

## Terms And Conditions for Agencies

### General

These terms and conditions (“Terms and Conditions”), including the Privacy Policy, Terms of Use and any other terms, conditions, notices and disclaimers published, displayed or otherwise provided to you from time to time (“Agreement”) govern your use of, or access to, WhatCollege.com.

The Agreement forms a legally binding contract between you and FirstPoint International Limited. You acknowledge and agree that:

in using or accessing WhatCollege.com; or

in indicating your acceptance to this Agreement by clicking the “I Agree” field on Registration,

you agree to comply with and be bound by this Agreement.

Should you not agree or accept this Agreement, including any modifications or variations to this Agreement from time to time, your sole remedy is to immediately cease your use of and access to WhatCollege.com and the Services.

### 1. Definitions

In these Terms and Conditions:

- **Active Commission** has the meaning given to that term in section 9 of these Terms and Conditions.
- **WhatCollege** means the student recruitment service provided by FirstPoint International, a company registered in England and Wales under company number 10043018 and have our registered office at 14th Floor, 111 Piccadilly, Manchester, England, M1 2HY.
- **WhatCollege** means the “WhatCollege.com” domain (including any mobile sites), the WhatCollege.com computing platform and any applications, and all other websites, mobile applications, software, components, products and services (including the Services as defined)
- **Agreement** has the meaning given to that term under the heading “General” of these Terms and Conditions.
- **Aggregated Data** means Personal Data that has been de-identified so that it will not directly or indirectly reveal identity.
- **Application** means a Course Application and/or a Visa Application (as the context provides).

- **Application Fees** means the fees charged by an School Partner or Government Authority (as applicable) on an Application.
- **AIRC Standards** means the certification standards of the American International Recruitment Council, as amended from time to time, and made available at: <https://www.airc-education.org>
- **Authorisation** means:
  - any authorisation, approval, licence, permit, consent, qualification, accreditation, filing, registration, certificate, resolution, direction, declaration or exemption, and any renewal or variation; and
  - for anything which a Government Authority may prohibit or restrict within a specified period after it is notified, the expiry of that period within intervention or action by that Government Authority.
- **Census Date** means:
  - the last date when a Student may withdraw from any subject provided by an School within a particular semester or teaching period; and
  - the date when Student enrolments are finalised by an School for a particular semester or teaching period.
- **Commission** means a payment made by a Participating School Partner for each successful enrolment of a Student to that School Partner.
- **Confidential Information** means:
  - any information (regardless of form) that is disclosed to you, before or after the date of this Agreement or your Registration, that is expressly designated at the time of disclosure as confidential, sensitive or private (or any other similar description) by FirstPoint International; or
  - any information (regardless of form) disclosed to you, before or after the date of this Agreement or your Registration, that a reasonable person would (given the nature of the information) consider to be confidential, sensitive or private,

but does not include:

- any information that you can prove by contemporaneous written documentation was in your lawful possession before you had dealings with FirstPoint International, or was independently generated by you or on your behalf;
- is in the public domain otherwise than as a result of a breach in section 11 or any other obligation of confidentiality owed to FirstPoint International; or
- was legal and properly obtained by you from any other source without restriction on further disclosure.

- **Course** means any educational course, program, class, unit or qualification provided for or on behalf of a School.
- **Course Application** means any application in the form required by the School Partner that provides for the registration or enrolment of a Student in a Course.
- **Credentials** has the meaning given to that term in section 3 of these Terms and Conditions.
- **Eligibility Criteria** means all criteria, factors or indicia to determine whether or not a Student may be eligible to make a Course Application or a Visa Application (as the context provides).
- **Facebook Terms** means all terms, conditions and policies of Facebook, Inc. as amended from time to time, which apply to the Agency's use of Facebook, Instagram, Messenger and other products and features offered by Facebook, including:
  - Terms of service;
  - Data policy;
  - Advertising policies;
  - Lead adverts terms and associated lead ads policies;
  - Platform policy;
  - Commercial terms;

Made available at: <https://www.facebook.com/policies?ref=pf>

- **Government Authority** means any governmental, semi-governmental, municipal, statutory, judicial or quasi-judicial authority, department, agency, body, entity, organisation, commission or tribunal.
- **GST** means goods and services Tax.
- **Inactive Commission** has the meaning given to that term in section 9 of these Terms and Conditions.
- **School** means any USA school education provider, School, university or college.
- **School Partner** means any School under contract with FirstPoint International that provides or allows FirstPoint International to deliver the Services to Agencies and Students for that School.
- **School Partner Content** means all documentation and information regardless of form in connection with or developed by the Institute Partner in relation to the School and its Courses, including the Course Applications, the Course fees and the Eligibility Criteria.
- **Intellectual Property Rights** means all intellectual and industrial property (whether existing now or in the future, and whether or not registered or registrable), including all copyright (including moral rights), patents, trademarks (including service marks), designs, Confidential Information, circuit layout, inventions, discoveries, geographical indications of origin, circuit layouts, programming tools, object code, source code, methods, techniques, recipes, formulae, algorithms, modules, libraries, databases, and includes:

