

# Emerald Alumni Toolkit

## 1. DEFINITIONS

<b>Access Period</b>	means the period during which the Users are provided with access to the Toolkit
<b>Agreement</b>	means these general terms and conditions together with the Commercial Terms
<b>Commercial Terms</b>	means the commercial terms agreed between Emerald and the Customer in respect of the use of the Toolkit by the Customer and varied from time in writing
<b>Customer Contract Date</b>	as stated in the Commercial Terms means the start date of this Agreement as stated in the Commercial Terms
<b>Fee</b>	means the amount payable set out in the Commercial Terms, as varied in accordance with this Agreement
<b>Emerald Initial Period</b>	means Emerald Publishing Limited means the initial period during which the access to the Toolkit shall be provided (from the Access Start Date to the End Date) as set out in the Commercial Terms
<b>Maximum Number of Users</b>	means the maximum number of Users as stated in the Commercial Terms
<b>Term</b>	means the period from the Access Start Date (stated in the Commercial Terms) to the expiry or earlier termination of this Agreement
<b>Toolkit</b>	means the digital performance support tool for multimedia learning and development comprising resources such as articles, practical tools, self-assessments, infographics, e-learning, audio and video that is supported and maintained by GoodPractice (a trading name of Emerald Learning Limited)
<b>Users</b>	means individuals who have been properly authorised by the Customer to access the Toolkit via the Website
<b>Website</b>	means the website used to provide access to the Toolkit as detailed in the Commercial Terms

## 2. LICENCE

- 2.1. In consideration of the Fee, Emerald grants to the Customer the non-exclusive and non-transferable right to give Users access to the Toolkit throughout the Term, subject to the terms and conditions of this Agreement.
- 2.2. The resources comprising the Toolkit may be updated, revised and replaced at any time, provided that such changes will not prevent the use of the Toolkit for its intended purposes and the Toolkit will continue to meet any descriptions in the Commercial Terms.

## 3. FEE AND PAYMENT

- 3.1. Unless otherwise stated in the Commercial Terms, the Customer shall pay the Fee to Emerald within twenty-eight (28) days of receipt of Emerald's invoice.
- 3.2. For the avoidance of doubt, the Fee shall be exclusive of any sales, use, value added, non-recoverable, withholding or similar taxes and the Customer shall be liable for any such taxes in addition to the Fee.
- 3.3. If this Agreement is automatically renewed in accordance with clause 8 Emerald will be entitled to increase the Fee for each renewal period, by an amount equal to the Retail Prices Index prevalent on the date of renewal plus an additional five (5) per cent.

## 4. PERMITTED USES

- 4.1. Subject to payment of the Fee, the Customer may allow Users to access the Toolkit through the Website for the User's training, learning and development purposes.
- 4.2. Subject to payment of the Fee, Users may search, view, retrieve, use, display on screen and download resources from the Toolkit for their training, learning and development purposes.
- 4.3. All rights in and to the Toolkit not expressly granted to the Customer under this Agreement are reserved to Emerald and its licensors.

## 5. EMERALD OBLIGATIONS

- 5.1. Emerald will, subject to the Customer's compliance with its obligations under this Agreement:
  - (a) procure that the Toolkit will be made available to the Customer from the Access Start Date through the Website based on internet access by an industry standard means of authentication;
  - (b) procure that the Customer is provided with information sufficient to enable the Customer to access the Toolkit from the Access Start Date; and
  - (c) use reasonable endeavours to procure that the Toolkit is available to the Customer and to Users from the Access Start Date at all times and on a twenty-four-hour basis, save for routine maintenance, and that access to the Toolkit is restored as soon as possible in the event of an interruption or suspension of the service.
- 5.2. Emerald acknowledges that any copyright or other intellectual property rights in any materials provided by the Customer for use on the Website will be unaffected by the terms of this Agreement. Emerald and its Licensors are hereby granted a non-exclusive, worldwide, royalty free licence to place and/or host such materials on the Website for the sole access of the Customer and its Users.

## 6. CUSTOMER OBLIGATIONS

- 6.1. Within 30 days of this Agreement, the Customer shall provide to Emerald all information sufficient to enable Emerald to provide access to the Toolkit via the Website.
- 6.2. The Customer will use, and shall procure that Users use, the Toolkit in accordance with the terms of this Agreement and any instructions provided by Emerald in writing or on the Website (as may be updated from time to time).

- 6.3. The Customer will ensure that the aggregate number of Users shall not exceed the Maximum Number of Users during the Term. If the Customer requires the Maximum Number of Users to be increased, it should request written permission from Emerald, who shall be entitled to increase the Fee.
- 6.4. The Customer shall:
  - 6.4.1. use all reasonable endeavours to ensure that all Users are aware of the permitted uses of Toolkit under this Agreement;
  - 6.4.2. use reasonable efforts to prevent unauthorised use of the Toolkit and, on becoming aware of any unauthorised use or other breach of this Agreement, inform Emerald as soon as practicable in writing;
  - 6.4.3. authenticate the identity of Users to accepted industry standards at log in and issue passwords (or equivalent access verification) to Users;
  - 6.4.4. take all reasonable steps and appropriate steps (including, without limitation, taking disciplinary action), to promptly cease any unauthorised use of the Toolkit and ensure it does not recur.

