

## Emerald Works Limited Toolkit Agreement

### COMMERCIAL TERMS

#### DETAILS



<b>Client Name</b>		National Institute for Health and Care Excellence
<b>Address</b>		Level 1A, City Tower, Piccadilly Plaza, Manchester, M1 4BT
<b>Contract Date</b>		12 <sup>th</sup> December 2022
<b>Initial Service Period</b>	<b>Access Start Date</b>	1 <sup>st</sup> February 2023
	<b>End Date</b>	31 <sup>st</sup> January 2024
<b>Fee per annum (state currency)</b>		£12,800 + vat
<b>Website or Client's Learning Management System</b>		TBC
<b>Maximum Number of Users</b>		800
<b>Invoice Dates</b>		December 2022
<b>Invoice Address</b>		Level 1A, City Tower, Piccadilly Plaza, Manchester, M1 4BT
<b>Accounts Contact</b>		TBC
<b>Purchase Order Number (if required)</b>		TBC

#### SPECIAL CONDITIONS



N/A

#### AUTHORISATION

For and on behalf of Emerald Works Limited, a company registered in Scotland and whose registered office is Level 1, 50 Frederick Street, Edinburgh, Scotland EH2 1EX

<b>Signature</b>	
<b>Print Name and Title</b>	 Head of Revenue Operations

For and on behalf of National Institute for Health and Care Excellence, I accept these Commercial Terms, together with the attached General Terms and Conditions and any Schedules.

<b>Signature</b>	
<b>Print Name and Title</b>	

# Emerald Works Toolkit

## GENERAL TERMS AND CONDITIONS

### 1. DEFINITIONS

<b>Access Period</b>	means the period during which the Users are provided with access to the Toolkit
<b>Access Start Date</b>	means the date on which the Toolkit access will start as set out in the Commercial Terms
<b>Agreement</b>	means these general terms and conditions together with the Commercial Terms
<b>Client</b>	means the client identified in the Commercial Terms
<b>Commercial Terms</b>	means the commercial terms agreed between Emerald Works and the Client in respect of the use of the Toolkit by the Client and varied from time to time in writing
<b>Contract Date</b>	means the start date of this Agreement as stated in the Commercial Terms
<b>End Date</b>	means the date on which access to the Toolkit expires as set out 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 Works</b>	means Emerald Works Limited, a company registered in Scotland with its registered office at Level 1, 50 Frederick Street, Edinburgh, Scotland EH2 1EX
<b>Initial Service Period</b>	means the initial period during which the Service 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 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
<b>Users</b>	means individuals who have been properly authorised by the Client 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 Works grants to the Client 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. Emerald Works reserves the right to update, revise and replace the resources comprising the Toolkit at

any time acting reasonably, 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 Client shall pay the Fee to Emerald Works within thirty (30) days of receipt of Emerald Works' 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 Client shall be liable for any such taxes in addition to the Fee.
- 3.3. If this Agreement is automatically renewed in accordance with clause 10 Emerald Works will be entitled to increase the Fee for each renewal period, by a maximum amount equal to the UK Retail Prices Index prevalent on the date of renewal plus an additional five (5) per cent.
- 3.4. If the Client fails to make a payment due to Emerald Works then, without limiting Emerald Works' remedies under clause 10, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgement. Interest under this clause 3.4 will accrue each day at a rate of 2% a year above Bank of England's base rate from time to time.

### 4. PERMITTED USES

- 4.1. Subject to payment of the Fee, the Client:
  - 4.1.1. may allow Users to have access to the Toolkit through the Website for the Client's training, learning and development purposes; and
  - 4.1.2. may download, store machine readable extracts or make paper copies of individual items of content forming part of the Toolkit available to Users for the purposes of the Client's face-to-face training and development activities.
- 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 Client under this Agreement are reserved to Emerald Works and its licensors.

### 5. PROHIBITED USES

- 5.1 Neither the Client nor Users may:
  - 5.1.1. scan, copy, reproduce, adapt, translate, modify or create derivative works from the Toolkit; or
  - 5.1.2. provide access to the Toolkit to anyone outside of the Client's organisation.

### 6. EMERALD WORKS OBLIGATIONS

- 6.1. Emerald Works shall, subject to the Client's compliance with its obligations under this Agreement:
  - 6.1.1 make the Toolkit available to the Client from the Access Start Date through the Website based on internet access by an industry standard means of authentication;
  - 6.1.2 provide the Client with information sufficient to enable the Client to access the Toolkit from the Access Start Date; and
  - 6.1.3 use its reasonable endeavours to make the Toolkit available to the Client and to Users from the

Access Start Date at all times and on a twenty-four-hour basis, save for routine maintenance, and to restore access to the Tool kit as soon as possible in the event of an interruption or suspension of the service.

