

ARX PARTNERS TERMS AND CONDITIONS

1. Definitions and Interpretation

1.1. Definitions: In this agreement, the following words and phrases shall have the following meanings unless the context otherwise requires:

Administrator	means the person appointed by Client to carry out the ongoing management of the Software on behalf of Client, whose responsibilities will include adding and editing lists of Sites to be reviewed and the Users.
Additional Services	means the services supplied by arx to Client other than the Core Services as set out in the Deal Sheet or as otherwise agreed between the parties in writing from time to time.
Additional Services Fee	means the fee for any Additional Services as set out in the Deal Sheet or as otherwise agreed between the parties in writing from time to time.
arx IP	as defined in clause 4.1.
Assessment	means the process of using the Software to complete a set of defined questions presented through the Question Sets for a designated site that results in a User generating a report that provides an overall risk rating for that site and guidance on how to mitigate any areas of risks and vulnerability.
Core Services	means those services provided through the Software to Client by arx as set out in Clause 2 below.
Data Controller	shall have the meaning prescribed by the Data Protection Legislation.
Data Processor	shall have the meaning prescribed by the Data Protection Legislation.
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 the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended.
Fees	means the fees paid by Client to arx in consideration of the Services, including the Set Up Fees and the Core Service Fees, as set out in the Deal Sheet.
Force Majeure	means any circumstances beyond the reasonable control of the party in question including war, riots, fire, explosion, government action, seriously adverse weather conditions, accident, breakdown of plant or machinery (save as a result of failure to maintain such plant and machinery in accordance with good industrial practice), non-performance by suppliers or subcontractors, interruption or failure of utility service, unavailability of transport or acts of the other party or any third party.
Intellectual Property or IP	means patents, trade marks, copyright, database rights, domain names, rights in confidential information (including know-how and trade secrets) and any and all other intellectual property rights and sui generis rights and other similar rights (whether now subsisting or in the future created) both in the United Kingdom and all other countries of the world for the full period for which those rights subsist (including any and all extensions and renewals and all vested, future and contingent rights and rights under licences) and all applications for the foregoing.
Personal Data	shall have the meaning prescribed by the Data Protection Legislation.
Platform	means arx's online portal and/or arx's mobile application through which the Client accesses the Software.
Processing	shall have the meaning prescribed by the Data Protection Legislation and "process" and "processed" shall be construed accordingly.

Question Sets	means the sets of questions provided by arx and/or Client (or their licensors) and incorporated into the Software for completion by the Users as part of Assessments and to generate Reports.
Report	means a report which identifies risks and proposes practical risk mitigation measures whilst signposting to Users the relevant current UK best practice.
Services	means the Core Services and the Additional Services.
Set Up Fees	means non-refundable fees paid by Client to set up the Software so that it meets Client's needs.
Sites	means locations owned or operated by Client and other premises at or from which Client operates or otherwise has permission to run an Assessment(s) on.
Software	means the software through which the Services are provided.
Software Code and Documentation	means the computer software (both object code and source code), flow charts, algorithms, sub-routines, utilities, modules, file structures, coding sheets and programming notes, technical, functional and other specifications and other materials and documents relating to the Software and necessary for the normal operation of the Platform as a whole and its support and maintenance.
Term	in relation to the duration of this agreement, has the meaning set out in the Deal Sheet.
Update	means a hotfix, patch or minor version update to the Software.
Upgrade	means a major version upgrade of the Software.
User	means a person (including any Client employee, contractor or agent) authorised to access the Platform and use the Software on behalf of the Client as defined in the Deal Sheet.

