



## TERMS & CONDITIONS FOR SUBSCRIPTION AND HR/EMPLOYMENT LAW SERVICES 2017

(Version 2017 v5 170315)

### 1. Definitions

**"Anniversary date"**: 12 months from the date of initial service commencement and every 12 months thereafter, or in the case of upgrade or downgrade to your subscription service, 12 months from the date of such change in subscription service and every 12 months thereafter.

**"Associate member"**: any organisation that purchases any HR & Legal service who is not a foundation member.

**"Customer"**: any organisation which signs up to a subscription service level or takes any pay-as-you-go HR & Employment Law services.

**"Documentation"**: HR and/or Health & Safety (H&S) material as provided by EEF.

**"EEF"**: EEF Limited (registered number 05950172) a company limited by guarantee.

**"Eledecks"**: Eledecks Limited (registered number 5320438) a company limited by guarantee & third party provider of HR portal software.

**"Foundation Member"**: any organisation whose business activities fall into the manufacturing or adjacent sectors as determined by EEF from time to time, and purchases any HR & Legal service or H&S subscription service.

**"Minimum term"**: 12 months from the date of service commencement (or longer as agreed between the Customer and EEF) plus one month's notice period thereafter.

**"Notice period"**: one calendar month

**"Online portal"**: Online portal as provided by third party Eledecks.

**"Operational working hours"**: Monday to Friday 9am – 5.30pm excluding weekends, bank holidays and any other days EEF offices are formally closed, to be notified to the customer in advance of such closure.

**"PAYG fees"**: temporary uplift in subscription fees, immediately payable in full, to cover Tribunals, Settlement agreements and any other contracted work outside of EEF's standard Subscription Service offerings.

**"PAYG services"**: services provided as a temporary extension to subscription services, subject to a PAYG fee.

**"Services"**: incorporates both subscription services and PAYG services.

**"Subscription Fees"**: fees applicable to the subscription service elected for a subscription period.

**"Subscription period"**: a period of 12 months from the initial date of service commencement and thereafter 12 months from the anniversary date or date of any upgrade/downgrade of service.

**"Subscription Service"**: any services paid for in advance on a recurring basis for an agreed period of time as part of a bundled package, primarily Level 1 or 2 (with or without HR portal), or any bespoke package as agreed between the Customer and EEF.

### 2. These terms

2.1 These Terms and Conditions apply to any and all subscription services supplied by EEF to the Customer as part of your subscription service along with any pay-as-you-go (PAYG) HR & Employment Law services. Additional terms will apply to training and consultancy purchased separately.

2.2 These terms and conditions will prevail over any terms and conditions used, contained, set out or referred to in any documents sent by you to us.

2.3 These terms and conditions may be varied by EEF from time to time. EEF will give you one month's notice prior to any such change taking effect. In the event of any such variation EEF will publish any revised terms and conditions on its website at <http://www.eef.org.uk/terms-and-conditions>. If you do not accept the revised terms then you will be entitled to terminate your contract in accordance with clause 21 on termination, with pre-existing terms and conditions applying up to the anniversary date.

### 3. Minimum term & contract renewal

3.1 Subscription services, are subject to a minimum term of at least 12 months.

3.2 After expiry of the minimum term you may terminate the service by providing no less than one month's written notice in accordance with 21.1 below. Otherwise your subscription will continue indefinitely until the expiry of any served notice period thereafter.

3.3 Where a Customer contracts with the Company for a service contract period of greater than 12 months, the agreed duration of the contract will form the minimum term, with automatic continuation of service thereafter until expiry of the notice period.

### 4. General HR & Employment Law terms

4.1 None of our advice shall be used by any law firm or by any other adviser without our express written consent. EEF reserves the right not to comment on the advice provided by any other solicitor or adviser or by in-house staff, although a second opinion may be provided.

4.2 Unless you subscribe to the Level 2 service option which includes EEF's Settlements support service, or accordingly buy tribunal and/or settlement

agreement support on a PAYG basis, EEF will not generally communicate with any other party on your behalf or enter into settlement negotiations. EEF will not attend any Employment Tribunal or other hearing on your behalf unless you have paid for the relevant subscription or PAYG service. Litigation support is not provided in relation to health and safety, environmental or other any legal matters or claims save to the extent these may be raised in an employment claim (and then only if you have subscribed to or bought on a PAYG basis EEF's Tribunals and/or Settlements support).

