

## **Abacus Edutech Limited Terms and Conditions**

These terms and conditions ("Terms") shall apply to the provision of any Abacus Edutech service (the "Service"), which is provided by Abacus Edutech Limited, a company registered in England and Wales with registered number 13880209 and with its registered office at 22 Faulkner Place, Brize Norton, Carterton, United Kingdom OX18 1NF ("Abacus Edutech") to you ("The Customer"). In these Terms, each of the Customer and Abacus Edutech shall be a "Party" and together they shall be "the Parties".

This is a legally binding agreement, and you should read the Terms carefully. If you find yourself unable to agree to them, then you must not use the Service.

### **Basis of agreement**

1. The contract between the Customer and Abacus Edutech for the supply of the Service ("the Contract") shall be in accordance with these Terms.
2. These Terms shall be read in conjunction with (which shall be incorporated into the Contract): the separate Data Processing Agreement entered into between the Parties, which shall govern the processing of any personal data by Abacus Edutech on behalf of the Customer (or any authorised third party, as applicable) in connection with the Service.
3. The Customer's order constitutes an offer by the Customer to purchase the Service (or, in the case of a free trial, to accept the Service on a free trial basis) in accordance with these Terms.
4. The Customer's order shall only be deemed to be accepted on the earlier of: (i) Abacus Edutech issuing its confirmation of The Customer's order; or (ii) Abacus Edutech providing you with access to the Service, at which point and on which date the Contract shall come into existence ("Commencement Date").
5. This Contract shall commence on the date that it is accepted in accordance with clause 4 above ("Commencement Date") and shall continue for the initial term as set out in the purchase order, ("Initial Term") and will continue automatically thereafter for additional minimum terms of 12 months each, unless terminated in accordance with the terms of this Contract.
6. Abacus Edutech agrees to provide the Service in accordance with these Terms and the Specification in all material respects. Specification means the agreed Service as provided by Abacus Edutech to The Customer, or as set out on the Website or Abacus Edutech's brochure, which may be updated by Abacus Edutech from time to time.
7. Abacus Edutech shall use all reasonable endeavours to meet any performance dates specified in the Specification or otherwise agreed by the Parties, but any such dates shall be estimates only and time shall not be of the essence for performance of the Service.
8. The data that Abacus Edutech processes that is stored by the Organisation will be retrieved using the API of a third party; Wonde.

### **Intellectual Property**

9. Abacus Edutech grants to the Customer a non-exclusive, licence to receive and use the Service in its business during the term of the Contract on the terms set out in the

EULA. The Customer shall not sub-license, assign or otherwise transfer the rights granted in this clause.

10. The Service makes use of Abacus Edutech and third party software. Nothing in these Terms should be taken as conferring any licence or right to use any software without the prior written approval of the owner or its licensors except as required for the provision of the Service. Ownership of Abacus Edutech and third party software shall remain with Abacus Edutech and/or the relevant third party owner at all times.

## **Content**

11. The copyright and database right (and all other intellectual property rights) in the Service (or any other material created or prepared by Abacus Edutech, whether or not provided to The Customer, in performing the Service) shall belong to Abacus Edutech.
12. The Customer retains copyright and any other rights they already hold over all information, data, text, software, music, sound, photographs, graphics, video, messages, or any other materials whatsoever (collectively, "Content") that is uploaded, posted, emailed or otherwise held or transmitted by the Service or which the Customer generates using the Service. The Customer grants Abacus Edutech a non-exclusive, royalty-free, non-transferable licence to store, process, copy and modify any Content for the term of the Contract for the purpose of providing the Service to the Customer. The Customer shall be responsible for keeping a back-up copy of all Content and Abacus Edutech shall have no liability for the loss or corruption of any Content.
13. All Content stored on the Service is the responsibility of The Customer. This means that The Customer, and not Abacus Edutech, is entirely responsible for all Content that is uploaded, posted, emailed or otherwise held or transmitted by the Service or which the Customer generates using the Service. The Customer warrants and confirms that it has the right to use such Content for such purposes and such use of the Content shall not infringe any intellectual property rights or any other rights of any third party or be illegal or objectionable in any other respect.
14. The Customer shall indemnify Abacus Edutech against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interests, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Abacus Edutech arising out of or in connection with any claim made against Abacus Edutech for actual or alleged infringement of a third party's intellectual property rights or any other claim arising out of any Content supplied to Abacus Edutech or generated by The Customer within or outside the scope of these Terms.

