

1. General Application

- 1.1 These terms and conditions (**Terms**) apply to all contracts between Midlands Excellence and any person buying or receiving Services from Midlands Excellence from time to time (**the Customer**).

2. Definitions

- 2.1 In these Terms, the following words have the following meanings:

Agreement means the agreement between Midlands Excellence and the Customer for Midlands Excellence to provide Services to the Customer incorporated in these Terms and any relevant Proposal or Booking Form.

Booking Form means Midlands Excellence's written standard form of Booking Form from time to time.

Documents means all records, reports, documents, papers, memoranda, software, correspondence (including emails) and other materials whatsoever and all Confidential Information originated, produced or made by, or on behalf of, Midlands Excellence.

Fee means the fee for the Services specified in the Proposal or Booking Form or otherwise agreed between the parties.

Proposal means Midlands Excellence's written standard form of proposal for the provision of services from time to time

Services means the services to be provided to the Customer by Midlands Excellence set out or referred to in the Proposal or Booking Form.

Third Party Materials means material in any form, the intellectual property rights subsisting in which are owned by or exclusively licensed to Midlands Excellence by a third party.

3. Services

- 3.1 Midlands Excellence shall use its reasonable endeavours to deliver the Services and the Documents to the Customer on such dates as the Customer and Midlands Excellence agree, but such dates shall be estimates only and time shall not be of the essence.
- 3.2 The Customer and Midlands Excellence shall provide each other with clear and accurate information and co-operate fully with each other to the degree necessary to enable Midlands Excellence to provide the Services and the Documents.
- 3.3 Midlands Excellence undertakes that the Services shall be provided with reasonable skill and care.
- 3.4 Where individuals to be involved in delivering the Services are named in the Proposal or advised verbally, Midlands Excellence shall use reasonable endeavours to ensure that they are so involved. Midlands Excellence may substitute those identified for others of equal or similar skills.

4. Payment

- 4.1 The Customer will pay the Fee to Midlands Excellence at the times and in the manner outlined in this Agreement. Time for payment shall be of the essence and Midlands Excellence may suspend or cancel its carrying out of the Services without liability if the Fee is not paid when due.
- 4.2 Unless otherwise stated the Fee is exclusive of VAT and all other taxes, duties and charges, and the Customer shall be liable for such VAT, taxes, duties or charges which will be payable by the Customer to Midlands Excellence in addition.
- 4.3 Subject to Clause 4.4, the Customer must pay in full and cleared funds all amounts owing under this Agreement within 30 days of the date of the relevant Midlands Excellence invoice or, where appropriate in accordance with the terms of the Proposal or Booking Form.
- 4.4 Interest: If any invoice is not paid by the due date interest will become due to Midlands Excellence from the due date until payment is made at the then current rate set by the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.5 All amounts owing under this Agreement will be invoiced by Midlands Excellence and paid by the Customer in sterling (£) currency.

5. Confidential Information

- 5.1 In providing the Services, both Midlands Excellence and the Customer shall take all reasonable measures and precautions to safeguard any confidential information and data in its possession concerning the affairs of the other and in any event such measures and precautions shall be no less stringent than operated from time to time by that party in respect of data concerning its own internal affairs.
- 5.2 On termination of this Agreement or demand by the disclosing party, all confidential information supplied to the recipient by or on behalf of the disclosing party is to be returned to the disclosing party or destroyed as directed by the disclosing party.

6. Intellectual Property

- 6.1 The Customer acknowledges that title to and all intellectual property rights in all existing Midlands Excellence Documents will remain with Midlands Excellence or with the Third Party who has licensed them to Midlands Excellence.
- 6.2 The property and any copyright or any other intellectual property rights in the Documents generated or used by Midlands Excellence in the course of the provision of the Services shall be and remain vested in Midlands Excellence or the Third Party. Subject to Midlands Excellence receiving the payment in full and cleared funds of all amounts owing under this Agreement, Midlands Excellence grants the Customer the non-exclusive right to use the Documents and any Third Party Materials for the purposes of receiving the Services only and in particular for the application of the contents of the Documents to its own business.
- 6.3 The Customer shall not use the Documents or Third Party Materials for any other purpose without the prior written consent of Midlands Excellence and upon such terms as may be agreed by Midlands Excellence. Midlands Excellence shall not be liable for the use by any person of the Midlands Excellence Documents for any other purpose other than that for which the same were prepared by or on behalf of Midlands Excellence.

7. Limitation of Liability

- 7.1 Midlands Excellence will not be liable either in contract, tort (including negligence) or otherwise for indirect loss, loss of profits, loss of business or anticipated savings, nor for any indirect or consequential loss or damage arising from a breach of this Agreement by Midlands Excellence.
- 7.2 The liability of Midlands Excellence for all claims in aggregate for any loss suffered by the Customer (except for those losses excluded under clause 7.1) for any cause of action will be limited to the extent permitted by law to the Fee paid to Midlands Excellence under this Agreement.