4.3 EEF may refuse to act for you on any matter if:

- acting for you might give rise to a conflict of interest; or
- two or more of EEF's customers are separate parties to that matter; or
- there is a risk of a breach of the Solicitors Code of Conduct or any other professional codes of conduct which apply to our advisers.

4.4 Advice provided on any matter will be based on the details and information outlined by your employee or agent to our help desk or adviser. If you are concerned about a particular risk please notify EEF at the earliest opportunity. EEF also advise that you take written advice about areas of concern. EEF's maximum liability in relation to any telephone or general advice will for the avoidance of doubt, be limited to the lower of total fees payable over the subscription period or 12 months subscription fees.

### SERVICE OPTIONS

#### Level 1

#### 5.0 HR portal (optional service)

5.1 The Customer is entitled to access to the online portal as currently provided by Eledecks (including online guides, model documents and other toolkits and best practice papers), and other decks as outlined as part of your service package.

5.2 The Customer acknowledges that the online portal is provided by a third party supplier, Eledecks, and EEF reserves the right to transfer any contractual service relationship in relation to the online portal directly to Eledecks or other third party provider as per clause 22.1 at any time. In such circumstances EEF will provide a minimum of one month's notice of any intent to transfer any such service provision.

5.3 Any content on the online portal which is uploaded by the Customer will continue to be the property of the Customer except to the extent the Customer has copied from Eledecks or EEF content. All other content except that directly created and uploaded by the Customer remains the property of EEF and/or Eledecks. The Customer should retain copies of any customer related documentation which is uploaded. EEF accepts no liability for loss of Customer data.

5.4 Due to the sensitive and/or confidential nature of Customer data likely to be held on the online portal, the Customer agrees to keep safe and not share passwords or any other log on information which could result in a breach of security and unauthorised access to the online portal. The Customer accepts full liability in such circumstances.

5.5 EEF reserves the right to amend, change, add or remove any documentation as necessary during the course of the service contract with the Customer without notice.

5.6 Information, toolkits and all other online based data provided by EEF are for the benefit of the customer's own use and are not to be copied, printed or distributed to any third parties whatsoever without the prior written consent of EEF.

5.7 Subject to clause 23 EEF accepts no liability whatsoever for any actions taken by the customer on reliance on documentation, where the customer has not taken specific advice either through the advice line or on a face-to-face basis under the Level 1 or 2 subscription services.

5.8 From time to time such access to documentation may be restricted or unavailable due to circumstances outside the reasonable control of EEF. Under such circumstances the Customer acknowledges that EEF is under no obligation to refund any part of the subscription fees whatsoever. Furthermore EEF may restrict access to the online portal where it is believed that the use of the system is being abused and/or is subject to a possible security breach.

#### 6. EEF telephone and email advice line service

6.1 Only authorised and named users of the Customer who subscribe to the EEF advice line service, either the HR & Employment Law advice line and/or the Health & Safety advice line, are entitled to access the advice line service.

6.2 Authorised named users of the Customer may access advisory services either through direct voice call to the dedicated advice line or via email. EEF will review and comment upon supporting documentation and correspondence in relation to any matter.

6.3 With regards to the HR & Employment Law advice line the Customer acknowledges that EEF is authorised to provide legal advice to its customers but is not regulated by the Solicitors Regulation Authority. The provision of legal advice does not amount to the formation of a solicitor-client relationship and EEF is not part of the solicitor's indemnity fund, although EEF does carry professional indemnity insurance.

6.4 Please note that while EEF will provide HR & Employment Law advice via the EEF advice line service, EEF's advisers will not be obliged to provide any on-site or face to face support, or attendance at any disciplinary/grievance meetings unless the customer has subscribed to and paid for the Level 2 service or agreed to a consultancy or PAYG arrangement which is subject to additional fees.

#### 7.0 Update briefings

7.1 As part of the subscription service, customers may attend any Employment Law and/or Health & Safety/Sustainability update briefings at any location.