- 1.2 Where there is any manifest inconsistency between the provisions of any of the Deal Sheet and the remainder of this agreement, the provisions of the Deal Sheet shall prevail. References to a "person" include natural persons, corporations, companies, firms, associations and organisations. References to "including" and "include" shall be construed as illustrative and deemed to mean respectively "including without limitation" and "include without limitation". References in this Agreement to any statute, statutory provision or regulation includes a reference to:- (a) that statute, statutory provision or regulations as from time to time amended, extended, re-enacted or consolidated whether before or after the date of this agreement; and (b) all statutory instruments or orders made pursuant to it.
2. The Core Services
 - 2.1. These terms together with the attached Deal Sheet shall govern continuing business in relation to the agreement between Client and arx.
 - 2.2. Client shall, subject to the provisions of this agreement, be entitled to access and use the Software via the Platform for the Purpose(s) as further set out in the Deal Sheet.
3. The Additional Services
 - 3.1. Subject to the payment of the appropriate Additional Services Fee, Client may purchase Additional Services from arx, which shall be set out in the Deal Sheet or otherwise agreed between the parties from time to time.
 - 3.2. arx shall provide the Additional Services to Client in accordance with the description and/or specification published in respect of each individual Additional Service.
4. Licence
 - 4.1. Title and ownership of all Intellectual Property subsisting in the Platform, the Software, the Question Sets, the Software Code and Documentation and any other part of the Core Services remains with arx (the "**arx IP**"). Except as expressly provided in this agreement, nothing shall be construed to grant to Client any right, title or interest in or to the arx IP. The ownership of any and all IP which exists in any changes, modifications, adaptations or improvements made to the Software and/or the Question Sets by Client shall remain with arx.
 - 4.2. In consideration of the payment of the Fees and Client fulfilling its obligations (as set out in

- clause 6 of this agreement), arx hereby grants to Client a limited, non-exclusive, non-transferable licence, during the Term, to use the arx IP to access and use the Software via the Platform, including inputting the necessary information requested, for the purpose of receiving the Core Services to undertake Assessments and produce and use Reports. The foregoing licence shall be non-sublicensable except to Users.
- 4.3. Subject always to clause 4.4, the Report and any Intellectual Property subsisting in it shall be a deliverable under this agreement and, once produced, shall be owned by Client. Client hereby grants arx a perpetual licence to use the Report.
- 4.4. Any and all data generated through Client's use of the Platform and the Software (excluding any Personal Data which shall be processed and handled in accordance with arx's privacy policy from time to time) shall belong to arx and arx hereby grants Client a licence to use such data as part of and to use the Report.
- 4.5. Nothing in this agreement shall be so construed as to require arx to assign to Client any rights whatsoever in relation to such ideas, know-how, methodologies and techniques developed by arx whether prior to or in the course of performance of this agreement as together constitute the expertise which arx brings to bear on the performance of its obligations hereunder.
- 4.6. The Software shall only be accessed only through the Platform.
- 4.7. The number of Users permitted to access and use the Software on behalf of the Client are set out in the Deal Sheet. Each User must use an individual email address and password to access the Software and ensure that they keep such access details confidential. Any failure to adhere to the foregoing shall be deemed a material breach of this agreement.
- 4.8. The Software shall materially conform to the specification provided by arx to Client as set out in the Deal Sheet. However, arx does not represent or warrant that access to the Software and/or Platform or any part of it will be uninterrupted, reliable or fault free.
- 4.9. The licence granted under this clause 4 includes the right to deploy and use all Updates to the Software that arx elects to incorporate into and make part of the Software and for which arx does not charge an additional fee above and beyond the Fees. It does not, however, include any Upgrades, including any bespoke developments that Client may request, for which arx reserves the right to charge additional fees.
- 4.10. The Client shall not:
- 4.10.1. permit any person other than a registered User to access and use the Software and/or the Platform;
- 4.10.2. sub-license or in any other way allow access to the Software, Platform and/or the Website to any third party;
- 4.10.3. introduce or permit the introduction of any spyware, malware, virus or additional or substitutional computer or programming code into the Software, the Platform or the Website.
- 4.11. The Client shall be entitled to access and review all information:
- 4.11.1. uploaded into the Software by or on behalf of the Client; and
- 4.11.2. uploaded by a User and specifically made available by that User for review by Client.
5. Obligations of Arx
- 5.1. In consideration of the agreement by Client to fulfil the obligations of Client set out in Clause 6 below, arx shall:
- 5.1.1. provide the Core Services and any Additional Services which are purchased by Client;
- 5.1.2. use its reasonable endeavours to ensure that, save for notified maintenance periods, the Platform through which the Software can be accessed is continuously available between 9 am and 6 am the following day seven days per week;
- 5.1.3. exercise such reasonable skill care and diligence as would be expected of an experienced provider of the Services;
- 5.1.4. perform such maintenance and other actions reasonably required to maintain the Software and the Platform in full working order;
- 5.1.5. notify Client of any significant intended maintenance of the Platform and Software or the systems which support the same and which will result in reduced availability of the Platform and/or the Software, on reasonable notice and wherever practicable at least three days prior to such work being undertaken;
- 5.1.6. seek to undertake any significant maintenance of the Platform and/or Software outside the hours of 9am to 6pm GMT;

