Arbor Education Partners Limited
Master SaaS Terms and Conditions

1 Definitions and interpretation

1.1 The following terms shall have the meaning set out below.

"**Access Rights**" means the level of access a User or Third Party has in respect of the System and Content, including without limitation what Content the User or Third Party can access and/or edit, whether the User or Third Party is authorised to generate Content and if so, the nature and scope of such Content;

"**Accredited Partner**" means an Accredited Status partner of Arbor, who is party to a current, 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 an Institution relating to the use of the System;

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

"**Arbor Advanced Support**" means second line support provided by Arbor to an Institution where the Institution provides secondary education services;

"**Conditions**" means these master SaaS terms and conditions and the Terms of Use;

"**Content**" means any content or material, whether of an audio or visual nature, which is accessible to a User, Users or Third Party via the System, which may include but is not limited to words, pictures, blogs, comments, reports, case studies, lesson plans, home work, programmes and podcasts;

"**Contract**" means each Order Form entered into between the parties relating to the provision of Service(s) by Arbor to the Institution (which shall be deemed made subject to the Conditions) and the Supplemental Terms (if any) including for the Initial Licence Period;

"**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**" all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended;

"**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-year extension of a Service from the end of the Initial Licence Period or any Extension Period;

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

"**Feedback**" means the written and oral feedback to be provided to us 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 us to discuss the System;

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

"**Institution**" means the customer detailed on the Licence Summary;

"**Intellectual Property Rights**" means any and all copyright and related rights, rights in software (including object code and source code), rights in inventions, patents, know how, trade secrets, trade marks, trade names, services marks, design rights, rights in get-up, database rights and rights in data, domain names, rights in goodwill and the right to sue for passing off, and all other similar rights in each case whether or not registered, and wherever existing;

"**Licence Period**" means the period from the commencement of the Institution's access to the System until the expiration or termination of any Contract(s) entered into pursuant to these Conditions;

"**Licence Summary**" means the combination of all Order Forms completed by the parties and signed by the Institution which includes, without limitation, the details of all of the Service(s) to be provided, the duration of the Licence Period(s) including the Initial Licence Period, and the Fee(s);

"**Order Form**" means the order for services in the form set out in Schedule 1;

"**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 Customers to make payments directly to the Institution, facilitated by a third party Payment Provider;

"**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 academic 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 any third party;

"**Service**" means one of our service lines provided by us to the Institution pursuant to an Order Form, as set out on the Licence Summary, including (without limitation), the System and any Training;

"**Supplemental Terms**" means any special conditions that also apply to the Contract.

"**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 each individual User, must agree to in order to access and use the System, in whole or in part, as amended from time to time and available [here](#);

"**Third Party**" shall be construed to mean any organisation that offers Third Party Integrations, and is 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;

"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 Licence Summary;

"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"**, "Arbor" means Arbor Education Partners Limited (Company No. 07790198) whose registered office is at The Key Support Services Ltd, 3rd floor, 80 Old Street, London EC1V 9HU;

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

The definitions in the Data Processing Schedule (Schedule 3) shall apply to this Contract mutatis mutandis and in the event of any inconsistency between the two definitions, the terms of the Schedule shall prevail.

2 The Contract

2.1 Each Contract shall be deemed to have been entered into upon signature by the Institution of the relevant Order Form or when we make the relevant Service available to the Institution, whichever is the earlier (the "**Commencement Date**").

2.2 In case of conflict between, the following order of precedence shall be followed (highest priority first):

    (a)   any Supplemental Terms;

    (b)   the Order Form

    (c)   these Conditions; and

    (d)   Terms of Use.

2.3 The System is licensed and the Training is provided subject to these Conditions and these Conditions shall be the sole terms and conditions applicable to the Institution's use of the System or any Service. Terms and conditions on the Institution's order form, purchase order or other similar document shall not be binding on us.

2.4 The Institution acknowledges and agrees that: (i) if the Institution does not agree to the Terms of Use, any Contract entered into with us will immediately terminate; and (ii) if an individual User does not agree to the Terms of Use, it will not be entitled to access or use the System or any part thereof.

