

SBM Toolkit – Terms and Conditions

These Terms and Conditions of Supply govern your use of the SBM Toolkit and your relationship with SBM Services (uk) Ltd. Please read them carefully and make sure you understand them as they affect your rights and liabilities under the law.

Terms and Conditions

These terms and conditions govern the content and regulate Your use of tools we provide you and access to the toolkit area of www.sbmservices.co.co.uk, which is owned and operated by Us (the “**Company**”) (the “**Agreement**”).

By paying the Subscription Fees, You agree to these terms and conditions and warrant to us that (i) You are a professional school leader of a school in England and Wales with authority to enter into this legally binding Agreement on behalf of that school; and (ii) that all of the information that You have provided to us is complete, true and accurate in all respects.

These terms and conditions contain the following information:

1. Definitions
2. Authority and Licence for use of SBM Toolkit
3. Obligations
4. Confidentiality
5. Disclaimer
6. Liability
7. Termination
8. General Provisions

1. DEFINITIONS

You or Your: the party entering into this Agreement with Us by paying the Subscription Fee and accepting these terms and conditions. Where the context so requires, You or Your includes Your Authorised Users.

Us, We, or Our: SBM Services (uk) Ltd company registration number: 0857251

SBM Toolkit – All resources, tools, templates, advice, guidance, information, ‘ask an SBM expert’ that is provided under by Us to You under this Agreement with ourselves.

Authorised Users: in the case of all school types, Authorised Users are restricted to trustees, governors, management, members, staff, teachers, and employees of the school purchasing the subscription to Our Services in the UK. In the case of any other organisation, Authorised Users includes any person in the business unit or units that We have agreed with You in writing is or are to benefit from the subscription.

Business Day: a day that is not a Saturday, Sunday or public holiday in England.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 4.

Subscriber Data: the data input by You (and anyone authorised by You) for use in conjunction with the SBM Toolkit. Subscriber Data includes Your questions asked through the “Ask an SBM Expert

Subscription Fee: the subscription fee for the Services to be provided under this Agreement, as specified in Our invoice relating to this Agreement.

Subscription Period: the 12 calendar month period in respect of which a Subscription Fee is payable for any Service, as specified in Our invoice relating to this Agreement.

UK: the United Kingdom of Great Britain and Northern Ireland.

2. AUTHORITY AND LICENCE FOR USE OF THE SBM TOOLKIT

2.1 We authorise You and Your Authorised Users to use the SBM Toolkit for the duration of the Subscription Period for which You agree to pay us the Subscription Fee.

2.2 This authority and licence starts when You enter into this Agreement and ends if this Agreement is terminated under clause 7 below.

2.3 We hereby grant You on the terms and conditions of this Agreement a non-exclusive, non-transferable licence to access all resources within the SBM Toolkit solely for Your business purposes (and for the avoidance of doubt, nothing in this Agreement grants to You any rights whatsoever in or relating to the source code of the tools and resources). You may use, view, search and print the content of the SBM Toolkit for Your own business purposes.

2.4 You shall not:

(a) attempt to duplicate, modify, disclose or distribute any portion of the SBM Toolkit; or

(b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form any of the SBM Toolkit, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or

(d) transfer, temporarily or permanently, any rights or obligations under this Agreement, or

(e) attempt to obtain, or assist others in obtaining, access to SBM Toolkit, other than as provided under this clause.

2.5 We confirm We have all the rights in relation to the SBM Toolkit that are necessary to grant all the rights We purport to grant under the terms of this Agreement.

3. OBLIGATIONS

3.1 You will take reasonable steps to ensure that Authorised Users comply with the terms of use of the Services in this Agreement and do not:

(a) copy, print out or otherwise reproduce any part of the SBM Toolkit nor any material relating to all or any part of the SBM Toolkit, except as permitted under this Agreement or authorised by us in writing;

(b) make any part of the SBM Toolkit available to anyone, except as permitted under this Agreement or authorised by us in writing;

(c) subject to clause 3.4 below, alter any part of the SBM Toolkit;

(d) in respect of any query raised by You with us, provide any answer by us to a query to any third party or permit any third party to be aware of or rely upon Our provision of such an answer; or

(e) purport to assign or otherwise dispose of Your rights under this Agreement.

3.2 You must not provide Your username or password to any third parties and You must take reasonable steps to ensure that nobody accesses the SBM Toolkit using accounts created with Your username and password or by gaining access to the tools.

3.3 You acknowledge and agree that We own all intellectual property rights of the SBM Toolkit Except as expressly stated in this Agreement, this Agreement does not grant You any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect SBM Toolkit or any related documentation.

3.4 You are solely responsible for the appropriate use and adaption of Our SBM Toolkit for Your own use.

3.5 You recognise and accept that in Our SBM Toolkit (including Our answers to queries) We are not providing legal, financial, taxation or any other type of advice. You recognise and accept that Our employees are not practising solicitors, barristers, accountants or other professionally qualified advisers.

3.6 You must inform any individuals using the SBM Toolkit on Your behalf that neither SBM Services (uk) Ltd nor its employees are giving legal or financial advice either as practising solicitors, barristers or accountants or otherwise.

