

# Arbor Education Partners Limited

## Master SaaS Terms and Conditions (“Master Terms”)

### **1 Definitions and interpretation**

- 1.1 The definitions and rules of interpretation set out in Schedule 1 and Schedule 2 shall apply to this Contract.
- 1.2 Each Sales Order and applicable Service Schedule shall be a part of the Contract and shall not form a separate contract to it.
- 1.3 To the extent of any conflict between any of the terms of this Contract, the following order of precedence shall be followed (highest priority first):
  - (a) the Sales Order;
  - (b) any Service Schedules;
  - (c) the Master Terms;
  - (d) Terms of Use; and
  - (e) Guide to Billing.
- 1.4 If and to the extent that there is any conflict, consistency or ambiguity between any Sales Orders, the Sales Order entered into most recently shall take precedence.
- 1.5 The Institution agrees that the Services are provided subject to the Contract and such terms shall apply to the exclusion of any other terms that the Institution may seek to impose or incorporate including without limitation the Institution's own order form, purchase order or other similar document which shall not be binding on Arbor.

### **2 Licence grant**

- 2.1 In consideration of the Institution paying the Fee in accordance with clause 8 (Fees), and the Institution's compliance with clause 3 (Access Rights) and clause 6 (Institution's obligations), we grant to the Institution a non-exclusive, non-sublicensable (other than to Customers) licence for the applicable Licence Period (subject to earlier termination in accordance with the Contract) to permit Authorised Users to use the Services, and the Documentation, strictly for the Purpose and in accordance with the terms of the Contract.
- 2.2 The Institution acknowledges and agrees that, in relation to each Service there is no right to have access to the Service (or any part of it) in object or source code form.
- 2.3 The Institution may, from time to time, request in writing to order additional Services. If we agree to provide such Services, the parties shall execute a new Sales Order which shall incorporate any applicable Service Schedules into this Contract.
- 2.4 The Institution acknowledges and agrees that the System will interface with and process data from the Institution's management information systems and any other relevant systems in which the Institution stores data. The Institution represents, warrants and undertakes that it has obtained and shall maintain all necessary rights, permissions, licences and/or consents for itself, and to enable Arbor, to lawfully carry out such interfacing and use such data as contemplated by this Contract, including by way of the provision of a fair processing notice to

individuals where they are providing Personal Data in relation to any Service.

- 2.5 We may provide the Institution with APIs in order to permit the Institution to utilise the services of a Third Party, where the Institution is permitted to do so and where the Institution wishes to allow Third Party Integration with the System.
- 2.6 We may suspend, disable or withdraw access to these APIs at any time, without any liability to the Institution or any Third Party.
- 2.7 The Institution acknowledges and agrees that APIs:
  - (a) will be subject to fair usage terms as may be set out in the Terms of Use and/or relevant Service Schedule;
  - (b) are provided "as-is", and without any warranty of any kind; and
  - (c) may not be used for the purpose of developing or interfacing with any product or software which substantially replicates the functionality of any part of the System, or which competes with any of the Services and System.
- 2.8 The Institution acknowledges that the only warranties provided in relation to the Third Party Integration or the supply thereof are those contained in the licence from the Third Party Integrator of the same. No warranties will be provided by Arbor in relation to any Third Party Integrations.

### **3 Access Rights**

- 3.1 The Institution understands and agrees that it shall be responsible for administering and monitoring Access Rights to its Authorised Users including without limitation:
  - (a) using its discretion to appoint administrators who shall be responsible for the use of the Services by the Institution and its Authorised Users ("**Administrators**");
  - (b) allocating usernames and passwords to Authorised Users and ensuring that the same keep their usernames and passwords secure and confidential and do not share with any third parties; and
  - (c) attributing the appropriate level of Access Rights to each individual Authorised User, and specifically to ensure that any Access Rights are granted in compliance with any of the Institution's obligations pursuant to the Data Protection Legislation.
- 3.2 In relation to Access Rights, the Institution agrees that we shall not be responsible for any error, act or omission of the Institution (including without limitation by any Administrators) in respect of the level of Access Rights granted to any Authorised User.
- 3.3 With regards to Third Party Integrations, the Institution understands and agrees that it shall be solely responsible and liable for:
  - (a) approving and/or rejecting any connection requests for Third Party Integrations; and
  - (b) administering, managing and monitoring a Third Party Integrator's Access Rights, which includes the ability of a Third Party Integrator to read (access data), write (create data), update (edit data) and/or delete Institution Content from time to time subject always to Arbor's API fair usage terms as set out in clause 2.7(a).

- 3.4 Arbor shall not be responsible, and excludes all liability (whether directly or indirectly arising), for any losses caused by the following:
- (a) breach of clauses 3.1, 3.2 or 3.3 (Access Rights) by the Institution;
  - (b) an Institution providing incorrect Access Rights to any Authorised Users;
  - (c) vetting any Third Party Integrator who wishes to implement a Third Party Integration for the Institution;
  - (d) any action or inaction, acts or omissions, of any Authorised Users;
  - (e) the Institution's use of the API and otherwise in relation to its integration with the System; and/or
  - (f) the Institution's allocation of usernames and/or passwords to Authorised Users.

#### **4 Restrictions on use**

- 4.1 The Institution shall comply and shall procure that its Authorised Users comply with the Terms of Use.
- 4.2 The Institution shall prevent any unauthorised access to, or use of, any Service and, in the event of any such unauthorised access or use, promptly notify Arbor.
- 4.3 The Institution acknowledges and agrees that if any Authorised User does not agree to the Terms of Use, it will not be entitled to access or use the Services or any part thereof.
- 4.4 Arbor reserves the right, without liability or prejudice to its other rights or remedies, to disable any Authorised User's login credentials, passwords and/or access to all or any (or any part of any) Services in the event of any breach of the Terms of Use. If Arbor intends to disable any login credentials, passwords and/or access pursuant to this clause 4 (Restrictions on use), Arbor shall notify the Institution of its intention to do so before disabling such login credentials, passwords and/or access.

#### **5 Support and Updates**

- 5.1 All Institutions must have a support subscription from either Arbor or an Accredited Partner. The Institution hereby acknowledges and understands that Accredited Partners may receive a service fee from Arbor for introductions to potential customers, providing support and training services and/or achieving and maintaining their Arbor accreditation so that they can provide Institutions with the best support.
- 5.2 The Institution shall notify us in a timely manner in the event it becomes aware of any problem or error with the System and/or any Third Party Integrations, and we shall use reasonable efforts to remedy in a timely manner and at the Institution's cost if caused by them, any problem with the System that we are made aware of.
- 5.3 Arbor shall not be responsible for maintaining, or remedying any Third Party Integration. The Institution should contact the Third Party Integrator to rectify any issue with its Third Party Integration.
- 5.4 Where the Institution enters into an Accredited Partner Agreement, the Institution is solely responsible for arranging the Accredited Partner Agreement. Any Accredited Partner Agreement shall provide for all

necessary Access Rights for the Accredited Partner. The Institution acknowledges and agrees that we are not responsible for or party to any Accredited Partner Agreement.

