

# TERMS AND CONDITIONS

## PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY

This Agreement is a binding, contractual agreement between the client (“Client” or “You”) and Abacus Major Donor Ask Calculator LLC (“Abacus”). This Agreement applies to your access to and/or use of the Services (defined below) pursuant to this Agreement. By using a service of Abacus, you are indicating your acceptance of the Agreement. You represent that you have the authority to bind the Client and its affiliates to the terms and conditions of this Agreement. If you do not have such authority, or if you do not accept and agree to all of the Terms and Conditions, contact Abacus by email at [abacus@donorabacus.com](mailto:abacus@donorabacus.com).

“Addendum” or “Addenda” means the document(s) attached hereto and incorporated herein at any time, and only to the extent applicable, that set(s) forth additional descriptions and requirements of particular hosting-specific terms, subscription information and test file submission matters.

If You and Abacus have executed a written agreement, that agreement shall apply and govern the relationship between You and Abacus instead of these Terms.

**The Terms and Conditions were last updated on December 1, 2023.**

## CONFIDENTIALITY

Abacus acknowledges that the data submitted to Abacus by Client (the “Data”) is to be used by Abacus for the sole purpose of enhancing the Data. Therefore, Abacus certifies that from the time that Abacus receives the Data until the analysis process has been completed, no person or persons who are not employees of Abacus or consultants working for Abacus will have access to the Data.

Each party acknowledges and agrees that all information emanating from the other party’s business in any form that is marked confidential or reasonably should be deemed confidential, including and not limited to marketing information, prospective plans, activities of technical and other personnel, and any compilations of otherwise non-public information, including the terms of this Agreement, are confidential and proprietary information (collectively, the “Confidential Information”). Each party agrees that it will not, during or after the term of this Agreement, permit the duplication, use, or disclosure of any such Confidential Information to or by any person (other than any of its employees, agents, independent contractors, or other representatives who must have such information for the performance of such party’s obligations hereunder), unless such duplication, use or disclosure is specifically authorized in writing by the other party.

Abacus shall notify Client of any unauthorized or inadvertent disclosure of Data following the requirements outlined in any Addendum hereto.

## **INFORMATION DELIVERY SCHEDULE**

Abacus will deliver to the Client the results of Abacus's analysis of the Data (the "Information") immediately upon completion of the profile information, provided Abacus has received the subscription payment.

Abacus will make every effort to have the online research service available (the "Services") seven (7) days a week, twenty-four (24) hours a day, except for planned and unplanned outages not to exceed five (5) business days in any one calendar year.

The client shall purchase the Information and/or Services from Abacus at a price (the "Price") listed on the chosen subscription Order Summary. Unless otherwise stated in the Order Summary or any quote provided by Abacus, prices quoted shall be good for thirty (30) days. Unless otherwise stated in the Order Form, full payment is due immediately upon the Client's completion of the subscription Order. Payment to Abacus is not contingent upon payment to the Client from a third party. Services will be suspended upon completion of the subscription term.

## **RIGHTS OF CLIENT**

The client acknowledges that Abacus, or the data owners who provided the Information to Abacus, own the Information. The Client has no proprietary rights to the Information used by Abacus to calculate a Donor Ask Profile.

The client has the right to use all Information provided via Abacus's Data analysis process without limitation, solely in connection with Client fundraising and marketing programs.

The Client may not sell, lease, rent, or otherwise provide to any other party its own Data as enhanced with the Information or any direct marketing list, model, analysis, code, or report utilizing or derived from the Abacus generated results, except that Client may provide without charge its own Data as enhanced with the Information or any actual pledge result information utilizing or derived from the Information to an employee, agent, independent contractor, or other representatives of Client assisting Client in connection with the fundraising and marketing programs permitted under the Section above.

## REPRESENTATIONS AND WARRANTIES BY ABACUS

Abacus represents and warrants to Client as follows:

Abacus has all rights and licenses necessary to deliver the Information to the client and grant the client all rights granted in this Agreement to analyze and use the Information.

To the knowledge of Abacus's principles without investigation, the Information does not infringe upon or otherwise violate any copyright, trade secret, trademark, patent, invention, right of privacy, known third party rights, or non-disclosure requirements of any third party. In furtherance of these representations and Client's reliance thereon, Abacus shall indemnify and hold Client, its officers, directors, agents, and employees harmless against all claims, demands, or liabilities of or to third parties arising from or in connection with Abacus's breach of its representations or warranties as to third party infringement under this Section. Said indemnification shall survive the expiration or termination of this Agreement.