2.5 No representative, agent or other person has our authority to vary, amend or waive any of these Conditions on our behalf and no amendment or addition to any of these Conditions shall be deemed to have been accepted unless signed in writing by a Director of Arbor Education Partners Limited.

2.6 By entering into each Contract, the Institution represents, warrants, and undertakes that it has the requisite power and authority to enter into a Contract, 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. We shall be entitled to rely on this clause 2.6 as a condition of any Contract entered into pursuant to these Conditions.

2.7 The Institution may order additional Services under these Conditions by agreeing a new Order Form.

2.8 We may modify any terms of these Conditions at any time and at our sole discretion by informing the Institution no less than 30 days in advance 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 modification. If the Institution does not agree to any of the modifications, it may provide a written notice to us stating that the Institution does not accept the modification, after which we may, in our sole discretion and as the Institution's sole recourse: (a) terminate the relevant Contract (or the relevant Service); 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 shall apply to all or any Service(s).

2.9 The Institution acknowledges and agrees that Arbor may engage subcontractors (or third party agents) in order to provide the Services to the Institution.

3   Licence of the System

3.1 In consideration of the Institution paying the Fee in accordance with the payment mechanism detailed in the relevant Order Form, we grant to the Institution a non-exclusive, non-sublicensable, licence for the Licence Period (subject to earlier termination in accordance with these Conditions) to use the Services, and the Documentation, strictly for the Purpose and subject to these Conditions.

3.2 We warrant that the System will materially conform with the Documentation at the Commencement Date. The Institution's sole and exclusive remedy for our breach of this warranty shall be that we shall, upon receipt of written notice of breach, use reasonable endeavours to modify the System to be compliant with this warranty, and if we do not modify the System within a reasonable period of time, the Institution will be entitled to terminate the relevant Contract on written notice. The Institution acknowledges that, where it terminates a Contract in accordance with this clause 3.2, it shall not be entitled to any refund of any Fee paid for use of the System or any Service by the Institution before the date of such termination.

3.3 Subject to the foregoing warranty, the Institution agrees that we may modify or update the System or change the way it operates at any time without notice.

3.4 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

excluding where the System is detrimentally affected due to:

    (a)   any of our or our subcontractors' or third party agents' routine or emergency maintenance downtime;

    (b)   any improper use, misuse or unauthorised alteration of the System by the Institution;

    (c)   any use of the System by the Institution in a manner inconsistent with the then-current Documentation;

(d)   the use by the Institution of any hardware or software not provided by us 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 our reasonable control; or

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

3.5   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 us to lawfully carry out such interfacing and use such data as contemplated by these Conditions, including by way of the provision of a fair processing notice to individuals where they are providing personal data. The Institution shall fully indemnify us and hold us harmless against any claim that the Institution's use of the System or of such data breaches the intellectual property rights, confidentiality rights, privacy rights, or any other rights of any Third Party or Customer.

3.6   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.

3.7   We may suspend, disable or withdraw access to these API at any time, without any liability to the Institution or any Third Party.

3.8   The Institution acknowledges and agrees that APIs:

(a)   are provided free of charge

(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 our System, or which competes with any of our Services or products.

3.9   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 of the same. No warranties will be provided by Arbor in relation to any Third Party Integrations.

4   Access Rights

4.1   The Institution understands and agrees that it shall be responsible for administering and monitoring Access Rights to Users, including without limitation: (a) using its discretion to appoint administrators who shall be responsible for the Institution , Users' and Customers' use of the System (and any other Service) ("**Administrators**"); (b) allocating usernames and passwords to Users and/or Customers; and (c) attributing the appropriate level of Access Rights to each individual 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 Laws.

4.2 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 of the Institution's Administrators and/or Users) in respect of the level of Access Rights granted to any individual User.

4.3 With regards to Third Party Integrations, the Institution understands and agrees that it shall be solely responsible for:

(a) approving and/or rejecting any connection requests for Third Party Integrations; and

(b) administering, managing and monitoring a Third Party's Access Rights, which includes the ability of a Third Party to read (access data), write (create data), update (edit data) and/or delete Content from time to time.