5.1.7.	establish and implement reasonable steps to protect, from access by any unauthorised person, the information uploaded into the Software by Client;	Software operates and their and Client's obligations in respect of entering information in accordance with this agreement and any rules and guidance issued by arx from time to time.
5.1.8.	store the electronic information uploaded by Client into the Software and use reasonable endeavours to enable the Client to access the information so uploaded.	
5.2.	Should Client's use of the Software be determined to have infringed, or if, in arx's reasonable opinion, such use would be likely to infringe, any Intellectual Property of any third party, arx may at its option and expense: (a) procure for Client the right to continue using the Software or the relevant part thereof; or (b) replace or modify the Software or the relevant part thereof to render Client's use non-infringing, provided always that any such replacement or modification shall not degrade performance of the Software as set out in this agreement. If neither option (a) nor option (b) produces an outcome which arx considers to be commercially acceptable, arx may terminate this Agreement in accordance with clause 8.2.1 below, and Client shall on receipt of written notice from arx to do so immediately cease to use and deliver up (or at arx's option destroy) the Software. In such circumstances and without prejudice to any of Client's other rights and remedies arising under this agreement, arx shall refund any fees and other charges paid under this agreement which relate to a period after the date on which Client's right to use the Software so ceased.	6.2. Client warrants: 6.2.1. that it will not, and will ensure that the Users will not, upload any information into the Software which is illegal, obscene, threatening, defamatory or discriminatory, or which breaches the Intellectual Property rights of arx or of any third party, or which promotes or condones any illegal or unlawful activity or is otherwise actionable or in violation of any of the rules, regulations or laws to which the Software and the Website are subject; and 6.2.2. that it will not, and will ensure that the Users will not, upload into the Software any information which it or they know to be inaccurate or misleading.
6.	Obligations of Client	6.3. Client agrees not to reverse-engineer, disassemble, decompile, translate or modify the Software or any part thereof except where permitted by applicable law.
6.1.	In consideration of this agreement, of the licence granted of the Software, and of the provision of the Services, Client will: 6.1.1. promptly pay the Fees for the Core Service and any Additional Services Fee, if such a Fee is charged; 6.1.2. use the Software strictly and only in accordance with the rules and guidance issued in respect of the operation of the Software; 6.1.3. appoint the Administrator to manage Client's use of the Software; 6.1.4. appoint Users of the Software on behalf of Client to input information into the Software; and 6.1.5. ensure that all Users appointed by Client understand how the	7. Fees 7.1. The Core Services shall be provided by arx to Client at the Fee specified in the relevant Deal Sheet. 7.2. Any Additional Services Fee is dependent upon the Additional Services ordered by Client and shall be agreed between the parties in writing from time to time. 7.3. All sums are exclusive of VAT which shall be charged by arx at the prevailing rate from time to time. 7.4. arx shall invoice Client for the Fees in accordance with the terms set out in the Deal Sheet. 7.5. Client shall pay all invoices within 14 (fourteen) days of the date of the invoice unless otherwise set out in the Deal Sheet. 7.6. Payments which are not received by the date payable will be considered overdue and will remain payable in full by Client together with interest for late payment from the date payable to the date of full payment at 8% per annum plus the Bank of England base rate for business to

