

# Mosaic Terms of Service



*Last updated April 2022*

These Terms of Service set out the terms on which Penrose Education Limited, a company registered in the United Kingdom under company number 12220704 with its registered office at 2 Perrygate Avenue, Manchester, England, M20 1JR (“we” or “us”) will make Mosaic available to the training provider on whose behalf an order for Mosaic is placed (“you”). Please ensure that you have read and understand these Terms of Service.

## 1. Interpretation

### 1.1 In these Terms of Service, the following definitions apply:

**Agreement:** the agreement between us and you for the supply of Services comprising of these Terms of Service and the Order collectively;

**Data Protection Legislation:** any applicable law relating to the processing, privacy, and use of Personal Data, as applicable to you and/or the Services, including the Data Protection Act 1998, the General Data Protection Regulation (EU) 2016/679 and any subsequent UK data protection legislation;

**Mosaic:** the hosted online application Mosaic, accessible at [mosaic.penrose.education](https://mosaic.penrose.education);

**Fees:** the fees payable by you for the supply of the Services in accordance with condition 7;

**Losses:** all damages, liabilities, demands, costs, expenses, claims, actions and proceedings (including all consequential, direct, indirect, special or incidental loss or punitive damages or loss, legal and other professional fees, cost and expenses, fines, penalties, interest and loss of profit or any other form of economic loss (including loss of reputation)).

**Order:** an order for the Services which we, in our sole discretion, accept;

**Training Provider Data:** the data inputted or provided by you or your Users in using, or for the purposes of, the Services;

**Services:** the provision of access to Mosaic in relation to your purchased subscription, as set out in the Order; and

**Subscription Period:** i) the period of twelve or thirty-six months (as specified in the Order), starting on the date specified in the Order, during which you and your users may access the Services; and ii) each subsequent such period if the Agreement is renewed;

**Intellectual Property Rights:** all patents, rights to inventions, copyright and related rights, trade marks, service marks, domain names, rights in designs, rights in computer software, database rights, rights in know-how and trade secrets and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**User:** any employee or trainee of yours who is authorised by you to access the Services;

**Working Day:** Monday to Friday excluding all bank and public holidays in the United Kingdom.

## **1.2 In these Terms of Service:**

1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or reenacted, including any subordinate legislation made under it;

1.2.3 any phrase introduced by the terms 'including', 'include', 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.4 a reference to writing or written includes emails from persons with sufficient authority to bind a party.

## **2. Formation of Contract**

2.1 By placing an order for the Services using the Order, you are offering to purchase the Services set out in that Order on these Terms of Service. The Agreement is formed when we have notified you of our acceptance of the Order.

2.2 The Agreement will be on these Terms of Service to the exclusion of all other terms and conditions (including any of your standard terms and conditions). In the event of a conflict between a term contained in these Terms of Service and a term contained in an Order, the terms contained in these Terms of Service shall prevail.

### **3. Setting Up**

3.1 Each subscription to Mosaic entitles the agreed number of Users within your training provider to access and use Mosaic.

3.2 Except to the extent we have agreed otherwise with you, you will be responsible for using the functions of the Services available to administrator Users to set the Services up for your use (including by importing information relating to Users and issuing those Users with individual logins and passwords).

### **4. Our Responsibilities**

4.1 We will provide the Services to you on and subject to the terms of the Agreement.

4.2 Any timings we may agree are estimates only. We will use reasonable endeavours to meet specified timings, but time will not be of the essence in relation to performance of our obligations under the Agreement.

4.3 We will provide you with first line support by email. The supplier agrees to respond to all support requests within a reasonable time period.

4.4 First-line support will also be provided to end-users via a help-desk accessible within the platform

4.5 We may at our option provide you with additional services (such as training or integration services) if we have agreed these with you in writing.

### **5. Your Responsibilities**

5.1 In order for us to provide the Services, you will provide us with all necessary cooperation and access to such information as we may reasonably request. This may include:

5.1.1 providing documentation, Training Provider Data and security access information;

5.1.2 ensuring that your network and systems comply with any specifications issued by us from time to time;

5.1.3 responding promptly and in full to any request by us for information, instruction or assistance; and

5.1.4 making personnel available to instruct and assist us where reasonably requested.

5.2 You will be responsible for procuring and maintaining your network connections and telecommunications links from your systems to our data centres.

5.3 You will ensure that the Users use the Services in accordance with the Agreement and applicable laws, and will be responsible for any User's breach of the Agreement.

