

## BE THE BUSINESS

### BENCHMARK YOUR BUSINESS TOOL AND COMMUNITY OF PRACTICE PROGRAMME TERMS AND CONDITIONS

These are the terms and conditions on which we will supply information, content, benchmarking and other tools and programmes via our website: [www.bethebusiness.com](http://www.bethebusiness.com) (“**Be the Business**”).

Benchmark your Business is free to use. Third party course providers may charge for courses that they provide but you will contract with them on their own terms and conditions.

#### 1. **Who we are**

1.1 Benchmark your Business is operated by The Productivity Group, trading as Be the Business (“**we**”, “**our**”, “**us**”) with company number 10754958, charity registration number 1173660 and registered office at Partnership House, Carlisle Place, London SW1P 1BX.

1.2 You can contact us by email: [enquiries@bethebusiness.com](mailto:enquiries@bethebusiness.com) or through the contact page on our website.

#### 2. **Our contract with you**

2.1 Please read these terms carefully before you use our site or register to use any of our tools, services or programmes. These terms and conditions tell you who we are, how we will provide the Benchmark your Business tool and/or any of our community of practice programmes to you (“**you**”, the “**user**”), how you or we may end the contract and other important information.

2.2 By using our site or any of our tools, services or programmes, you confirm that you accept these terms and conditions and that you agree to comply with them and with any other applicable policies, such as our privacy policy and acceptable use policy.

2.3 We may amend these terms and conditions from time to time. Every time you wish to use the site or any of our tools, services or programmes, please check these terms to ensure you understand the terms and conditions that apply at that time.

2.4 You are responsible for ensuring that all persons who access the site or any of our tools, services or programmes on your behalf are aware of these terms and conditions and that they comply with them.

2.5 These terms and conditions apply to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

#### 3. **Registration**

3.1 You must register to use the Benchmark your Business tool and/or participate in any one of our community of practice programmes. By submitting your registration application you represent and warrant that the information submitted by you is true and accurate to the best of your knowledge. If you are creating an account on behalf of an organisation, you represent and warrant that you are authorised to represent and bind the organisation mentioned in your registration.

- 3.2 We reserve the right to refuse to register an individual or organisation in our absolute discretion.
- 3.3 If you are provided with, or set up, a password or any other piece of information as part of our security procedures during your registration, you must treat such information as confidential, and you must not disclose such information to any third party.
- 3.4 We have the right to disable any user identification or password, whether chosen by you or allocated by us, at any time, if, in our reasonable opinion, you or your authorised personnel have failed to comply with any of the provisions of these terms.
- 3.5 If you know or suspect that anyone other than you and/or your authorised personnel know such confidential identification codes or passwords, you must promptly notify us.

#### **4. Benchmark your Business tool**

- 4.1 The Benchmark your Business tool is an online questionnaire which, when completed, provides your business with a score indicating areas in which your business's productivity could be improved and also provides information on course providers for those areas where your business's productivity could be improved.
- 4.2 We may update the Benchmark your Business tool from time to time to reflect changes to its functionality or changes to users' needs.
- 4.3 We do not guarantee that the Benchmark your Business tool or any content on it, will always be available or be uninterrupted. We may suspend, withdraw or restrict the availability of all or any part of it, for example for security, maintenance or operational reasons.
- 4.4 We do not guarantee that the Benchmark your Business tool will be secure or free from bugs or viruses.
- 4.5 You are responsible for configuring your information technology, computer programs and platform to access the Benchmark your Business tool. You should use your own virus protection software.
- 4.6 You must not misuse the Benchmark your Business tool by knowingly introducing viruses, trojans, worms, logic bombs or other material that is malicious or technologically harmful. You must not attempt to gain unauthorised access to the Benchmark your Business tool, the server on which the Benchmark your Business tool is stored or any server, computer or database connected to our site. You must not attack the Benchmark your Business tool via a denial-of-service attack or a distributed denial-of service attack.