- any application or right to apply for registration of any of these rights;
  - all licences and rights to use the intellectual property;
  - any registration of any of those rights or any registration of any application referred to above; and
  - all renewals and extensions of these rights.
- **Law** means:
  - any law, statute, subordinate legislation, by-law, treaty, rule, regulation, order, ordinances, standards, guidelines, policy or direction, irrespective of where enacted under domestic or foreign; and
  - any judgments, common law and principles of equity as applied from time to time.
- **Other Social Media** means all and any social media platform or application.
- **Other Social Media Terms** means all terms, notices and policies of Other Social Media, as amended from time to time, that govern your use of the Other Social Media.
- **Participating School Partner** has the meaning given to that term in section 9 of these Terms and Conditions.
- **Permitted Purpose** means the lawful use of WhatCollege.com and Services provided by FirstPoint International.
- **Personal Data** means all information or opinions about an identifiable person or a person who is reasonably identifiable, including (without limitation) name, gender, date of birth, marital status, home and mailing addresses, contact information, emergency contact information, citizenship and residential status, passport information, racial or ethnic origin, religious beliefs or affiliations, financial information, employment information, educational information, transcripts, language proficiencies, criminal record, health information, genetic information and biometric information, but does not include any de-identified, anonymous meta-data or data-about-data.
- **Privacy Policy** means the privacy policy available on WhatCollege.com, as amended from time to time;
- **Agency** means any person or corporation that:
  - provides or undertakes the Agency Business; and has a Registration.
- **Agency Approval** means that the Agency has been verified and approved by FirstPoint International (in its absolute discretion) for a Registration.
- **Agency Business** means any person or corporation that is the business of providing advice, guidance and assistance to any tertiary student that is or intends:
  - to apply to any tertiary education provider, School, university or college; or
  - to apply for a visa to enable them to undertake tertiary education.

- **Agency Criteria** means the criteria set by FirstPoint International from time to time for a Registration.
- **Restricted Access** means a limited or restricted access to WhatCollege.com for any reason whatsoever, including:
  - a Registration pending Agency Approval;
  - where the Registration Fee has not been paid;
  - where FirstPoint International disables access where the Agency is suspected of contravening this Agreement; or
  - where FirstPoint International disabled access on termination or expiry of this Agreement; or
  - as a result of any temporary technical or system error.
- **Services** has the meaning given to that term in section 2 of these Terms and Conditions.
- **Student** means any tertiary student, including a prospective tertiary student, that is applying, or is interested in applying, to a School or for a visa to study at an School.
- **Student Documentation** means any information, document, transcript, video, photograph, image, drawings, records or other materials prepared by or relating to a Student, including Personal Data.
- **Register and Registration** means a Registration with FirstPoint International to use or access the Services and/or WhatCollege.com by registration, regardless of whether Registration Fees are not payable or not.
- **Tax** means any tax, rate, duty or other charge assessed or payable to any Government Authority and includes any additional tax, interest, penalty, charge, fee or other amount imposed in relation to a failure to file a return or to pay the tax.
- **Term** means the period of time the Agency has Registered to use WhatCollege.com and the Services provided by FirstPoint International.
- **Terms and Conditions** has the meaning given to that term under the heading “General” of these Terms and Conditions.
- **Terms of Use** means the terms of use available on WhatCollege.com website, as amended from time to time;
- **Third Party Content** has the meaning given to that term in section 6 of these Terms and Conditions.
- **Transaction Fee** has the meaning given to that term in section 9 of these Terms and Conditions.
- **Visa Application** means any application in the form required by a Government Authority that seeks to apply for a visa

## 2. Scope of Services

FirstPoint International provides services to the Agencies through WhatCollege.com (Services), including:

- delivering access to School Partner Content to Agencies that may be used to determine whether the Student meets the Eligibility Criteria to make a Course Application;
- delivering access to information about visas to Agencies that may be used to determine whether the Student meets the Eligibility Criteria to make a Visa Application;
- enabling the Agency to submit or upload Student Documentation onto WhatCollege.com;
- reviewing Student Documentation submitted or uploaded onto WhatCollege.com to provide assistance and guidance on the Application;
- acting as an intermediary between the Agency, the Student and the School Partner by transmitting Student Documentation, Application Fees and any other ancillary payments or information to the School Partner for an Application; and
- facilitating the payment of Commission to Agencies.

### **3. Access to WhatCollege.com and Services**

You must Register with FirstPoint International to access WhatCollege.com and Services.

You acknowledge and agree that:

#### **Registration**

- your use and access to WhatCollege.com and the Services is subject to your successful registration with FirstPoint International, Agency Approval by FirstPoint International, and your compliance with this Agreement;
- to Register and maintain your Registration with FirstPoint International, you must:
  - provide true, accurate, complete and up to date information as required by FirstPoint International from time to time; and pay the Registration Fee (where applicable) and any other applicable fees in connection with WhatCollege.com.
  - your failure to provide true, accurate, complete and up to date information (including payment information) or pay the Registration Fee (where applicable) will result in your inability to Register, Restricted Access or the cancellation, termination or suspension of your Registration;
- you must comply with all reasonable requests by FirstPoint International to verify your identity;

- your failure to comply with all reasonable requests may result in your inability to Register, Restricted Access or cancellation, termination or suspension of your Registration;
- in order for FirstPoint International to ensure the integrity of WhatCollege.com and Services, FirstPoint International reserves all its rights, in its sole and absolute discretion, to reject or refuse a Registration, or otherwise suspend, cancel and deregister any person from WhatCollege.com for any reason whatsoever. FirstPoint International is not required to provide any reason, explanation or clarification as to your rejection or refusal of any Registration, or the suspension, cancellation or termination of any person;

### **Credentials**

- except for an officer, employee or contractor directly engaged by the Agency, you will not provide your Login ID and password (“Credentials”) used to access WhatCollege.com and the Services, and any other details of your Registration, to any other person;
- except for an officer, employee or contractor directly engaged by the Agency, you will not permit any person to use your Credentials to access WhatCollege.com and the Services;
- you are responsible for, and liable to FirstPoint International, for the acts and omissions of any officer, employee or contractor engaged by you that uses your Credentials to access WhatCollege.com and Services;
- you are responsible for, and liable to FirstPoint International, for the acts and omissions of any unauthorised person that uses your Credentials to access WhatCollege.com and Services;
- you must change the user’s password used to access WhatCollege.com and the Services immediately when the officer, employee or contractor ceases to be engaged by you;
- you must change all password used to access WhatCollege.com and the Services immediately when any computer, electronic device or network used to access WhatCollege.com is compromised, or suspected of being compromised, by a security breach.