Abacus will obtain the Information from reliable sources and run reasonable control checks on the Information. Still, it will not be subject to liability for the truth or accuracy of the Information conveyed or for its completeness or errors or mistakes made by humans or machines. Abacus shall take reasonable steps to control the continuing quality of the Information. Application of such quality control procedures constitutes the full extent of warranty concerning the information provided. The client acknowledges that it may be necessary or advisable from time to time, in the ordinary course of Abacus's business, for Abacus to add, delete, and substitute Information it makes available to its clients, including the Client. Abacus expressly reserves the right to revise the information and make changes in the content. Abacus will give the Client written prior notification of any such changes.

ABACUS MAKES NO WARRANTIES EXCEPT FOR THOSE SET FORTH ABOVE. IT DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ABACUS MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET THE CLIENT'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE. These disclaimers must be conveyed to all Client-authorized users of the Information. Abacus's sole and exclusive liability and Client's sole and exclusive remedy for breach of the limited warranty outlined in this Section D shall be reperformance of the affected services or, at Abacus's option, a refund to Client of a portion of the fees previously paid by Client corresponding to the defective services.

## **LIMITATION OF LIABILITY**

IN NO EVENT SHALL ABACUS BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY (A) LOSS OF USE, INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (B) LOSS OF GOODWILL OR REPUTATION; (C) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (D) FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT ABACUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

IN NO EVENT SHALL ABACUS'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO ABACUS FOR THE INFORMATION AND SERVICES THAT ARE THE SUBJECT OF THE APPLICABLE CLAIM.

## **TERM AND TERMINATION**

This Agreement shall be effective for a term of the Agreement beginning on the Effective Date of the Order and shall continue for a period of the Order (the "Initial Term") and successive Orders that may follow the initial Order.

Upon any material default under this Agreement by either party, the other party shall give written notice of such default to the defaulting party. Unless the default is cured within thirty (30) days after delivery of such notice, then, without limitation of any other remedy available herein, the non-defaulting party may terminate this Agreement by delivery of a notice of termination to the defaulting party at any time before such default has been cured. Notwithstanding the foregoing, if the client cannot cure the default within the thirty (30) day cure period despite the defaulting party's good faith efforts and diligence, and if the defaulting party commences the cure within the thirty (30) day cure period and thereafter uses good faith efforts and reasonable diligence to cure the default, then the non-defaulting party shall not be entitled to terminate this Agreement until the sixtieth (60th) day after delivery of the default notice. Notwithstanding anything to the contrary contained herein, if Client fails to pay to Abacus any amount as and when due hereunder, Abacus may at its sole discretion discontinue any or all Information and/or Services provided hereunder and/or exercise any rights it may have at law, in equity, under this Agreement or otherwise, all without any obligation to provide notice or an opportunity for Client to cure in connection therewith.

The client may pause this Agreement at any time, without cause, using the pause feature in the Client's account for a period up to six-months. If the pause exceeds six-months, the subscription will be cancelled. The subscription can be started anew at the current monthly or annual rate. Profiles created during the original subscription will be accessible and preserved for one year upon subscription renewal.

After the Initial Term of a subscription, the Agreement shall automatically renew for successive periods of the Initial Term (the "Renewal Terms"), unless one party has given at least 30 days written notice to the other party before such term end date that it desires to terminate the Agreement in which event the Agreement shall end at the end of the current Initial Term or Renewal Term, as applicable. The terms of each Renewal Term shall be on the same terms as the preceding term, except that the fee(s) may be increased by 10% but only with written notice is given at least 30 days before the completion of the Initial Term or Renewal Term.

## **NOTICES**

All notices given under this Agreement must be via the appropriate options in the Client's profile or in writing and sent by email to the Client's email address.

## **MISCELLANEOUS**

Subject to the following sentence, this Agreement shall be binding upon the parties, their successors, and assigns. Neither this Agreement nor any interests or duties hereunder may be assigned by either party without the prior written consent of the other.

This Agreement shall be governed by and construed and enforced per the laws of the Commonwealth of Massachusetts, excluding its choice of law rules regardless of its place of execution. In the event of a dispute hereunder, the parties agree to submit to the exclusive jurisdiction of the state courts of, and federal courts sitting in, the State of [Massachusetts].

No waiver of any term or condition of this Agreement shall be deemed to be a waiver of any subsequent breach of any term or condition.

If any part of this Agreement shall be held unenforceable, the remainder of this Agreement will nevertheless remain in full force and effect.

