

1. DEFINITIONS

- 1.1. 'Us' and 'we' mean Abacus Learning Systems of Abacus House, 15, Acacia Park, Bishop's Cleeve, Cheltenham, Gloucestershire, GL52 7WH. 'Our' relates to things of Abacus Learning Systems. 'You' means any of our clients; or organiser or sponsor of the provision by us of our Services; or user of our Server. 'Server' means the computer server equipment (also known as the Abacus Virtual College) operated by us in connection with the provision of our Services. 'Services' includes all goods and services supplied by us.

2. APPLICATION

- 2.1. These terms and conditions of business apply to any or all of the goods and services provided by us.

3. OUR SERVER

- 3.1. You warrant, undertake and agree that you will access the server only from a machine that has anti-virus software installed and you will keep this software updated.

- 3.2. We specifically exclude any warranty as to the accuracy or quality of information received or given by any person via the Server and in no event will we be liable for any loss or damage to any data stored on the Server.

- 3.3. We will take all reasonable precautions to preserve data stored on the Server. If you deem it necessary, you are responsible for maintaining insurance cover in respect of any loss or damage to your data stored on the Server.

- 3.4. You warrant to us that you will only use the Server for lawful purposes. In particular, you further warrant and undertake to us that:

- 3.4.1.1. You will not, nor will you authorise or permit any other party to, use the Server in violation of any law or regulation:

- 3.4.2. You will not knowingly or recklessly post, link to or transmit:

- 3.4.2.1. any material that is unlawful, threatening, abusive, harmful, malicious, libellous, defamatory, obscene, pornographic, profane or otherwise objectionable in any way: or

- 3.4.2.2. any material containing a virus or other hostile computer programme.

- 3.4.3. You will not post, link to or transmit any material that shall constitute or encourage a criminal offence, give rise to civil liability or that violates or infringes any trade mark, copyright, other intellectual property rights or similar rights of any person, firm or company under the laws of any jurisdiction: and

3.4.4. you will conform to the standards made available by us from time to time and will not yourself, and will ensure that none of your end users, make excessive or wasteful use of the Server to our detriment or that of our other customers.

3.5. You are responsible for sending mail in accordance with any relevant legislation (including data protection legislation) and for sending the same in a secure manner. We will take all reasonable steps to ensure accurate and prompt routing of messages but we will not accept any liability for non-receipt or misrouting or any other failure of email.

3.6. You warrant, undertake and agree that you will keep secure any identification, password and other confidential information relating to your account, and you will notify us immediately of any known or suspected unauthorised use of your account, or any known or suspected breach of security, including loss, theft or unauthorised disclosure of your password information.

3.7. Whilst we shall use reasonable endeavours to ensure the integrity and security of the Server, we do not guarantee that the Server will be free from unauthorised users or hackers.

3.8. Our server is set to automatically delete all mail in an individual user's MailBox after 60 days unless the user changes the default expiry property. The default expiry property for messages in conferences on our server is 3599 days.

4. SERVICE AVAILABILITY

4.1. We shall use reasonable endeavours to provide continuing availability of the Server and the Services but we shall not, in any event, be liable for Service interruptions or down time of the Server.

5. FIRSTCLASS SUPPORT

5.1. Where Abacus Learning Systems has supplied FirstClass software and an associated maintenance and support agreement, we will provide FirstClass support at no extra cost provided requests for such support are occasional and reasonable.

5.2. Where these requests are more frequent or less reasonable (to be determined at our sole discretion) we will charge you for this support at the current rate per hour or part of an hour.

5.3. We will, at our discretion, charge you for all support at the current rate per hour or part of an hour where Abacus Learning Systems has not supplied the FirstClass software or an associated maintenance and support agreement; or you have a FirstClass system pre-dating FC Gold; or you have allowed a maintenance and support agreement to expire.

5.4. Before we provide you with chargeable FirstClass support we will inform you of the fact that we will charge you for the service.

6. USE OF DATA

We are committed to upholding the eight Data Protection Principles of good 6.1. information handling practice. Unless you notify us in writing or by email that you do not wish us to do so, we may at our discretion share information about you with companies in the same group as ourselves.

7. INDEMNITY

7.1. You agree to indemnify and keep indemnified and hold us on demand harmless from and against any claim brought against us by a third party resulting from the provision of Services by us to you and your use of the Server, and in respect of all losses, costs, actions, proceedings, claims, damages, expenses (including reasonable legal costs and expenses) or liabilities, whatsoever suffered and howsoever incurred by us in consequence of your breach or non-observance of these terms of business.

8. TERMINATION

8.1. We may terminate this agreement forthwith if you fail to pay any sums due to us as they fall due.

8.2. We may terminate this agreement upon written notice if you breach any of these terms and conditions and you fail to correct the breach within thirty (30) days following written notice from us specifying the breach, or if you are a company you go into insolvent liquidation, or if you are a person you are declared bankrupt.