### **Knowledge of Agreement**

- you are responsible for ensuring that you have read and understood the terms of this Agreement;
- you are responsible for ensuring that you keep up to date with any modifications, variations or amendments to this Agreement;

### **Knowledge of Facebook Terms**

- in the event that you use Facebook, Instagram, Messenger and any other products and features offered by Facebook to advertise, promote or otherwise generate leads as a Agency,
  - you are responsible for ensuring that you have read and understood the Facebook Terms;
  - you are responsible for ensuring that you keep up to date with any modifications, variations or amendments to the Facebook Terms; and
  - you are responsible for ensuring compliance with the Facebook Terms;

### **Knowledge of Other Social Media**

- in the event that you use any Other Social Media and any products and features offered by any Other Social Media to advertise, promote or otherwise generate leads as a Agency:
  - you are responsible for ensuring that you have read and understood Other Social Media Terms;
  - you are responsible for ensuring that you keep up to date with any modifications, variations or amendments to Other Social Media Terms; and
  - you are responsible for ensuring compliance with Other Social Media Terms;

### **Knowledge of AIRC Standards**

- you are responsible for ensuring that you have read and understood the AIRC Standards;
- you are responsible for ensuring that you keep up to date with any modifications, variations or amendments to the AIRC Standards; and
- you are responsible for ensuring compliance with the AIRC Standards;

### **Personal Data**

- in applying for a Registration, FirstPoint International:
  - will collect, use, process and store your Personal Data in accordance with its Privacy Policy and all applicable Laws;
  - may use and share Aggregated Data for purposes ancillary to WhatCollege.com and the Services.
- as a Agency, your collection, use, processing and storage of any Personal Data of a Student must be in compliance with all applicable Laws in or that affect the jurisdiction where you reside or conduct business as a Agency, and the jurisdiction of the Student, including all data and privacy Laws.



- you will obtain consent from all Students to the collection, use, processing and storage of their Personal Data by you for purposes, including:
  - your use or access to WhatCollege.com and the Services;
  - transmitting that Personal Data to FirstPoint International (which shall be treated in accordance with our Privacy Policy and applicable Laws); and
  - allowing Personal Data to be disclosed to any School Partner or other authorised third party in relation to or in connection with an Application.
- you have an up to date privacy policy readily available and easily accessible to all Students that:
  - complies with all applicable data and privacy Laws in or that affect the jurisdiction where you reside or conduct business as a Agency, and the jurisdiction of the Student;
  - clearly states how Personal Data will be collected, used, processed, stored and transmitted;
  - clearly states that Personal Data will be transmitted or shared with WhatCollege.com for its intended direct and indirect purposes;
- in the event that you use Facebook, Instagram, Messenger and any other products and features offered by Facebook to advertise, promote or otherwise generate leads as a Agency, your privacy policy is consistent with the Facebook Terms;
- in the event that you use any Other Social Media and any products and features offered by any Other Social Media to advertise, promote or otherwise generate leads as a Agency, your privacy policy is consistent with Other Social Media Terms;
- you have implemented appropriate measures to protect Personal Data against accidental or unlawful destruction, or accidental loss, alteration, unauthorised disclosure or access;
- you will inform the Student that WhatCollege.com may convert Student Personal Data to Aggregated Data;
- WhatCollege.com is permitted to retain all information, documentation, Aggregated Data and Personal Data (including Student Personal Data) you provide to us, irrespective of the suspension, expiry or termination of this Agreement.

### **FirstPoint International as intermediary**

- FirstPoint International is not responsible for, and will not vet, examine or undertake any quality control or assurance of the Personal Data. Any review or inspection of the Personal Data undertaken by FirstPoint International is for the purpose of confirming the Personal Data is ready for transmission or otherwise compliant to complete an Application;

## **Other Agency responsibilities**

- you must act in good faith at all times towards FirstPoint International;
- you must keep up to date, be aware of, and comply with, all applicable Laws in or that affect the jurisdiction you reside or conduct business, in your use of WhatCollege.com and the Services, and all other services you provide to Students;
- you must perform an initial assessment on all Students using the WhatCollege.com guidelines, as amended from time to time, to determine whether the Student qualifies as a suitable candidate and meets the Eligibility Criteria;
- you must maintain and keep current all Authorisations to enable you to lawfully provide recruitment or education advisory services to Students, including any immigration or visa related advice; and
- promptly inform FirstPoint International of any information, matter, situation, circumstance or thing that may cause or will cause an impact on or in any way change your use of WhatCollege.com and the Services.

## **4. Representations and warranties**

You represent and warrant that:

### **Capacity to enter into legal relations**

- if you Register as a corporation:
  - the corporation is validly incorporated and existing under the Law of its place of incorporation;
  - the corporation has the power to authorise the Registration and the delivery and performance of this Agreement in accordance with its terms, and to perform its obligations under this Agreement; and
  - the corporation has taken all necessary action to authorise the Registration and the delivery and performance of this Agreement in accordance with its terms;
- if you Register as an individual, you have full power and legal capacity to Register and enter into this Agreement and to perform your obligations under this Agreement;

### **Authorisation**

- where required as a Agency, you have current and valid Authorisations in or that affect the jurisdiction you reside or conduct business;

## **Accuracy of information and Personal Data**

- all information and Personal Data provided by you to FirstPoint International (including as part of your Registration or Application) is true, accurate, complete and up to date;
- should any information and Personal Data provided by you to FirstPoint International be inaccurate, incomplete or have changed in anyway, you will promptly amend, update or resubmit that information and Personal Data to ensure that it is true, accurate, complete and up to date;
- you have lawfully obtained all relevant consents from any affected third party, including an School Partner and Student, for FirstPoint International to collect, use, store and transmit Personal Data for the purposes of providing the Services;