- 7.2 Attendance at such briefings is subject to advance confirmation of attendance, as specified by the individual event, with spaces allocated on a first come first served basis.
- 7.3 EEF in no way guarantees availability of spaces at such briefings for a customers preferred time, date and location.
- 7.4 The customer acknowledges that where spaces are unavailable, or where EEF has to cancel the update briefing for any reason whatsoever, EEF is under no obligation to refund any part of the subscription fees payable whatsoever.
- 7.5 Attendance at briefings is strictly restricted to one individual per customer, with any attendees over and above this number being at the sole discretion of EEF, and subject to possible further fees for any additional attendees.
- 7.6 Subject to clause 23 (liability and insurance) EEF accepts no liability whatsoever for any actions taken by the customer resulting from attendance at an update briefing, where the customer has not taken specific advice either through the EEF advice line or on a face-to-face basis under the Level 1 or 2 subscription service.
- 8. Health & Safety web content**
- 8.1 For those Customers who subscribe to the Health & Safety module, online Health & Safety content can be found at [www.eef.org.uk/hseguide](http://www.eef.org.uk/hseguide)
- 8.2 EEF reserves the right to amend, change, add or remove any documentation as necessary during the course of the service contract with the Customer without notice.
- 8.3 Information, toolkits and all other online based data provided by EEF are for the benefit of the customer's own use and are not to be copied, printed or distributed to any third parties whatsoever without the prior written consent of EEF.
- 8.4 Subject to clause 23 EEF accepts no liability whatsoever for any actions taken by the customer on reliance on documentation, where the customer has not taken specific advice either through the advice line or on a face-to-face basis under the Level 2 subscription.
- 8.5 From time to time such access to documentation may be restricted or unavailable due to circumstances outside the reasonable control of EEF. Under such circumstances the Customer acknowledges that EEF is under no obligation to refund any part of the annual subscription fees whatsoever.
- 8.6 Where the Customer requires additional licences to the proprietary online Health & Safety content, the Customer acknowledges that additional fees will become payable per user licence and added to the subscription fee. All licences are issued on an annual basis and cannot be terminated part way through the year.
- 8.7 Where the Customer wishes to reduce the number of user licences in relation to the online Health & Safety content, then the Customer acknowledges that the licence is an annual licence and as such no refunds for unexpired periods will be issued by EEF. The reduction in licence requirements will be reflected at the anniversary date in the next Subscription Fee.
- Level 2**
- 9. Face-to-face HR & Employment Law support**
- 9.1 Where issues cannot be reasonably resolved via telephone and/or email, then those Customers who subscribe to the Level 2 HR & Employment Law service are entitled to face to face advice, at a mutually convenient location.
- 9.2 EEF agrees to all reasonable endeavours to provide such face-to-face support subject to EEF staff availability and reasonable notice. Where the Customer has been allocated a lead adviser, the Customer acknowledges that the nominated lead adviser may from time to time not be available, and in such instances may be re-directed to either the National Advice Line or an alternative suitably qualified person to deal with any issues.
- 9.3 The Customer acknowledges that whilst EEF will provide reasonable face-to-face support, additional fees may become payable where the Customer requires extensive face to face support or usage of the service becomes in any way, in the view of EEF, unreasonable, in accordance with clause 19 on fair usage. In such circumstances EEF will inform the Customer at the earliest opportunity where additional fees become due.
- 9.4 EEF agrees to provide general advice on day to day HR issues such as disciplinary or grievance investigations, as well as advice in relation to Employee Relations and/or Trade Union issues. Where support is required from the Customer which goes beyond general advice in relation to Employee Relations and/or Trade Union issues, then any onsite consultancy or interim support will be separately chargeable under our consultancy terms & conditions.
- 9.5 EEF may agree to assist with disciplinary or grievance investigations. Please note that if EEF carries out or assists with such an investigation then:
- EEF will be acting independently in carrying out such investigation and does not guarantee the outcome.
  - Any report which EEF staff prepare following such investigation will not be privileged and may be used in tribunal or other proceedings.
  - The outcome of the investigation or report may lead to proceedings (EEF will not be liable for any such outcome).
  - If litigation or proceedings are commenced which relate either to the circumstances investigated or to the investigation itself then EEF may be unable to act and if EEF do act an adviser from a different EEF region may be appointed by EEF to handle the case.
- 10. Annual review of contracts & policies**