- 5.5 Arbor shall not be liable for any act or omission of any Accredited Partner under any Accredited Partner Agreement or the impact on the Institution of following that Accredited Partner's advice, or by virtue of its use of the System or its receipt of any additional support from the Accredited Partner.
- 5.6 The Institution shall notify Arbor in writing if it becomes aware of or has reason to believe that it has received a request or demand for any undue financial or other advantage in connection with Arbor, an Accredited Partner or otherwise in relation to the Contract.
- 5.7 Subject to clause 7 (Our obligations), the Institution agrees that Arbor has sole discretion and control over, and may modify or update the functionality, performance, configuration, appearance and content of any Service at any time ("**Updates**").
- 5.8 Any Updates shall take effect automatically. The Institution understands and agrees that Updates may only ever be used for the Purpose and for no other purposes.
- 5.9 We shall have the right to access the System, including without limitation the Institution Content, for the purpose of maintaining the System. Further, we shall be entitled to change any username, password or other access information allocated by us to the Institution for the purpose of Updates or essential network maintenance, enhancement, modernisation or other work which Arbor may deem necessary for the operation of the System and/or its server.
- 5.10 The System may become unavailable for periods of time in order for Updates or planned maintenance to be performed. We shall use reasonable endeavours to notify the Institution of any Updates or planned maintenance and shall make reasonable efforts to ensure that the Institution's use of the System is not interrupted during Updates or planned maintenance.

## **6 Institution's obligations**

- 6.1 The Institution warrants that it has the full power, authority and capacity to enter into this Contract and each Sales Order and that any individual signing the Contract on the Institution's behalf has been duly appointed by the Institution and given the requisite power and authority to bind the Institution.
- 6.2 The Institution shall:
  - (a) provide Arbor with all necessary co-operation requested by Arbor in relation to the Contract;
  - (b) provide Arbor with all access to such information as is reasonably requested by us from time to time (including all Institution Content and Access Right information) in order to provide the Services and/or perform Arbor's obligations under the Contract;
  - (c) positively promote the Services to all staff and pupils of the Institution, and where the Institution deems it appropriate, to Customers, and encourage all such parties to become Authorised Users of the System;

- (d) use reasonable endeavours to provide us with regular Feedback and bug reports relating to the System during the applicable Licence Period;
- (e) use reasonable efforts to ensure that any and all Authorised Users shall at all times provide the Feedback using all reasonable skill and care. For the avoidance of doubt, this shall include without limitation using all reasonable endeavours to ensure that the Feedback is accurate, honest, complete and up to date;
- (f) comply with and ensure that all Authorised Users shall always comply with the Terms of Use. The Institution further agrees that Arbor shall be entitled to investigate, and shall be entitled to require that the Institution investigates, any material or repeated breach of the Terms of Use by any Authorised User;
- (g) ensure that all electronic communication between the Institution and Customers is protected by industry standard protection against unauthorised access to or manipulation of data;
- (h) at no time during the life of the Contract use or permit or assist any third party to use the Services for any purpose other than the Purpose;
- (i) notify Arbor promptly of any proposed or executed Accredited Partner Agreement, including details of the Accredited Partner;
- (j) at no time enter into any Accredited Partner Agreement with any Third Party Integrator other than an Accredited Partner who can adequately support the Institution in its use of the System;
- (k) comply with all applicable laws, regulations and codes of practice with respect to its activities under the Contract;
- (l) obtain and shall maintain all necessary licences, consents and permissions necessary for the Institution to provide and/or make available the Institution Content under the Contract;
- (m) ensure that its systems, software, hardware, networks and other components comply with any relevant specifications provided by Arbor in Documentation from time to time;
- (n) be solely responsible for determining the fitness of the Services for its purposes and requirements, including compliance with any laws or regulatory requirements applicable to, or requirements of, the Institution and its business;
- (o) procure and maintain any and all systems, software, hardware, networks and other components required from time to time in order to access, use and obtain the benefit of the Services (including its network connections and telecommunications links from its systems to Arbor's systems) and be solely responsible for any and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to them; and
- (p) ensure, and be solely responsible for, the legality, non-infringement, reliability, integrity, accuracy and quality of the Institution Content.

**6.3** Arbor shall not have any liability to the Institution under the Contract if Arbor breaches the Contract and/or is prevented or delayed in providing the Services or performing its other obligations under the Contract as a result of any breach of this clause 6 (Institution's obligations) by the Institution and its Authorised Users.

- 6.4 For Payment Services - the Institution and its Payment Customers may only use the Payment Services subject to:
- (a) the terms set out in Schedule 3 (Payment Services), which shall be superseded by the relevant Payment Services Schedule which will be incorporated into your Sales Order for Payment Services; and
  - (b) any applicable terms and conditions of the Payment Provider, which the Institution and Payment Customers must agree to prior to any use of the Payment Services.

## **7 Our obligations**

- 7.1 Arbor warrants that:
- (a) the Services shall be performed with reasonable skill and care; and
  - (b) Arbor has the full power, authority and capacity to enter into the Contract and each Sales Order.
- 7.2 Arbor shall use reasonable endeavours to:
- (a) maintain the availability of any Service in accordance with any Documentation and/or Service Schedule; and
  - (b) ensure the Service materially conform to the specification set out in the same.
- 7.3 The Institution understands and agrees that, subject to clause 7.2 (Our obligations):
- (a) no warranty is given that the Services (in whole or in part) are free from defects or that it is bug or error-free or that access to it will be uninterrupted, and the Institution acknowledges and agrees that the Services are provided "as is"; and
  - (b) the Services have not been developed to meet the Institution's individual requirements. Except as expressly set out in any Sales Order, all warranties, conditions and other terms implied by statute or common law or otherwise are, to the fullest extent permitted by law, excluded from the Contract.
- 7.4 We will use our reasonable endeavours to maximise uptime, and ensure that the System is available at least:
- (a) 99.8% of the time during Working Hours; and
  - (b) 98.5% of the time outside of Working Hours.
- 7.5 Arbor shall not be responsible for, and excludes all liability (whether directly or indirectly arising), where the System is detrimentally affected due to:
- (a) routine or emergency maintenance downtime carried out by us or our subcontractors or third party agents;
  - (b) any improper use, misuse or unauthorised alteration of the System by the Institution and/or its Authorised Users;
  - (c) any use of the System by the Institution and/or its Authorised Users in a manner inconsistent with the then-current Documentation;
  - (d) the use by the Institution and/or its Authorised Users of any hardware or software not provided by Arbor or approved by us for use by the Institution in connection with the System;
  - (e) a failure between the Institution's computer(s) and the internet;
  - (f) Third Party Integrations;
  - (g) cyber attack, distributed denial of service attack, virus or similar;
  - (h) factors outside of Arbor's reasonable control; or



- (i) the Institution's action or inaction, or any action or inaction of its Authorised Users or other suppliers.