## **Use, collection, storage and transmission of Personal Data**

- in the event that you use Facebook, Instagram, Messenger and any other products and features offered by Facebook to advertise, promote or otherwise generate leads as a Agency:
  - you will comply with the Facebook Terms;
  - you will obtain all relevant permission and consent required from Students to the use, collection, storage and transmission of their Personal Data; and
  - you will explicitly make known to the Student when obtaining their consent that their Personal Data will be transmitted or shared with FirstPoint International for its direct and indirect purposes.
- you have a privacy policy readily available and easily accessible to all Students that:
  - complies with all applicable data and privacy Laws in or that affect the jurisdiction where you reside or conduct business as a Agency, and the jurisdiction of the Student;
  - clearly states how Personal Data will be collected, used, processed, stored and transmitted;
  - clearly states that Personal Data will be transmitted or shared with FirstPoint International for its intended direct and indirect purposes;
- you have implemented appropriate measures to protect Personal Data against accidental or unlawful destruction, or accidental loss, alteration, unauthorised disclosure or access.

## **Security of Credentials**

- your Credentials used to access WhatCollege.com and Services, and any other details of your Registration, are kept in a safe and secure location;

- you will immediately notify us if you are, or become aware of, or otherwise have grounds to believe that there is, or has been, an unauthorised use of your Credentials;

### **Compliance with Laws**

- you will comply with all applicable Laws in or that affect the jurisdiction you reside or conduct business in connection with your use and access to WhatCollege.com and Services, including data and privacy laws;

### **Report errors**

- you will promptly notify FirstPoint International of any information, matter, situation, circumstance or thing which may cause or will cause an impact on, or has in any way changed the performance of, WhatCollege.com, including any errors, problems, glitches, nonconformities or broken links in WhatCollege.com;

### **Prohibitions**

- you will not engage in any of the following conduct and will not permit or entice any other person to:
  - providing unsolicited advice (including in relation to Student immigration or visa conditions) unless you have current Authorisations in or that affect the jurisdiction you reside or conduct business;
  - use WhatCollege.com and the Services for any activities or conduct that breaches or is contrary to any applicable Laws in force from time to time or otherwise infringes third party rights (including intellectual property rights, privacy and data protection rights);
  - use WhatCollege.com and the Services in any manner or way, or post to or transmit to WhatCollege.com any information or material, which interferes, defames, harasses, threatens, menaces or offends any person or which prevents any other person from using or enjoying WhatCollege.com and Services;
  - Register using automated means or under false or fraudulent pretences;
  - make fraudulent, false or speculative Applications on WhatCollege.com;
  - impersonate any other person when using or access WhatCollege.com or the Services;
  - sign (whether in person, electronically or otherwise) any documents (including these Terms and Conditions) on behalf of any person but yourself and/or a company to

which you are not a director or secretary, unless you have the proper authority and permission granted to you by means of power of attorney or other legal instrument recognised by the Law in the country in which you reside;

- post or transmit any obscene, indecent, inflammatory or pornographic material or other material that may give rise to civil or criminal proceedings;
- tamper with, hinder or interfere with WhatCollege.com and the Services, including compromising any security measures, functionality, network, system, software and content;
- copy, reproduce, modify, adapt, translate, improve, deconstruct or reverse engineer WhatCollege.com, or any part thereof;
- use any robot, spider, site search, bot, timer, software lock, Trojan-horse routing, trap door, virus, worm or similar disabling or malicious code to the monitor, tamper, distort, delete, damage or disable WhatCollege.com, or any part thereof;
- use WhatCollege.com or its Services to commit or attempt to commit a civil or criminal act or facilitate the commission of a civil or criminal act or other illegal conduct;
- deface, obscure or remove any proprietary rights or notice on WhatCollege.com;
- use WhatCollege.com and the Services other than in accordance with this Agreement; and
- make any representation to the School Partner, Student or third party which is misleading or deceptive or untrue or is likely to mislead or deceive or be untrue.

Failure to comply with any of the forgoing representations and warranties will result in your inability to Register, Restricted Access or the cancellation, termination or suspension of your Registration.

## **5. Licence to use WhatCollege.com and the Services**

Subject to Agency Approval and your compliance with this Agreement, FirstPoint International will grant you a non-exclusive, non-transferable, revocable and personal licence to access WhatCollege.com to use and access the Services.

### **Agency Approval**

Notwithstanding your acknowledgement of the Agreement, you will be subject to Agency Approval. When FirstPoint International is undertaking Agency

Approval, FirstPoint International will grant you a non-exclusive, non-transferable, revocable and personal licence to obtain Restricted Access.

Failure to:

- meet the Agency Criteria;
- provide true, accurate, complete and up to date information;
- pay the Registration Fee (where applicable); and
- comply with any lawful and reasonable request by FirstPoint International for information,

may result in the suspension, cancellation or termination of your Restricted Access.

## **6. Restriction on use and access to WhatCollege.com**

### **Access to WhatCollege.com**

- WhatCollege.com uses all reasonable endeavours and reasonable safeguards to implement and provide you with use and access to WhatCollege.com and the Services, however it does not make any representations, statements or warranties whatsoever that your use or access shall be timely, secure, free from interruption (whether due to any temporary and/or partial breakdown, repair, upgrade or maintenance of WhatCollege.com) or free from error; and
- Your use of, and access to, WhatCollege.com and the Services may be suspended or unavailable for any reason whatsoever, including without limitation, due to technical difficulties with your internet connection or service provider, in the case of system failure, maintenance or repair works.

### **No time critical Applications**

You should not use WhatCollege.com where any Application you submit or intend to submit is time-critical, time-dependent, urgent or inherently dangerous. You should contact WhatCollege.com, the School Partner or Government Authority directly if you have any concerns over any time-critical Application.