5.4 You warrant that all information, data and materials provided by you to us (including Training Provider Data) will be, to the best of your knowledge, lawful, accurate and complete in all material respects.

5.5 If our performance in relation to the Services is prevented or delayed by any act or omission of yours or your Users, or arises from a failure by you to perform any of your obligations as set out in the Agreement (a "Default"), then:

5.5.1 we shall without limiting our other rights or remedies have the right to suspend performance of the Services until you remedy the Default, and to rely on the Default to relieve us from the performance of any of our obligations to the extent the Default prevents or delays such performance; and

5.5.2 you shall reimburse us on written demand for any costs or losses sustained or incurred by us, arising directly or indirectly from the Default.

## **6. Use of Mosaic**

6.1 Subject to your compliance with the terms of the Agreement, we grant to you a non-exclusive, nontransferable right to permit your Users to use the Services during the Subscription Period solely for the purposes of the operation of your training provider and the education and assessment of your trainees.

6.2 You will ensure that each User will keep a secure password for his/her use of the Services and that each User will keep his/her password confidential.

6.3 Unless expressly permitted by us in writing (but without limiting your or your Users' legal rights) you will not:

6.3.1 attempt to adapt, copy, modify, duplicate, create derivative works from, download or distribute all or any portion of Mosaic (as applicable);

6.3.2 attempt to decompile, disassemble or reverse engineer all or any part of Mosaic (except as permitted by law);

6.3.3 access all or any part of the Services in order to build a product or service which competes with the Services;

6.3.4 use the Services to provide services to third parties;

6.3.5 remove any copyright or other notices placed on any Mosaic documentation, platform content or marketing materials;

6.3.6 license, sell, rent, or otherwise commercially exploit the Services or make them available to any third party except the Users.

6.4 You will prevent any unauthorised access to, or use of, the Services and will promptly notify us of any unauthorised access or use.

6.5 You guarantee that any and all materials that you or your Users upload to Mosaic do not infringe any Intellectual Property Rights of any third parties.

## **7. Fees And Payment**

7.1 Subject to condition 14.3 the Fees for the Services shall be as set out in the Order.

7.2 Unless otherwise agreed as part of the order, we will invoice you for the Fees on formation of the Agreement and at the start of each subsequent Subscription Period.

7.3 All invoices rendered are due and payable within thirty (30) days of the date of invoice. You shall inform us in writing of any claim or dispute relating to an invoice within fourteen (14) days of receipt of the relevant invoice. You shall pay all amounts due under the Agreement in full without any deduction, set-off, counterclaim or withholding except as required by law.

7.4 Without prejudice to any other right or remedy, if you fail to pay us on the due date we reserve the right to:

7.4.1 charge you interest on the overdue amount at the rate provided by the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount; and

7.4.2 suspend or disable access to the Services until payment has been made in full.

7.5 All amounts payable by you are exclusive of amounts in respect of VAT, which you will pay where applicable.

7.6 We may, without prejudice to any other rights we may have, set off any liability you have to us against any liability we have to you.

## **8. Intellectual Property Rights**

You acknowledge and agree that as between the parties to the Agreement we and/or our licensors own all Intellectual Property Rights in Mosaic. Except as expressly stated, nothing in the Agreement will operate to grant you any rights in relation to Mosaic.

## **9. Training Provider Data and Data Protection**

9.1 As between the parties, you own all rights in the Training Provider Data and will be responsible for the legality, integrity, and quality of the Training Provider Data.

9.2 We (or any third party data host appointed by us) will follow archiving procedures for Training Provider Data in accordance with our or its back-up policy. If there is any loss or damage to Training Provider Data, your sole and exclusive remedy will be for us to use reasonable endeavours to restore the lost or damaged Training Provider Data from the latest back-up. We will not be responsible for any loss, destruction, alteration or disclosure of Training Provider Data caused by any third party except our appointed data host.

9.3 We will, in providing the Services, comply with our Privacy Policy and the Agreement.

9.4 For the purposes of these Terms of Service, “Controller”, “Processor”, “Data Subject”, “Personal Data” and “processing” shall have the meanings attributed to them in accordance with the Data Protection Legislation.

