

Standard terms & Conditions of Contract - Building Software Limited trading as measure2improve

1. DEFINITIONS

1.1 In these conditions the following expression shall, where the context permits, have the following meaning:

- Act Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002.
- Club The benchmarking club selected by the Customer as indicated on the Order Form.
- Commencement Date The date on which the Service is made available by BSL to the Customer Conditions These standard terms and conditions of contract.
- Contract The contract between BSL and the Customer for the provision of the Service.
- Customer The person, firm or company, or any other body placing the order
- Customer Data The data held and controlled by a customer in a database hosted by BSL
- Database A database hosted by BSL
- Personal Data Data relating to an individual held and controlled by BSL
- Fees The fees due to BSL in accordance with the Contract (as set out in the Order Form)
- Good Industry Practice The use of standards, practices, methods and procedures conforming to the law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.
- Internet Service Provider The Internet service provider which hosts the website
- Licensed Products The software and the database
- Products Multi-Party A benchmarking club operated by BSL in respect of a Club which multiple members share benchmarking data
- Order Form The order form completed by the Customer in connection with a Customer's request for provision of the service
- Service The web-based benchmarking service provided by BSL and as selected by the Customer
- Software The software, owned by or licensed to BSL, which is accessed and used by the Customer in connection with the service
- VAT Value added tax (at the prevailing rate)
- Website The website, operated by BSL through which the service is accessed.
- Writing Written communication by electronic delivery, facsimile transmission or pre paid first class postage

1.2 References to any statute or statutory provision in the conditions shall be deemed to refer to any modification or re-enactment which has come into force whether by statute, directive or regulation

1.3 The headings in the Conditions are for convenience only and have no legal effect.

2. GRANT OF LICENSE AND PROVISION OF THE SERVICE

2.1 BSL hereby

2.1.1 grants to the Customer a non-exclusive licence to use the software and (to the extent that the rights in the Database and/or its contents are owned by or licensed to

BSL) the Database for a period of one year from the

Commencement date and

2.1.2 undertakes to the customer to provide Service upon these conditions

2.2 The service shall include

2.2.1 documentation as agreed

2.2.2 Helpdesk support (during normal business hours –

9am to 5pm, Monday to Friday) and

2.2.3 software hosting, maintenance and error correction services

2.3 The Customer acknowledges that BSL shall from time to time amend, enhance and, where necessary, correct errors in the software and that, given the internet-based nature of the software, such amendments, will be effected without the consent of the Customer provided that:

2.3.1 The Customer shall be given reasonable notice of any planned amendments; and

2.3.2 Such amendments shall not reduce the functionality of the Service.

2.4 The Customer hereby grants to BSL (to the extent that the rights in the Database and/or its contents are owned by or licensed to the Customer) a non-exclusive license to use the Database

2.5 The Customer acknowledges that where it is joining a multi-party Club the data, which it provides to the Club shall (in an anonymised form) become available to other members of the Club and hereby licenses such other members to use such data

3. USE OF THE SERVICE

3.1 The Customer acknowledges that, because of the nature of the internet, BSL is unable to guarantee that the Service will be uninterrupted, timely, entirely secure or entirely error free

3.2 The Customer shall be responsible for ensuring that it has appropriate computer hardware and software to enable it to access and use the Service

3.3 The Customer shall from time to time download and install all upgrades, software patches and new software releases recommended by browser owners.

3.4 BSL reserves the right to alter or suspend the Service at any time provided that such alteration or suspension

3.4.1 is reasonably required in order to permit BSL to comply with an order, instruction or request of any competent governmental, administrative or regulatory authority; or

3.4.2 is reasonably required for the purpose of maintenance or error correction or software enhancement; or

3.4.3 is reasonably required for the purpose of security; or 3.4.4 has been required by or it has been requested by the Internet Service Provider.

Standard Terms & Conditions

3.5 The Customer shall not transmit on or through via the Web Site and/or the Service, any material that is, in BSL's reasonable discretion, unlawful, obscene, threatening, abusive, libellous, hateful, or encourage conduct that would constitute a criminal offence, give rise to civil liability, or otherwise violate any local, national or international law. 3.6 BSL may, in its absolute discretion, remove illegal or offensive material from the Web Site.

3.7 The Web site may provide links to other World Wide Web sites or resources. BSL has no control over such sites and resources. The Customer acknowledges that BSL is not responsible for the availability of such sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products or other materials on or available from such sites or resources. BSL shall not be responsible or liable, whether directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource.

3.8 There will be a maximum limit of 50GB disk space across both the production and backup server environments. If you exceed this number then this will be reviewed and may result in an increase to your annual fee.

3.9 There will be a maximum limit of 30,000 files that can be uploaded a year. If you exceed this number then this will be reviewed and may result in an increase to your annual fee.