4.4 Arbor shall not be responsible, and excludes liability (whether directly or indirectly arising), for the following:

(a) an Institution providing incorrect Access Rights to a Third Party;

(b) vetting any Third Party who wishes to implement a Third Party Integration for the Institution;

(c) any action or inaction, acts or omissions, of a Third Party;

(d) the Institution's use of the API /integration with the System; and/or

(e) the Institution's allocation of usernames and/or passwords to Users and/or Customers.

5 Support & Updates

5.1 All Institutions must have a support subscription from either Arbor or an Arbor Accredited Partner.

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, any problem with the System that we become aware of, and/or contact any Third Party to rectify an issue with a Third Party Integration.

5.3 Arbor shall not be responsible for maintaining, or remedying any 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 During the Licence Period we may (but shall be under no obligation to) modify, vary, update or otherwise adapt the System, in whole or in part (each, an "**Update**").

5.6 Updates shall take effect automatically, but we shall use reasonable endeavours to notify the Institution when an Update occurs.

5.7 The Institution understands and agrees that Updates may only ever be used for the Purpose and for no other purpose.

5.8 We shall have the right to access the System, including without limitation Content, for the purpose of maintaining the System. Further, we shall be entitled to change any user name, password or other access information allocated by us to the Institution for the purpose of essential network

maintenance, enhancement, modernisation or other work which we deem necessary for the operation of the System and/or its server.

5.9 The System may become unavailable for periods of time in order for planned maintenance to be performed. The Institution shall be given advance reasonable notice of any planned maintenance and we shall make reasonable efforts to ensure that the Institution's use of the System is not interrupted during planned maintenance.

6 The Institution's obligations

6.1 The Institution agrees that it shall:

(a) provide Arbor with all necessary co-operation in relation to this Contract;

(b) positively promote the System to all staff and pupils of the Institution, and where the Institution deems it appropriate, Customers, and encourage all such parties to become Users of the System;

(c) provide us with regular Feedback and bug reports relating to the System during the Licence Period;

(d) use reasonable efforts to ensure that any and all 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;

(e) comply with and ensure that all Users shall always comply with the Terms of Use. The Institution further agrees that we 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 User;

(f) ensure that all electronic communication between the Institution and Customers is protected by industry standard protection against unauthorised access to or manipulation of data;

(g) at no time during the life of the Contract use or permit or assist any third party to use the System for any purpose other than the Purpose;

(h) notify us promptly of any proposed or executed Accredited Partner Agreement, including details of the Accredited Partner;

(i) at no time enter into any Accredited Partner Agreement with any Third Party other than an Accredited Partner; and

(j) ensure all Users and/or Customers shall keep its and their (as applicable) registration and account details secure and confidential, including but not limited to Users' or Customers' names and passwords, and shall not share or disclose such information to any third party. The Institution shall be solely responsible for any information provided or actions undertaken using the log-in information provided to the Institution and its Users and/or Customers.

6.2 We shall send the Institution initial and subsequent invoices in accordance with Schedule 1, Section B of the Order Form. This Contract is made in accordance with Arbor Guide to Billing which is herein incorporated into the terms of this Contract and stored on Arbor's support centre online (https://support.arbor-education.com/hc/en-us/articles/360021916693) .

6.3 If the Institution does not give notice to terminate a Service in accordance with these Conditions after the Initial Licence Period (or any Extension Period) for that Service, the License Period for that Service shall automatically be extended for an additional Extension Period. The Institution shall pay us, at

our then-current pricing, the Fees for the Extension Period within 30 days of issue of an invoice from us.

6.4 The Institution agrees that the Fees shall be paid in full in pounds , 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.

6.5 If the Institution does not pay the Fees on time then we may suspend the Institution's access to the System without notice or liability.

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

6.7 The Institution acknowledges and agrees that where it provides notice to terminate in accordance with clauses 2.8(a) or 3.2 of these Conditions, then such notice shall be no less than 90 days' written notice and whilst Arbor will continue to support the Institution fully during this period, the Institution will need to make plans to export its data prior to Arbor deleting such data in accordance with clause 15.2. The nominated Arbor representative will contact the nominated Institution representative to confirm a migration date and mechanism to provide data in this time.