- 10.1 Upon request by the Customer, EEF will review the key HR policies and processes of the Customer, and will advise as applicable on their alignment or otherwise with best practice Employment Law legislation.
- 10.2 Any request by the Customer for EEF to rewrite or rework an existing HR policy or process of the Customer is not covered under the Level 2 subscription service and will be subject to a separate consultancy arrangement for which additional fees will be applicable.
- 11. Support with early conciliation**
- 11.1 Following notification to the Customer, EEF will support the Customer with any early conciliation process including negotiation and documentation support.
- 11.2 In order to fulfill its obligations within legal deadlines the Customer will inform EEF at the earliest opportunity of all required early conciliation support.
- 12. Support with Settlement Agreements**
- 12.1 The Customer will receive Settlement Agreement support including opinion, negotiation support and the drafting and production of the Settlement Agreement documentation as arising during the normal course of business.
- 12.2 Whilst the number of Settlement Agreements covered are not specifically capped, fees are subject to possible review and amendment based upon clause 19 on fair usage.
- 12.3 The Customer acknowledges that only those Settlement Agreements incurred through the normal course of business are covered by the Subscription Fees. Where the Customer undertakes some form of large scale programme of restructuring, or any other substantial event, which requires significant numbers of Settlement Agreements, then EEF reserve the right to charge additional fees based upon the amount of time and effort required to provide the service under a consultancy arrangement.
- 12.4 Any monies paid by the Customer to the Customer's employee as part of any Settlement Agreement is not covered under the Settlement Agreement support service.
- 13. Health, Safety & Sustainability annual review**
- 13.1 Upon request by the Customer, EEF agrees to provide up to 1 day per annum conducting an annual review of the Customers Health, Safety & Sustainability policies, procedures and practices.
- 13.2 Any such work undertaken by EEF is to provide a summary gap analysis only. Any work conducted outside of this annual review, and/or work undertaken which exceeds one day in totality, is subject to a separate consultancy arrangement for which additional fees will be applicable, or additional days can be obtained by upgrading the subscription service to include additional days, with such days reflected in the Subscription Fee.
- 13.3 The Customer acknowledges they are under no obligation to request an annual review each year, but by not requesting such annual review also acknowledges that EEF is under no obligation to refund any subscription fees whatsoever.
- 14.0 Additional Health, Safety & Sustainability consultancy days**
- 14.1 The Customer has an option to subscribe to additional consultancy Health, Safety & Sustainability days over and above the one day contained within Level 2, within their recurring subscription service, for an additional fee.
- 14.2 The Customer may choose any number of days up to a maximum of 20 days per subscription year.
- 14.3 Any additional days requested by the customer will cover specified consultancy days only, as outlined in the customer's service proposal, and does not cover any form of training services whatsoever, which are subject to additional fees.
- 14.4 Any additional days subscribed to by the Customer are subject to a minimum term of 12 months and then one months' notice thereafter for cancellation or downgrade.
- 14.5 A customer may upgrade the number of subscribed days at any point as per clauses 14.4 and 16.4.
- 14.6 Any days unused by the end of the subscription year may not be carried over, unless agreed in advance with EEF. Any such carryover of unused days is at the sole discretion of EEF.
- 14.7 Consultancy days may be used at any time and location within the United Kingdom only, and will consist of whole days only of 7.5 hours duration. No half days may be drawn down against the requested number of days.
- 14.8 Any consultancy days booked and scheduled as agreed between EEF and the Customer which are subsequently cancelled, will be lost unless 2 weeks' notice of cancellation is received. Any days which are cancelled and rescheduled must be rescheduled within the same subscription year otherwise clause 14.6 will apply.
- 14.9 Travel & expenses are not covered within the subscription fee and will be separately charged onto the Customer at cost.
- 14.10 The Customer acknowledges that it is their responsibility to request, agree and schedule those consultancy days subscribed to during the course of a subscription year. EEF accept no liability whatsoever for failure of the Customer to request consultancy days to be delivered, or where the Customer provides unreasonable notice of a request for consultancy.
- 14.11 Additional days will primarily be delivered by EEF employed consultants, although EEF reserve the right to use third parties as required. Where the Customer requests any third party involvement, then the Customer acknowledges additional fees may become due.
- 14.12 Where a Customer provides one months' notice of downgrade to the number of days subscribed to, and the notice period spans the subscription renewal anniversary date, so the consultancy day entitlement will be pro-rata'd for the new subscription period, and rounded to the nearest whole day.