### **Third Party Content**

You acknowledge and agree that:

- WhatCollege.com contains School Partner Content;
- all School Partner Content has been prepared, produced or provided by or on behalf of an School Partner;

- you rely on the School Partner Content at your own risk;
- without limiting the forgoing, WhatCollege.com may contain other third party content or links to other websites (“Third Party Content”) that is provided solely as a convenience to you during you use of WhatCollege.com;
- WhatCollege.com does not endorse the Third Party Content and is not responsible for the creation, maintenance or accuracy of the Third Party Content;
- you rely on the Third Party Content at your own risk; and
- WhatCollege.com makes no representation, statement or warranty, either expressly or implicitly, in relation to the accuracy, timeliness, performance, completeness or suitability of the School Partner Content or Third Party Content on WhatCollege.com.

### **Equipment**

You are responsible for all equipment, operating systems, networks, software and internet service providers that you use or may use to access WhatCollege.com, including the maintenance, upkeep, repair and performance of those equipment and systems.

FirstPoint International accepts no responsibility for any lack of access or inability to use WhatCollege.com and the Services.

### **Information back up**

You are responsible for backing-up all information and Personal Data received from or submitted to WhatCollege.com, an Institute Partner, a Student, or any other party in association with WhatCollege.com.

FirstPoint International does not make any representations, statements or warranties whatsoever to assure or guarantee data integrity.

## **7. Registration Term and Renewal**

- Your Registration Term will commence with FirstPoint International when you are granted a licence (as set out in section 5) to access WhatCollege.com and the Services. Your Registration Term will commence upon your acceptance of this Agreement.
- Unless suspended, cancelled or terminated earlier, your Registration will be in effect.
- Your Registration to FirstPoint International will automatically renew at the conclusion of each Term.
- Your renewal will be for the same Term and on the same conditions as the Registration that was in effect prior to the conclusion of your previous Term.

- You may cancel or terminate your Registration at any time during the Term (which includes any renewal Term) in accordance with section 10 of these Terms and Conditions.

### **Application fees**

- In order to process any Application, FirstPoint International may require you to pay any Application Fees before an Application is processed.
- You acknowledge that the Application Fees are payable to the relevant School Partner or Government Authority to process an Application.
- An Application fee (or any part thereof) is non-refundable where the School Partner or Government Authority determine, in their sole and absolute discretion, that an Application Fee (or any part thereof) is non-refundable.
- An Application fee (or any part thereof) may be non-refundable where:
  - all relevant information, documentation and Personal Data of a Student is not submitted as part of the Application or before any submission deadline;
  - the Application is rejected by the School Partner or Government Agency; or
  - you cancel or withdraw an Application on behalf of a Student.
- You acknowledge that Application fees and ancillary charges are set by an School Partner or Government Authority. FirstPoint International has no control over the amount or type of these fees or charges and remits all such monies to an School Partner or Government Authority. Unless an Application fee or ancillary charge is refunded to FirstPoint International, it will not be refundable to the Agency.
- You agree to ensure that the Student is made fully aware:
  - of all fees in relation to an Application, including the Application Fee;
  - that the Application Fee and ancillary charges as set by an School Partner or Government Agency may not be refundable; and
  - the Census Date applicable to their Course.

### **Modification of fees**

FirstPoint International reserves the right to modify any fees in connection with or arising out of your use and access to the WhatCollege.com or an Application at any time, provided that FirstPoint International will notify you prior to any change. Notification may occur through the WhatCollege.com or by other means of electronic communication.



Your acknowledge and agree that your continued use and access to the WhatCollege.com following a modification of any fees constitutes your acceptance of those modified fees.

### **Payment of fees**

- All payments of fees (including Application Fees) are received through WhatCollege.com (or an approved third-party payment gateway provider).
- If you pay any amount to WhatCollege.com by credit card, debit card or other payment card, you automatically authorise WhatCollege.com (or its payment gateway provider) to charge that card.
- You authorise WhatCollege.com to charge your credit card, debit card or other payment card for the Application Fees
- You acknowledge that certain card payments or bank transactions may attract a surcharge, transaction fee or other charge. You acknowledge and agree that WhatCollege.com may charge you an amount equal to this cost imposed on WhatCollege.com.
- If your credit card, bank transfer or transaction fails or is rejected for any reason, you will be responsible for any fees and charges associated with that failure or rejection.
- You are responsible for the payment of any fees, charges or costs in relation to any exchange rate.

You acknowledge that any delay in Agency Approval caused or contributed by your failure to provide accurate and up-to-date information and documents required by FirstPoint International in accordance with the Agency Criteria may result in you only having Restricted Access for all or any part of the Term of the Registration.

### **Tax**

- You are responsible for, and warrant that you will pay, all Tax arising out of in relation to any fees payable under this Agreement.
- Where required by FirstPoint International, an School Partner or Government Authority, you must provide documentation evidencing payment of any applicable Tax.
- If you are required to withhold any amount of Tax arising out of in relation to any fees payable under this Agreement, you will be liable and must pay any amount equivalent to that amount of Tax, so that the amount paid to FirstPoint International is equal to the amount due.

