

INVESTORS IN EXCELLENCE ON-LINE

TERMS & CONDITIONS

BACKGROUND

- (A) The Supplier has developed and provides an on-line improvement tool provided by internet access.
- (B) The Client wishes to use the tool for improvement of its business.
- (C) The Supplier has agreed to provide and the Client has agreed to take and pay for the Supplier's service subject to the terms and conditions of this Agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Authorised Users: those employees of the Client who are entitled to use the tool under this agreement, as further described in clause 2.1.6.

Business Day: any day which is not a Saturday, Sunday or public holiday in the UK.

Client: the party who has agreed in writing to use the Tool

Client Data: the data input into the information fields of the Tool by the Client, by Authorised Users, or by the Supplier on the Client's behalf.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as confidential information in clause 8.5, or which by its nature is clearly confidential.

Effective Date: the date of the signed written document.

Error: a non-conformance in any material respect with the applicable portion of the Tool Specification.

Fees: such sum/s as the parties agree in writing that the Client should pay the Supplier from time to time.

Intellectual Property Rights: all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world.

Maintenance: any error corrections, updates and upgrades that the Supplier may provide or perform with respect to the Tool, all as described in clause 2.

Maintenance Events: maintenance of the hosting equipment, facility or Tool that may require interruption of the Services.

Normal Business Hours: 8.30am to 5.30pm Monday to Thursday and 8.30am to 4.00pm Friday local UK time, excluding public holidays.

Services: access to the Tool.

Supplier: Investors in Excellence Limited incorporated and registered in England and Wales whose registered office is at c/o BMW Plant Hams Hall, Canton Lane, Coleshill, Birmingham, B46 1GB

Tool: the Supplier's proprietary tool known as 'Investors in Excellence On-line'.

Termination Date: the date of termination or expiry of this Agreement.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 Any use of the word "including" shall not be limited by the words that follow.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraph of the relevant schedule.

2. LICENCE AND MAINTENANCE

- 2.1 In relation to the Tool:
 - 2.1.1 the Supplier hereby grants to the Client for the term of, and on and subject to the terms and conditions of, this Agreement a non-exclusive and non-transferable licence to allow Authorised Users to access the Tool and to use the Tool solely for the Client's business purposes;
 - 2.1.2 the Client shall not store, distribute or transmit any that is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
 - 2.1.3 the rights provided under this clause 2.1 are granted to the Client only, and shall not be considered granted to any subsidiary or holding company of the Client; and
 - 2.1.4 the Client shall not:
 - (a) attempt to duplicate, modify or distribute any portion of the Tool;

- (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form any of the Tool, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties;
- (c) use the Tool to provide services to third parties other than to Authorised Users;
- (d) transfer, temporarily or permanently, any of its rights under this Agreement,
- (e) attempt to obtain, or assist others in obtaining, access to the Tool, other than as provided under this clause 2.1.

2.1.5 In relation to Authorised Users:

2.1.5 the Client's access to the Hosting Services shall be limited to the number of individual Authorised Users stated in the written agreement, being only employees of the Client;

2.1.6 the Client shall maintain a written list of current Authorised Users of the Tool, and the Client shall provide such list to the Supplier as may be requested by the Supplier from time to time;

2.1.7 the Client shall ensure that each Authorised User keeps a secure password for his use of the Tool, and that each Authorised User keeps his password confidential;

2.1.8 the Supplier may at any time audit the Client's use of the Tool and payments made under this Agreement, including the name, password and access made by each Authorised User. Such audit may be conducted at the Supplier's expense, and shall be exercised with reasonable prior notice, in a manner so as to not substantially interfere with Client's normal conduct of business; and

If such audit reveals that passwords have been provided to individuals who are not Authorised Users, and without prejudice to the Supplier's other rights, the Client shall promptly disable such passwords and shall not issue any new passwords to such individuals. The Supplier shall be entitled to charge the Client for the Client's access to the Tool by individuals who are not Authorised Users for the whole of the period of such use up to such amount which would have been properly chargeable had they been Authorised Users

2.2 The Client shall have the ability to request access for additional individual authorised users in excess of the number stated in the written agreement . Any additional Authorised Users requested by the Client shall be requested in writing. The Supplier shall evaluate such requests and respond to the Client with approval or disapproval of the request, together with a quote for any additional set-up or ongoing costs to the Client for creating and granting access to such additional Authorised Users. On Client acceptance of such approval and quotation, the Supplier shall provide access based on a mutually agreeable schedule.