7   Content

7.1 The Institution agrees that it shall:

(a)   be solely responsible and liable for all Content, including without limitation User Content and any Content generated by or on behalf of the Institution which is uploaded to or otherwise made available to us by the Institution's use of the System or any Service; and

(b)   be responsible for monitoring Content, including without limitation User Content, and ensuring that such Content and User Content complies with the Terms of Use.

7.2 The Institution acknowledges and agrees that we shall not be responsible for monitoring any Content, including without limitation the User Content.

7.3 The Institution grants us a non-exclusive, royalty-free, worldwide, licence to copy, transmit, and use the Content, User Content, and any third party curriculum content uploaded to the System, for the Institution's purposes during the term of the Contract, and the Institution shall not upload any third party curriculum content to the System unless it has procured all necessary rights to do so.

7.4 To the extent that the Institution makes available to a Third Party any 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 Content or data by such Third Party.

8   <u>Hardware and internet</u>

8.1 Subject to condition 8.2 we confirm that: (a) we shall supply the System and, where applicable, Training, using reasonable skill and care; (b) all data and other Content, including User Content, shall at all times be stored on secure servers.

8.2 The Institution is responsible for obtaining, paying for and maintaining its own internet connection and hardware in order to make use of the System. We shall not be responsible for any error or downtime suffered by the Institution in respect of the Institution's internet and/or hardware. Further, except as expressly set out in the Contract, we shall not be responsible for any technical malfunction or other problems of any telephone network or service, computer systems, servers or providers, computer or mobile phone equipment, software or combination thereof, including injury or damage to any person's computer, mobile phone, or other hardware or software, related to or resulting from using the System, including without limitation downloading / uploading materials using the System.

9   <u>Payment Services</u>

9.1 Where agreed by us with the Institution in an Order Form, the Institution may utilise the Payment Services, subject to the terms of this clause 9 and any applicable terms and conditions of the Payment Provider, which the Institution must agree to prior to any use of the Payment Services.

9.2 The Institution acknowledges and agrees that the Payment Services are provided by a third party Payment Provider and not by Arbor, and will enable a Customer who has an account with that Payment Provider and has agreed to the Payment Providers terms and conditions and privacy notice, to transfer funds from the Customer's account to the Institution's account.

9.3 The Institution acknowledges that we are not a party to any transactions made using the Payment Services, and that we shall have no liability whatsoever to the Institution or to a Customer in respect of any use of the Payment Services by the Institution or the Customer.

9.4 The Institution agrees that we may change or withdraw the Payment Services at any time where there is a legal or technical reason to do so.

9.5 The Institution shall comply with our reasonable instructions and the reasonable instructions of any Payment Provider for the purposes of operating the Payment Services.

9.6 The Institution agrees that it shall be responsible for any fees or charges levied by any Payment Provider in respect of any transaction initiated using the Payment Services. The Institution shall pay our applicable Fees as identified in the Licence Summary, as well as any additional transaction fee charges which the Institution owes to the Payment Provider. The Institution acknowledges that these charges will be payable by the Institution, but shall be charged by the Payment Provider to Arbor initially. Arbor will send to the Institution an invoice on a fortnightly basis to recover the transaction charges it has paid to the Payment Provider during that period. Such charges will be exclusive of VAT, which shall also be payable by the Institution.

9.7 The Institution shall comply with the terms and conditions of the Payment Provider and shall indemnify Arbor fully against any claims, losses or damages arising out the Institutions breach of such terms and conditions.

9.8 The Institution shall ensure that it records and retains all data relating to each transaction made using the Payment Services, and shall make available such records on Arbor's reasonable request, to enable Arbor to audit the Institution's compliance with clause 9.7, or in the event of any dispute between Arbor and a Payment Provider in respect of the amount of charges due for the Institution's use of the Payment Services.

9.9 The Institution agrees that it shall be responsible for, and shall indemnify us fully against any claims, costs or losses arising in connection with any unauthorised use of the Payment Services by its Customers, Users, employees, agents or contractors.