## 7. WARRANTIES AND INDEMNITIES

- 7.1. Each party warrants to the other that it has full power and authority to enter into and perform its obligations under this Agreement.
- 7.2. Except as expressly provided in this Agreement, all representations or warranties of any kind, express or implied, including but not limited to the accuracy of the information contained in the Toolkit, merchantability or fitness of use for a particular purpose are to the fullest extent permitted by law excluded from this Agreement and accordingly the Toolkit is supplied "as is".
- 7.3. Neither party shall be liable to the other party or to any other person, including but not limited to Users, for any special, exemplary, indirect or consequential loss, costs, damages, charges or other expenses of any kind (including loss of profits or revenues, loss of business, depletion of goodwill, loss of anticipated savings, loss of contract or business interruption) arising under or in connection with this Agreement.
- 7.4. Both parties' aggregate liability for all claims, losses or damages arising under or in connection with this Agreement or any collateral agreement shall be limited to £3 million.
- 7.5. No party limits its liability for death or personal injury caused by its own negligence (or the negligence of its employees or agents) or for fraud.

## 8. TERM AND TERMINATION

- 8.1. This Agreement will commence on the Contract Date and will automatically renew for consecutive periods of one (1) year unless and until either party gives the other no less than thirty (30) days' written notice, such notice to expire at the end of the Initial Service Period (the End Date in the Commercial Terms) or the end of the applicable renewal period.
- 8.2. Either party may terminate this Agreement by notice in writing to the other if the other party:
  - 8.2.1. commits a material or persistent breach of any term of this Agreement and fails to remedy the breach (if capable of remedy) within thirty (30) days of notification in writing; and/or
  - 8.2.2. becomes insolvent or becomes subject to bankruptcy, receivership, liquidation or administration.

- 8.3. If on expiry or earlier termination of this Agreement the Access Period is less than the Term, Emerald may, at its discretion, provide access to the Toolkit to the Users for an additional period up to a maximum of three (3) months. In such circumstances access to the Toolkit is subject to the terms of this Agreement.
- 8.4. On termination of this Agreement, all rights of the Customer or Users to access the Toolkit will cease and the Customer shall destroy any copies of the Toolkit in its possession or control and promptly provide to Emerald such evidence as it may reasonably require of the Customer's compliance with this requirement.

## 9. CONFIDENTIALITY AND ANNOUNCEMENTS

- 9.1. The terms of this Agreement are confidential and, except as permitted below or required by law, neither party shall disclose the same to any third party without the written permission of the other Party.
- 9.2. The Customer consents to Emerald providing the details of the Customer's account and/or its Users' accounts to its licensors, group companies, associates, agents and IT service providers, some of which are based outside of the European Economic Area, where this is necessary to provide the services requested by the Customer.
- 9.3. The parties agree to maintain the confidentiality of any data relating to usage of the Toolkit by the Customer and its Users. Such data may be provided to third parties in aggregated form only and shall not include any information relating to the identity of individual Users.
- 9.4. Emerald may publicly acknowledge that the Customer is a customer and the Customer grants to Emerald the right to use the Customer's name and quotations in public relations and promotional material.

## 10. GENERAL

- 10.1. Either party's delay or failure to perform any provision of this Agreement, as a result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or internet failures, or damage to or destruction of any network facilities) (a Force Majeure Event) shall not constitute a breach of this Agreement and neither party shall have any liability or responsibility for failure to fulfil any obligation under this Agreement so long as and to the extent to which the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event provided reasonable notice of the Force Majeure Event is given by the non-performing party to the other.
- 10.2. This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter of this Agreement, whether oral or written. On giving notice via its website, Emerald may vary these General Terms and Conditions.
- 10.3. This Agreement may not be assigned by the Customer to any other person or organisation without the prior written consent of Emerald.
- 10.4. Any notices to be served in writing on either of the parties by the other shall be sent by first class post and email to the address of the addressee as set out in this Agreement or to such other address as notified by either party in writing to the other as its address for service of notices. If no sooner response is received, notices shall be deemed served 24 hours after sending by email or 7 days after posting.
- 10.5. If any provision of this Agreement (or part of any provision) is found by any court or other competent

authority to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid or unenforceable provision would be valid, enforceable and 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.

10.6. Either party's waiver or failure to require performance by the other of any provision of this Agreement will not affect its full right to require such performance at any subsequent time, or be taken or held to be a waiver of the provision itself.

10.7. No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

10.8. Unless otherwise stated in the Commercial Terms, this Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the Courts of England.