

Standard Terms and Conditions for the supply of EDM information management services in the UK



AGREEMENT FOR THE SUPPLY OF INFORMATION MANAGEMENT SERVICES

THIS Agreement Number (number) is made between EDM Group Limited, a company registered in England under number 1193648 and whose registered office is situated at Queens House, 8-9 Queen Street, Cheapside, London, EC4N 1SP ("EDM") AND (company) a company registered in England under number (Number) whose registered office is situated at (address) ("Customer").

1. DEFINITIONS AND INTERPRETATION

1.1 The following expressions will have the following meaning:-

"Charges" means the charges payable to EDM by the Customer for the Services provided;

"Customer Personal Data" means any Personal Data processed by EDM on behalf of the Customer pursuant to this Agreement;

"Data Controller", "Data Processor", "Data Subject", "Personal Data", "Personal Data Breach", "Process/Processing" and **"Special Categories of Personal Data"** shall have the same meaning as in the Data Protection Laws;

"Data Protection Laws" means the General Data Protection Regulation (EU) 2016/679 ("GDPR") (together with laws implementing or supplementing the GDPR in Member States, in each case, as amended and superseded from time to time), and/or all applicable laws, rules, regulations, regulatory guidance, regulatory requirements from time to time, relating to data privacy, in each case in each jurisdiction where the Services are delivered;

"EEA" means the European Economic Area;

"Input Material" means the documentation, in whatever form, supplied by or on behalf of the Customer for processing by EDM pursuant to this Agreement;

"Intellectual Property Rights" means all rights in relation to patents, trademarks or trading names, registrable and registered designs, unregistered design rights, domain names, copyright, (including rights in computer software), topography rights and other rights in semi-conductor chips, rights in relation to databases, moral rights, rights in know-how, rights in the nature of copyrights or any industrial, commercial or intellectual property rights (whether or not such rights are registered and including applications for registration of any of them) and all rights or forms of similar protection or of a similar nature or having the equivalent or similar effect to any of these which may subsist anywhere in the world;

"Member State" means a member state of the EU;

"Output Material" means the material produced by EDM in processing the Input Material;

"RPI" means the General Index of Retail Prices which is published in the United Kingdom in the Monthly Digest of Statistics or any replacement of it;

"Services" means the Services to be provided by EDM

“Standard Contractual Clauses” means the “Standard Contractual Clauses (Processors)” as laid down in the European Commission Decision 2010/87/EU of 5 February 2010; and

“Supervisory Authority” means: (a) an independent public authority which is established by a Member State pursuant to Article 51 GDPR; and (b) any similar regulatory authority responsible for the enforcement of Data Protection Laws.

2. **PROVISION OF THE SERVICES**

2.1 From the Commencement Date, EDM will provide the Services to the Customer in consideration of the Charges.

2.2 Time shall not be of the essence in relation to provision of the Services unless otherwise expressly agreed in writing by the parties.

2.3 EDM undertakes to provide the Services in compliance with the requirements of ISO9001, ISO14001 and ISO27001.

3. **OBLIGATIONS OF THE CUSTOMER**

3.1 The Customer will provide all reasonable co-operation requested by EDM in performance of this Agreement.

3.2 The Customer will provide EDM with the Input Material.

4. **CHARGES AND PAYMENT**

4.1 EDM will invoice the Customer and the Customer will pay to EDM the Charges set out in this Agreement, at the times set out in this Agreement.

4.2 In the absence of express dates for invoicing and payment, EDM may raise invoices for Charges monthly in advance or upon completion of the associated work (whichever is the earlier).

4.3 Payment for Services must be made by the Customer within thirty days of the date of EDM's invoice.

4.4 EDM reserves the right to charge interest on overdue sums at the rate of 2% per annum above the base rate for the time being of Lloyds Bank Plc calculated on a daily basis from the due date of payment until the date upon which payment is made.

4.5 All payments made by the Customer under this Agreement will be made in full without any set-off, restriction or condition and without any deductions for or on account of any counterclaim.

4.6 Subject to 4.10, the Charges are subject to an increase by EDM no more than once in any 12 month period following the first anniversary of the Commencement Date in line with RPI.

4.7 All Charges are stated exclusive of VAT which is payable in addition to the Charges at the rate and in the manner prescribed by law, subject to EDM raising a valid VAT invoice.