## **Responsibilities**

15. The Customer will co-operate with Abacus Edutech during the preparation and performance of the Service and make available such Facilities as Abacus Edutech

reasonably requires. The Customer will not charge Abacus Edutech for use of the Facilities.

16. 'Facilities' means, computer equipment, access to the internet and The Customer computer network, telecommunications system etc, and shall include not only access to such resources but also use of them to the extent required by Abacus Edutech in order to perform the Service.
17. The Customer will provide Abacus Edutech with such information and materials as Abacus Edutech may reasonably require in order to supply the Service, and ensure that such information is complete and accurate in all material respects.
18. Abacus Edutech warrants that it will use reasonable care and skill in performing the Service but gives no warranties as to the suitability of The Customer's hardware or network which may compromise the performance of the Service.
19. The Customer is responsible for having sufficient, competent technical support personnel available who will co-operate and assist Abacus Edutech as reasonably required by Abacus Edutech.
20. The Customer is responsible for ensuring that Abacus Edutech is given permission to access the required information through its administration of the Wonde API.
21. The Customer shall keep materials, equipment, documents and other property of Abacus Edutech ("Abacus Edutech Materials") at its premises in safe custody at its own risk, maintain the Abacus Edutech Materials in good condition until returned to Abacus Edutech, and not dispose of or use the Abacus Edutech Materials other than in accordance with Abacus Edutech's written instructions or authorisation.
22. Abacus Edutech shall not be responsible for any data loss as a result of the Customer changing the Management Information System software it uses.
23. Abacus Edutech shall not be required to provide any support services which include the diagnosis and rectification of any fault resulting from The Customer's: (i) mis-use of the Service; (ii) failure to comply with any provision of these Terms; or (iii) failure to report the incident to Abacus Edutech promptly.
24. The Customer is responsible for ensuring that all users it authorises to use the system are entitled to access the information stored within it.
25. Abacus Edutech shall not be responsible to the extent that its performance of any of its obligations under these Terms is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation under these Terms (Customer Default). In such circumstances, Abacus Edutech shall have the right, without limiting or affecting any other right or remedy available to it, to suspend performance of the Service until the Customer remedies the Customer Default.

### **System Requirements, Improvements and Updates**

26. Without prejudice to clauses 39 to 41, Abacus Edutech aims to use appropriate technology to ensure that you are provided with the best quality of service. As such, the functionality of the Service may change from time to time and Abacus Edutech cannot guarantee the availability of the Service on any particular system or browser. The operation of the Service requires Internet connectivity and you agree to connection with your school management system via the use of the Wonde API. You are responsible for making appropriate arrangements with an Internet service provider.

27. Abacus Edutech reserves the right to:
- a. add or remove additional functionality to the Service;
  - b. provide additional services from time to time;
  - c. introduce updates to the system;
- which may at Abacus Edutech's sole discretion either be provided as part of the Service or provided for an additional fee.

## **Term and Fee**

28. This Agreement shall commence on the date that it is accepted in accordance with clause 4 above ("Commencement Date") and shall continue for the initial term as set out in the purchase order, ("Initial Term") and will continue automatically thereafter for additional minimum terms of 12 months each, unless terminated in accordance with the terms of this Agreement.
29. You shall pay to Abacus Edutech the licence fee as set out in the purchase order or subsequent invoices as per clause 28 above in this agreement ("Fee"). The terms of payment of such Fee are as set out in the purchase order and invoice issued to you by Abacus Edutech from time to time.
30. The Customer shall pay each invoice submitted by Abacus Edutech within 30 days of the date of invoice and in full and in cleared funds to a bank account nominated in writing by Abacus Edutech. The invoice number and relevant reference numbers shall be quoted by The Customer at the time of making payment. Time for payment shall be of the essence of these Terms.
31. Abacus Edutech shall be entitled to change its licence fee rate (as published on its Website from time to time), without prior notice, and for such increases to apply to the Customer's next 12 month Term Extension.
32. Abacus Edutech shall be entitled to increase its fee within a 12 month Contract Term if the cost to Abacus Edutech of providing its Service increases (for example, we have to pay third parties more for use of their infrastructure). The Customer shall be given 30 days notice, by email, of any such increases. Any increased fee will be applied on a pro-rata basis for the remainder of the term.
33. All amounts payable are exclusive of VAT.