3.7 You recognise and accept that We may give answers to the same or similar queries asked by any of Our subscribers and that any conflict which might arise between subscribers is waived.

3.8 You will defend, indemnify and hold Us harmless against claims, actions, proceedings, losses, damages, expenses and all costs arising out of or in connection with You using the SBM Toolkit. We will provide reasonable co-operation to You in the defence and settlement of such claim, at Your expense.

3.9 You are responsible for configuring Your information technology, computer programmes and platform in order to access the SBM Toolkit. You should use Your own virus protection software.

3.10 By submitting any individual's personal information to Us or Our affiliates, service providers and agents, You agree, and confirm Your authority from such other individual, to Our collection, use and disclosure of such personal information.

3.11 If You are a Multi-Academy Trust, you must promptly notify Us at info@sbmservices.co.uk when additional academies join Your trust irrespective of whether or not such academies or any of their governors, management, members, staff, teachers, or employees are to be an Authorised User.

3.12 We will use all reasonable endeavours to ensure that the services are provided continuously and that access to Our Website is not interrupted by any event within Our control. We will notify You in advance of planned downtime, which, if reasonably practicable, will be scheduled outside normal UK office hours.

3.13 We undertake to provide acknowledgement of all queries raised within 5 Business Days

4. CONFIDENTIALITY

4.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

(a) is or becomes publicly known other than through any act or omission of the receiving party; or

(b) was in the receiving party's lawful possession before the disclosure; or

(c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

(d) is independently developed by the receiving party, which independent development can be shown by written evidence; or

(e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

4.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement or any of its provisions.

4.3 Each party shall use its best endeavours to ensure that the other's Confidential Information to which it has access is not disclosed or distributed in violation of the terms of this Agreement.

4.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party (except, in Our case, those third parties sub- contracted by Us to perform services related to Subscriber Data maintenance and back-up).

4.5 We acknowledge that the Subscriber Data is Your Confidential Information.

4.6 Each party shall not permit any unaffiliated third party access to, in any manner, the Confidential Information of the other party, except as provided in this agreement.

4.7 Any of Your personal data collected by Us may be processed or used by Us or Our third party contacts in accordance with the provisions of the Data Protection Act 1998.

4.8 This clause 4 shall survive termination of this Agreement, however arising.

5. **DISCLAIMER**

5.1 We give You no warranty or assurance. We declare and You acknowledge that all implied warranties and conditions are excluded to the maximum extent permitted by law.

5.2 Our policy is to conduct Our business at all times in a professional manner and to best practice standards. We use Our best endeavours to maintain the SBM Toolkit to ensure it is up to date and to develop SBM Toolkit to meet subscribers' needs. However, You should note in particular:

(a) the SBM Toolkit is not intended to constitute a definitive or complete statement of the law on any subject, nor is any part of it intended to constitute legal advice for any specific situation;

(b) We do not undertake any obligation to consider whether the information provided to or by Us for the purpose of Our SBM Toolkit (including answering a query) is either sufficient or appropriate for any particular actual circumstances;

(c) the SBM Toolkit includes archived information and resources, which may be incorrect or out of date;

(d) We are a provider of practical school business management advice and resources. We do not accept any responsibility for action taken as a result of information provided by Us or by use of the tools. You should take specific advice when dealing with specific situations. The SBM Toolkit is general and educational in nature and may not reflect all recent legal developments and may not apply to the specific facts and circumstances of individual transactions and cases. We are not a law firm or accountancy firm, do not represent or advise clients in any matter and are not bound by the professional responsibilities and duties of a legal practitioner or accountant. Nothing in the SBM Toolkit or in this Agreement nor any receipt or use of the content of the SBM Toolkit, shall be construed or relied on as advertising or soliciting to provide any legal services, accountancy services, creating any solicitor-client relationship or providing any legal representation, advice or opinion whatsoever on behalf of Us or Our staff;

(e) We give You no warranty or assurance that the SBM Toolkit and Our means of delivering them are compatible with Your software or computer configuration;

(f) We may update the Website from time to time and may change part or all of any SBM Toolkit services at Our discretion. The content on the Website may be out of date at any given time, and We are under no obligation to update it; and

(g) We do not guarantee that the content of the SBM Toolkit will be free from errors or omissions.

6. LIABILITY

6.1 This clause 6 sets out Our entire financial liability (including any liability for the acts or omissions of Our employees, agents, contributors, consultants and sub-contractors) to You in respect of:

(a) any breach of this Agreement;

(b) any use made by You of the SBM Toolkit or any part of it; and

(c) any representation, statement or tortious act or omission (whether negligent or otherwise) arising under or in connection with this Agreement.

6.2 Except as expressly and specifically provided in this Agreement and particularly clause 5.1 above:

(a) You assume sole responsibility for results obtained from the use of the SBM Toolkit by You, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided by You in connection with the SBM Toolkit, or any actions taken by Us at Your direction; and

(b) all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

6.3 Nothing in this Agreement excludes Our liability:

(a) for death or personal injury caused by Our negligence; or

(b) for fraud or fraudulent misrepresentation.