4.8 Following the date of completion of processing of any Input Material by EDM pursuant to this Agreement, such Input Material will be retained by EDM for a period of 28 days. Prior to the expiry of this 28 day period the Customer will by written notice inform EDM that at the end of such period it wishes that:-

- 4.8.1 the Input Material is returned by EDM to the Customer; or
 - 4.8.2 the Input Material is placed into storage in which case the Input Material will be subject to storage Charges in accordance with EDM's standard charges which apply from time to time]; or
 - 4.8.3 the Input Material is destroyed.
- 4.9 If the Customer fails to give notice pursuant to **clause 4.8** then EDM will be entitled to destroy the Input Material at the end of the 28 day period in accordance with **clause 4.8.3**.
- 4.10 In the event that any new legislation or regulation comes into effect after the Commencement Date (a "Change of Law") as a result of which EDM incurs additional costs in providing the Services, EDM shall be entitled to increase the Charges proportionately with effect from the date that the Change of Law becomes effective. EDM shall use reasonable endeavours to provide the Customer with at least one month's prior written notice of such increase to the Charges.
5. **WARRANTIES**
- 5.1 EDM warrants and represents that:-
- 5.1.1 it has full capacity and authority and all necessary consents to enter into and to perform its obligations under this Agreement and that this Agreement has been executed by duly authorised representatives; and
 - 5.1.2 it will provide the Services using reasonable skill and care.
6. **LIABILITY**
- 6.1 The following provisions in this **clause 6** set out EDM's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) in respect of any breach of its obligations arising under or in connection with this Agreement (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise).
- 6.2 Nothing in this **clause 6** will be deemed to exclude or limit EDM's liability for death or personal injury resulting from EDM's negligence or for fraud.
- 6.3 Subject to **clauses 6.1, 6.2, 6.4** and **6.5** the total aggregate liability of EDM to the Customer under or in relation to this Agreement (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) in respect of all and any loss or damage arising in one Year howsoever caused will be limited to 100% of the Charges payable by the Customer under this Agreement in the Year in which the relevant loss or damage arose.
- 6.4 Except as provided under **clause 6.2**, EDM will be under no liability to the Customer (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any of the following types of losses (whether those losses arise directly in the normal course of business or otherwise):-
- 6.4.1 pure economic loss, loss of profits, loss of business, loss of revenue, loss of contract, loss or depletion of goodwill and/or business opportunity, loss of anticipated earnings or savings or like loss; or
 - 6.4.2 wasted management, operational or other time; or

- 6.4.3 any special, indirect or consequential losses.
- 6.5 EDM will have no liability to the Customer for any loss, damage costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or arising from their late arrival or non-arrival or any other fault of the Customer where such errors or omissions on the part of the Customer have caused the said loss, damage, costs, expenses or other claims for compensation.
- 6.6 Except as set out expressly in this Agreement, EDM hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.
- 6.7 For the purposes of this **clause 6**, a “Year” will mean a 365 day period (or a 366 day period if that period encompasses 29th February) commencing either on the Commencement Date or any anniversary of such date.
7. **TUPE**
- 7.1 In the event that the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (‘TUPE’) apply to any of the Customer’s employees as a result of the parties entering into this Agreement then:-
- 7.1.1 all accrued liabilities, including but not limited to wages, salaries and benefits of the Customer’s employees, will be the responsibility of and be discharged by the Customer in respect of the period up to and including the date on which any employees transfer to EDM either by the application of TUPE or otherwise as a result of the parties entering into this Agreement and the Customer will indemnify EDM in respect of the same; and
- 7.1.2 subject to **clause 7.1.3**, the Customer will indemnify and keep EDM indemnified in full against all costs, claims, awards, orders, obligations and liabilities incurred (including legal and other professional fees and expenses – such fees and expenses to be in line with reasonable expectations) which EDM may be required to discharge in connection with or as a result of:-
- 7.1.2.1 any claim or demand by any of the Customer’s employees in respect of redundancy, unfair dismissal, or any other claim within the jurisdiction of an Employment Tribunal, any claim for wrongful dismissal or breach of contract, any claim in tort or any other claim whatsoever whether arising at common law, under statute or otherwise arising directly or indirectly from any act, fault or omission (or any alleged act, fault or omission) of the Customer in respect of the Customer’s retained employees and any other employee of the Customer that will have transferred to EDM by virtue of TUPE; and
- 7.1.2.2 any claim by any trade union, staff association or by any other employee representatives within the meaning of Regulation 13 of TUPE, or any employee howsoever arising from or connected with any failure to comply with Regulation 13 of TUPE or otherwise.
- 7.1.3 the indemnity granted by the Customer to EDM at **clause 7.1.2.1** in respect of the Customer’s retained employees and any other employee of the Customer that will have transferred to EDM by virtue of TUPE shall apply only to claims or demands

arising in respect of the period up to and including the date on which any employees transfer to EDM either by the application of TUPE or otherwise as a result of the parties entering into this Agreement.