## 15. Employment Tribunal support

- 15.1 Following notification to the Customer of a lodged tribunal, EEF will assess the likely resource requirements in order to support the Customer through the end to end Employment Tribunal process (including ET3 responses), and will provide a fee quote payable by the Customer as a one-time payment in return for EEF to provide the employment tribunal support service.
- 15.2 Where EEF provides such a quote for work, EEF will also provide a relevant scope of works to be conducted and the basis upon which the fee has been derived following conversations with the Customer. Should the requirements materially change for any reason at any point, requiring significantly more work beyond that initially envisaged, the Customer acknowledges that additional fees may become due. In such instances EEF endeavors to notify the Customer at the earliest opportunity.
- 15.3 In exceptional circumstances EEF may agree to provide Employment Tribunal support on a retained basis (known as Level 3) through an uplift in the monthly recurring subscription fee. In such instances the Customer acknowledges that EEF may revoke the delivery of this service on this basis at any time, not least where use of the service is beyond reasonable when taking into account fees paid as per clause 19. Furthermore, no employment tribunal support will be provided in the first three months from commencement of service on a retained basis, unless the Customer pays for such service on a PAYG basis.
- 15.4 Where EEF provides Employment tribunal support, either under a PAYG or retained basis, then the following terms will apply:
- 15.4.1 Following notification to the Customer of a lodged tribunal, EEF will support the Customer by completing and submitting all ET3 responses as requested by the Customer.
- 15.4.2 In order to fulfill its obligations within legal deadlines, the Customer will inform EEF at the earliest opportunity of all tribunal claims lodged requiring an ET3 response.
- 15.4.3 EEF will not be held responsible for any late response submissions where the Customer has not promptly notified EEF of a lodged tribunal claim.
- 15.4.4 Following submission of an ET3 response, upon request, EEF will review and advise on the initial prospects of success of the claim.
- 15.4.5 EEF accepts no responsibility for the actual outcome of the claim based on its assessment of the prospects of success.
- 15.4.6 If you wish EEF to represent you at an Employment Tribunal or other employment hearing you must inform us as soon as you are aware of a claim. If you notify and agree any fees and scope of works with EEF less than 3 days prior to the deadline for preparing a response to a claim then EEF reserves the right not to prepare the response, handle the claim or attend the hearing.
- 15.4.7 You also agree to supply EEF with all supporting documents and other information. Failure to do so may mean that EEF is unable to represent you at a hearing or prepare a response on your behalf.
- 15.4.8 Where a Customer takes Tribunal support under a retained basis through an uplift in the recurring monthly fee and such support is provided by EEF which extends beyond any notice period provided by the Customer, then the Customer agrees to pay additional one-off fees to cover the work for the period until such time that the Tribunal is complete, taking into account any excess usage of the service to date. EEF is under no obligation to accept any new Tribunals arising during this period where the Customer has provided notice of termination.
- 15.4.9 If a proposed tribunal hearing is listed for 5 days or longer or EEF estimates that the value of a potential claim is more than £100,000 or if the case raises issues which are either unusually complex or have implications beyond that case then EEF reserves the right to instruct a Barrister at your expense. Any Barrister will be appointed in consultation with you, however if EEF requests your consent to appoint a Barrister and you refuse, then EEF reserves the right to cease acting for you in relation to that matter.
- 15.4.10 EEF reserves the right to charge for reasonable disbursements and costs including (but not limited to) the costs of retaining professional witnesses, travelling and subsistence expenses, copying charges, and the cost of any external Barrister or Counsel.
- 15.4.11 Awards and/or damages are not covered under any circumstances.

## FEES

### 16. Subscription service fees

- 16.1 Subscription fees are primarily payable via direct debit instalments monthly in advance, due on the 1<sup>st</sup> calendar day of each month, or where the 1<sup>st</sup> is a weekend, the first working day thereafter. Subscription fees are based on full headcount (not FTE) which incorporates all permanent employees, any other fixed term contract workers included on the Customers payroll and any agency workers with longer than 12 weeks employment history. If at any point your number of employees increases then EEF reserves the right to increase the subscription fee from the point that headcount increased. EEF also reserves the right to revise your subscription fees at any point in line with clause 19 where usage exceeds that reasonably expected as compared to the fees paid by the Customer. Additionally EEF will provide a reduction in fee where headcount has reduced.
- 16.2 In the event that any fees or charges whatsoever are due to EEF, or your subscription fee has been incorrectly calculated then you agree to settle any invoice for additional or unpaid subscription fees rendered by EEF via direct debit collection over an agreed instalment plan.