- 2.3.1 Maintenance Events shall not be performed during Normal Business Hours. The Supplier may interrupt the Services to perform emergency maintenance during the daily window of 6.00 pm to 6.00 am UK time. In addition, the Supplier may interrupt the Services outside Normal Business Hours for unscheduled maintenance. The Supplier shall at all times use reasonable endeavours to keep any service interruptions to a minimum.
- 2.3.2 The Supplier may determine, at its sole discretion, that providing appropriate service levels requires additional equipment and/or bandwidth, and may install that equipment and/or bandwidth without approval from the Client.
- 2.3.3 Maintenance includes all regularly scheduled error corrections, tool updates and upgrades. Support for additional features developed by the Supplier, as requested by the Client, may be purchased separately at the Supplier's then current rates.

3. CLIENT DATA

The Supplier shall follow its own archiving procedures for Client Data. In the event of any loss or damage to Client Data, the Client's sole and exclusive remedy shall be for the Supplier to use its reasonable commercial efforts to restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by the Supplier. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Client Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Client Data maintenance and back-up).

4. SUPPLIER'S OBLIGATIONS

- 4.1 The Supplier warrants that the Services will be performed with reasonable skill and care. This warranty shall not apply to the extent of any non-conformance which is caused by use of the Tool contrary to the Supplier's instructions or modification or alteration of the Tool by any party other than the Supplier or the Supplier's agents. If the Tool does not conform with the foregoing warranty, the Supplier will, at its option and expense, use reasonable commercial efforts to correct any such non-conformance promptly or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's sole and exclusive remedy for any breach of the warranty set out in this clause 4.1. Notwithstanding the foregoing, the Supplier does not warrant that the Client's use of the Tool and the Services will be uninterrupted or error-free.

5. CLIENT'S OBLIGATIONS

The Client shall:

- 5.1.1 provide the Supplier with:

- (a) all necessary co-operation in relation to this Agreement; and
- (b) all necessary access to such information as may be reasonably required by the Supplier;

in order to render the Services including Client Data, security access information and tool interfaces to the Client's other business applications;

- 5.1.2 provide such personnel assistance as may be reasonably requested by the Supplier from time to time. The Client shall use reasonable endeavours to ensure continuity of its personnel assigned to this Agreement;
- 5.1.3 comply with all applicable laws and regulations with respect to its activities under this Agreement; and
- 5.1.4 carry out all other Client responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, the Supplier may adjust any timetable or delivery schedule set out in this Agreement.

6. CHARGES AND PAYMENT

- 6.1 The Client shall pay the Fees .
- 6.2 All amounts and fees stated or referred to in this Agreement are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 6.3 Each invoice is due and payable 30 days after the invoice date. If the Supplier has not received payment within five days after the due date, and without prejudice to any other rights of the Supplier, the Supplier may suspend the Services until payment in full has been made and in any event interest shall accrue on such due amounts at the rate of 3% over the base lending rate of the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Client acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Tool and the Services. Except as expressly stated herein, this Agreement does not grant the Client any rights to, or in, any Intellectual Property Rights or any other rights or licences in respect of the Tool, the Services or any related documentation.
- 7.2 The Supplier confirms that it has all the rights in relation to the Tool that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

8. CONFIDENTIALITY

- 8.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information which:
 - 8.1.1 is or becomes publicly known other than through any act or omission of the receiving party; or
 - 8.1.2 was in the other party's lawful possession before the disclosure; or
 - 8.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