8. TERM AND TERMINATION

8.1 This Agreement will take effect from the Commencement Date and will last for an initial period of 36 months from the Commencement Date (“the Initial Period”), and will continue thereafter unless and until terminated in accordance with the provisions of this **clause 8**.

8.2 Either party may by written notice served on the other terminate this Agreement immediately if the other party:-

8.2.1 is in material breach of any of the terms of this Agreement and, where the breach is capable of remedy, the other party fails to remedy such breach within 30 days after service of a written notice from the party not in breach, specifying the breach and requiring it to be remedied;

8.2.2 summons a meeting of its creditors, makes a proposal for a voluntary arrangement, becomes subject to any voluntary arrangement, is unable to pay its debts within the meaning of section 123 Insolvency Act 1986, has a receiver, manager or administrative receiver appointed over any of its assets, undertakings or income, has passed a resolution for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation previously approved in writing, by the party serving notice), is subject to a petition presented to any Court for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation previously approved in writing, by the party serving notice), has a provisional liquidator appointed, has a proposal made for a scheme of arrangement under section 425 Companies Act 1985, has an administrator appointed in respect of it or is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator given by any person or is the subject of a notice to strike off the register at Companies House;

8.2.3 has any distraint, execution or other process levied or enforced on any of its property;

8.2.4 ceases, or appears in the reasonable opinion of the party wishing to terminate likely or is threatening to cease to trade within 30 days; or

8.2.5 the equivalent of any of the above occurs to that party under the jurisdiction to which that party is subject.

8.3 Either party may terminate this Agreement at any time after the Initial Period on giving 6 months' prior written notice to the other party.

8.4 Termination of this Agreement for any reason will be without prejudice to the rights, duties and liabilities of either party accrued prior to termination and will not affect any term that is stated to continue (or must by inference continue) after termination.

8.5 On termination of this Agreement, howsoever arising:-

8.5.1 all outstanding payments due to either party shall be paid in accordance with **clause 4**; and

8.5.2 each party will, upon request by the other party, return any documents in its possession or control which belong to the other party. EDM shall be entitled to charge the Customer the reasonable costs of so doing on a time and materials basis. The Customer agrees that any remaining copies of any Input Material, which the Customer does not request are returned to it, will be destroyed by EDM.

9. **CHANGE CONTROL**

9.1 At any time during the term of this Agreement, the Customer may request a change (referred to below as a "Change") to the Services using the following procedure:-

9.1.1 the Customer will request the Change in writing and EDM will notify the Customer of any time required to investigate the effect upon this Agreement of implementing the Change;

9.1.2 EDM will then reply in writing to the Customer stating whether a Change is possible and, if it is possible, the increase (if any) which will be required to the Charges and any changes (if any) which will be required to this Agreement; and

9.1.3 the Change will not take effect unless and until the Customer elects in writing to proceed with the Change, in which case the Agreement will be deemed amended as set out in EDM's response.

10. **FORCE MAJEURE**

10.1 EDM will not be liable for any delay in delivery or non-delivery of the Services caused by any circumstances beyond EDM's reasonable control, including without limitation, any Act of God, war or national emergency, riot, civil commotion, malicious damage, explosion, fire, flood, terrorism, accident or compliance with any law or governmental order, rule, regulation or direction (a "Force Majeure Event").

10.2 EDM will take all reasonable steps available to it to minimise the effects of a Force Majeure Event on the performance of its obligations under this Agreement including ensuring (insofar as it is able) that the Services are in any event fully resumed as soon as possible after the occurrence of the Force Majeure Event.

11. **INTELLECTUAL PROPERTY RIGHTS**

Rights in Input Material and Output Material

11.1 All Intellectual Property Rights in and to the Input Material and any hard copy documents stored by EDM on the Customer's behalf will belong to the Customer.

11.2 All Intellectual Property Rights in and to the content of any Output Material will belong to the Customer.

11.3 The Customer warrants that any Input Material and its use by EDM for the purpose of providing the Services will not infringe the Intellectual Property Rights of any third party, and the Customer will indemnify EDM against any loss, damages, costs, expenses or other claims arising from any such infringement.