10 **Intellectual Property**

10.1 The Institution acknowledges and agrees that: (a) all Intellectual Property Rights in or relating to the System, the Documentation, the API, and/or any Service belongs to and shall remain vested in us or our licensors, as applicable; (b) the System, the Documentation, the API and any Service is licensed (not sold) to the Institution for the Licence Period only; and (c) except as expressly set out in these Conditions, the Institution has no rights in or to the System, the Documentation, the API or any Service, or any part thereof, and nothing said or done by either party shall constitute a transfer of such rights.

10.2 The Institution shall, as between the parties, own or be responsible for any data it makes available to us through its use of the System, including personal data, Content, User Content, and third party curriculum content ("**Institution Data**"), and the Institution shall ensure that it has all necessary permissions, licences, or consents to make such Institution Data available to us. The Institution acknowledges and agrees that Feedback and benchmarking data (of the anonymised aggregation of data including Institution Data) shall be owned by us.

10.3 The Institution hereby grants to us a royalty-free, non-transferable, non-exclusive licence to use, copy, and otherwise utilise the Institution Data to the extent necessary for us to benchmark, provide the System and any Service, or to enable us to perform our rights, remedies and obligations under these Conditions.

10.4 The Institution hereby assigns, and shall procure that any Users assign, to us absolutely and with full title guarantee (including by way of present assignment of future Intellectual Property Rights) any Intellectual Property Rights in any Feedback provided to us pursuant to these Conditions.

10.5 The Institution hereby waives (and shall ensure that all 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 part of the world.

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 1111.4, 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 the implementation of 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, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

11.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

11.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Arbor's Confidential Information.

11.7 Arbor acknowledges that the Customer Data is the Confidential Information of the Customer.

11.8 No party shall make, or permit any person to make, any public announcement concerning this Contract without the prior written consent of the other parties (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.

11.9 The above provisions of this clause 11 shall survive termination of this Contract, however arising.

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12 Liability

12.1 The Institution understands and agrees that:

    (a) No warranty is given that the System (in whole or in part) is 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 System is provided "as is";

(b) 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, its use of the System or its receipt of the Additional Support; and

(c) the System has not been developed to meet the Institution's individual requirements. Except as expressly set out in these Conditions, all warranties, conditions and other terms implied by statute or common law or otherwise are, to the fullest extent permitted by law, excluded from each Contract. Nothing in these Conditions limits or excludes the liability of either party for death or personal injury resulting from negligence; or for any damage or liability incurred by a party as a result of fraud or fraudulent misrepresentation by the other party.

12.2   Subject to conditions 3.5   and 12.3 (where such liability shall not be limited):

(a) Neither party shall be liable for any loss of profits; or loss of business; or depletion of goodwill and/or similar losses; or loss of anticipated savings; or loss of goods; or loss of contract; or loss of use; or loss or corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and

(b) each party's total liability arising under or in connection with all Contracts entered into pursuant to these Conditions, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, or otherwise shall be limited in the aggregate to the Fee paid or payable by the Institution to Us for the year in which the breach occurs.

12.3   Notwithstanding the provisions of this clause 12, where Supplemental Terms apply, the Institution's sole remedy for any breach of the Supplemental Terms shall be as set out in the Supplemental Terms.

12.4   The Institution shall fully indemnify us and hold us harmless and keep us indemnified in respect of any 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 12.4 shall not exceed the Fee payable by the Institution in the 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 year in which the liability arises, whichever is the higher:

(a) the Institution's use of the System in any way which does not comply with our reasonable instructions and/or the Terms of Use;

(b) any claim that any Content (including without limitation User Content) infringes any Intellectual Property Right of any third party;

(c) any claim by any Third Party to which the Institution makes available any data or Content from the System, where such Third Party places any reliance on the quality or content of such data or Content;

(d) any breach by the Institution of the Data Protection Laws; 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 Audit Rights

13.1 The Institution shall allow and procure for us (or any of our authorised representatives) access to the Institution's records in order to permit us to inspect use of the System and to audit (and take copies of) any relevant

records to the extent necessary for us to verify that the Institution is in compliance with its obligations under these Conditions.