### **9. Commission**

- The Agency is entitled to receive Commission on successful placement of a Student with an School Partner where Commission is made available by a participating School Partner (Participating School Partner). FirstPoint International shall publish a list of Participating School Partners, which may be amended from time to time. For the avoidance of any doubt, no Commission will be payable by a School Partner not listed as a Participating School Partner.
- The Agency will only receive payment of the Commission (“Active Commission”) where:
  - the Agency has a Registration to the WhatCollege.com;
  - the Agency has maintained a current and active paid Registration Package to WhatCollege.com;
  - the Registration Fee for that Registration Package is paid from the date the Student was first entered into WhatCollege.com, up to date when the Commission is due to be paid;
  - a Course Application on behalf of a Student has resulted in the acceptance by a Student to the School Partner;
  - the Student is enrolled in the Course on the day following the Census Date;
  - the Participating School Partner pays the Commission to WhatCollege.com;
  - the Agency is not in breach of this Agreement, including sections 4, 8, 11 and 12 of these Terms and Conditions and the Privacy Policy; and
  - the Agency provides accurate and up to date account details for WhatCollege.com to process payment.
- For the avoidance of any doubt, the Active Commission will only be paid to the Agency where each of the abovementioned criteria is satisfied. For example, subject to all other criteria, if the Agency did not have a paid Registration Package at the date the Student was first entered into WhatCollege.com, the Agency is not entitled to Active Commission for that Student even if the Agency later upgrades to a paid Registration Package.
- The Active Commission is 75% of the net payment received from the Participating School Partner by WhatCollege.com for each Student.
- If the Agency does not have, or no longer has, a paid Registration Package to WhatCollege.com when the Student was first entered into WhatCollege.com, up to date when the Commission is due to be paid, and that Registration was not suspended, cancelled or terminated by WhatCollege.com because the Agency was in breach of this Agreement, then the Agency will still receive a Commission payment but at a discounted rate (“Inactive Commission”) on the condition that:
  - a Course Application on behalf of a Student has resulted in the acceptance by a Student to the School Partner;

- the Participating School Partner pays the Commission to WhatCollege.com;
  - the Student is enrolled in the Course on the day following the Census Date;
  - the Agency provides accurate and up to date account details for WhatCollege.com to process payment.
- For the avoidance of any doubt, the Inactive Commission will only be paid to the Agency where each of the abovementioned criteria is satisfied. For example, subject to all other criteria, if the Agency did not have a paid Registration Package at the date the Student was first entered into WhatCollege.com and the Agency later upgrades to a paid Registration Package, the Agency is only entitled to Inactive Commission for that Student.
- The Inactive Commission is 75% of the net payment received from the School Partner by WhatCollege.com for each Student.
- For the avoidance of any doubt, WhatCollege.com is not liable to pay any Commission to the Agency where no Commission is received from the Participating School Partner.
- You will not be required to issue a tax invoice for the Commission. By agreeing to these Terms and Conditions, you authorise WhatCollege.com to generate an invoice on your behalf for the Active Commission or the Inactive Commission.
- WhatCollege.com will pay Active Commission or the Inactive Commission to the Agency within 30 days of the end of each month of receiving the Commission, provided the Agency has accurate and up to date account details for WhatCollege.com to process payment.
- You acknowledge and agree that a 75% transaction fee shall be charged on the payment of any Active Commission or the Inactive Commission (“Transaction Fee”). You authorise WhatCollege.com to deduct or set off this Transaction Fee from the Active Commission or the Inactive Commission.
- You acknowledge WhatCollege.com will not be responsible for any bank fees or currency conversion fees incurred by your bank. Should WhatCollege.com be charged any such fee, you authorise WhatCollege.com to deduct this from the Active Commission or the Inactive Commission.
- you acknowledge that if you are a company incorporated in England & Wales, you must notify WhatCollege.com in writing immediately if:
  - your GST registration is cancelled; or
  - you are issued with a new GST number.

## **10. Suspension, cancellation or termination**

### **WhatCollege.com’ rights to suspend, cancel or terminate for cause**

- This Agreement and your Registration may be immediately suspended, cancelled or terminated by WhatCollege.com for cause, where:
  - you have not paid the Registration Fee when due and payable;
  - you are in breach of section 3 (Access to WhatCollege.com and Services) of these Terms and Conditions;
  - you are in breach of section 4 (Representations and warranties) of these Terms and Conditions;
  - you are in breach of section 11 (Confidential Information) of these Terms and Conditions;
  - you are in breach of section 12 (Intellectual Property) of these Terms and Conditions;
  - you are in breach of the Privacy Policy; or
  - you are in breach of any other material provision of this Agreement and you do not remedy that breach within 10 days of receiving notice from WhatCollege.com.
- WhatCollege.com reserves the right to elect to suspend, cancel or terminate your Registration and this Agreement for any of the forgoing reasons.

### **Termination without cause**

- This Agreement and your Registration may be terminated by either you or WhatCollege.com for any reason.

### **Consequences of termination of expiry**

If this Agreement and your Registration is terminated or expires for any reason:

- no further Services will be provided by WhatCollege.com and you will not longer have access to the WhatCollege.com;
- you must cease using the WhatCollege.com and the Services;
- you will be liable to pay any amounts payable under this Agreement up to and including the date of termination;
- termination, however caused, is without prejudice to any rights or liabilities of either party accruing to the date of termination; and
- WhatCollege.com will not, in any case, be liable to you to pay any compensation for loss of prospective revenue or profit, or loss of service suffered in connection with such termination;

Notwithstanding the forgoing, you may, at WhatCollege.com' discretion, be granted Restricted Access for a period not exceeding 14 days from the date of termination or expiry of this Agreement.

## **Sections surviving termination or expiration**

Despite any other provision of this Agreement, this section 10, section 1 (Definitions), section 8 (Registration Fees), section 9 (Commission), section 11 (Confidential Information), section 12 (Intellectual Property), section 13 (Disclaimers), section 14 (Indemnity), section 15 (Limitation of liability), section 17 (Miscellaneous) and the Privacy Policy will survive expiry or termination of this Agreement and your Registration.