6.1.4 give the Client reasonable notice of downtime for pre-scheduled maintenance.

## 7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. Emerald Works acknowledges that any copyright or other intellectual property rights in any materials provided by the Client for use on the Website will be unaffected by the terms of this Agreement.
- 7.2. Emerald Works is 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 Client and its Users.
- 7.3. Except as expressly agreed above, no intellectual property rights of either party are transferred or licensed as a result of this Agreement.
- 7.4. The Client warrants that any materials or data provided by the Client to Emerald Works in connection with the Toolkit will not infringe any intellectual property rights of, or include any confidential information belonging to, any third party.
- 7.5. Emerald Works shall not be responsible for any content or postings on forums, sites or external links to the Toolkit and accepts no liability for the same.

## 8. CLIENT OBLIGATIONS

- 8.1. Within 30 days of this Agreement, the Client shall provide to Emerald Works all information sufficient to enable Emerald Works to provide access to the Toolkit via the Website.
- 8.2. The Client will use, and shall procure that Users use, the Toolkit in accordance with the terms of this Agreement and any instructions provided by Emerald Works in writing or on the Website (as may be updated from time to time).
- 8.3. The Client will ensure that the aggregate number of Users shall not exceed the Maximum Number of Users during the Term. If the Client requires the Maximum Number of Users to be increased, it should request permission from Emerald Works, who shall be entitled to increase the Fee.
- 8.4. The Client shall:
  - 8.4.1. use all reasonable endeavours to ensure that all Users are aware of the permitted uses of Toolkit under this Agreement;
  - 8.4.2. 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 Works as soon as practicable in writing;
  - 8.4.3. use reasonable efforts to collaborate with Emerald Works to test and, at Emerald Works reasonable request, to deploy any security application protocol interface or similar script that we produce to ensure the security of the Toolkit (acknowledging that the Client has sole discretion in relation to any action affecting any of its systems);
  - 8.4.4. authenticate the identity of Users to accepted industry standards at log in and issue passwords (or equivalent access verification) to Users;
  - 8.4.5. 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.

## 9. WARRANTIES AND INDEMNITIES

- 9.1. Each party warrants to the other that it has full power and authority to enter into and perform its obligations under this Agreement.
- 9.2. 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".
- 9.3. 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.
- 9.4. 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.
- 9.5. 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.

## 10. TERM AND TERMINATION

- 10.1. This Agreement will commence on the Contract Date and will continue for the Initial Service Period and thereafter 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 (as the case may be).
- 10.2. Either party may terminate this Agreement by notice in writing to the other if the other party:
  - 10.2.1. 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
  - 10.2.2. becomes insolvent or becomes subject to bankruptcy, receivership, liquidation or administration.
- 10.3. If on expiry or earlier termination of this Agreement the Access Period is less than the Term, Emerald Works 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.
- 10.4. On termination of this Agreement, all rights of the Client or Users to access the Toolkit will cease and the Client shall destroy any copies of the Toolkit in its possession or control and promptly provide to Emerald Works such evidence as it may reasonably require of the Client's compliance with this requirement.

## 11. CONFIDENTIALITY AND ANNOUNCEMENTS

- 11.1. 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.
- 11.2. The Client consents to Emerald Works providing the details of the Client's customer account to its group companies, associates, agents and IT service providers, some of which may be based outside of the

European Economic Area, where this is necessary to provide the services requested by the Client.

- 11.3. The Parties agree to maintain the confidentiality of any data relating to usage of the Tool kit by the Client 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.
- 11.4. Emerald Works may publicly acknowledge that the Client is a customer and the Client grants to Emerald Works the right to use the Client's name and quotations in public relations and promotional material, subject to the prior consent of the Client, (not to be unreasonably withheld or delayed).

## 12. GENERAL

- 12.1. 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.
- 12.2. 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 Works may vary these General Terms and Conditions.
- 12.3. This Agreement may not be assigned by the Client to any other person or organisation without the prior written consent of Emerald Works.
- 12.4. 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.
- 12.5. 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 un-enforceable 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.
- 12.6. 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.
- 12.7. 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.
- 12.8. 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.