- 16.3 Customers subscribe to EEF services through varying levels of service package as described in your contract. Please note that you will only be entitled to access those services which are included within a service level you have subscribed to.
- 16.4 If you wish to move up to a higher service level at any point in time Subscription fees will be immediately uplifted to reflect the upgraded service option from the date of upgrade. You will also be required to commit for a further minimum term of 12 months from the date of upgrade.
- 16.5 The right to access services commences upon successful collection of the initial and subsequent direct debit payments.
- 16.6 After your minimum term, if you wish to reduce your service option then you will be required to give one months' notice of this and your Subscription fee will be recalculated accordingly from the date that your service entitlement is reduced. You will also be required to commit for a further minimum term of 12 months from the date of downgrade.
- 16.7 Where a direct debit collection is returned as unsuccessful, through no fault of EEF, EEF reserve the right to put on hold any and all services with immediate effect until such time that payment is received in full, either through electronic payment or reinstated direct debit collection. EEF reserves the right to charge an administration fee of £30 for each returned direct debit.

- 16.8 Where the Customer is provided with the HR portal on a free of charge basis for a limited period as agreed between EEF and the Customer, the Customer acknowledges that fees will become immediately due and will automatically be collected monthly in advance from the expiration of the free period.
- 16.9 Where in exceptional circumstances the customer pays an annual fee for subscription services, the customer acknowledges that fees may still be amended at any time, as per clauses 18 and 19, with any additional fees due being payable immediately. Payment terms for annually billed customers are annual payment in advance of the anniversary date, 30 days from date of invoice. The Customer acknowledges that no discount is available for annual payments in advance.

### 17. Pay-as-you-go ("PAYG") service fees

- 17.1 Customers who use Tribunal and/or Settlement Agreement services on a PAYG basis will be quoted a fixed PAYG fee on a case by case basis prior to the commencement of any work.
- 17.2 Upon agreement to the quoted fixed PAYG fee, the Customer acknowledges that such fees are payable in advance of commencement of the work.
- 17.3 Where a Customer has an existing direct debit instruction in place for subscription services, the Customer agrees that EEF may collect any PAYG fees due, in full, which relate to Tribunals and/or Settlement Agreements via a one-off direct debit collection process.
- 17.4 If a proposed tribunal hearing is listed for more 5 days or longer or EEF estimates that the value of a potential claim is more than £100,000 or if EEF believes that it is otherwise in your best interests then EEF reserves the right to instruct a Barrister at your expense. Any Barrister will be appointed in consultation with you, however if EEF requests your consent to appoint a Barrister and you refuse, then EEF reserves the right to cease acting for you in relation to that matter.
- 17.5 EEF reserves the right to charge for reasonable disbursements and costs including (but not limited to) the costs of retaining professional witnesses, travelling and subsistence expenses, copying charges, and the cost of any external Barrister or Counsel.
- 17.6 Awards and/or damages are not covered under the Tribunal support service.

### 18. Fees – General

- 18.1 The Customer acknowledges that it is their responsibility to provide, where applicable, a valid purchase order number to be included for all work and services provided by EEF. EEF is not liable for the Customers failure to provide such purchase order numbers, and the Customer accordingly acknowledges that fees are still due in full in the instances where a valid purchase order number has failed to be provided in reasonable time.
- 18.2 If EEF's staff or contractors are required to discharge out-of-pocket expenses in delivering Services to you those expenses will be charged to you as may be agreed from time to time. In the absence of any express agreement you agree to pay all reasonable expenses incurred by EEF or their employees or contractors in carrying out services on your behalf.
- 18.3 Returned direct debits, or in the case of annually billed Customers, non-payment, may result in immediate suspension of services until the successful collection of any outstanding fees. Nonpayment which is of no fault of EEF may result in the immediate cancellation of the contract. The Customer has no right of cancellation in these circumstances.
- 18.4 In the event that a direct debit collection is returned unpaid, EEF retain the right to charge an administration fee of £30 for each returned direct debit.
- 18.5 All fees are routinely reviewed on the anniversary date and are subject to uplift based on indexation and service usage versus that reasonably expected. EEF will provide 30 days' notice of any change to fees due.
- 18.6 Any sums payable which remain outstanding and which are not paid on the due date shall bear interest from day to day at the rate equal to 8% per annum above the Bank of England base rate.
- 18.7 All fees and charges are quoted exclusive of VAT unless otherwise specified. VAT will be applied at the prevailing rate.