## **11. Confidential Information**

### **Obligation to maintenance confidence**

You acknowledge and agree that:

- the Confidential Information is valuable, confidential and commercially sensitive to WhatCollege.com;
- the Confidential Information is disclosed to you solely for the Permitted Purpose and for no other reason;
- the Confidential Information shall at all times remain the sole property of WhatCollege.com;
- you will take all steps to secure and keep secure the Confidential Information coming into your possession;
- you may only use the Confidential Information of WhatCollege.com for the Permitted Purpose and to the extent necessary to perform your obligations under this Agreement;
- you must not disclose the Confidential Information to any other person not party to this Agreement, unless you have the prior written consent of WhatCollege.com; and
- you must not memorise, modify, reverse engineer or make copies, notes or records of the Confidential Information for any purpose.

### **Exceptions**

The obligations of confidentiality under this section 11 do not apply to any information that is:

- required to be disclosed by Law; or
- disclosed for the purposes of obtaining legal or accounting advice regarding this Agreement.

### **Return or destruction of Confidential Information**

- You must, on the request of WhatCollege.com, immediately deliver to WhatCollege.com all Confidential Information which is in your possession, power or control, or in the possession, power

or control of persons who have received Confidential Information from you.

- You must, on the request of WhatCollege.com, immediately destroy all Confidential Information which is in your possession, power or control, or in the possession, power or control of persons who have received Confidential Information from you and provide a statutory declaration to confirm the destruction.

### **Common law rights preserved**

The provisions in this section 11 will be in addition to and not in derogation of any of the common law or equitable rights of WhatCollege.com with respect to the Confidential Information.

## **12. Intellectual Property**

### **Ownership**

- WhatCollege.com is owned by WhatCollege.com, its related bodies corporate and/or its third party licensors. You acknowledge WhatCollege.com' title to and interest in WhatCollege.com.
- All Intellectual Property Rights arising out of or in connection with WhatCollege.com and Services are owned by WhatCollege.com, its related bodies corporate and/or its third party licensors. You acknowledge WhatCollege.com' title to and interest in the Intellectual Property Rights.

### **Your covenants**

You must:

- not represent yourself as the owner of or having any interest in WhatCollege.com' Intellectual Property Rights or any part of it;
- not use or allow the use of WhatCollege.com' Intellectual Property Rights or any part of it in a manner that is contrary to, or conflicts with, or in any way damages the title or interest of WhatCollege.com in the Intellectual Property Rights;
- not use any brand name, trade name, trademark, logo or design of WhatCollege.com or its School Partners;
- to the brand style guides as provided to you from time to time, where authorised to use an WhatCollege.com' trademark by WhatCollege.com for purposes directly attributed to your duties as a Agency;
- subject to this Agreement, where any of WhatCollege.com' Intellectual Property Rights is referred to or used by you, indicate clearly WhatCollege.com' ownership of the Intellectual Property Rights;

- not challenge or call in to question in any way the right, title, interest and goodwill of WhatCollege.com in respect of the WhatCollege.com Intellectual Property Rights;
- not register or attempt to register under the provisions of any statute or otherwise WhatCollege.com' Intellectual Property Rights;
- not produce, modify, transmit, post, use, licence, distribute, reverse engineer or make a copy of WhatCollege.com' Intellectual Property Rights for any purpose;
- not deface, remove or obscure any of WhatCollege.com' Intellectual Property Rights; and
- do all other acts and things that may be reasonably required by WhatCollege.com to ensure the protection of WhatCollege.com' Intellectual Property Rights.

### **13. Disclaimers**

To the fullest extent permitted by Law:

- WhatCollege.com does not make any representations, statements or warranties whatsoever, either expressly or implicitly, in relation to the accuracy, timeliness, performance, completeness or suitability of content (including School Partner Content and Third Part Content) found or offered on WhatCollege.com;
- You acknowledge that your use of WhatCollege.com and its Services is at your own risk;
- WhatCollege.com does not make any representations, statements or warranties whatsoever, either expressly or implicitly, that your use or access to WhatCollege.com and Services shall be timely, secure, free from interruption (whether due to any temporary and/or partial breakdown, repair, upgrade or maintenance of WhatCollege.com) or free from error;
- You are responsible for conducting your own due diligence check in relation to any School Partner listed on WhatCollege.com;
- You are responsible for ensuring that you have read and understood this Agreement and keep up to date with any modifications or amendments of this Agreement;
- WhatCollege.com does not make any representations, statements or warranties whatsoever, either expressly or implicitly, in relation to your Application, including whether or not you shall be successful in obtaining any placement with a School Partner or be granted a visa;
- You are responsible for ensuring that you have met all necessary Eligibility Criteria and any other requirements of the School Partner in making an Application;
- You acknowledge that WhatCollege.com is not suitable for time-sensitive Applications and WhatCollege.com shall not accept any responsibility should you use WhatCollege.com for a time-sensitive Application;

- You acknowledge that downloading or viewing of any content, including Third Party Content, is done so at your own risk and WhatCollege.com does not make any representations, statements or warranties whatsoever, either expressly or implicitly, that the content, including Third Party Content, shall be fit for purpose or virus free; and
- You are responsible for all equipment, operating systems, networks, software and internet service providers that you use or may use to access WhatCollege.com, including the maintenance, upkeep, repair and performance of those equipment and systems and WhatCollege.com does not make any representations, statements or warranties whatsoever, either expressly or implicitly, that your equipment, operating systems, networks, software and internet service providers are fit for purpose to use or access WhatCollege.com.

You acknowledge that in some jurisdictions, WhatCollege.com is not able to exclude liability for implied terms. Some of these disclaimers may not apply to you.

#### **14. Indemnity**

To the fullest extent permitted by Law, you agree to release, hold harmless and indemnify WhatCollege.com from and against any claims, suits, liabilities, damages, injuries, costs, expenses (including indirect and consequential loss) whatsoever and however arising out of or in connection with:

- your use or access to, or misuse of WhatCollege.com or Services;
- your breach or non-compliance with any terms of this Agreement;
- your violation, infringement or contravention of the Facebook Terms;
- your violation, infringement or contravention of the Other Social Media Terms;
- your violation, infringement or contravention of any third party rights; and
- your infringement or noncompliance with any applicable Law.