13.2   Unless otherwise agreed in writing, the inspection and audit referred to in clause 13.1 shall be undertaken during the Institution's normal business hours, and subject to us having given no less than five (5) working days' notice, no more than once in any calendar year.

13.3   The Institution acknowledges and agrees that we may monitor, collect, store and use information relating to the Institution's use of, and the performance of, the System (including the Institution Data) in order to detect threats or errors to the System and/or our operations, and for the purposes of further developing and improving the System, provided that such activities at all times comply with the Data Protection Laws.

14   Force Majeure

Arbor shall have no liability to the Customer under this Contract if it is prevented from or delayed in performing its obligations under this 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 sub-contractors, and Arbor shall ensure that the Customer is notified of such an event as soon as reasonably possible and its expected duration.

15   Termination

15.1 Without prejudice to any rights or remedies already accrued to a party, either party may terminate the Contract at any time with immediate effect by giving written notice to the other if the other commits a material breach of the Contract which is not capable of remedy or if it is capable of remedy, if it does not remedy such breach within 21 days of receiving notice from the other requiring it to do so;

15.2   Upon expiration or termination of the Contract for any reason and at any time: (a) all rights and licences granted to the Institution under the Contract shall immediately cease and the Institution shall cease all activities authorised by the Contract; (b) we shall be entitled to disable the Institution's access of the System, in whole or in part; and (c) for up to 7 days following termination we shall, upon written request from the Institution, make available to the Institution such data as held on the System at the termination date in a format to be agreed between the parties at the time of such expiration or termination. We shall be entitled to charge a reasonable administration fee for this service which shall be notified in advance to the Institution. Institution data shall not be available and will be automatically deleted immediately after this 7 day period has ended (except any data we are required to retain by law).

15.3   The Institution understands and agrees that: (a) in the event of planned maintenance and/or the Institution breaching the terms of the Contract (which shall include any breach by a User) we shall be entitled to disable the Institution's access and use of the System, in whole or in part. For the

avoidance of doubt, in the event that the Institution's right of access to the System is disabled at any time, howsoever caused, any and all Users' access and use of the System shall also be disabled; and (b) in the event that a User breaches the Terms of Use or at any time upon us giving reasonable prior notice to the Institution, we shall be entitled to disable any User's access and use of the System, in whole or in part.

15.4 The Institution understands that in the event our relationship with any of our third party suppliers who provide software, hosting or other software, technology or related services to us ("**Third Party Supplier**") terminates or expires for any reason, or if the Third Party Supplier requires us to change the way we provide the System or other technology, we shall (where such expiry, termination or change impacts on our ability to licence the System to the Institution) be entitled to suspend the Institution's access on a temporary basis and/or terminate the relevant Contract with immediate effect upon giving the Institution written notice.

16 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.

17 Governing Law

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 law of England and Wales.

18 Notices

18.1 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 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. Legal notices may not be validly served by email but this shall not preclude other matters requiring agreement in writing to be agreed over email.

18.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 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.

18.3 Writing shall include email.

19   General

19.1   Interest shall be chargeable on any late payment under this Contract at a rate of 8% above the base rate of the Bank of England, applied per month.

19.2   Training Services and Professional Services will be valid for up to 12months from date of purchase or until the end of the Contract Term, whichever is earlier.

19.3   The Institution understands that if we fail or delay in exercising any of our rights under the Contract then that failure/delay shall not operate as a waiver of such right. Further, any single or partial exercise of a right or remedy available to us under the Contract shall not preclude any further exercise of that right or the exercise of any other right or remedy.

19.4   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.

19.5   These Conditions (together with the Terms of Use and the Licence Summary) represents the entire agreement between the parties and supersedes any prior agreement, understanding or arrangement between us 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 these Conditions.

19.6   The Contract shall be governed by and construed in accordance with English Law and each party submits to the exclusive jurisdiction of the English courts.

19.7   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.

19.8   The Institution may assign or novate or transfer its rights or obligations under these Conditions in whole without our prior written consent but on reasonable written notice.