4. SECURITY

4.1 BSL Shall in accordance with Good Industry Practice, maintain appropriate security software (including virus detection, encryption and firewall software) but does not warrant that the software or the service shall be free from all known viruses or shall be entirely secure

4.2 The Customer acknowledges that it has considered (or has had the opportunity to consider) the security arrangements provided by BSL and agrees that such arrangements are appropriate for the purposes of the contract

4.3 Notwithstanding clause 4.1 above the Customer shall be responsible for providing appropriate virus detection software for the purpose of protecting its own data and software

4.4 The customer is responsible for maintaining the confidentiality of any password required to access the Service (including Passwords issued by BSL and all subsequent passwords produced under the initial authority of this Password) and is fully responsible for all activities that occur under this or subsequent Password(s) issued under its authority

4.5 BSL will not be liable for any loss or damage arising from failure to comply with the confidentiality of passwords

5. INTELLECTUAL PROPERTY RIGHTS

5.1 BSL shall retain all rights in the Software.

5.2 The Customer shall retain all rights in any data provided by the Customer to BSL provided that all rights in any data created by the manipulation of such data (using the Software) shall vest in the members of the Club.

6. FEES AND PAYMENT

6.1 Unless otherwise agreed in writing by the parties, all Fees are:

6.1.1 quoted and payable in UK pounds sterling; 6.1.2 quoted exclusive of any applicable VAT (which is chargeable at the current rate); and 6.1.3 payable within 30 days of the date of invoice.

Standard Terms & Conditions

6.1.4 any bespoke software development charges will be due at placement of order (50%) and at delivery (50%) 6.2 BSL

reserves the right, at its sole discretion, to require payment of Fees in advance.

6.3 BSL is a “small enterprise” (as defined in The Act). The Act entitles BSL to payment of its Fees within 30 days of invoice. If payment is not received from the Customer within this period, then BSL shall be entitled, in accordance with the Act to claim from the Customer interest on any outstanding Fees and compensation for debt recovery costs.

6.4 If the Customer fails to make any payment by the due date then, without prejudice to any other right or remedy available to BSL (and in addition to the rights set out in clause 6.3), BSL shall be entitled to:

6.4.1 Apply a 5% surcharge to the amount overdue.

6.4.2 Enable Restricted Mode and withdraw Support after

45 days after the due date, Withdrawn the full service after 90 days and a re-joining surcharge of 5% will be applied.

6.4.3 Suspend provision of the Service (or any part thereof) and membership of the relevant Clubs (or Clubs) pending full payment of outstanding Fees and a re-joining fee/surcharge of 5% will be applied.

6.4.4 Terminate the Contract by 7 days written notice if any invoice remains unpaid for more than 60 days after the date of invoice;

6.4.5 Recover from the Customer any costs (including but not limited to administrative and legal costs) reasonably incurred by BSL in securing payment of overdue Fees.

6.5 Nothing in this clause 6 shall prevent the Customer from delaying or withholding payment where there is a genuine reason for so doing (provided that where only part of an invoice is disputed, then the Customer shall only be entitled to delay or withhold payment in respect of that part).

7. LIABILITY

7.1 The following provisions set out BSL’s entire liability (including any liability for the acts and omissions of the Internet Service Provider and BSL’s employees agents and sub contractors) to the Customer in respect of:

7.1.1 any breach of its contractual obligations

Arising under the Contract, and

7.1.2 any representation statement or tortious act or omission including negligence arising under or in connection with the Contract.

7.2 Any act or omission on the part of BSL or its employees agents or sub contractors falling within clause 7.1 above shall for the purpose of this clause 6 be known as an “Event of Default”

7.3 BSL’s liability to the Customer for death or injury resulting from its own or that of its employees’, agents’ or sub contractors’ negligence shall not be limited.

7.4 Subject to the provisions of clause 7.3 above BSL’s entire liability in respect of any Event of Default shall be limited to damages of an amount equal to the aggregate of the Fees paid to BSL in the immediately preceding period of 12 months

7.5 Subject to clause 7.3 above BSL shall not be liable to the Customer in respect of any Event of Default for loss of profits, goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or BSL had been advised of the possibility of the Customer incurring the same.

7.6 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under the Contract.

7.7 The Customer hereby agrees to afford BSL not less than 28 days (following notification by the Customer) in which to remedy any Event of Default hereunder.

Standard Terms & Conditions

7.8 Except in the case of an Event of Default arising under clause 7.6 above BSL shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon BSL within 12 months of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become aware

7.9 Nothing in this clause shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.

8. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

8.1 BSL will indemnify and hold harmless the Customer against any damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the normal operation, possession or use of the Licensed Products by the Customer infringes the patent or copyright of said third party (an 'Intellectual Property Infringement') provided that the Customer:

8.1.1 gives notice to BSL of any Intellectual Property

Infringement forthwith upon becoming aware of the same; 8.1.2 gives BSL the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability or otherwise settle or

compromise or attempt to settle or compromise the said claim or action except upon the express instruction of BSL; and

8.1.3 acts in accordance with the reasonable instruction of BSL and gives to BSL such assistance as it shall reasonably require in respect of the conduct of the said defence including without prejudice to the generality of the foregoing the filing of all pleadings and other court process and the provision of all relevant documents.