	business transactions. In addition to the foregoing right to charge interest, arx shall also be entitled to immediately suspend provision of the Services and access to/use of the Platform and Software by Client unless and until it receives such unpaid sums.		
8.	Termination	9.	Consequences of Termination
8.1.	arx may terminate this agreement immediately on written notice:	9.1.	Following termination of this agreement, Client shall not be entitled to access and use the Software and all licences granted under this Agreement shall end.
8.1.1.	should any sum payable to arx by Client not be paid within 30 (thirty) days of Client being notified by arx that a sum due to arx has not been paid;	9.2.	If this agreement is terminated by Client under Clause 8.2, Client will be liable to pay arx the Fees due for the first year of the Term.
8.1.2.	should Client take any action or fail to take any action which is inimical to arx.	9.3.	The information which has been entered into the Software by or on behalf of the Client shall be either returned to the Client or destroyed.
8.1.3.	should arx reasonably believe that its relationship with Client will or may reasonably be thought to affect adversely the reputation of arx.	9.4.	Set Up Fees are non-refundable and will not be returned.
8.2.	Client may, when 6 (six) months of the Initial Term have elapsed (the “ Break Date ”), terminate this agreement by giving arx written notice provided always that such notice is given within the 1 (one) month period prior the Break Date.	10.	Limitation of Liability
8.3.	Either party:	10.1.	Nothing in this agreement excludes or limits the liability of arx for: (a) death or personal injury caused by arx’s negligence; or (b) fraud; or (c) any other liability which cannot be excluded or limited under applicable law.
8.3.1.	shall be entitled to terminate this agreement forthwith by written notice to the other if that other party commits any material breach of the agreement and fails to remedy such breach within 7 (seven) business days after receipt of a written notice giving full particulars of such material breach and requiring it to be remedied;	10.2.	Subject to Clause 10.1, arx shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement.
8.3.2.	may without prejudice to its other rights, terminate this agreement forthwith by written notice if the other party shall have a receiver appointed, or shall pass a resolution for winding-up (other than a winding-up for the purposes of or in connection with any amalgamation or reconstruction while solvent) (or in the case of an individual be declared bankrupt) or a Court shall make an order to that effect, or if either party shall enter into any composition or arrangement with its creditors (other than relating to a solvent restructuring of its lending facilities) or shall cease to carry on business.	10.3.	Subject to Clauses 10.1 and 10.2, arx’s maximum aggregate liability arising out of or in connection with this agreement, whether in contract or tort (including in each case negligence) or otherwise shall in no circumstances exceed in aggregate of the Fees paid by Client and received by arx in cleared funds in the 12 months prior to the event giving rise to liability.
		11.	Data Protection: For the purposes of this agreement Client is a Data Controller of the Personal Data and arx is a Data Processor. arx agrees to comply with the data processing terms set out at Annex 2 of this agreement.
		12.	Confidentiality
			The parties agree to treat as secret and confidential, and not at any time for any reason to disclose or permit to be disclosed to any person or persons or otherwise make use of or permit to be made use of, all and any information relating to the business affairs or finances of the other party where knowledge or details of that information was acquired as a result of or in connection with this agreement.

13.	Whole Agreement		be appropriate to mitigate the effects of such Force Majeure.
	Each party acknowledges that this agreement contains the whole agreement between parties and that it has not relied upon any oral or written representation made to it by or on behalf of the other.	16.3.	If subject to Force Majeure the defaulting party shall:
		16.3.1.	use all reasonable endeavours and employ all reasonable means to remedy or abate the Force Majeure as expeditiously as practicable;
14.	Assignment	16.3.2.	resume performance of this agreement as expeditiously as practicable after termination of the Force Majeure or after the Force Majeure has abated to an extent which permits resumption of such performance;
14.1.	Arx may assign this agreement to a successor in title to the business undertaken by arx, provided that arx disposes of the whole business entity in respect of which the Software is used.	16.3.3.	notify the other party forthwith when the Force Majeure has terminated or abated to an extent which permits resumption of performance to occur; and
14.2.	Client may not appoint sub-licensees.	16.3.4.	notify the other party when resumption of performance will or is likely to occur.
15.	Amendment		
15.1.	From time to time arx may add new features to the Services and enhance the level of service that is offered to Client. This may lead to changes in this agreement. Other changes may result from operational requirements.	16.4.	If the event of Force Majeure endure for longer than 3 (three) months this agreement shall automatically terminate, without prejudice to the accrued rights of the parties under it.
15.2.	Any such changes will be notified to Client at least one month prior to commencement of the changes, and by arx notifying Client of the changes and Client's subsequent use of the Services, Client will be deemed to have accepted the changes.	17.	Third Parties
16.	Force Majeure	17.1.	The parties confirm their intent not to confer any rights on any third parties by virtue of this agreement and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement.
16.1.	Provided always that the parties take all reasonable steps to prevent and/or mitigate a Force Majeure event, the defaulting party shall be excused performance of its obligations under or pursuant to this agreement if and to the extent that its performance is delayed, hindered or prevented by an event of Force Majeure.	18.	Jurisdiction and Governing Law
		18.1.	This agreement is governed by English law.
16.2.	If a party is subject to an event of Force Majeure or is aware of the likelihood of a situation constituting Force Majeure arising, it shall notify the other party in writing forthwith of the cause and effect of such non-performance or likely non-performance, the date or likely date of commencement thereof and the means proposed to be adopted to remedy or abate the Force Majeure, and the parties shall without prejudice consult with a view to taking such steps as may	18.2.	The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to hear and determine any dispute, demand, claim, controversy or other matter arising out of, under, or in connection with this agreement or the legal relationship established by this agreement (including for the avoidance of doubt any matter relating to its essential validity).
		18.3.	This agreement is made in English which is the sole authentic language for its interpretation.