## **8 Fees**

- 8.1 Arbor shall send the Institution invoices for the Fees in accordance with the Guide to Billing as may be varied from time to time and which is herein incorporated into the terms of this Contract and stored on Arbor's support centre online ([Arbor Guide to Billing](#)).
- 8.2 The Institution agrees that the Fees shall be paid in full in pounds sterling, are non-cancellable and non-refundable, and are exclusive of value added tax or any other applicable local taxes, which shall be added to Arbor's invoice(s) at the appropriate rate.
- 8.3 All invoices shall be payable within thirty (30) days after the date of invoice unless otherwise agreed in any Sales Order.
- 8.4 The Institution shall make all payments under the Contract free and clear of any deduction or withholding of any kind, save only as may be required by law. If any such withholding or deduction is required, the Institution shall, at the same time as making the payment to which the withholding or deduction relates, pay to Arbor such additional amount as will, after the deduction or withholding has been made, leave Arbor with the same total amount that it would have received if no such withholding or deduction had been required.
- 8.5 Arbor shall be entitled to deduct any sum owing from the Institution under the Contract from any sum owing to the Institution under the Agreement.
- 8.6 Without prejudice to any other rights and remedies of Arbor, if we have not received payment of an invoice by the due date for payment in accordance with the Contract, this will be deemed to be a material breach by the Institution for the purposes of clause 16.4(a) (Licence Period and termination) and we may, without liability to the Institution:
  - (a) suspend, disable, restrict or withdraw the Institution's access to the Services (including access to the System) in the event of any non-payment by the Institution, and Arbor shall have no obligation or liability to provide any of the Services or access to the System whilst any Fees remain unpaid by the Institution;
  - (b) terminate the Contract or Service in accordance with clause 16.5 (Licence Period and termination); and
  - (c) interest shall be chargeable on any late payment under the Contract on a monthly basis until received in full by Arbor at (i) a rate of 8% above the base rate of the Bank of England or (ii) the maximum amount permitted by applicable law, whichever is higher.
- 8.7 Arbor may alter the amount of, or the payment terms relating to, the Fees at any time during the Contract and as set out in the Guide to Billing for the following:
  - (a) to take account of changes in student numbers as set out in more detail in the Guide to Billing;
  - (b) to take account of any increase in the costs or charges of any Third Party Supplier or such other costs or providers as set out in any

Service Schedule or Sales Order which are incurred by Arbor in the provision or delivery of the Services; or

- (c) Arbor may increase the Fees once at any time in each Contract Year by an amount equal to the increase in the Retail Price Index during the preceding twelve (12) month period or 4%, whichever is the higher.

8.8 Changes to Fees made pursuant to clause 8.7 (Fees) shall be notified to the Institution whether by posting the changes on the System or otherwise by any communication channel and shall be deemed to be incorporated into the Contract and be legally binding on the parties with effect from thirty (30) days after the date of such communication to the Institution.

8.9 The Institution represents, warrants and undertakes (a) that all information provided by it in connection with payment of the Fees and the Payment Services, whether to us or to any relevant third party (including any Payment Provider, Payment Customer or Third Party Supplier), is and will be complete and correct, and (b) that if any of such information changes, the Institution will promptly notify Arbor and/or such relevant third party.

## **9 Content**

9.1 The Institution agrees that it shall:

- (a) be solely responsible and liable for all Institution Content which include without limitation User Content and any Content generated by or on behalf of the Institution which is uploaded to or otherwise made available to Arbor by the Institution's use of the System or any Service;
- (b) be responsible for monitoring access to and use of Institution Content; and
- (c) be responsible for ensuring that Authorised Users comply with the restrictions concerning Institution Content set out in the Terms of Use.

9.2 The Institution acknowledges and agrees that Arbor shall not be responsible for monitoring the generation, availability or use of any Institution Content.

9.3 To the extent that the Institution makes available to a Third Party any Institution Content or data which the Institution uploads to or otherwise makes available within the System, the Institution acknowledges and agrees that Arbor shall have no liability whatsoever to any Third Party in respect of any use of that Institution Content or data by such Third Party.

## **10 Intellectual Property**

10.1 The Institution acknowledges and agrees that Arbor and/or its licensors own:

- (a) all Intellectual Property Rights in or relating to the System, the Documentation, the API, and/or any Service existing before the Start Date and/or developed independently of the Contract or any part of it; and



- (b) all rights (including Intellectual Property Rights) title and interest in, to and arising in connection with the Services, System, the Documentation and the API or any part of them, together with any and all Updates, adaptations, add-ons, modifications and/or enhancements to any Service, API or Documentation or part of them and/or any of their use and/or receipt and all copies of them, (together, “**Arbor IP**”);
- 10.2 To the extent, at any time, that by operation of law any Arbor IP does not vest in Arbor or its licensors, the Institution hereby irrevocably assigns to Arbor (by way of present and future assignment) with full title guarantee all Arbor IP (or, if applicable, shall procure such an assignment to Arbor).
- 10.3 The Institution shall not act in a way which is inconsistent with or undermines Arbor or its licensors' (as the case may be) right of ownership or diminishes any Arbor IP or calls any Arbor IP into question.
- 10.4 Except to the extent expressly specified otherwise in the Contract, the Contract does not grant the Institution or any Authorised User any right, title or interest in, to or arising in connection with any Arbor IP or any licences in respect of any Arbor IP.
- 10.5 The Institution shall, as between the parties, own all rights (including Intellectual Property Rights), title and interest in and to the Institution Content but excluding any Analytics Data (“**Institution IP**”).
- 10.6 The Institution shall ensure that it has all necessary permissions, licences, or consents to license such Institution IP available to Arbor.
- 10.7 The Institution hereby grants to Arbor a royalty-free, non-transferable, sub-licensable, non-exclusive licence to use, copy, and otherwise utilise the Institution IP to the extent necessary for Arbor to carry out research, benchmark and improve the Services, provide the Services, or to enable Arbor to perform its rights, remedies and obligations under the Contract.
- 10.8 The Institution acknowledges and agrees that Feedback and Analytics Data shall be owned by Arbor.
- 10.9 The Institution hereby assigns, and shall procure that any Authorised Users assign, to Arbor absolutely and with full title guarantee (including by way of present assignment of future Intellectual Property Rights) any Intellectual Property Rights in any Feedback and Analytics Data pursuant to this Contract.
- 10.10 The Institution hereby waives (and shall ensure that all Authorised Users and any third parties have waived) any moral rights arising in any Feedback pursuant to Chapter IV of the Copyright, Designs and Patents Act 1988, or any broadly equivalent rights in any other jurisdiction.