8.2 BSL shall reimburse the Customer its reasonable costs incurred in complying with the provision of clause 8.1 above.

8.3 BSL shall have no liability to the Customer in respect of an Intellectual Property Infringement if the same results from any breach of the Customer's obligations under the Contract.

8.4 In the event of an Intellectual Property Infringement BSL shall be entitled at its own expense and option either to:

8.4.1 procure the right for the Customer to continue using the Licensed Products; or

8.4.2 make such alterations modifications or adjustments to the Licensed Products so that they can become non infringing; or

8.4.3 replace the Licensed Products with non-infringing substitutes

8.5 If BSL in its reasonable judgement is not able to exercise any of the options set out at clause 8.4 above within 28 days of the date it received notice of the Intellectual Property Infringement then the Customer without prejudice to any other rights or remedies it may have hereunder or at law shall be entitled to terminate the Contract by 14 days' notice upon BSL.

8.5 The provision of clause 7 above shall not apply to this clause 8.

9 DEFAMATION INDEMNITY

9.1 The Customer will indemnify and hold harmless BSL against any damage (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that any data posted on the Web Site by the Customer (or any employee or agent of the Customer) is defamatory provided that BSL

9.1.1 give notice to the Customer of any such claim or action forthwith upon becoming aware of the same; 9.1.2 gives the Customer the sole conduct of the defence to such claim or action and does not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the said claim or action except upon the express instruction of the Customer; and

Standard Terms & Conditions

9.1.3 acts in accordance with the reasonable instructions of the Customer and gives to the Customer such assistance as it shall reasonably require in respect of the conduct of the said defence including without prejudice to the generality of the foregoing the filing of all pleadings and other court process and the provision of all relevant documentation.

10 CONFIDENTIALITY

10.1 Each of the parties hereto undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or the entering into of the Contract save that which is:

10.1.1 trivial or obvious;

10.1.2 already in its possession other than as a result of a breach of this clause; or

10.1.3 in the public domain other than as a result of a breach of this clause.

10.2 Each of the parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provision of clause 10.1 above by its employees agents and sub-contractors.

11 CLUB RULES

The Customer acknowledges that it has received a copy of the rules of the Club and agrees to observe and adhere to such rules (in addition to any obligations set out in these Conditions).

12 FORCE MAJEURE

Neither party shall be liable to the other party, nor be deemed to be in breach of the Contract, by reason of any delay in performing, or failure to perform any of its obligations in relation to the Contract if the delay or failure was due to any cause beyond that party's reasonable control

No waiver by BSL of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision of the Contract.

13 SERVERABILITY

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provision of these Conditions and the remainder of the provision in question shall not be affected thereby.

14 LAW

The Contract shall be governed by the Laws of England and the Customer agrees to submit to the non-exclusive jurisdiction of the English Courts.

15 CANCELLATION

The term of the Contract shall be not less than 3 years from the commencement date, unless otherwise stated in the Contract.

The Company will continue to issue invoices after the 3-year period unless written cancellation has been received from the Customer 3 calendar month's prior to the renewal date. If the Customer intends to cancel the Contract during the agreed term or any time after this, then the Company requires 3 calendar months' notice, in writing, and all outstanding fees for the remaining term must be settled in full before the cancellation takes effect. Notice of cancellation should be sent to the registered office.

16 ANTI-BRIBERY

BSL and all Customers will comply with all applicable laws, statutes and regulations relating to anti-bribery and anticorruption including but not limited to the Bribery Act 2010.

17 GDPR

17.1 Under the GDPR, a “controller” determines why and how personal data is processed. A “processor” processes personal data on behalf of the controller. BSL has limited knowledge of the data that each customer processes via the hosting infrastructure (“Customers Data”). Also, BSL only processes Customer Data in accordance with the customer’s instructions. Therefore, BSL is a processor of Customer Data hosted on its servers; the customer is a controller.

17.2 All Customer Data will be held in the UK.

17.3 BSL will only disclose customer Data if legally obliged to do so.

17.4 A summary of principles according to which BSL will process personal data:

17.4.1 BSL will not sell or transfer personal data to any third-party.

17.4.2 BSL will not use personal data to sell any third-party services or products.

17.4.3 Personal data will be processed on the basis of a contract between the customer and BSL, customer consent, or our legitimate interest.

17.4.4 BSL may process the personal data that you have provided to us directly; details that have been collected on the basis of the use of our website or products and services; your purchase data; data related to other correspondence with us; and data collected from other sources as listed in our privacy policy

17.4.5 BSL will collect your personal data to enable us to offer you our products and services in the best possible way, to create a convenient purchasing experience for you, and to maintain and develop our products and services. BSL will retain your data as long as you are a current user of our products and services, plus the applicable period for