

TERMS AND CONDITIONS

Introduction

1. By signing the Application Form, the Organization is entering into a legal relationship with ACBS, governed by the following terms and conditions (“the Terms”) (as may be updated from time to time). The Organization acknowledges that choosing to be considered for Accreditation (as defined below) by ACBS is entirely voluntary and other accreditation organizations exist.
2. The Association of Colleges and Business Schools (“ACBS”) is a private, organization to which colleges and training providers can apply to be considered for Accreditation.

Structure

3. The Schedules form part of these Terms and shall have effect as if set out in full in the body of these Terms. Any reference to these Terms includes the Schedules. The Organization must comply with the ACBS Documents. If there is an inconsistency between any of the provisions of these Terms and the ACBS Documents, the provisions of these Terms prevail in preference to the ACBS Documents.
4. The Organization shall be obliged to complete the following documents to apply for Accreditation:
 - The Application Form
5. In order to maintain Accreditation, the Organization must renew its accreditation status.

Use of the Accreditation

6. Should the Organization successfully receive Accreditation, ACBS grants the Organization, for the duration of their Accreditation only, the non-exclusive, revocable and non-transferable right (with no rights to sub-license) to use the ACBS Logo, the applicable Scheme Logo and Accreditation Statement in accordance with these Terms for the purpose of communicating that the Organization is accredited by ACBS (“Licence”).
7. The Organization’s use of the Licence is subject to the following conditions, the Organization must
 - a) comply with these Terms and the ACBS Documents;
 - b) not be in default with respect to the payment obligations in clause 18 (Payment)
 - c) only use the ACBS Logo, applicable Scheme Logo and the Accreditation Statement when the organization has a current Accreditation for the scheme(s); and
 - d) comply with any branding and copy guideline issued by ACBS from time to time.
8. For the avoidance of doubt, ACBS is the owner of any inspection reports made pursuant to these Terms and the ACBS Documents and any use made of any such reports by the Organization must be in accordance with these Terms and the ACBS Documents.
9. The Organization acknowledges and agrees that all ACBS Intellectual Property shall vest in ACBS absolutely and, apart from the Licence granted pursuant to clause 8 (Licence), these Terms do not transfer any interest in ACBS Intellectual Property.

10. For the avoidance of doubt, ACBS does not accredit programmes/courses. The Organization may not use the ACBS Logo or applicable Scheme Logo on a course certificate or imply that their programmes/courses are accredited by ACBS in any of their online or printed material.
11. The Organization may only use the ACBS Logo and applicable Scheme Logo in connection to the provision accredited by ACBS. Additional provision that has not been inspected by ACBS must have ACBS approval for the Organization to use the ACBS Logo and applicable Scheme Logo.
12. The Organization will not use, register or attempt to register any mark, design, business name or domain name consisting or comprising or being confusingly similar to any of the ACBS Intellectual Property, or do or permit to be done any act that may weaken, damage or be otherwise detrimental to the reputation or goodwill associated with ACBS, or may interfere with or jeopardise the registration and/or validity of ACBS Intellectual Property.
13. The Organization will ensure that its public information about the Accreditation is accurate and reliable.
14. For the avoidance of doubt a breach of any of the provisions of these clauses 8 to 16 (inclusive) (Intellectual Property) shall be deemed to constitute a material breach of these Terms.

Duration

15. These Terms commence on the date when the Application Form has been signed and submitted to ACBS by the Organization and continues for the duration of the Accreditation, unless terminated earlier in accordance with clause 37 (Voluntary withdrawal) or clause 39 (ACBS Termination rights).

Charges

16. The Organization shall pay to ACBS the applicable charges as specified in the Fees Brochure ("Charges"). Where there is discretion as to which rate from the Fees Brochure is applicable, that discretion shall lie solely with ACBS.
17. The Organization shall pay the Charges to ACBS in accordance with the following timeframes:

Application Fee:

The Application Fee is payable with submission of the Application Form. This fee is non-refundable.

Any other Charges are due within 30 days of the date of invoice.

18. If any amount remains unpaid after the payment dates set out above:
 - ACBS reserves the right to charge interest
 - without prejudice to any termination process set out in the ACBS Documents (such as withdrawal of Accreditation), ACBS may at its discretion refuse to provide any ongoing Accreditation to the Organization until such amount is paid; and the Organization shall (without any limitation of other remedies open to ACBS) be liable for the reasonable costs incurred by ACBS in seeking recovery of unpaid amounts.