## **11 Confidentiality**

- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Contract. 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;
  - (b) was in the other party's lawful possession before the disclosure;

- (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.
- 11.2 Subject to clause 11.4 (Confidentiality), each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than to fulfil its obligations under this Contract.
- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Contract.
- 11.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.4 (Confidentiality), it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 11.5 The Institution acknowledges that details of the Services, any pricing and sensitive commercial information, the results of any performance tests of the Services and/or otherwise any information which would be exempt from disclosure in accordance with the provisions of the Freedom of Information Act constitute Arbor's Confidential Information.
- 11.6 The Institution shall immediately notify Arbor in writing if any unauthorised access, use or disclosure of Arbor's Confidential Information has taken place or is reasonably likely to take place and take such steps as Arbor may reasonably require in relation to the same. No party shall make, or permit any person to make, any public announcement concerning this Contract without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11.7 Each party acknowledges that unauthorised use and/or disclosure of the other's Confidential Information may cause substantial harm and/or irreparable loss or damage to the other party for which monetary damages alone would not be a sufficient remedy and, therefore, that upon any use or disclosure of Confidential Information in breach of this clause 11 (Confidentiality) the disclosing party shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law or pursuant to the Contract.
- 11.8 The above provisions of this clause 11 (Confidentiality) shall survive termination of this Contract, howsoever arising.

## **12 Liability**

- 12.1 Nothing in the Contract limits or excludes:
- (a) the Institution's obligation to pay the Fees as they become due; or
  - (b) the liability of either party:
    - (i) for death or personal injury resulting from negligence;
    - (ii) fraud or fraudulent misrepresentation by the other party; or
    - (iii) any other liability to the extent that it cannot be limited or excluded under applicable law.
- 12.2 Subject to clause 12.1 (Liability), neither party shall be liable whether in tort (including negligence), contract, misrepresentation, restitution or otherwise for:
- (a) any loss of profits;
  - (b) loss of business;
  - (c) depletion of goodwill and/or similar losses;
  - (d) loss of anticipated savings;
  - (e) loss of goods;
  - (f) loss of contract;
  - (g) loss of use;
  - (h) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses;
- in each case arising (directly or indirectly) out of or in connection with the Contract and whether or not reasonably foreseeable, reasonably contemplatable, actually foreseen or actually contemplated by a party at the Start Date or Service Start Date as applicable.
- 12.3 Subject to clause 12.1 (Liability) but without prejudice to the other terms in the Contract, Arbor shall have no liability under the Contract to the extent such liability is caused by:
- (a) access to or use of any Service contrary to the Documentation or Arbor's instructions; or
  - (b) the Institute's breach of clause 3 (Access Rights), clause 4 (Restrictions on use) or clause 6 (Institution's obligations).
- 12.4 Subject to clauses 12.1 to 12.3 inclusive and 12.5 (Liability), each party's total aggregate liability arising under or in connection with the Contract, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise shall be limited in the aggregate to the Fees paid or payable by the Institution to Arbor for the Contract Year in which the breach occurs, less all amounts paid plus all amounts liable to be paid by the party seeking to rely on this liability cap in satisfaction of any liability accrued against this liability cap in the same or any other Contract Year.
- 12.5 Notwithstanding the provisions of this clause 12 (Liability), where any Service Schedules apply to any Service, the Institution's sole remedy for any breach of such Service shall be as set out in the Service Schedule as applicable.

## **13 Indemnities**

- 13.1 Institution shall fully indemnify Arbor and hold us harmless and keep us indemnified in respect of any liability, loss, costs, damages, expenses (including legal expenses), and claims suffered by us in connection with

the following, provided always that the Institution's liability under this clause 13.1 (Indemnities) shall not exceed the Fees paid or payable by the Institution in the Contract Year in which the liability arises, or the maximum level of liability permitted by the relevant Institution under its relevant funding agreement in place in the Contract Year in which the liability arises, whichever is the higher:

- (a) the Institution's or any of its Authorised Users' use of the Services in any way which does not comply with our reasonable instructions and/or the Terms of Use;
- (b) any claim that any Institution Content (including without limitation User Content) infringes any third party rights (including Intellectual Property Rights);
- (c) any claim by any Authorised User or otherwise any third party to which the Institution makes available any data or Institution Content from the Services, where such party places any reliance on the quality or content of such data or Institution Content;
- (d) any breach by the Institution or any of its Authorised Users of the Personal Data Protection Legislation; and/or
- (e) any act or omission of any Third Party, or any liability arising whatsoever and howsoever caused (whether arising directly or indirectly) as a result of the use of Third Party Integrations, or any Accredited Partner Agreement.

13.2 Where Arbor receives a third party claim to which clause 13.1 (Indemnities) applies, we shall ensure:

- (a) the Institution is given prompt notice of any such claim;
- (b) we provide reasonable co-operation to the Institution in the defence and settlement of such claim; and
- (c) the Institution giving the indemnity is given sole authority to defend or settle the claim.

## **14 Audit rights**

14.1 The Institution shall allow and procure for Arbor (or any of our authorised representatives) access to the Institution's records relating to this Contract in order to permit Arbor to inspect use of the System and to audit (and take copies of) any relevant records to the extent necessary for Arbor to verify that the Institution is in compliance with its obligations under the Contract.

14.2 Unless otherwise agreed in writing, the inspection and audit referred to in clause 14.1 (Audit rights) shall be undertaken during Working Hours, and subject to Arbor having given no less than five (5) working days' notice, no more than once in any calendar year.

14.3 To the extent an audit reveals a breach of the Contract by the Institution (including any breach of the Terms of Use), the cost of the audit shall be borne by the Institution.

14.4 The Institution acknowledges and agrees that Arbor may monitor, collect, store and use information relating to the Institution's use of, and the performance of, the System (including Institution Content) and other Services in order to detect threats or errors in the System, other Services and/or Arbor's operations, and for the purposes of

further developing and improving the Services, provided that such activities at all times comply with the Data Protection Legislation.

## **15 Force majeure**

Arbor shall have no liability to the Institution under the Contract if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Arbor or any other party), failure of a utility service or transport or internet or telecommunications 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, storm or default of suppliers or subcontractors. Arbor shall ensure that the Institution is notified of such an event as soon as reasonably possible and its expected duration.