19.9   We may assign, novate, sub-contract (in accordance with clause 2.9), or otherwise transfer any right or obligation under these Conditions in whole or in part at any time without notice (subject to paragraph 6.5 Schedule 1) or consent but will notify the Institution promptly as soon as reasonably practicable after any such event occurring.

Schedule 1 Data Processing

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

2   The Institution and Arbor acknowledge that for the purposes of this Contract Arbor shall act as Data Processor and the Institution shall act as Data Controller.

3   Each party will comply with its obligations under all relevant Data Protection Laws at all times in relation to this Contract.

4   Arbor will without undue delay inform the Institution if, in connection with the Agreement, it:

4.1   discovers or reasonably suspects that any personal data relating to this Contract has been accidentally or unlawfully destroyed, lost, altered, or disclosed:

4.2   has been contacted by any person seeking to exercise any right under the Data Protection Laws; or

4.3   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.

5   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 without the prior written consent of the

Institution (which consent may be conditional upon Arbor or the relevant third parties entering into an Contract containing similar terms to these terms with the Institution) 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 and the relevant importing entity participate in a valid cross-border transfer mechanism under the Data Protection Legislation, 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. If any Personal Data transfer between the Arbor and the importing entity requires execution of an International Data Transfer Agreement, International Data Transfer Addendum to EU Commission Standard Contractual Clauses and/or EU Commission Standard Contractual Clauses in order to comply with the Data Protection Legislation (where Arbor is exporting Personal Data to an importing entity outside the EEA), the parties will complete all relevant details in, and execute, the relevant documentation, and take all other actions required to legitimise the transfer.

6   Arbor:

6.1   shall only process personal data in accordance with the instructions of the Institution;

6.2   warrants that it has in place and undertakes to 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 and that it has appropriate security programmes and procedures in place to ensure that unauthorised persons do not have access to personal data or to any equipment used to process personal data;

6.3   warrants that it has in place procedures to promptly and effectively deal with 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) and to assist the Institution in addressing such requests, queries or complaints;

6.4   shall 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;

6.5   save for its existing sub-processors (which are listed on the Support Centre Data Protection Section here https://support.arbor-education.com/hc/en-us/articles/360013442894-Arbor-s-Data-Protection-Policy-to-comply-with-GDPR) , shall only engage a sub-processor where it has provided advance notice of the appointment of the sub-processor so that the Institution may object to such appointment if it deems the appointment will unduly prejudice the rights of the relevant data subjects;

6.6   to the extent that it engages a sub-processor for the purposes of providing data processing in relation to this Contract, it will ensure that equivalent data protection obligations to that contained within this Contract are imposed on that sub-processor by way of contract;

6.7 shall keep records of all processing undertaken by it in relation to this Contract and shall make available to the Institution all information necessary to demonstrate compliance with the obligations in this paragraph 6 of this Schedule 1;

6.8 shall immediately inform the Institution if, in its opinion, an instruction infringes Data Protection Laws and shall refrain from such processing until consultation with the Institution on how to continue processing in a compliant manner;

6.9 at the end of the Term cease processing on the Institution's behalf 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

6.10 shall 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 1.

7 If, during the Term, the Institution instructs 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 sub-processor of Arbor.

8 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 sub-processors and ensuring that any Third Party has appropriate agreements in place with their sub-processors.

9 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 sub-processors), its Access Rights or the Third Party Integration itself.

10 Any loss of personal data by a Third Party (or its sub-processors), or Content, or incorrect data processed by a Third Party (or its sub-processors) 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.

11 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).

12 Arbor reserves the right to:

(a) decline any request by an Institution to use a Third Party Integration for any reason (acting reasonably);

(b) 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 2: Service Credits for Advanced Support Users

The provision of Service Credits is subject to these Supplemental Terms. All initial capitalised terms in these Supplemental Terms shall have the meaning given to them in the Conditions. Please note that these Supplemental Terms only apply to those Institutions with Arbor Advanced Support.

1. **Interpretation**

The following definitions and rules of interpretation apply in these Supplemental Terms.