#### **15. Limitation of liability**

To the fullest extent permitted by Law, WhatCollege.com exclude any liability (whether based in contract, tort or negligence) for any direct, indirect or consequential loss or damage, cost or expense, however or wherever incurred, including but not limited to any direct, indirect or consequential loss or damage, cost or expense arising from or in connection with:

- your use or misuse of WhatCollege.com or Services;



- your use or misuse of any content, including School Partner Content and Third Party Content, on WhatCollege.com;
- your inability to Register to WhatCollege.com or Services;
- your failure or neglect to provide the requisite information and Personal Data necessary to Register for WhatCollege.com or Services;
- your failure or neglect to provide the requisite information or Personal Data necessary to submit an Application;
- the suspension, cancellation or termination of your Registration;
- any rejection of Application;
- any inaccuracies, errors or omissions in any content, including School Partner Content and Third Party Content;
- any inaccuracies, errors or omissions in the course matching, course discovery or predictive offer process
- any inaccuracies, errors or omissions in any Application;
- the loss or modification of any Personal Data, documents or information transmitted to or from WhatCollege.com;
- any loss of confidentiality in any Personal Data, documents or information transmitted to or from WhatCollege.com;
- your failure to obtain all relevant consents from any affected third party, including an School Partner and Student, for WhatCollege.com to collect, use, store and transmit Personal Data;
- your failure, violation, infringement or contravention of the Facebook Terms;
- your violation, infringement or contravention of the Other Social Media Terms;
- your failure, neglect or refusal to comply with any applicable Laws, including data and privacy laws; and
- any interruption, suspension, delay in operation or transmission of WhatCollege.com or Application for any reason whatsoever.

If, to extent that any of the above exclusions are void by operation of Law, then you unequivocally acknowledge and agree that WhatCollege.com' total aggregate liability arising from or in connection with this Agreement, is limited to your Registration Fee payable for a Term not exceeding a 12-month period.

Nothing in this Agreement limits WhatCollege.com' liability for fraud, personal injury or death to the extent found to be caused by WhatCollege.com' negligence or wilful conduct.

You acknowledge that in some jurisdictions, WhatCollege.com is not able to exclude or limit its liability and some of this section may not apply to you.

## **16. Modification of these Terms and Conditions**

To the fullest extent permitted by Law, you acknowledge and agree that WhatCollege.com reserves the right to modify or vary any terms, conditions,

notices or disclaimers in relation to these Terms and Conditions, at our sole and absolute discretion, without notice and without liability to you or any third party.

In the event the Terms and Conditions are modified or varied in any way whatsoever, your use and/or continued use of WhatCollege.com and Services constitutes your acceptance of any modified or varied Terms and Conditions.

## **17. Miscellaneous**

### **Remedies**

Each party to this Agreement acknowledges and agrees that if any of them breach the covenants contained in this Agreement that damages may not be an adequate remedy and the agreed terms will be enforceable by injunction, order for specific performance or such other equitable relief as a court of competent jurisdiction may see fit.

### **Waiver**

A waiver of a provision of or right under this Agreement is effective only if it is in writing signed by the party granting the waiver.

### **Invalidity**

Any provision of this Agreement which is invalid or unenforceable in any jurisdiction will, as to that jurisdiction only, be read down or severed to the extent of that invalidity or unenforceability. The remaining provisions of this Agreement which are self-sustaining and capable of separate enforcement without regard to the read down or severed provision in that jurisdiction are and will continue to be valid and enforceable in accordance with their terms.

### **Assignment**

- You may not assign its rights or obligations under this Agreement to any person.
- You acknowledge and agree that WhatCollege.com may assign or transfer its rights or obligations under this Agreement without your consent.

### **No merger**

The rights and obligations of the parties in respect of agreements, indemnities, covenants and warranties contained in this Agreement shall remain in full force and effect, be continuing agreements, indemnities, covenants and

warranties and not be merged or extinguished by or upon termination of, or completion of any obligations under, this Agreement.

### **Entire agreement**

This Agreement, together with any documents referred to in this Agreement or provided in conjunction with this Agreement from time to time, comprises the entire agreement between the parties with respect to the subject matter of this Agreement.

### **No relationship**

Nothing in this Agreement, expressly, implicitly or otherwise, is to be treated as creating a relationship of employer and employee, partnership or joint venture or agency. You acknowledge and agree that:

- you have no authority to bind WhatCollege.com; and
- you must not purport to incur any obligation, bind or make any promise, contract or undertaking, warranty or representation for or on behalf of WhatCollege.com.

### **Governing Law**

This Agreement shall be governed and construed in all respects in accordance with the laws of England & Wales and, except where restricted by the applicable Law, the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

### **Electronic agreement**

You acknowledge and agree that:

- by clicking on the “I Agree” field (or any similar field or link designated to indicate your acceptance of this Agreement or any other terms, conditions, notices and disclaimers published, displayed or otherwise provided to you from time to time, you are entering into a legally binding contract;
- if you are a corporation, you are authorised to represent that corporation;
- a printed version of this Agreement will be admissible in judicial, administrative or arbitral proceedings; and
- you waive any rights to originally execute by hand this Agreement.

### **Language**

This Agreement shall only be produced in the English language. If English is not your first language, it is your responsibility to have this Agreement translated by a professional translator. WhatCollege.com shall not be held responsible for any errors, omissions or misunderstandings arising from or as a result of any translation of this Agreement.

## **Contact**

Any questions, complaints or other concerns in relation to this Agreement should be directed to FirstPoint International:

- Written Correspondence:  
Attn: WhatCollege Department,  
111 Piccadilly, 14th Floor  
Manchester, M1 2HY  
United Kingdom