## **16 Licence Period and termination**

- 16.1 This Contract shall be deemed to have been entered into upon signature by the Institution of the first Sales Order or when Arbor makes the first Service available to the Institution, whichever is the earlier (the "**Start Date**") and shall continue until (i) all Sales Orders have expired or have been terminated; or (ii) the Contract is terminated in accordance with the terms of the Contract.
- 16.2 In relation to each Service, the Licence Period shall automatically be extended for an additional Extension Period unless the Institution terminates the provision of that Service on not less than ninety (90) days' written notice expiring on the expiry of the Initial Licence Period or the current Extension Period, as the case may be. The Institution shall be invoiced by Arbor for the Fees for the Extension Period in accordance with clause 8 (Fees).
- 16.3 If the Institution: (i) does not give notice to terminate the provision of a Service in accordance with clause 16.2 (Licence Period and termination); or (ii) otherwise terminates or purports to terminate the provision of a Service other than in accordance with the terms of the Contract, the Institution shall be liable to pay as a debt, any Fees that Arbor has invoiced or would be entitled to invoice in accordance with the terms of the Contract for any part of the Initial Licence Period and to the extent applicable, the subsequent Extension Period.
- 16.4 Without prejudice to any rights or remedies already accrued, either party may terminate the Contract in its entirety or the provision of any Service at any time with immediate effect by giving written notice to the other if:
- (a) the other commits a material breach (including where multiple breaches in aggregate amount to a material breach) of the Contract which is not capable of remedy or, if it is capable of remedy, the defaulting party does not remedy such breach within twenty-one (21) days of receiving notice from the other requiring it to do so; or
  - (b) the other party:

- (i) is unable to pay its debts as defined in section 123 Insolvency Act 1986;
  - (ii) has steps taken for a receiver, administrator or manager to be appointed over the whole or a material part of its business or assets;
  - (iii) is subject to an order being made, a resolution passed or other steps being taken for its winding-up (except for the purposes of a bona fide solvent reorganisation), bankruptcy or dissolution;
  - (iv) proposes or enters into any composition or arrangement with its creditors generally or any class of them;
  - (v) ceases to carry on business or claim the benefit of any statutory moratorium; or
  - (vi) if any event occurs, or proceedings taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.4(b)(i) to clause 16.4(b)(v) inclusive (Licence Period and termination).
- 16.5 Arbor may terminate the Contract (or any Service) with immediate effect by giving written notice to the Institution if:
- (a) Arbor has not received payment of an invoice within thirty (30) days after the date of such invoice; or
  - (b) the Institution commits any breach (whether material or not) of clause 2 (Licence grant), clause 4 (Restrictions on use), clause 10 (Intellectual Property), clause 11 (Confidentiality) or Schedule 2 (Data Processing) which is not capable of remedy or, if it is capable of remedy, if it does not remedy such breach within twenty-one (21) days of receiving notice from Arbor requiring it to do so.
- 16.6 In relation to each Service, upon expiry of the relevant Licence Period or termination of a Service for any reason and at any time:
- (a) all rights and licences granted to the Institution under the applicable Sales Order shall immediately cease and the Institution shall cease all activities authorised by the Contract in connection with that Service;
  - (b) Arbor shall be entitled to disable the Institution's access to the relevant Service;
  - (c) in respect of the termination of the System only, for up to thirty (30) days following expiry or termination Arbor shall, upon written request from the Institution, make available to the Institution a full database backup of such Institution Content as held on the System at the termination date or other format to be agreed between the parties at the time of such expiration or termination. If the Institution requires multiple database exports, Arbor shall be entitled to charge a reasonable administration fee for doing this which shall be notified to the Institution. Institution Content shall not be available and will be deleted after the thirty (30) day period has ended (except any data Arbor is required to retain by law);
  - (d) each party shall return or (if the other requests) destroy all Confidential Information of the other (and all copies of the same) provided or made available in connection with the Contract in



- respect of that Service, provided that Arbor shall be entitled to retain the Institution's Confidential Information for as long as any applicable law may require Arbor to do so; and
- (e) comply with paragraph 6.9 of Schedule 2 (Data Processing).
- 16.7 If the Contract expires or is terminated for any reason at any time, clause 16.6 (Licence Period and termination) shall apply in relation to all Services under all Sales Orders.
- 16.8 The Institution understands and agrees that in the event of planned maintenance and/or the Institution breaching the terms of the Contract (which shall include any breach by an Authorised User) Arbor shall be entitled to disable the Institution's access and use of the Services, in whole or in part. For the avoidance of doubt, in the event that the Institution's right of access to the Services is disabled at any time, howsoever caused, any and all Authorised Users' access and use of the Services shall also be disabled.
- 16.9 The Institution understands that in the event Arbor's relationship with any Third Party Supplier terminates or expires for any reason, or if the Third Party Supplier requires Arbor to change the way we provide the Services or other technology, Arbor shall (where such expiry, termination or change impacts on our ability to license the System to the Institution) be entitled to suspend the Institution's access to such impacted Service on a temporary basis whilst Arbor seeks to engage an alternative Third Party Supplier and/or to terminate the relevant Service or entire Contract with immediate effect upon giving the Institution written notice.

## **17 Variation**

- 17.1 Subject to clause 17.2 (Variation), no representative, agent or other person has Arbor's authority to vary, amend or waive any of the Contract on Arbor's behalf and no amendment or addition to any of this Contract shall be deemed to have been accepted unless signed in writing by a Director of Arbor Education Partners Limited.
- 17.2 Arbor may modify any terms of the Contract at any time and at its sole discretion by informing the Institution no less than thirty (30) days in advance by using the System or other means of communication. Further use by the Institution of the System or any Service after such period will constitute acceptance of the changes. If the Institution does not agree to any of the changes, it may provide written notice to Arbor, prior to the changes taking effect, stating the reasons why the Institution does not accept the changes, after which Arbor may, in its sole discretion (and as the Institution's sole recourse):
- (a) terminate the Contract or the relevant Service by providing no less than ninety (90) days' written notice to the Institution, and whilst Arbor will continue to support the Institution fully during this period, the Institution will need to make plans to migrate its Institution Content prior to Arbor deleting such data in accordance with clause 16.6(c) (Licence Period and termination). The nominated Arbor representative will contact the nominated Institution representative to confirm a migration date and mechanism to provide data in this time; or

- (b) permit the Institution to continue using the Service(s) on the unchanged terms until the commencement of the next Extension Period (if any) for any Service, after which the updated terms of the Contract shall apply to the use of all or any Service(s) by the Institution.

## **18 Counterpart**

This Contract may be executed in any number of counterparts, each of which is an original and which, when executed and delivered, shall be an original and which together shall have the same effect as if each party had executed and delivered the same document. Transmission of the executed signature page of a counterpart of this Contract by: e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Contract.

## **19 Governing law and jurisdiction**

This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle the same.

## **20 Notices**

- 20.1 Any notice required to be given under this Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post or by email to the other party at its address set out in this Contract, or such other address as may have been notified by that party for such purposes, in each case addressed for the attention of the Legal Department.
- 20.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in Working Hours, at 8 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice delivered by email shall be deemed to have been received at the time of transmission (or if delivery is not in Working Hours, at 8 am on the first business day following delivery).