#### **5. Intellectual Property Rights**

- 5.1 We are the owner (or the licensee) of all intellectual property rights in the site, content, the Benchmark your Business tool and any and all associated materials, including any materials provided through your participation in any of our community of practice programmes.
- 5.2 All intellectual property rights in or arising out of or in connection with your use of the Benchmark your Business tool will be owned by us.

- 5.3 We grant to you a limited, non-exclusive, revocable, non-transferrable and non-sublicensable licence to use: (i) the results generated through your use of the Benchmark your Business tool; and (ii) any materials provided through your participation in any of our community of practice programmes, each solely for the purposes of your business and in particular to increase and/or improve productivity and management practices within your business.
- 5.4 All data that you input through your use of the Benchmark your Business tool will be owned by us and we may use this on an aggregated and anonymised basis for any purpose that we determine, including sharing such data with our stakeholders.
- 5.5 We may receive feedback and information about you and your engagement in any of our community of practice programmes and/or any other course that you attend from the course provider(s). We may use this information on an aggregated and anonymised basis for any purpose that we determine, including sharing such data with our stakeholders.

## 6. **Information**

- 6.1 We will only use your personal information as set out in our Privacy Policy.
- 6.2 From time to time we may collect specific information about your business including, but not limited to, company name, location, business sector, turnover, number of employees and company registration number. The purpose of collecting such business information is to help us benchmark your business performance and tailor the information and content presented to you. We will also use this information to gather insight as to the performance and productivity of specific business sectors, industries and locations and we may disseminate such information, on an aggregate or anonymised basis, for the purposes of publicising issues relating to productivity in businesses and to help other businesses improve their productivity.
- 6.3 We may also share information about your business with:
- (a) course providers delivering any programmes, including any one of our community of practice programmes, for the purpose of being able to run such programmes; and
  - (b) various government agencies in order to help them better understand productivity issues at a macro-economic level.

## 7. **Course providers**

- 7.1 Be the Business may facilitate contact between you and course providers. You agree that we are not responsible for, and do not accept any liability for, any acts or omissions of any course providers.
- 7.2 Any engagement you have with any course provider will be governed by a separate agreement between you and the course provider. For information on any rights or obligations you have in respect of your engagement with a course provider, please contact them directly.
- 7.3 We do not make any representations as to the availability or suitability of any course provider for any particular engagement, including (but not limited to) in respect of their suitability.
- 7.4 We do not participate in any subsequent engagement you may arrange between yourself and a course provider.

7.5 The listing of course providers on our website is based on information provided to us by those course providers. Their listing does not amount to a recommendation, endorsement or confirmation of suitability of the course provider for your needs.

## 8. **Liability**

8.1 The content on our website, the Benchmark your Business tool and any materials provided through your participation in any of our community of practice programmes is provided for general information only. It is not intended to amount to advice on which you should rely and professional or specialist advice should be obtained before taking, or refraining from, any action on the basis of the content on our website, the Benchmark your Business tool and/or your participation in any of our community of practice programmes. We make no express or implied representations or warranties with respect to your participation in any of our community of practice programmes and/or use of the Benchmark your Business tool and guarantee no particular outcome or result. Be the Business does not represent or guarantee that any implied or suggested course of conduct, strategy or action will deliver any particular outcome or result or will conform to any applicable law or regulation and Be the Business shall not be liable to any user for any loss or damage (including negligence) that may arise from your participation in any of our community of practice programmes and/or use of the Benchmark your Business tool or engagement with any course providers.

8.2 Where our service, website and/or the Benchmark your Business tool contains links to other websites and resources provided by third parties (including third party course providers), these links are provided for your information only. Such links should not be interpreted as approval by us of those linked websites or information you may obtain from them. We have no control over the contents of those websites or resources.

8.3 Although we make reasonable efforts to update the information published as part of our service, we make no representations, warranties or guarantees, whether express or implied, that the content of the Benchmark your Business tool and/or any materials provided through your participation in any of our community of practice programmes is complete or up to date.

8.4 The views expressed by any third party course provider do not represent our views or values.

8.5 Nothing in these terms and conditions shall operate so as to restrict or exclude liability which cannot be so restricted or excluded in law.