Except as provided in of this Agreement and any Addendum hereto, Abacus is not responsible for any loss or damage incurred by any person or party as a result of the use of or reliance on the Information or Services supplied. In no event will Abacus be liable for loss or damage incurred by any person or party due to the use of the Client's software, data, or equipment.

Abacus shall not be liable or responsible to Client, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Abacus including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

Each party represents and warrants that its respective representative, whose signature appears below, is duly authorized by all necessary corporate actions to execute this Agreement.

This Agreement, including all Addenda and Appendices, contains the entire understanding between Abacus and Client and supersedes all prior written and oral understandings relating to the subject matter hereof. This Agreement may be executed in counterparts, and the agreement may assemble the signature pages of such counterparts to form a single, integrated document.

Only by written agreement of the parties may this agreement be modified or amended in any manner whatsoever.

The Client acknowledges that Abacus is not a consumer reporting agency or subject to the Fair Credit Reporting Act (FCRA). Accordingly, no service provided by Abacus shall, under any circumstance, be utilized for any purpose covered under the FCRA.

The details of the method and manner for the performance of the services by Abacus shall be under its own control. However, Abacus shall be solely responsible for supervising, controlling, and directing the details and manner of completing the services. Nothing in this Agreement shall give the Client the right to instruct, supervise, control, or direct the details and manner of completing the services. Abacus is for all purposes hereunder, an independent contractor, and in no event will Abacus be considered an agent or employee of Client for any purpose.

The Client hereby agrees that, during the term of this Agreement, Abacus may use the Client's name and those of any Client Organizations on its website and in business development communications for promotional purposes.

## HOSTING-SPECIFIC TERMS ADDENDUM

### DATA SAFEGUARDS

Abacus shall provide to Client and implement technical, administrative, physical, and organizational safeguards and security measures that are consistent with industry standards and practices and otherwise meet the requirements of applicable federal, state, and local law, including applicable state data privacy laws, too (i) protect Client Data, and all other Clients Confidential Information against unauthorized destruction, loss, alteration, access, misuse or disclosure, and (ii) ensure the availability, integrity, and confidentiality of Client Data and all other Client Confidential Information in possession of Abacus or its affiliates, contractors, and personnel (or to which any of the foregoing has access) during the shipping, transporting, maintenance, electronic transmission, and storage thereof (the “Data Safeguards”). In this respect, Abacus shall employ appropriate methods, including encryption and encrypted devices, and secure communication lines to secure Client Data’s privacy and security and minimize the risk of unauthorized access to the Abacus data centers.

### ABACUS DATA SECURITY COMPLIANCE

Abacus warrants and covenants that it shall require all of its employees, contractors, agents, and other authorized individuals who have access to its data centers to adhere to its written security policies and procedures regarding remote electronic access or physical access to a data center which shall be available to Client upon execution of this Agreement and as requested thereafter. Abacus shall enforce such security policies and procedures and take appropriate corrective action against individuals who fail to adhere to such security policies and procedures, including termination.

### ACCESS AND BREACHES

Abacus will not attempt to access or allow access to Client Data that is not required for the performance of the services hereunder or otherwise authorized by the Client. Abacus shall notify Client within forty-eight (48) hours of (a) Abacus’s determination that an actual or suspected breach of Client Data has occurred or (b) in the event of Abacus’s determination that any actual or suspected unauthorized use, disclosure, acquisition or access to Client Data has occurred that requires Client, under applicable federal or state law, to make a notification to any third party (including, without limitation, to any affected individual) (a “Triggering Event”). To the extent Client is required to notify any third party, including a patient or another Covered Entity, of such breach unless otherwise required by law, Client shall have the sole right to make such notification, including determining the content, methods, and means of such notification. Notwithstanding the foregoing, Abacus shall reasonably cooperate with Client in formulating such notification, but Abacus shall not make any such notification at its own initiative without Client’s prior written consent. Abacus will pay the reasonable costs and expenses of investigation, remediation, notification, and penalties to the extent the Triggering Event is caused by the grossly negligent acts or omissions of Abacus, its subcontractors, or any Abacus

personnel or a material breach of this Agreement by Abacus or any Abacus personnel, subject to the terms and conditions of this Agreement including without limitation the Terms and Conditions.