12. **CONFIDENTIALITY**

12.1 Each party shall keep confidential any confidential information disclosed to it by the other. Confidential information includes, without limitation, information which is marked or expressed

as being confidential, the content of this Agreement, and any information which could reasonably be deemed to be confidential, from its nature, content or the circumstances in which it is provided. Neither party shall disclose confidential information to anyone else except to its employees, agents and sub-contractors who need the information to effect proper performance of this Agreement and/or to its professional advisers. Each party shall be responsible for ensuring that any person to whom information is disclosed by them complies with the terms of this **clause 12**.

12.2 **Clause 12.1** shall not apply to any information that is generally available to the public, unless this availability results from a breach of this Agreement, to information the receiving party already possesses or which it obtains independently in circumstances in which the receiving party is free to disclose it to others and/or to information that is required to be disclosed by law.

12.3 This **clause 12** has continuing effect after termination of this Agreement.

13. **DATA PROTECTION**

13.1 Each party confirms that, in the performance of this Agreement, it will comply with its obligations under the Data Protection Laws.

13.2 Insofar as EDM Processes any Personal Data on behalf of the Customer, EDM shall:-

13.2.1 not Process the Personal Data other than in accordance the Customer's documented instructions (whether in this Agreement or otherwise) unless Processing is required by EU or Member State law to which EDM is subject, in which case EDM shall, to the extent permitted by such law, inform the Customer of that legal requirement before Processing that Personal Data;

13.2.2 immediately inform the Customer if, in its opinion, any instruction from the Customer infringes the Data Protection Laws or other EU or Member State data protection provisions;

13.2.3 not publish, disclose or divulge any of the Personal Data to any third party (including the Data Subject), unless directed to do so in writing by the Customer;

13.2.4 not authorise any sub-contractor to Process the Personal Data ("**sub-processor**") other than with the prior written consent of the Customer, provided that in the case of each approved sub-processor, EDM shall:

13.2.4.1 ensure that the arrangement between EDM and the sub-processor is governed by a written contract including terms which impose obligations on the sub-processor equivalent to those applying to EDM under this **clause 13**;

13.2.4.2 insofar as that contract involves the transfer of Personal Data outside of the EEA, only transfer such Personal Data in accordance with **clause 13.15** below; and

13.2.4.3 remain fully liable to the Customer for any failure by each sub-processor to fulfil its obligations in relation to the Processing of any Personal Data.

- 13.3 EDM shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk associated with the Processing of the Personal Data. In assessing the appropriate level of security, EDM shall take account of the risks that are presented by Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise Processed.
- 13.4 EDM shall take reasonable steps to ensure the reliability of any employee, agent or contractor who may have access to the Personal Data, ensuring in each case that access is strictly limited to those individuals who need to access the relevant Personal Data, as strictly necessary for the purposes of this Agreement in the context of that individual's duties to EDM, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.
- 13.5 EDM shall promptly notify the Customer if it receives a request from a Data Subject under any Data Protection Laws in respect of the Personal Data.
- 13.6 EDM shall co-operate with the Customer and provide assistance the extent reasonably required to enable the Customer to comply with the exercise of such rights by a Data Subject and/or to comply with any assessment, enquiry, notice or investigation under any Data Protection Laws in respect of the Personal Data or this Agreement.
- 13.7 EDM shall notify the Customer without undue delay upon becoming aware of a Personal Data Breach affecting the Customer Personal Data, providing the Customer with sufficient information to allow the Customer to meet any obligations to report a Personal Data Breach under the Data Protection Laws.
- 13.8 If at the time of making the original notification described in **clause 13.7**, EDM does not have available to it all of the information that is required by the Customer in order to meet its obligations, EDM shall include in the original notification such information as it has available to it at that time, and then shall provide the further information as soon as possible thereafter.
- 13.9 EDM shall co-operate with the Customer and take such reasonable commercial steps as are directed by the Customer to assist in the investigation, mitigation and remediation of each Personal Data Breach.
- 13.10 Subject to **clauses 13.11 to 13.13**, EDM shall provide the Customer with evidence of compliance with its obligations under this Agreement and, to the extent that sufficient evidence regarding compliance has not already been provided, will allow its data processing facilities, procedures and documentation to be submitted for scrutiny by the Customer's auditors or Supervisory Authority during normal business hours in order to ascertain compliance with the Data Protection Laws and the terms of this **clause 13**.
- 13.11 The rights of the Customer shall only arise under **clause 13.10** to the extent that this Agreement does not otherwise provide information and audit rights meeting the relevant requirements of the Data Protection Laws.
- 13.12 The Customer shall give EDM reasonable prior notice of any audit or inspection to be conducted under **clause 13.10**, will ensure that its auditors comply with the internal security policies of EDM and ensure that its auditors make reasonable endeavours to minimise any disruption to EDM's business.
- 13.13 EDM need not give access to its premises for the purposes of more than one audit or inspection in any calendar year except where the Customer is required by a Supervisory Authority to carry out such an audit or inspection.