1.1   Definitions:

Available	the System, including both Arbor MIS and Arbor MIS for Groups and MAT (but excluding any Third Party Integrations) is working and functional for use by an Institution.
Expected Outage	any period of planned downtime where the System, or any part of it, will not be Available to a maximum of 2 hours.
Institution Fault	any of the following causes:
	(a) any improper use, misuse or unauthorised alteration of the System by the Institution;
	(b) any use of the System by the Institution in a manner inconsistent with the then-current Documentation;
	(c) the use by the Institution of any hardware or software not provided by us or approved by us for use by the Institution in connection with the System;
	(d) a failure between the Institution's computer(s) and the internet; or
	(e) the Institution's action or inaction, or any action or inaction of the Users or the Institution's other suppliers.
Parameters	when System Availability is breached on 2 (two) or more occasions within consecutive months.
Service Credits	as calculated in paragraph 3.3.

System Availability	the System being Available 99.8% during Working Hours, and 98.5% outside of Working Hours, calculated as an average for all Institutions in any calendar month, and as determined by our monitoring service.

2. System Availability

We will use our reasonable endeavours to maximise uptime and ensure the System Availability during the Licence Period. For the avoidance of doubt, availability of Services offered by a Third Party that complement the System, including Third Party Integrations, shall not be taken into account in calculating System Availability.

3. Service Credits

3.1 Subject to paragraph 3.2, the Institution may make a claim for Service Credits if:

3.1.1 we fail to ensure the System is Available in accordance with the System Availability; and

3.1.2 the failure occurs outside of the Parameters only;

3.2 Service Credits shall not be provided where System Availability is detrimentally affected due to:

3.2.1 Institution Fault;

3.2.2 subcontractors' or third party agents' routine or emergency maintenance;

3.2.3 Third Party Integrations;

3.2.4 Expected Outages, provided it is communicated to an Institution no less than 12 hours in advance of such downtime; and/or

3.2.5 Cyber attack, distributed denial of service attack, virus or similar;

3.2.6 factors outside of our reasonable control, including acts or omissions of any other third party or emergency maintenance.

3.3 Service Credits are calculated as follows:

A – B = C

A = the number of minutes the System is not Available in accordance with the System Availability
B = minutes attributed to any of the exclusions in paragraph 3.2
C = the total number of minutes the System is not Available, which would attract Service Credits and in calculating the Service Credits, each minute of downtime equates to one hour.

A worked example being:

In January and February, the monthly average System Availability levels for Institutions falls below 99.8% during Working Hours. In January, this equated to three minutes, and in February, three minutes. As this falls within the Parameters, the Institution would be entitled to make a claim for Service Credits.

Of those six minutes, four of the minutes were due to failures in Third Party Integrations. Therefore, subject to paragraph 3.5, the Institution may make a claim for Service Credits for the two minutes of downtime. In this instance, the two minutes would be converted to two hours in order to work out the total number of Service Credits due to the Institution, as below:

C * D = Service Credit due to the Institution

C = the total number of hours (as converted from minutes)
D = the average hourly licence fee payable by the Institution in the calendar month the downtime occurs.

A worked example being:

If the total number of hours is 2, and the average hourly licence fee is £500, the total Service Credit due to the Institution in their next invoice is £1,000.

3.4   The parties acknowledge that each Service Credit is proportionate when considering the Institution's legitimate interest to ensure that the System is Available.

3.5   The maximum number of Service Credits an Institution may claim in the Licence Period is 24 hours.

3.6   The provision of a Service Credit shall be an exclusive remedy for any particular System Availability failure.

4.   **How to claim a Service Credit**

4.1   The Institution must make a claim for a Service Credit within 30 (thirty) days of the failure in System Availability by writing to us. Failure to do so will result in the Service Credit being void.

4.2   In order to make a claim, the Institution must contact us by email: account-managers@arbor-education.com

4.3   We will check System Availability and either confirm or deny that the Institution may claim a Service Credit.

4.4   If a Service Credit is due to an Institution, it shall be applied to the next invoice raised. Using the earlier example, if the Institution is entitled to Service Credits which amount to the value of two hours of System Availability (due to two minutes of downtime), the Fee will be reduced accordingly in the invoice by £1,000.

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