8.3. On termination of the agreement we shall be entitled immediately to block your use of the Server and to remove all your data located on it. We will hold such data for a period of 14 days and allow you to collect it at your expense, failing which we shall be entitled to delete all such data. We shall further be entitled to post such notice in respect of the non-availability of the Server as we think fit.

9. PAYMENT

9.1. All charges payable by you to us for our Services shall be in accordance with the relevant scale of charges and rates published from time to time by us. Such charges are exclusive of Value Added Tax which shall be paid by you at the rate and in the manner for the time being prescribed by law. In the case of courses, invoices will be sent upon receipt of the booking and must be paid before the course starts. Invoices for other services must be paid within thirty (30) days of their receipt.

9.2. The provision by us of the Services is contingent upon our having received payment in full from you in respect of the relevant Services. Without prejudice to our other rights and remedies under this agreement, if any sum payable is not paid on or before the due date, we reserve the right,

forthwith and at our sole discretion, to suspend the provision of Services to you.

10. CANCELLATION, SUBSTITUTES & TRANSFERS

10.1. All course bookings must be confirmed in writing. A booking to attend an open event may be cancelled in writing at any time but the fees remains payable if this cancellation is made 10 working days or less prior to the event. A suitable substitute delegate is acceptable. 20 working days notice is required to transfer a booking to a later date.

10.2. Once the course or event has begun no fee is refundable in respect of any delegate to the course or event.

11. LIMITATION OF LIABILITY

11.1. No provision of these Terms and Conditions affects your statutory rights.

11.2. We will make very effort to give you satisfaction by ensuring reasonable standards of skills and reliability of our staff and to provide them in accordance with booking details. However, no liability will be accepted by us for any loss, expense, damage or delay arising from any failure to provide any particular staff for all or part of the period of the booking, or from negligence or lack of skill of our staff. In addition we accept no liability in respect of any claims or demands by our staff, you or any other person or body however arising.

11.3. We hereby exclude all conditions, terms, representations (other than fraudulent representations) and warranties relating to the Services supplied under this agreement, whether imposed by statute or operation of law or otherwise, that are not expressly stated in these terms and conditions including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose.

11.4. Our total aggregate liability to you for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of the Services shall be limited to the charges paid by you in respect of the Services which are the subject of any such claim and provided that you notify us of any such claim within one year of it arising.

11.5. In no event shall we be liable to you for any loss of business, contracts, profits or anticipated savings or for any other indirect or consequential or economic loss whatsoever.

11.6. We shall not be liable in respect of any liability arising out of any computer programme software or system advised upon, designed, supplied, modified or maintained for or on behalf of you which fails to perform in accordance with the manufacturer's specifications including consequential losses therefrom.

11.7. Should we for reasons beyond our control need to make any amendment to an agreement for our Service to you, we reserve the right to offer alternative arrangements.

11.8. We reserve the right to change course content and/or tutor without prior notice. We also reserve the right for causes beyond our control to cancel a course. The customer will then be offered an alternative date or the refund of any fee paid. We will not be liable for any loss or expense arising out of such cancellation.

11.9. Except as expressly agreed otherwise, the copyright in all original material on our server shall remain with us. You understand that we may show any material on our server to any person at our discretion.

11.10. Where you are the sponsor or organiser of the use of our Service, or are the user of such Service, you will be responsible for ensuring the safe use by yourself, or the person(s) you are sponsoring, of all equipment bearing in mind appropriate Health and Safety legislation and relevant recommendations. It is also your responsibility to ensure the user has no medical condition that precludes them from taking part.

11.11. Where we use your premises it is your responsibility to ensure adequate security measures are taken to protect our equipment whilst it is on your premises and that you have 'all risks' insurance cover.

11.12. You will not, either directly or indirectly, employ or in any way utilise the services of any person who shall already be contracted or have previously been contacted by us to you during a period of 12 months from the last date the services of that person were provided to you.

11.13. Where we host conferencing on our server for a third party, we will accept no responsibility whatsoever for the content, moderation or quality of that conferencing.

12.NOTICES

12.1. Any notice to be given by either party to the other may be sent by either email, fax or recorded delivery to the address of the other party as appearing in this agreement or ancillary application forms or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by recorded delivery shall be deemed to be served two days following the date of posting.

13.LAW

13.1. These terms and conditions shall be governed by and construed in accordance with English law and you hereby submit to the non-exclusive jurisdiction of the English Courts.

14. ENTIRE AGREEMENT

14.1. These terms and conditions together with any document expressly referred to in them, contain the entire agreement between us relating to the subject matter covered and supercede any previous agreements, arrangements, undertakings or proposals, written or oral, between us in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions.

You confirm that, in agreeing to these terms and conditions, you have not relied on any representation save insofar as the same has expressly in these terms and conditions been made a representation and you agree that you shall have no remedy in respect of any misrepresentation (other than a fraudulent