9.5 During the Term of the Agreement, you shall be the Controller of all Personal Data in relation to the Training Provider Data (Training Provider Personal Data) and we shall be the Processor in relation to the Training Provider Personal Data. We shall:

9.5.1 process the Training Provider Personal Data only to the extent, and in such a manner, as is necessary for the purposes of performing the Service in accordance with your instructions;

9.5.2 implement and maintain appropriate technical and organisational measures to protect the Training Provider Personal Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access;

9.5.3 only work with any sub-processor under a written contract containing materially the same obligations regarding processing of the Training Provider Personal Data;

9.5.4 ensure that all employees, agents or other persons with access to the Training Provider Personal Data: a) are informed of the confidential nature of the Training Provider Personal Data and are subject to a binding written contractual obligation to keep the Training Provider Personal Data confidential; b) have undertaken training in the Data Protection Legislation relating to handling Personal Data; and c) shall only have access to such part or parts of the Training Provider Personal Data as is strictly necessary for performance of that person's duties.

9.5.5 not transfer the Training Provider Personal Data outside the European Economic Area (EEA) without your prior written consent, unless the appropriate safeguards are place in accordance with the Data Protection Legislation;

9.5.6 promptly inform you if any Training Provider Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable;

9.5.7 on reasonable notice, allow for and contribute to audits, including inspections, by you in relation to its compliance with this clause;

9.5.8 provide such reasonable assistance as you may require to: a) respond to requests for exercising the Data Subjects' rights under the Data Protection Legislation; b) ensure compliance with your obligations under Data Protection Legislation with respect to: i. security of processing; ii. data protection impact assessments; iii. prior consultation with a supervisory authority regarding high risk processing; and iv. any remedial action and/or notifications to be taken in response to any Personal Data breach and/or any complaint or request relating to the Services including, subject in each case to the your prior written authorisation, any notification of the breach to supervisory authorities and/or communication to any affected Data Subjects; and

9.5.9 on termination, at your cost, we shall either return all of the Training Provider Personal Data to you or securely dispose of the Training Provider Personal Data (including any copies) except to the extent that any applicable law requires us to retain such Personal Data.

9.6 You are solely responsible for the completeness and accuracy of all Personal Data provided to us by you or the Users. You warrant that you have obtained all consents or other legal justifications necessary in accordance with the Data Protection Legislation to enable us to process the Training Provider Personal Data (and any other third party data comprised in the Training Provider Data) and you shall indemnify and keep us indemnified against all claims, liabilities, demands, proceedings, damages, losses, costs, expenses fines and charges which are made or brought against or incurred by us as a result of you being in breach of this warranty.

## **10. Warranty and Disclaimer**

10.1 We warrant that:

10.1.1 the Services (and any other services we may provide to you, such as training or implementation services) will be performed with reasonable skill and care; and

10.1.2 Mosaic will perform in material conformity with the Documentation.

10.2 If the relevant Services or Mosaic do not conform to the warranty at condition 10.1, we will, at our expense and option:

10.2.1 correct the non-conformity or provide you with an alternative means of accomplishing the desired performance; or

10.2.2 refund the Fees paid by you in relation to the non-conforming Services or elements of Mosaic during the period in which they are non-conforming, less a reasonable deduction in respect of the use made by you of Mosaic during that time, and this will be your sole and exclusive remedy for the non-conformity.

10.3 The warranty at condition 10.1 will not apply if any non-conformity is caused by your or your Users' use of Mosaic contrary to our instructions, use of any third party software product, or any cause outside of our reasonable control.

10.4 You acknowledge that the Services are delivered over third party internet and communications networks and we will not be liable in relation to any delays, limitations or other problems inherent in such networks or any failure of you to procure and maintain adequate communications networks. We do not warrant that the Services will be uninterrupted or error-free.

10.5 You acknowledge that Mosaic is made available to you solely for use as a tool to supplement your broader training programme. It is your responsibility to ensure the suitability of Mosaic for your training programme. We do not guarantee that the use of Mosaic will lead to any particular academic or business results.

10.6 We will not be liable for any loss or damage caused by a virus, distributed denial-of-service attack, or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of the Service or to your downloading of any content on it, or on any website linked to it.

## **11. Liability**

11.1 Nothing in the Agreement excludes our liability:



11.1.1 for death or personal injury caused by our negligence;

11.1.2 resulting from fraud or fraudulent misrepresentation made by us; or

11.1.3 for any other matter for which liability may not lawfully be limited or excluded.

11.2 Subject to condition 11.1:

11.2.1 we shall not be liable to you, whether in contract, tort (including negligence or breach of statutory duty), indemnity, misrepresentation, restitution or otherwise under the Agreement or in connection with its subject matter for: a) any loss of profits, loss of business, loss of agreements or contracts, loss of anticipated savings, loss of or corruption of data or depletion of goodwill (in each case whether direct or indirect); or b) any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising; and

11.2.2 our total aggregate liability in contract, tort (including negligence or breach of statutory duty), indemnity, misrepresentation, restitution or otherwise for any other damages arising in connection with the performance or contemplated performance of the Agreement shall be limited to the value of the Fees paid by you during the Subscription Period during which the event or occurrence giving rise to our liability occurred.