8.6 Subject to these terms and conditions, Be the Business shall not be liable to you in any circumstances in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever arising or whatever the cause thereof, for any:

- (a) loss of profit;
- (b) loss of business;
- (c) loss of reputation;
- (d) loss of contracts;
- (e) loss of revenues or anticipated savings;
- (f) loss of or damage to goodwill;

- (g) loss of use or corruption of software, data or information;
  - (h) ex-gratia payments; or
  - (i) special, indirect or consequential damage of any nature.
- 8.7 Subject to these terms and conditions, Be the Business's total liability to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with these terms and conditions shall be limited to £1,000.
9. **Termination**
- 9.1 Without affecting any other right or remedy available to you or us, either you or we may terminate these terms and conditions with immediate effect by giving the other party written notice.
- 9.2 On termination of these terms and conditions, your access to any of our community of practice programmes and the Benchmark your Business tool shall cease and your access to any part of our website that requires registration will also cease. We will continue to hold and use all data that you provided through your use of the Benchmark your Business tool.
- 9.3 Termination of these terms and conditions shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination.
- 9.4 Any provision of these terms and conditions that expressly or by implication is intended to come into or continue in force on or after termination of the contract shall remain in full force and effect.
10. **Communities of Practice Terms**
- 10.1 Competition law compliance is of particular importance when organisations operating in the same or similar sectors come together to discuss business-related matters. Specifically, information exchange in respect of commercially sensitive matters can lead to price-fixing or market sharing.
- 10.2 Be the Business, in hosting communities of practice, will under no circumstances require participants in any of our community of practice programmes to disclose, share or otherwise exchange commercially sensitive business information which could give rise to a competition law breach.
- 10.3 You acknowledge that to act in breach of UK competition law can give rise to civil and criminal investigations, fines and/or imprisonment, depending on the severity of the breach.
- 10.4 With that in mind, and as part of a community of practice, you agree the following:
- (a) **NOT** to directly or indirectly exchange with another participant commercially sensitive or business confidential information;
  - (b) **NOT** to directly or indirectly exchange with another participant its intentions regarding current or future conduct re pricing or quantities, including in relation to sales, customers, market shares, margins, input and output costs, and areas of operation.

- (c) **TO** immediately distance itself from any potentially anti-competitive discussion and/or conduct and to report the same to the relevant Be the Business contact.
  - (d) **TO** consider whether any activity or event could give rise to a diminishing of Participants' incentives to compete against each other on the relevant market(s) and **TO** report any such concerns to the relevant Be the Business contact.
- 10.5 In the course of participation in a community of practice, you may have access to confidential information relating to Be the Business and/or other Participants. You agree not to use or disclose this information to any person or to commercially exploit the information either during participation in community of practice or at any time afterwards, unless otherwise agreed in writing with the party disclosing the confidential information or disclosure is required by law.
11. **General**
- 11.1 We shall not be in breach of these terms and conditions nor liable for delay in performing, or failure to perform, any of our obligations under these terms and conditions if such delay or failure result from events, circumstances or causes beyond our reasonable control.
- 11.2 We may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of our rights and obligations under these terms and conditions.
- 11.3 You shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under these terms and conditions.
- 11.4 If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking any of these terms and conditions, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.
- 11.5 No one other than the user and Be the Business shall have any right to enforce any of these terms and conditions.
- 11.6 Nothing in the terms and conditions is intended to, or shall be deemed to, establish any partnership or joint venture, constitute a party the agent of the another party, or authorise a party to make or enter into any commitments for or on behalf of any other party.
- 11.7 Each paragraph of the terms and conditions operates separately. If any court or relevant authority decides that any of them is unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.
- 11.8 These terms and conditions constitute the entire agreement between the user and Be the Business relating to its subject matter and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral.
- 11.9 You acknowledge that in entering into these terms and conditions you do not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms and conditions.

You agree that you shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these terms and conditions.

- 11.10 The terms and conditions are governed by English law and all disputes arising out of or in connection with these terms and conditions shall be subject to the exclusive jurisdiction of the English courts.