ANNEX 2
DATA PROCESSING AGREEMENT

1. DATA PROTECTION

- 1.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Annex is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 1.2 The parties acknowledge that for the purposes of the Data Protection Legislation, Client is the data controller and arx is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation). Schedule 1 to this Annex 2 sets out the scope, nature and purpose of processing by us, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation) and categories of data subject for which we are data processor under this agreement (the "**Personal Data**").
- 1.3 Without prejudice to the generality of paragraph 1.1, Client shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to arx for the duration and purposes of this agreement.
- 1.4 Without prejudice to the generality of paragraph 1.1, arx shall, in relation to any Personal Data processed in connection with the performance by arx of its obligations under this agreement:
- (a) process that Personal Data only on Client's written instructions unless it is required by the laws of the UK applicable to arx to process the Personal Data ("**Applicable Laws**"). Where arx is relying Applicable Laws, it shall promptly notify Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit arx from so notifying Client;
 - (b) ensure that arx place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting the Personal Data, ensuring confidentiality, integrity, availability and resilience of arx's systems and services, ensuring that availability of and access to the Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by us);
 - (c) ensure that all personnel who have access to and/or process the Personal Data are obliged to keep the Personal Data confidential; and
 - (d) not transfer any Personal Data outside of the UK unless the following conditions are fulfilled:
 - (i) arx has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) arx complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) arx complies with reasonable instructions notified to it in advance by Client with respect to the processing of the Personal Data;
 - (e) assist Client, at Client's cost, in responding to any request from a data subject of the Personal Data and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify Client without undue delay on becoming aware of a Personal Data breach;
 - (g) at Client's written direction, delete or return the Personal Data and copies thereof to Client on termination of this Agreement unless required by Applicable Law to store the Personal Data; and
 - (h) maintain complete and accurate records and information to demonstrate its compliance with this Annex 2.
- 1.5 Client consents to arx appointing those third party processors as outlined in its privacy policy (the current version of which is available at our website) as a third-party processor of the Personal Data under this agreement together with such other third party processors as arx may appoint and identify under such privacy policy from time to time. arx confirms that it has entered into, or (as the case may be) will enter into, a written agreement with that third party processor substantially on that third party's standard terms of business. As between arx and Client, it shall remain fully liable for all acts or omissions of any third-party processor appointed by arx under this paragraph.

Schedule 1
Processing, Personal Data and Data Subjects

1. Processing by arx
 - 1.1 Scope: In order for arx to perform the Core Services for the Client under this agreement
 - 1.2 Nature: In order for arx to perform the Core Services for the Client under this agreement
 - 1.3 Purpose of processing: Why are you processing the data – e.g. in order to facilitate the use of the Platform by the Client and the production of survey results
 - 1.4 Duration of the processing: During the Term.
2. Types of personal data
First Name, Last Name, Email Address.
3. Categories of data subject
all Platform Users, the Client