## **21 General**

- 21.1 Training and Professional Services will be valid for up to twelve (12) months from date of purchase or until the end of the applicable Licence Period, whichever is earlier.
- 21.2 The Institution understands that if Arbor fails or delays in exercising any of its rights under the Contract then that failure/delay shall not operate as a waiver of such right nor shall it prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right under the Contract is only effective if it is in writing and signed by Arbor, and it applies only to the person to whom the waiver is

addressed and the circumstances for which it is given. No waiver of any right or remedy shall operate as a waiver of any subsequent or other breach.

- 21.3 If any of the terms of the Contract are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.
- 21.4 The Contract represents the entire agreement between the parties and supersedes any prior agreement, understanding or arrangement between Arbor and the Institution. Each party understands that in entering into the Contract it has not relied on any representation, undertaking or promise given by the other, whether expressed or implied, except as expressly set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 21.5 No party who is not a party to the Contract shall be entitled to enforce any term of the Contract under the Contracts (Rights of Third Parties) Act 1999.
- 21.6 The Institution may not assign or novate or transfer its rights or obligations under this Contract without the prior written consent of Arbor.
- 21.7 Arbor may assign, novate, sub-contract, or otherwise transfer any right or obligation under the Contract in whole or in part at any time without notice (subject to paragraph 5.5 of Schedule 2 (Data Processing)) or consent but will notify the Institution promptly as soon as reasonably practicable after any such event occurring.

## **Schedule 1 Definitions and Interpretation**

The following definitions and rules of interpretation apply to the Contract:

**"Access Rights"** means the level of access any Authorised Users have in respect of the System and Content, including without limitation what Content such Authorised Users can access, use and/or edit, whether they are authorised to generate Content and if so, the nature and scope of such Content;

**"Accredited Partner"** means an accredited partner of Arbor who is party to a current and valid accredited partner agreement with Arbor;

**"Accredited Partner Agreement"** means a contract between the Institution and an Accredited Partner for the provision of support by that Accredited Partner to the Institution relating to the use of the System;

**"Administrators"** has the meaning given to it in clause 3.1(a) (Access Rights);

**"Analytics Data"** means anonymised or aggregated data, analysis, predictions or insights created or derived by Arbor using Institution Content in accordance with clause 10.7 (Intellectual Property);

**"API"** means an application programming interface made available by Arbor to the Institution, to enable the Institution either to interface directly to allow access to the Institution's information held in the System, or to permit any Third Party Integration which the Institution wishes to use to interface with the System;

**"Arbor"** means Arbor Education Partners Limited (Company No. 07790198) whose registered office is at 103-105, Bunhill Row, London, EC1Y 8LZ and where applicable, our affiliates;

**"Arbor Content"** includes all Feedback, Analytics Data, Documentation, Updates to the same and derived or auxiliary data arising from or in connection with the Arbor Services, APIs and/or System;

**"Arbor IP"** has the meaning given to it in clause 10.1 (Intellectual Property);

**"Authorised Users"** include all Users, Administrators, Customers and Payment Customers, Third Parties and Third Party Integrators as may be applicable which have been authorised by the Institution and given Access Rights to the System and Institution Content;

**"Content"** means any content or material, whether of an audio or visual nature, which is accessible to any Authorised Users via the System, which may include but is not limited to words, pictures, videos, blogs, comment;

**"Contract"** means collectively, all Sales Orders entered into between the parties relating to the provision of Services by Arbor to the Institution, which shall include the Master Terms and any applicable Service Schedules;

**"Contract Year"** means each successive period of twelve (12) calendar months commencing on the Service Start Date;

**"Confidential Information"** means any and all information that: (i) is proprietary and/or confidential in nature and is either clearly labelled as such or would, by its nature, reasonably be considered to be confidential; and/or (ii) in the case of the Arbor, concerns any Service, technology, know-how, methodology of supply, business, development or finances of Arbor (including any Service or Documentation and Arbor Content); and/or (iii) in the case of the Institution, concerns Institution Content or User Content.

**"Customer"** means parents or guardians of pupils of the Institution who purchase goods or services from the Institution using the Payment Services;

**"Data Protection Legislation"** means all legislation relating to data protection, the processing of personal data, privacy and/or electronic communications in force and as amended, extended or re-enacted from time to time in the UK including the Data Protection Act 2018 (DPA 2018); the UK GDPR (as defined in the DPA 2018) and Privacy and Electronic Communications Regulations 2003 (or any replacement of the same);

**"Documentation"** means the online service guides or other documentation which we may make available to the Institution from time to time, which includes the specification of the System and any relevant instructions as to how to use the System;

**"Extension Period"** means a one (1) year extension of the provision of a Service from the end of the Initial Licence Period or current Extension Period;

**"Fee"** means the fee payable by the Institution to us for use of any Service, as detailed in a Sales Order;

**"Feedback"** means the written and oral feedback to be provided to Arbor by the Institution and Users in respect of the System. For the avoidance of doubt, this may include without limitation written feedback and bug reports relating to the System and raised by teachers and other representatives of the Institution at meetings with Arbor to discuss the System;

**"Guide to Billing"** has the meaning given to it in clause 8.1 (Fees) as amended from time to time and available [here](#);

**"Initial Licence Period"** means the initial period for provision of the Service(s) by Arbor to the Institution detailed in the Sales Order;

**"Institution"** means the customer detailed on the Sales Order;

**"Institution Content"** which shall also include **"User Content"** means all data entered into the System by the Institution and its Authorised Users which may also include Personal Data but excluding any Arbor Content;

**"Institution IP"** has the meaning given in clause 10.5 (Intellectual Property);

**"Intellectual Property Rights"** means any and all intellectual property rights of any nature in the world including copyright and related rights, rights in computer software (including object code and source code), database rights, topography rights, rights in data or confidential information (including know-how and trade secrets), rights in or to inventions, utility models, patents, trade marks, trade names, service marks, business and domain names, design rights, rights in trade dress or get-up, rights in goodwill and the right to sue for passing off, unfair competition rights, and any other intellectual property rights and all other similar or equivalent rights or forms of protection, and in each case (i) whether or not registered, (ii) including all applications to protect or register such rights, and (iii) including all renewals or extensions of such rights or applications, (iv) whether vested, contingent or future and (v) wherever existing;

**"Licence Period"** means, for each Service, the period commencing on the date the applicable Sales Order is executed until the date the provision of the Service expires or terminates, in accordance with the Contract;

**"Master Terms"** means these Master SaaS Terms and Conditions which incorporate the Terms of Use and the Guide to Billing;

**"Payment Customer"** means a Customer who has an account with the Payment Provider to make payments to the Institution pursuant to the

Payment Services terms set out in Schedule 3 or otherwise in any relevant Payment Services Schedule attached to the Sales Order;

**"Payment Provider"** means any bank, financial institution, payment services provider and/or card issuer which Arbor engages to provide the Payment Services;

**"Payment Services"** means the parts of the System which enable Payment Customers to make payments directly to the Institution, facilitated by a third party Payment Provider and subject to the terms set out in Schedule 3 or relevant Payment Services Schedule for using the Payment Services;