## **Confidentiality**

34. Each Party undertakes that it will not at any time disclose to any person any confidential information concerning one another's business, affairs, customers, clients or suppliers, except as permitted by the following paragraph.
35. Each Party may disclose the other's confidential information:
- a. to its respective employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out its respective obligations under these Terms. Each Party will ensure that such employees, officers, representatives, subcontractors or advisers comply with this paragraph; and

- b. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
36. Each Party may only use the other's confidential information for the purpose of fulfilling its respective obligations under these Terms.

### **Data Protection**

37. The Parties shall enter into the separate 'Data Processing Agreement', which sets out the terms on which Abacus Edutech processes any personal data on behalf of the Customer (or any authorised third party, as applicable) in connection with the Service.
38. When The Customer places an order, which is accepted by Abacus Edutech to use the Service, The Customer consents to such processing and warrants that it has all appropriate consents and notices in place to enable lawful transfer of such personal data for the duration and purposes of the Contract

### **Limitation of liability**

39. Neither Party excludes or limits in any way its liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation or any other liability which cannot be excluded or limited by law.
40. Subject to the clause above, Abacus Edutech shall not be liable to the Customer in contract (including under any indemnity), tort, negligence, breach of statutory duty or otherwise for any: (i) loss of profits or turnover; (ii) loss of business; (iii) loss of goodwill; (iv) loss or corruption of software, data or information; or (v) any indirect or consequential of any nature.
41. Subject to the clauses above and in the Data Processing Agreement, Abacus Edutech's total liability under or in connection with the Contract, whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever, shall not exceed the Fees paid or payable by The Customer for the Service under these Terms in the 12 month period immediately preceding the event or series of events giving rise to the relevant claim (or, in respect of a free trial, an amount which is equivalent to the current standard Fees payable for a 3 month period, as detailed on the Abacus Edutech company website).

### **Termination**

42. If you wish to terminate this Contract after your initial term then you must provide us with at least 30 days written notice of termination of the Contract, such notice not to expire before the end of the Initial Term or each anniversary thereafter. Termination of the Contract does not entitle you to recompense in any way and any recompense offered will be at the discretion of Abacus Edutech.
43. If you breach any of the terms of this Contract, Abacus Edutech is entitled to terminate this Contract immediately without recompense to you. Abacus Edutech may also terminate this Contract if you are unable to pay your debts (within the

meaning of section 123 of the Insolvency Act 1986) or become insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a bankruptcy order is made or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of your assets or if you enter into or propose any composition or arrangement with your creditors generally or any analogous event occurs in any applicable jurisdiction.

44. On termination for any reason:

- a. all rights granted to you under this Contract shall cease;
- b. you shall cease all activities authorised by this Contract; and
- c. you shall immediately pay to Abacus Edutech any sums due to Abacus Edutech under this Contract.
- d. data held by Abacus Edutech will be deleted within 90 days.

## **General**

- 45. Neither Party shall be in breach of these Terms nor liable for delay in performing, or failure to perform, any of its obligations under these Terms if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 46. These Terms (together with the Data Processing Agreement and the EULA) constitute the entire agreement between The Customer and Abacus Edutech and govern The Customer's use of the Service.
- 47. Each of the Parties acknowledges that, in entering into these Terms, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in these Terms, and any conditions, warranties or other terms implied by statute or common law are excluded from these Terms to the fullest extent permitted by law. Nothing in these Terms excludes liability for fraud.
- 48. Except as set out in these Terms, no variation of the Contract shall be effective unless set out in writing and signed by duly authorised representatives of the Parties.
- 49. Except as set out in these Terms, the Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Abacus Edutech. No failure or delay by Abacus Edutech in exercising any right, power or privilege under these Terms shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in these Terms are cumulative and not exclusive of any rights and remedies provided by law.
- 50. These Terms do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 51. The Customer and Abacus Edutech agree that these Terms will be governed by English law and irrevocably submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising under these Terms.
- 52. If any provision is determined to be illegal or unenforceable, such provision shall be deemed to have been deleted without affecting the remaining provisions.
- 53. Any notice or other communication given to a party under or in connection with the Contract shall be:

- a. in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - b. by email, to the email address [sales@abacusedutech.co.uk](mailto:sales@abacusedutech.co.uk).
54. Any notice or communication shall be deemed to have been received:
- a. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or
  - b. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
  - c. If sent by email, 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered.

This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.