8. Term and termination

- 8.1 This Agreement will terminate in accordance with the term specified in the Proposal or Booking Form (unless the parties agree in writing to extend the term) or following conclusion of the Services unless this Agreement is terminated in accordance with clause 8.2.
- 8.2 Subject to clause 8.3 either party may terminate the Agreement by written notice to the other party if (a) in the reasonable opinion of the non-breaching party, the breaching party is in breach of its obligations under the Agreement and fails to remedy that breach within a reasonable period (stated in the notice) of being requested in writing by the non-breaching party to do so, or (b) an order is made or a resolution is passed for the winding-up of the other party, or an order is made for the appointment of an administrator or receiver or circumstances arise which entitle a court of competent jurisdiction to make any such order of the other party, or (c) Midlands Excellence has reason to believe the Customer is suffering serious adverse financial circumstances (in which case Midlands Excellence only will have the right to terminate)
- 8.3 The Customer must pay Midlands Excellence for all Services rendered and expenses incurred up to the date of termination.
- 8.4 Clauses 4, 5, 6, 7, 9.2, 11 and 12 of this Agreement survive the termination or expiration of this Agreement.

9. Cancellation

- 9.1 Cancellation and/or postponement (Cancellation) of the Services, or any part of these, by the Customer, prior to these being provided, will only be effective if carried out in writing.
- 9.2 In the event of Cancellation by the Customer, Midlands Excellence reserves the right to charge the Customer a sum equal to the losses it reasonably calculates it has lost.

10. Data Protection

- 10.1 Each party shall ensure that it complies with its obligations under the Data Protection Act 1998 in relation to any personal data it supplies to the other party.

11. Assignment and subcontracting

- 11.1 A party may not assign or otherwise deal with their rights under this Agreement without the prior written consent of each other party, except that Midlands Excellence may assign its rights or obligations to Investors in Excellence Limited.
- 11.2 Midlands Excellence may subcontract any part of the Services to any person it reasonably considers has the necessary levels of skills and knowledge to provide the Services to the required standard.

12. Non-solicitation

- 12.1 The Customer agrees that it will not solicit or entice away from employment by Midlands Excellence any personnel of Midlands Excellence who it comes into contact with after entering into this agreement for a period of 12 months after the services contained in a Proposal terminate or in the case of a Booking Form, 6 months.

13. Notices

- 13.1 Notices under these Terms must be in English and in legible writing and must be delivered to the address specified for each party in the Proposal or as otherwise notified by that party.

14. Force Majeure

- 14.1 Neither party shall be liable to the other for any failure to perform or delay in performance of its obligations under this Agreement caused by act of God, war, civil disturbance, acts of terrorism, the act of any government or authority (including revocation of any licence or consent), fire, flooding, explosion, natural disasters, unavailability of key Midlands Excellence personnel for any reason, or other events beyond its reasonable control.

15. Applicable Law

- 15.1 The laws of England apply to these Terms and the parties submit to the exclusive jurisdiction of the English Courts.

16. General

- 16.1 Any provision of these Terms which is or becomes illegal, void or unenforceable will be ineffective to the extent only of that illegality, voidness or unenforceability and will not invalidate the remaining provisions.
- 16.2 Nothing in these Terms is intended to give any enforceable rights to any third party, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 16.3 This Agreement constitutes the entire agreement between the parties and all representations, express verbal or implied terms are deemed to be ineffective as between the parties to the fullest extent permissible by law unless reduced to writing and expressly incorporated into this Agreement. All statements whether written or oral, including descriptions, illustrations, or specifications concerning the Services made or given by Midlands Excellence before entering into an Agreement whether in brochures, leaflets, publications proposals or otherwise are for the purposes of information and guidance only
- 16.4 These Terms prevail over any terms and conditions of the Customer, unless expressly agreed to in writing by Midlands Excellence and incorporated into this Agreement.
- 16.5 In these Terms 'writing' includes email and fax transmissions.
- 16.6 A quotation for Services or a written choice of a range of Services provided to the Customer by Midlands Excellence does not constitute an offer and Midlands Excellence reserves the right to withdraw or revise a quotation at any time prior to entering into an Agreement. A written selection of Services by the Customer will constitute an offer which Midlands Excellence is not bound to accept.
- 16.7 The Customer agrees that it carries responsibility for all Health and Safety aspects of its own business and will indemnify and hold harmless Midlands Excellence against any claims, damages, losses or expenses incurred by Midlands Excellence or the Customer in relation to any health and safety matters either connected with the provision of the Services or connected with events taking place during the provision of the Services
- 16.8 Should any term of these Terms and any term of the Proposal be inconsistent with each other the term contained in the Proposal shall prevail.