- 8.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 8.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
 - 8.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
 - 8.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
 - 8.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
 - 8.5 The Client acknowledges that the Tool, the results of any performance tests of the Tool and the Services constitute the Supplier's Confidential Information.
 - 8.6 The Supplier acknowledges that the Client Data is the Confidential Information of the Client.
 - 8.7 This clause 8 shall survive termination of this Agreement, however arising.
9. INDEMNITY
- 9.1 The Supplier shall defend the Client, its officers, directors and employees against any claim that the Tool infringes any UK Intellectual Property Rights of a third party effective as of the Effective Date or right of confidentiality, and shall indemnify the Client for any amounts awarded against the Client in judgment or any settlement amounts approved by the Supplier of such claims, provided that:
 - 9.1.1 the Supplier is given prompt notice of any such claim;
 - 9.1.2 the Client provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - 9.1.3 the Supplier is given sole authority to defend or settle the claim.
 - 9.2 In the defence or settlement of the claim, the Supplier may obtain for the Client the right to continue using the Tool, replace or modify the Tool so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement without liability to the Client. The Supplier shall have no liability if the alleged infringement is based on:
 - 9.2.1 a modification of the Tool by anyone other than the Supplier; or
 - 9.2.2 the Client's use of the Tool in a manner contrary to the instructions given to the Client by the Supplier; or

9.2.3 the Client's use of the Tool after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

9.3 The foregoing states the Client's sole and exclusive rights and remedies, and the Supplier's entire obligations and liability, for any Intellectual Property Rights infringement.

10. LIMITATION OF LIABILITY

10.1 This clause 10 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:

10.1.1 any breach of this Agreement;

10.1.2 any use made by the Client of the Services, the Tool, or any part of them; and

10.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

10.2 Except as expressly and specifically provided in this Agreement:

10.2.1 the Client assumes sole responsibility for results obtained from the use of the Tool and the Services by the Client, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Client in connection with the Services, or any actions taken by the Supplier at the Client's direction; and

10.2.2 all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

10.3 Nothing in this Agreement excludes the liability of the Supplier:

10.3.1 for death or personal injury caused by the Supplier's negligence; or

10.3.2 for fraud or fraudulent misrepresentation.

10.4 Subject to clause 10.3 :

10.4.1 the Supplier shall not be liable for any loss of profits (unless directly arising from the relevant breach), loss of business, depletion of goodwill and/or similar losses or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising; and

10.4.2 the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the Fees paid for the Services during the 12 months preceding the date on which the claim arose.

11. TERM AND TERMINATION

- 11.1 This Agreement shall commence on the Effective Date and shall continue for as long as the parties agree in writing, unless otherwise terminated as provided in this clause 11.
- 11.2 Without prejudice to any other rights or remedies to which the parties may be entitled, the Supplier may terminate this Agreement without liability to the Client if:
- 11.2.1 The Client commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of the Client being notified in writing of the breach; or
 - 11.2.2 an order is made or a resolution is passed for the winding up of the Client, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the Client; or
 - 11.2.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the Client, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Client, or notice of intention to appoint an administrator is given by the Client or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
 - 11.2.4 a receiver is appointed of the Client's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Client, or if any other person takes possession of or sells the Client's assets; or
 - 11.2.5 the Client makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
 - 11.2.6 the Client ceases, or threatens to cease, to trade; or
 - 11.2.7 the Client takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 11.3 On termination of this Agreement for any reason:
- 11.3.1 all licences and rights granted to the Client under this Agreement shall immediately terminate;
 - 11.3.2 the Client and each Authorised User shall make no further use of the Tool;
 - 11.3.3 the Supplier may destroy or otherwise dispose of any of the Client Data in its possession unless the Supplier receives, no later than thirty days after the Termination Date, a written request for the delivery to the Client of the then most recent back-up of the Client Data. The Supplier shall use reasonable commercial efforts to deliver the back-up to the Client within 30 days of its receipt of such a written request, provided that the Client has, at that time, paid all Fees and charges outstanding at and resulting from termination (whether or

not due at the Termination Date). The Client shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Client Data; and

- 11.3.4 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

12. FORCE MAJEURE

The Supplier shall have no liability to the Client under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

13. WAIVER

- 13.1 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 13.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

14. SEVERANCE

- 14.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 14.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

15. ENTIRE AGREEMENT

- 15.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 15.2 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

16. ASSIGNMENT

- 16.1 The Client shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 16.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

17. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

18. THIRD PARTY RIGHTS

This Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

19. NOTICES

- 19.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as may have been notified by that party for such purposes.
- 19.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

20. GOVERNING LAW AND JURISDICTION

- 20.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.
- 20.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.