**"Professional Service"** means any project management, programme management, consulting or other one-off services;

**"Purpose"** means the purpose of using the System for the Institution's own internal and non-commercial purposes. For the avoidance of doubt, the Purpose does not include any commercial purposes of the Institution (except in respect of the Payment Services) or of any third party;

**"Sales Order"** means the order for Services which shall include, without limitation, the details of all of the Service(s) to be provided along with any relevant Service Schedules incorporated into the Contract, the duration of the Initial Licence Period, the Fee(s), any special conditions that may also apply to the Contract and any changes to a previous Sales Order (constituting as a **"Change Order"**);

**"Service"** means any of Arbor's service or product lines, including (without limitation), the System, Payment Services, Professional Services and any Training, provided by Arbor to the Institution pursuant to a Sales Order and subject to any applicable Service Schedules thereto;

**"Service Schedule"** means the document that sets out the product specific terms of a particular Service that the Institution has ordered pursuant to the Sales Order and which terms shall be incorporated into the Contract on execution of the applicable Sales Order and shall apply to the provision of such Service by Arbor as may be varied by Arbor from time to time;

**"Start Date"** has the meaning given to it in clause 16.1 (Licence Period and termination) and **"Service Start Date"** for each Service shall be as set out in the Sales Order or otherwise agreed in writing by the parties;

**"System"** means the Arbor Education management information system, intended for use on and access from a computer, smart phone or tablet computer, which enables a User to access Institution information on behalf of the Institution;

**"Terms of Use"** means the terms and conditions which the Institution, and its Authorised Users, must agree to in order to access and use the System and Services, in whole or in part, as amended from time to time and available [here](#);

**"Third Party"** or **"Third Parties"** shall be construed to mean any organisations that are granted various Access Rights, or any other third party supplier to which the Institution grants Access Rights, including an Accredited Partner;

**"Third Party Integration"** means the interfacing of the System with a Third Party application or similar via an API (or manually) requested by the Institution, and **"Third Party Integrator"** means any organisation that offers Third Party Integrations;

**"Third Party Supplier"** means any supplier of Arbor's who provides services relating to the provision of the Services, including the provision of software,



hosting, technology or related services to Arbor including without limitation any Payment Provider or provider of the SMS service;

**"Training"** means the training provided by us to the Institution in relation to the System, as may be agreed between the parties in writing from time to time and set out in the Sales Order;

**"Updates"** has the meaning given to it in clause 5.7 (Support & Updates);

**"User"** means a single individual who is granted Access Rights by the Institution (usually but not necessarily as an employee or consultant of the Institution) in respect of the System. For the avoidance of doubt, different Users may have varying levels of Access Rights to the System, as determined by the Institution;

**"User Content"** means Content generated by a User;

**"we", "us", "our"** means Arbor unless otherwise specified in a Sales Order;

**"Working Hours"** means 8am to 5pm (GMT) Monday to Friday, excluding public and bank holidays.

In this Contract:

- (a) the headings and titles are for convenience only and shall not affect the construction or interpretation of the Contract;
- (b) any obligation not to do an act or thing includes an obligation not to agree, allow, permit or acquiesce to that act or thing being done;
- (c) any reference to any enactment or statutory provision or subordinate legislation shall be construed as a reference to it as from time to time replaced, amended, consolidated or re-enacted (with or without modification) and includes all orders, rules or regulations made under such enactment;
- (d) unless the context requires otherwise, words in the singular shall include the plural and vice versa and words importing one gender include all genders;
- (e) any reference to a "person" includes individuals, firms, partnerships, companies, corporations, associations, organisations, trusts, statutory bodies or foundations (whether or not having separate legal personality); and
- (f) the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation".

## Schedule 2 Data Processing

### Definitions and Interpretation

The following definitions and rules of interpretation apply in this Schedule in addition to those contained in the main body of the Contract:

**Appropriate Safeguards:** means such legally enforceable mechanism(s) for transfers of Personal Data as may be permitted under Data Protection Legislation from time to time.

**Data Controller:** has the meaning given to it in the Data Protection Legislation;

**Data Processor:** has the meaning given to it in the Data Protection Legislation;

**Personal Data:** means any information relating to an identifiable person who can be directly or indirectly identified in particular by reference to that information.

**Personal Data Breach:** a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.

**Processing, processes and process:** any activity that involves the use of Personal Data or as the Data Protection Legislation may otherwise define processing, processes or process. Processing includes obtaining, recording or holding the Personal Data or carrying out any operations on the Personal Data, including organisation, adaptation or alteration, retrieval, consultation or use, disclosure, combination, erasure or destruction.

**Third Party Processor:** the various hosting providers, cloud providers, SMS providers and email providers as engaged by Arbor from time to time in relation to the Services.

This Schedule is subject to the terms of the Contract and is incorporated into the same and shall also take immediate effect on the Start Date.

In the case of any contradiction, inconsistency or other discrepancy between the terms of this Schedule and any other terms of the Contract, the terms of this Schedule will prevail.

- 1 The Institution and Arbor acknowledge that for the purposes of the Contract, Arbor shall act as Data Processor and the Institution shall act as Data Controller.
- 2 Each party will comply with its obligations under all relevant Data Protection Legislation at all times in relation to this Contract.
- 3 Arbor will without undue delay inform the Institution if, in connection with the Contract, it:
  - 3.1 discovers or reasonably suspects that any Personal Data relating to this Contract has been accidentally or unlawfully destroyed, lost, altered, or disclosed;
  - 3.2 has been contacted by any person seeking to exercise any right under the Data Protection Legislation; or

- 3.3 has been contacted by a data protection authority about Personal Data relating to this Contract, in which case the parties will cooperate regarding the relevant matter and keep the other informed in relation to the same.
- 4 Arbor shall, save for existing transfers to Arbor's group companies, not transfer Personal Data to, or process Personal Data in, any third country or territory outside of the UK unless (and for so long as):
- (a) there has been a finding of adequacy pursuant to Article 45 of the UK GDPR; or
  - (b) Arbor:
    - (i) enters into a valid cross-border transfer mechanism under the Data Protection Legislation with the relevant importing entity, so that Arbor can ensure that appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of individuals as required by Article 46 of the UK GDPR; and
    - (ii) carries out appropriate due diligence on the importing entity and the relevant jurisdiction to assess the adequacy of the third party and its jurisdiction in light of the Court of Justice of the European Union judgment in the case of C-311/18 Facebook Ireland and Schrems ('Schrems II'), and the relevant regulatory guidance.
- 5 Arbor shall:
- 5.1 only process Personal Data in accordance with the instructions of the Institution;
  - 5.2 maintain appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data provided to it by the Institution and against accidental or unauthorised alteration, loss or destruction of or damage to such Personal Data;
  - 5.3 maintain appropriate security programmes and procedures to ensure that unauthorised persons do not have access to Personal Data or to any equipment used to process Personal Data;
  - 5.4 assist the Institution in addressing any data subject requests for access, portability, rectification or erasure, queries or complaints made by data subjects in relation to this Contract (or the processing undertaken pursuant to it);
  - 5.5 ensure that the persons authorised to process Personal Data relating to this Contract have committed themselves to preserve the confidentiality of Personal Data relating to this Contract;
  - 5.6 save for its existing subprocessors (which are listed on the Support Centre Data Protection Section here: Arbor's Data Protection Policy to comply with GDPR), only engage a subprocessor where it has provided advance notice of the appointment of the subprocessor so that the Institution may object to such appointment if it reasonably deems the appointment will unduly prejudice the rights of the relevant data subjects. The parties will discuss the Institution's objection and, if unable to find a solution acceptable to both parties, the Institution will be entitled to terminate the relevant Service that is the subject of the subprocessing on ninety (90) days' written notice;