- 13.14 EDM shall provide reasonable assistance to the Customer with any data protection impact assessments which are required under Article 35 GDPR and with any prior consultations to any Supervisory Authority of the Customer which are required under Article 36 GDPR, in each case solely in relation to Processing of the Personal Data by EDM on behalf of the Customer and taking into account the nature of the Processing and information available to EDM.
- 13.15 EDM shall not (and shall procure that its sub-processors shall not) under any circumstances transfer the Customer's Data outside the EEA unless authorised in writing by the Customer to do so. Where EDM (or its sub-processors) is authorised to Process the Customer's Data including Personal Data outside the EEA, the Standard Contractual Clauses shall be completed and entered into between the Customer (or any other relevant Data Controller) and EDM (or, where applicable, between EDM and any relevant sub-processor) before such export.
- 13.16 Subject to the requirements of any applicable exit plan, EDM shall cease Processing the relevant Personal Data, as soon as reasonably practicable, upon the termination or expiry of this Agreement and thereafter, either return, or securely destroy, the Personal Data and any copies of it.
- 13.17 The subject matter and duration of the Processing, the nature and purpose of the Processing, the type of Personal Data and categories of data subject as required by Article 28(3) of the GDPR or equivalent provisions of any Data Protection Law, relating to this Agreement.

14. **ASSIGNMENT AND TRANSFER OF INTERESTS**

- 14.1 Neither party will be entitled to assign, transfer or charge any of their respective rights or obligations under this Agreement without the consent of the other party, such consent not to be unreasonably withheld or delayed, provided that a party may assign, transfer and/or charge its rights or obligations under this Agreement in the event of a merger or transfer of engagements or other event by that party, without the prior written consent of the other party.
- 14.2 For the avoidance of doubt, EDM shall be entitled to sub-contract any or all of its rights and obligations under this Agreement.

15. **WAIVER**

No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement will prejudice or restrict the rights of that party nor will any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy conferred upon or reserved for either party is exclusive or any other right, power or remedy available to that party and each such right, power or remedy will be cumulative.

16. **NOTICES**

- 16.1 Any notice under this Agreement will be in writing addressed to the relevant party at the address set out at the beginning of this Agreement or such other address as that party will notify to the other for this purpose. Notices may be delivered by hand, sent by prepaid first class post or by facsimile transmission and will be deemed to have been duly served:-
- 16.1.1 if delivered by hand, when left at the proper address for service;
- 16.1.2 if sent by pre-paid first class post, on the second business day after posting;

16.1.3 if sent by facsimile transmission, when the sender obtains a machine generated confirmation of error free transmission provided that a hard copy is forthwith placed in the first class pre-paid post by way of confirmation.

17. ENTIRE AGREEMENT

17.1 This Agreement and other documents which are incorporated into and form part of this Agreement contain, or will contain, all the terms which the parties have agreed in relation to the subject matter of this Agreement, and supersede any prior written or oral agreements, representations or understandings between the parties in relation to such subject matter.

17.2 The parties acknowledge that this Agreement has not been entered into wholly or partly in reliance on any statement, promise or representation made by or on their behalf.

17.3 Nothing in this **clause 17** will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

18. VARIATION

All amendments to this Agreement must be made in writing and signed by an authorised representative of each party.

19. SEVERABILITY

The invalidity or unenforceability of any term of, or any right arising pursuant to this Agreement, will not in any way affect the remaining terms and rights which will be construed as if such invalid or unenforceable term or right did not exist.

20. RELATIONSHIP OF THE PARTIES

The performance by EDM of its duties and obligations under this Agreement shall be that of an independent contractor and nothing contained in this Agreement will create or imply an agency relationship between the parties, nor will this Agreement be deemed to constitute a joint venture or partnership between the parties.

21. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Nothing in this Agreement is intended to create any right which, by virtue of the Contracts (Rights of Third Parties) Act 1999, might otherwise be enforceable by a third party against either party to this Agreement.

22. JURISDICTION

This Agreement will be governed and construed in accordance with the Laws of England and the parties agree to submit to the exclusive jurisdiction of the English Courts.