19. Unless otherwise stated, charges published by ACBS are exclusive of Value Added Tax (or any similar tax or duty).
20. If ACBS is unable to complete processing a new application within six months of submission of the relevant Application Documents as a result of failure by the Organization to submit the necessary documentation, the Organization may be asked to restart the application process which will include paying the Application Fee again.
21. If ACBS is unable to complete processing a re-accreditation application within six months of submission of the relevant Application Documents as a result of failure by the Organization to submit the necessary documentation or otherwise cooperate with the process set out in the ACBS Documents, ACBS may withdraw the Accreditation in accordance with clause 40 (Consequences of Termination/Withdrawal) and the Organization will be required to reapply as a new applicant which shall include paying the Application Fee, and any other Charges that apply to a new applicant.

Information

22. The Organization shall comply with all requirements for the provision of information to ACBS, including the ACBS Documents..
23. Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, learners, clients or suppliers of the other Parties, except as permitted by clause 27 (Permitted disclosure).
24. Each Party may disclose the other Party's confidential information:
 - a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with these Terms. Each Party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other Party's confidential information comply with clauses **Error! Reference source not found. – Error! Reference source not found.** (inclusive)(Confidentiality); and
 - b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
25. No Party may use any other Party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with these Terms.
26. For the avoidance of doubt, ACBS will use the information provided in the Application Form and declarations to administer the Accreditation scheme, contact the Organization with relevant information about ACBS and list the Organization on the ACBS website once accredited. Notwithstanding clause 27 (Permitted Disclosures), ACBS may also pass information to the Department for Education, the Home Office and Home Office approved bodies and partners as deemed necessary by ACBS.
27. The Organization acknowledges that the legal relationship between itself and ACBS is based on the utmost faith and trust. Therefore, it is a fundamental breach of that legal relationship should that faith and trust be compromised by a lack of full and frank disclosure, in a timely manner, of

any matter relating to or arising from the ACBS Documents and/or Accreditation.

28. The Organization authorizes ACBS to approach its referees (as declared in the ACBS Documents) to collect information relevant to its obligations (or potential obligations) in relation to the ACBS Documents.

Malpractice and maladministration

29. The Organization shall take all reasonable steps to prevent malpractice or maladministration in its activities.
30. The Organization shall promptly notify ACBS if it is, or if it has reasonable cause to believe that it is likely to be subject to:
 - a material change in its governance structure or legal status
 - any change of control
 - any form of insolvency or bankruptcy
 - having any member of its senior staff convicted of a criminal offence
 - any form of litigation which it has reasonable cause to believe will impact its Accreditation.

Reviewing Approach

31. The Organization shall keep under review, and shall enhance where necessary, its approach to being accredited by ACBS, so as to assure itself that its approach remains at all times appropriate to the provision of Accreditation by ACBS.

Assignment

32. The Organization shall not assign, or transfer any benefit, or sub-contract any obligation regarding the ACBS Documents without ACBS's prior written consent.

Termination

33. The Organization may voluntarily withdraw from the Accreditation at any point during its Accreditation cycle, provided the organization has given one month's notice to ACBS.
34. To initiate the withdrawal process, the Organization must contact ACBS.
35. ACBS may terminate its legal relationship with the Organization by written notice to it in accordance with clause 24 (Failure to reaccredit) or if the Organization:
 - fails to pay any amount due under these Terms (including the ACBS Documents) on the due date for payment and remains in default not less than 14 days after being notified to make such payment;
 - is in fundamental or irremediable breach of its obligations under the ACBS Documents
 - is otherwise in material breach of its obligations under the ACBS Documents (including through cumulative breaches) and where remediable it does not remedy such breach within 14 days (or such other period as ACBS shall specify) of being given written notice to do so by ACBS