- 5.7 to the extent that it engages a subprocessor for the purposes of providing data processing in relation to this Contract, ensure that equivalent data protection obligations to that contained within this Contract are imposed on that subprocessor by way of contract;
- 5.8 immediately inform the Institution if, in its opinion, an instruction infringes any Data Protection Legislation and may refrain from such processing until consultation with the Institution on how to continue processing in a compliant manner;
- 5.9 at the end of the Licence Period for the System and at the choice of the Institution, delete or return all Personal Data to the Institution (and shall delete existing copies unless otherwise required under applicable law); and
- 5.10 allow the Institution (including any auditor mandated by the Institution) to, on reasonable notice and at the Institution's cost, audit Arbor's compliance with this paragraph 6 of this Schedule. As part of such audit, Arbor will on request make available to the Institution all information necessary to demonstrate compliance with the obligations in this paragraph 6 of this Schedule.
- 6 If, during the Term, the Institution authorises Arbor to allow any Third Party Integration into the System, or enters into any Accredited Partner Agreement, the Institution acknowledges that any such Third Party will be a data processor of the Institution and not a subprocessor of Arbor.
- 7 The Institution shall be responsible for entering into an appropriate data processing arrangement with the Third Party, and for interrogating any Personal Data transfer from such Third Party to any of the Third Party's subprocessors and ensuring that any Third Party has appropriate agreements in place with their subprocessors.
- 8 For the avoidance of doubt, Arbor shall under no circumstances be liable for any acts or omissions of such organisation, as a result of the Third Party (or its subprocessors), its Access Rights or the Third Party Integration itself.
- 9 Any loss of Personal Data by a Third Party (or its subprocessors), or Content, or incorrect data processed by a Third Party (or its subprocessors) as a result of a Third Party Integration or Accredited Partner Agreement (whether direct or indirect), shall be the responsibility of the Institution and the relevant Third Party, not Arbor.
- 10 If implementation of any Third Party Integration to the System, has a detrimental effect on the System, including but not limited to, causing loss of data, loss of use or any reduction in the Institution's ability to use the System, Arbor shall not be liable whatsoever, under any circumstances, for any such losses (whether directly or indirectly arising).
- 11 Arbor reserves the right to:
  - 11.1 decline any request by an Institution to use a Third Party Integration for any reason (acting reasonably);
  - 11.2 object to and/or request termination of any Accredited Partner Agreement where the Accredited Partner is in breach or is suspected of being in breach of their Accredited Partner Agreement with Arbor.

## **Schedule 3 Payment Services**

### **Payment Services**

- 1 The Institution acknowledges and agrees that the Payment Services are provided by a third party Payment Provider and not by Arbor. The Payment Services will enable the Payment Customers to make payments to the Institution.
- 2 Any payments made will be subject to the relevant Payment Provider(s)'s terms and conditions. The Institution must comply with and ensure that its Payment Customers comply with the Payment Provider's terms and conditions and privacy notice, in order to transfer funds from the Payment Customer's account to the Institution's account.
- 3 The Institution must deal directly with all requests by Payment Customers in relation to the Payment Services (including without limitation to cancel or refund any payments requested by them) and should direct all Payment Customers to itself rather than Arbor.
- 4 The Institution shall comply with our or the Payment Provider's reasonable instructions for the purposes of providing the Payment Services to the Institution and its Payment Customers.
- 5 The Institution shall provide to its Payment Customers full and accurate information of any goods or services and associated pricing, and agree that Arbor is not responsible or liable for any inaccuracy or misrepresentation in any information provided by the Institution, including without limitation any information transmitted using the Arbor System.
- 6 The Institution acknowledges that Arbor is not a party to any transactions made using the Payment Services, and that Arbor shall have no liability whatsoever to the Institution, its Payment Customers or the Payment Provider in connection with or arising from the use of the Payment Services by the Institution or the Payment Customers.
- 7 Arbor shall use reasonable endeavours to ensure that the Payment Services and the Payment Provider are appropriate and suitable for the provision of Payment Services.
- 8 The Institution agrees that Arbor may change or withdraw the Payment Services at any time where there is a legal, technical or commercial reason to do so.
- 9 There is a payment processing charge (transaction fee) for each payment made using the Payment Services. Unless otherwise notified by Arbor or the Payment Provider, such transaction fees shall be paid by way of a deduction from the final payments made by the Payment Provider to the Institution in respect of the applicable transactions to which the transaction fees relate.
- 10 Arbor will review the transaction fees with the Payment Provider from time to time and any changes to the transaction fee will be communicated to the Institution at the relevant time as applicable.
- 11 The Institution shall comply with the terms and conditions of the Payment Provider, in force from time to time and shall fully indemnify Arbor and hold us harmless and keep us indemnified in respect of any

liability, losses, costs, damages, expenses (including legal expenses) and claims suffered by us in connection with a third party claim arising out of or in connection with the Institution's or Payment Customer's breach of such terms and conditions.

- 12 Where Arbor receives a third party claim to which the above indemnity applies, we shall ensure:
- (a) the Institution is given prompt notice of any such claim;
  - (b) Arbor provides reasonable cooperation to the Institution in the defence and settlement of such claim; and
  - (c) the Institution is given sole authority to defend or settle the claim.
- 13 The Institution shall allow Arbor or the Payment Provider to access records stored within the System for the purposes of supporting compliance with this Schedule.

Version	Date	Updates
1	9/7/19	–
2	1/5/20	Improved terms around data protection
3	18/01/21	Increased platform SLAs and the introduction of service credits for eligible customers. Additional clauses relating to third party access to data.
4	21/06/21	Introduction of clauses relating to Accredited Partner Agreements
5	27/05/2022	Updates on UK Data Protection, novation of contracts, limits on liability, notifying of subprocessors, training credits and incorporation of Arbor's Guide to Billing
6	23/01/2023	Amended email address for <a href="mailto:accountmanagers@arbor-education.com">accountmanagers@arbor-education.com</a>
7	17/06/2024	See the summary of key changes