11.3 Except as specifically stated in the Agreement, all warranties, conditions and other terms implied by statute or common law, custom, course of dealing or otherwise, in connection with our provision of the Services, are excluded to the fullest extent permitted by law.

11.4 You shall indemnify us, keep us indemnified and hold us harmless at your own expense from and against any and all damages, losses, liabilities, fines, costs and expenses (including reasonable legal fees) suffered or incurred by us as a direct or indirect result of any claim or allegation by a third party:

11.4.1 that our possession or use of any Training Provider Data infringes the Intellectual Property Rights of that third party; or

11.4.2 otherwise arising from your breach of conditions 9 and 5.4.

## **12. Changes to Mosaic**

We may update Mosaic from time to time, and may modify any aspect of the Service (provided that this shall not result in a degradation of the Service). The performance of modifications may result in the temporary unavailability of the Service. We will use our reasonable endeavours to ensure that modifications and improvements are performed outside of Training Provider hours

and will (insofar as reasonably practicable) give you reasonable prior notice of the unavailability of the Service.

### **13. Confidentiality**

Each party shall keep in strict confidence all information of a confidential or personal nature which has been disclosed by the other, or which may otherwise be obtained. Each party shall only disclose such confidential information of the other party to their employees and contractors who need to know it for the purpose of the Agreement under appropriate conditions of confidence or as required by law.

### **14. Termination and Renewal**

14.1 The Agreement will come into force on our acceptance of your order for the Services and will continue until the end of the Subscription Period unless terminated in accordance with this condition 14 or under the common law.

14.2 At the end of the Subscription Period the Agreement will renew and its term will be extended for a further Subscription Period unless either party has notified the other in writing prior to the end of the then-current Subscription Period that it does not wish the Agreement to renew.

14.3 We may increase the Fees at the end of each Subscription Period by written notice served no less than thirty (30) days prior to the end of the Subscription Period. If you do not wish to accept the increase Fees then you should notify us that you do not wish the Agreement to renew as set out under condition 14.2.

14.4 You acknowledge that the Subscription Period is a fixed term and the Agreement may not be terminated early for convenience. If you purport to terminate in breach of these terms, you shall remain liable for the Fees for the full Subscription Period and shall pay any outstanding Fees within 7 days of our invoice.

14.5 Without limiting its other rights or remedies, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

14.5.1 the other party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of receipt of notice in writing to do so; or

14.5.2 the other party becomes insolvent or bankrupt, enters into administration, ceases to trade or takes any step or suffers any occurrence of equivalent or similar effect.

14.6 Termination of the Agreement, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. You will cease to be entitled to use the Services on termination of the Agreement.

14.7 Conditions 1, 8, 11, 13, 14.6, 15 and 16 shall survive termination of the Agreement, however arising.

## **15. Data Recovery**

15.1 Your access to the Services and to any Training Provider Data in our possession shall cease upon termination of the Agreement. Unless otherwise agreed ahead of time, you shall be responsible for arranging for the transfer or export of all Training Provider Data prior to the termination or expiry of the Agreement.

15.2 We shall retain Training Provider Data for a period of two (2) years after the termination of this Agreement, and thereafter may destroy or otherwise dispose of any of any Training Provider Data in our possession. If during such period we receive a written request for the provision to you of access to the Training Provider Data, we shall provide such access for such fee as we may reasonably agree with you.

## **16. General**

16.1 Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure result from events, circumstances or causes beyond its reasonable control.

16.2 You may not assign, transfer, subcontract or deal in any other manner with any or all of your rights or obligations under the Agreement.

16.3 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing and addressed to the receiving party at such address or contact details as may have been provided by that party from time to time for contact purposes.

16.4 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable or, if such modification is not possible, deemed deleted. Neither case shall affect the validity and enforceability of the rest of the Agreement.

16.5 A waiver of any right or remedy under the Agreement or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

16.6 Nothing in the Agreement shall establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other.

16.7 A person who is not a party to the Agreement shall not have any rights to enforce its terms.

16.8 Except as set out in these Terms of Service, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by us.

16.9 The Agreement, 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 and subject to the exclusive jurisdiction of the courts of England and Wales.