- acts or fails to act in any way that ACBS reasonably considers may place ACBS's status or reputation as an Accreditation body in jeopardy
 - acts, or fails to act, in any way that ACBS reasonably considers is against the values of ACBS
 - is subject to insolvency or bankruptcy proceedings
 - has any member of its senior staff convicted of a criminal offence
 - is unable to prove the Organization continues to meet any or all of the eligibility criteria (as set out in the Handbook)
 - has not recruited any active enrolments in a 12-month period.
36. On termination of these Terms for whatever reason:
- a) The Accreditation and Licence will no longer apply to the Organization and no representation must be made by the Organization declaring or implying the Accreditation being anything other than withdrawn;
 - b) the Organization shall immediately pay to ACBS all of ACBS's outstanding unpaid invoices and interest and, in respect of any Charges that would have otherwise applied prior to the termination date but for which no invoice has been submitted, ACBS may submit an invoice, which shall be payable immediately on receipt;
 - c) any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Terms shall remain in full force and effect; and
 - d) termination or expiry of these Terms shall not affect any of the rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Terms which existed at or before the date of termination or expiry.

Liability and Indemnity

37. Subject to clause 43 (Liabilities which cannot be legally limited) and clause 44 (Liability exclusions), ACBS's total liability to the Organization for any claim or series of connected claims shall be limited to an amount equal to two times the Charges paid and/or payable in the calendar year in which the relevant claim occurred.
38. Nothing in these Terms or the ACBS Documents limits or excludes either Parties' liability for:
- a) death or personal injury caused by its negligence;
 - b) fraud or fraudulent misrepresentation; and/or
 - c) any other liability which cannot be limited or excluded by applicable law.
39. Subject to clause 43(Liability which cannot be legally limited), ACBS shall not be liable to the Organization, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any: (a) loss of profit or revenue; (b) loss of goodwill; (c) loss of business; (d) loss of business opportunity; (e) loss of anticipated saving; or (f) special, indirect, punitive, or consequential damage or loss arising under or in connection with this Agreement.
40. The Organization shall indemnify ACBS against all Losses incurred by ACBS as a result of any claim arising out of or in connection with any action or omission carried out by the Organization in breach of clauses 8 -16 (inclusive) (Use of Accreditation) ("Indemnity").
41. Liability under the Indemnity is unlimited.

Force Majeure

42. Neither Party shall be liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 30 days, the Parties not affected may terminate these Terms by giving not less than 7 days' written notice to the affected Parties.

Dispute resolution

43. Solely in relation to matters arising from these Terms (and not the ACBS Documents as a whole) and, specifically, without prejudice to any appeal procedure within the ACBS Documents, the following shall apply:
 - In the event of either Party considering it to be in dispute with the other, it shall formally notify the other party to that effect by written notice.
 - Each Party shall then use reasonable endeavours through suitably senior representatives, to resolve the dispute, within the next 14 days.
 - If the dispute is not resolved within that period, each Party will use reasonable endeavours through more senior officers, to resolve the dispute within the next 14 days.
 - If the dispute is not resolved within that period, either Party may, on written notice to the other, refer the matter for mediation in accordance with the standard mediation procedure of the Centre for Effective Dispute Resolution (www.cedr.com) and both Parties shall (without prejudice to legal remedies) use reasonable endeavours to reach agreement through such mediation.
 - In relation to any mediation, each party shall bear its own costs.

Governing Law

44. These Terms are governed by and construed in accordance with the law of the U.S..
45. Each Party irrevocably agrees that the courts of the U.S. have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Terms or its subject matter or formation. Nothing in this clause limits the right of ACBS to take proceedings against the Organization in any other court of competent jurisdiction, nor shall the taking of proceedings by ACBS in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

Waiver

46. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
47. A delay or failure to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.

Severance

48. If any provision or part-provision of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these Terms.
49. If any provision or part-provision of these Terms is deemed deleted under clause 53, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

No partnership or agency

50. Nothing in these Terms is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorize any Party to make or enter into any commitments for or on behalf of any other Party.
51. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

Notices

52. Any notice given to a Party under or in connection with these Terms shall be in writing and shall be:
 - a) 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) sent by email to the following addresses (or an address substituted in writing by the Party to be served):
 - c) the Organization: as set out in the Application Form
 - d) ACBS: as set out in the Application Form
53. Any notice shall be deemed to have been received:
 - e) if delivered by hand, at the time the notice is left at the proper address; or
 - f) 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
 - g) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
54. This section (Notices) 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.

Third Party Rights

55. These Terms do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms.

Entire Agreement

56. These Terms constitute the entire agreement between the Parties.
57. Each Party acknowledges that in entering into these Terms it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms. Each Party agrees that it has no claim for innocent or negligent misrepresentation based on any statement in these Term