12.4 The Client consents to Apricot appointing the entities set out in Schedule 2 as third-party processors of personal data under the Contract ("**Third-Party Processors**"). Apricot confirms that it has entered or (as the case may be) will enter with the Third-Party Processors into a written agreement substantially on that third party's standard terms of business and in either case which Apricot confirms reflect and will continue to reflect the requirements of the Data Protection Legislation.

### **13. Force Majeure**

Apricot reserves the right to suspend or to cancel the Contract in whole or in part (without liability to the Client) if it is prevented from or delayed in the carrying on of its business and its obligations under the Contract due to circumstances beyond the reasonable control of Apricot including, without limitation, Acts of God, fire, flood, lightening, war, revolution, acts or terrorism, but excluding strikes, lockouts, or other industrial action whether of the affected party's own employees or others, failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services. If the event of force majeure continues for a continuous period of more than four weeks, the Client shall be entitled to give notice in writing to Apricot to terminate the Contract.

### **14. Entire Agreement**

This Contract, and any documents referred to in it, constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Contract. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in this Contract.

### **15. Assignment and Other Dealings Prohibited**

15.1 The Client shall not assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this Contract without the prior written consent of Apricot.

15.2 Apricot may subcontract any of its rights and obligations under this Contract without the prior written consent of the Client, but shall remain responsible for the provision of the Services.

### **16. Waiver**

No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.



## **17. Severance**

If any court or competent authority finds that any provision of this Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Contract shall not be affected. If any invalid, unenforceable or illegal provision of this Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## **18. Third Party Rights**

A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of this Contract.

## **19. Notices**

19.1 Any notice required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by pre-paid first class post, recorded delivery, or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

19.2 Any notice shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first class post or recorded delivery, at 9.00am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

19.3 This Term 19 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this Term, "writing" shall not include emails and, for the avoidance of doubt, notice given under this Contract shall not be validly served if sent by e-mail.

## **20. Governing Law and Jurisdiction**

This Contract and any dispute or claim arising out of or in accordance with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).



## Schedule 1 Services and Pricing

### **All Apricot Learning Provision Plans include:**

- Initial English and/or Maths Assessment
- Student progress tracking
- Client access to learning platform courses
- Several online subscriptions to interactive education software
- Continuous contract provision until notification in writing from Client to Apricot and confirmation in writing from Apricot to Client
- Minimum client liability is 6 weeks (as defined in SIRA Form)

### **Commissioned Groups**

Personalised Groups pricing subject to quotation

Minimum enrolment for Termly Contracts is one (1) Term

Minimum enrolment for Annual Contracts is one (1) Academic Year

Unenrolment Notification is required six (6) weeks

### **Pricing:**

2-3 students = £40/student/hour

4-5 students = £30/student/hour

6-7 students = £20/student/hour

8-10 students = £15/student/hour

N.B. further discounts available for multiple groups and subjects

### **One2One Lessons**

One2One at £50.00/hour

Minimum enrolment is six (6) weeks

Un-enrolment Notification Period is 48 hours after the first six (6) week period

*Please note that there is £300 setup fee for non-starters.*



## Schedule 2 Data Protection

### 1. PROCESSING BY THE PROVIDER

#### 1.1 SCOPE

Collection of personal data as set out in the SIRA form relating to the Student and their parent(s) or guardian(s).

#### 1.2 NATURE

Collection, consultation and communication of personal data.

#### 1.3 PURPOSE OF PROCESSING

To provide the Services requested by the Client in the Order.

#### 1.4 DURATION OF THE PROCESSING

The personal data will be processed by Apricot for the duration of the Contract.

### 2. TYPES OF PERSONAL DATA

- Student Details
  - Student Name
  - Date of Birth
  - Academic Year Group
  - Gender
  - Ethnicity
  - Academic Information
  - Safeguarding Information
  
- Parent Details
  - Parent/Carer Name
  - Relationship to Student
  - Telephone Number(s)
  - Email
  - Emergency Contact Name
  - Emergency Contact Number

### 3. CATEGORIES OF DATA SUBJECT

Students and related details for their parents(s) or guardian(s)

### 4. THIRD PARTY PROCESSORS

PowerSchool Group LLC