6.4 Subject to clause 6.3 above:

(a) We shall not be liable for any loss of profits, anticipated profit, revenues, anticipated savings, loss of business, depletion of goodwill or similar losses or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising; and

(b) Our total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to 3 times the price paid for the Services during the 12 months preceding the date on which the claim arose. You acknowledge that this limitation is reasonable.

6.5 We shall not be liable for any damage to Your or an Authorised User's software, or damage to or loss of data.

6.6 The information, opinion and resources contained in the SBM Toolkit are not intended to provide legal or any other professional advice. We take no responsibility for the accuracy or correctness of any such information, opinion and resources. We shall not be liable for the actions You take or refrain to take as a result of the SBM Toolkit provided to You.

6.7 We shall have no liability whatsoever for any liability owed by You or an Authorised User which might arise to any third party.

6.8 We make no warranty that access to the SBM Toolkit will be uninterrupted, secure, complete or error free. You and the Authorised Users acknowledge that the SBM Toolkit entails the likelihood of some human and machine errors, delays, interruptions and losses, including the inadvertent loss of data or damage to media.

6.9 Under this clause, "Our Liability" includes that of any company in Our group and Our and their respective agents, employees, contributors and consultants and sub-contractors, "You" includes any other party claiming through You and "loss", "damage" or "damages" include any losses, damages, costs or expenses whatsoever or howsoever arising in connection with the SBM Toolkit, whether under this Agreement or other Agreement or in consequence of any misrepresentation, misstatement or tortious act or omission, including negligence.

6.10 We shall have no liability to You under this Agreement if We are prevented from or delayed in performing Our obligations under the Agreement or from carrying on business by acts, events, omissions or accidents beyond Our reasonable control, including without limitation default of sub-contractors, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or communications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

7. YOUR ACCOUNT AND PASSWORD

7.1 Upon receipt of Your username and password to the SBM Toolkit and its associated tools or any other piece of information as part of Our security procedures, You must treat such information as confidential.

7.2 You must treat the information and resources of the SBM Toolkit as confidential and you must not allow any party to make use of or benefit from such information and resources.

7.3 You and any Authorised Users must not grant any other party permission to host or make use of any information and/or resources derived from the Toolkit.

7.4 We have the right to immediately disable your access to the SBM Toolkit, whether chosen by You or allocated by Us, at any time, if in Our reasonable opinion You have failed to comply with any of the provisions of this Agreement.

7.5 If You know or suspect that any party knows Your username and password or has gained access to any of our tools You must promptly notify Us at info@sbmservices.co.uk

8. TERM AND TERMINATION

8.1 Unless otherwise terminated as provided in this clause 10, this Agreement may only be terminated by either party by notice in writing to the other party at least 30 Business Days before the end of the Subscription Period to which such notice relates. If no such notice is received this Agreement will continue in full force and effect.

8.2 The minimum subscription period is 12 months however, You may, within 14 days of entering into this agreement (the "Cooling-Off Period"), cancel this Agreement penalty-free by giving notice to info@sbmservices.co.uk. Any cancellation of this agreement outside the Cooling-Off Period shall be in accordance with the termination provisions of this clause 10 of the agreement.

8.3 This Agreement will terminate if You or We are in material breach of any of its terms and if the breach is not remedied within the period of 10 Business Days after written notice of it has been given to the party in breach. If We are in material breach as a result of circumstances within Our control, You will be entitled to pro-rata return of the Subscription Fee.

8.4 On termination of this Agreement for any reason:

(a) all licences granted under this Agreement shall immediately terminate;

(b) subject to the exceptions in this sub-clause, You will take reasonable steps to delete the SBM Toolkit from Your electronic media, including Your intranet and electronic storage devices so that You no longer have an electronically functional copy of any part of the SBM Toolkit. Note, some of the tools will become inoperable beyond your subscription date and you are therefore permitted to produce and not destroy printouts of information and data contained within these prior to terminations.

(d) termination shall not affect or prejudice the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination.

9. GENERAL PROVISIONS

9.1 The rights provided under this Agreement are granted to You only, and shall not without Our prior written consent be considered granted to any other party. You may not, without Our prior written consent, assign, transfer, charge, sub-contract, declare a trust in respect of, or deal in any other manner with all or any of Your rights or obligations under this Agreement.

9.2 This Agreement is not intended to benefit anyone other than the parties to it and, in particular, no term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.

9.3 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

9.4 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

9.5 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

9.6 This Agreement, the Subscription Fee and any agreed written record identifying Authorised Users constitute the entire Agreement and understanding of the parties and supersede any previous Agreement between the parties relating to the subject matter of this Agreement. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently made or not) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. The only remedy available to it for breach of the Agreement shall be for breach of contract under the terms of this Agreement. However, this clause 9.6 does not exclude liability for fraud or fraudulent misrepresentation.

9.7 English law governs this Agreement and the parties submit to the non-exclusive jurisdiction of the English courts.