## **VIRUS PROTECTION**

Abacus shall use commercially reasonable efforts to ensure that the data centers, solutions, and/or programs used by Abacus in providing the Services are protected against known or suspected Disabling Devices by implementing appropriate processes for detecting, preventing, and recovering from virus attacks, including all necessary data and software back-up and recovery tools and arrangements. “Disabling Devices” shall mean any software, equipment, tools or data (a) designed or able to disrupt, disable, harm or otherwise impede in any manner, including aesthetical disruptions or distortions, the operation of the systems, or any software, equipment, tools or data (e.g., “viruses” or “worms”); (b) that would disable the Abacus systems, or Client’s access to the Client Data, or impair in any way their operation including, for example, based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral (e.g., “time bombs”, “time locks” or “drop dead” devices); (c) that would permit a third party to access Client Data, to cause such disablement or impairment, or otherwise to circumvent the security features of the Abacus systems or services, or Client Data hosted by Abacus (e.g., “traps”, “access codes” or “trap door” devices); or (d) which contains any other harmful, malicious or hidden procedures, routines or mechanisms which would cause the Client systems to cease functioning or to damage or corrupt storage media, software, equipment, tools, data or communications or any part of the Abacus systems, or otherwise interfere with operations.

## **DATA AVAILABILITY AND DISASTER RECOVERY PLAN**

Abacus shall implement a disaster recovery plan to ensure that all Client Data is preserved for as long as Client requires such Client Data to be preserved and readily available at all times to Client. The disaster recovery plan shall include the following procedures: Abacus shall ensure that a backup of its systems, including the Client Data, is conducted every other night by Abacus, which at a minimum, shall include daily incremental backups. Backups are conducted digitally at Abacus’s expense. In addition, Abacus shall ensure that all Client Data hosted by Abacus is securely stored and preserved on both primary and backup data centers, and in the event of failure of the primary data center or other interruption of access to the Client Data, that Abacus shall readily restore the redundant copy of such Client Data and the hosting services, accessible and usable by Client (from the back-up data center or other location or means as agreed by the parties).



## **OFF-SHORE RESOURCES**

Abacus shall not directly or indirectly transmit or transfer to or allow access from any offshore location to any information or Client Data without Client's prior written consent, which client may withhold consent for any or no reason.

## **SUBSCRIPTION INFORMATION ADDENDUM**

### **Intellectual Property**

The Client agrees that the Service and Information are and will remain the property of Abacus. The Client does not have any license or right to use any trade or service mark displayed in any part of the Service and Information without the express written permission of Abacus. Abacus's intellectual property rights in and to the product are protected by the United States copyright and trademark laws, and the Client agrees that its employees are not authorized to reproduce, copy, republish, upload to a third party, or distribute any part of the Service or Information, except under this Agreement. The Client agrees not to use any Information obtained through the Service for any unlawful or unauthorized purpose.

### **Network Security**

Violations of this Agreement include but are not limited to any attempt to avoid user authentication or security of any host, network, or account. This includes accessing content not intended for visitors and logging into an account you are not expressly permitted to access. Attempting to force a denial of service by email bombing, packet spoofing, or ping flooding, among other measures, is strictly prohibited. The client is forbidden to perform any network monitoring, including probing the security of networks or attempting to intercept data not intended for the Client.

### **Restrictions**

The Client must ensure that only users who are a part of their organization and who have authorization can access and use the Service under this Agreement. Such access and use only enable the Client to conduct its business in the normal course. The Client agrees to take all necessary precautions to ensure that no unauthorized persons have access to the product. All authorized persons having access refrain from unauthorized disclosure, duplication, reproduction, or storage on locations accessible by users who do not have authorization.

### **Payment, Cancellation, Refunds**

#### **SUBSCRIPTION**

A new Client chooses the Planner or Planner+ subscription is charged monthly. Abacus asks for credit card information to be used for payment at the start of each subscription term. A credit card on file is a prerequisite for any available preferential pricing.

A new Client chooses Teams or Consultants subscription is charged annually. Abacus asks for credit card information to be used for payment at the start of each subscription term, or payment by invoice.

#### RENEWAL

The Planner or Planner+ subscription will auto-renew until canceled. Abacus will charge the credit card on file unless otherwise notified anytime in the previous month that the Client wishes to cancel.

Abacus may increase the subscription pricing by a maximum of 15% for users once every 12 months, starting at the expiration of the Initial Term or Renewal subscription.

#### CANCELLATION

A Client on auto-renewal may cancel at any time with no termination fee.

A Client who has canceled their subscription may purchase it again but will have to begin anew at the current monthly or annual rate. Profiles created during the original subscription will be accessible and preserved for one year upon subscription renewal.

#### REFUNDS

Abacus does not give refunds.