## 19. Fees – Fair usage

- 19.1 Outside of the routine annual fee review process as per clause 18.5, Subscription fees are also subject to immediate review where it is believed that the Customers usage of the service, other than the HR portal, is excessive.
- 19.2 Where it is believed a Customers usage is unreasonably excessive and such usage levels are not reflected in the fee charged, then EEF reserve the right to charge additional fees and/or reduce a Customers service entitlement to that reasonably expected for the fee charged.
- 19.3 EEF agrees to provide reasonable notice of proposed changes to fees in such circumstances, providing no less than 30 days' notice of a change in fee or change in service entitlement.
- 19.4 Where the parties fail to agree to a revised price and/or amended service entitlement on the basis of excess use, and where the Customer has been provided with 30 days' notice of such change, then EEF reserve the right to cancel the contract with immediate effect, with no further liability in service provision. The Customer has no right of cancellation in such circumstances.

## 20. Services

- 20.1 EEF will provide the services with reasonable skill and care. Unless expressly agreed in writing no further conditions, warranties or representations are given by EEF in relation to the services and any such terms are excluded to the fullest extent permitted by law.
- 20.2 Services will be provided to you, the Customer, and not to any other third party. EEF will not be obliged to provide services to any third party nor will EEF accept any liability or duty of care to any third party whatsoever.
- 20.3 In order to allow EEF to provide the services you agree that you, together with your employees and agents will at all times:
- provide EEF with complete, accurate and timely information, data and documents which may be requested;
  - co-operate fully with EEF in the provision of the services and permit EEF to provide the services free of obstruction and interference;

## 21. Termination

- 21.1 Your service contract may be terminated by either party at any time by providing no less than one months' notice in writing, for any reason, following expiry of the initial minimum term of 12 months (or such longer minimum term as may be agreed).
- 21.2 EEF shall be entitled to terminate your service contract immediately in the event that you fail to make payment of any subscription or other fees which are due and payable or if you are otherwise in material breach of these terms and conditions.
- 21.3 EEF shall be entitled to terminate your service contract immediately where usage is unreasonably excessive in comparison to the subscription fees paid, and where the parties fail to agree to a revised price and/or amended service entitlement on the basis of excess use, and where the Customer has been provided with 30 days' notice of such change. The Customer has no right of cancellation in such circumstances.
- 21.4 Either party shall be entitled to terminate the service with immediate effect if any of the following events occurs in respect of the other party:
- a proposal is made for a voluntary arrangement or for any other composition, scheme or arrangement with, or assignment for the benefit of its creditors;
  - a shareholders meeting is convened or a resolution is passed for its winding up (except for a bona fide reconstruction or amalgamation)
  - a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors meeting is convened pursuant to s.98 of the Insolvency Act 1986
  - a receiver, manager or administrative receiver is appointed over any or all of its undertaking or assets
  - an administrator is appointed or an application is made for such an appointment or the making of an administrative order, or;
  - it becomes insolvent within the meaning of s.123 of the Insolvency Act 1986, or;
  - a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986.

## 22. Staff and Contractors

- 22.1 EEF shall be entitled to subcontract, delegate or assign the provision of any services or any of their rights or duties under these terms. EEF shall have discretion as to which of their third party suppliers, employees or self-employed agents, contractors or associates ("Associates") are assigned to perform the services.
- 22.2 You agree to pay EEF's introduction fee as set out in clause 22.3 in the event that you, any subsidiary, group or associated company or any person connected with you (directly or indirectly) recruit as an employee or engage as self-employed contractor any employee or Associate of EEF if that employee or Associate was involved in the provision of services to you by EEF in the 12 month period prior to their engagement by you.
- 22.3 In the event that you engage an employee or Associate of EEF as set out in clause 22.2 you agree to pay an introduction fee (which shall be immediately due and payable) equal to 50% of the annual remuneration (including pay and benefits) payable by you to the relevant individual in the year following the commencement of that individual's employment.

## 23. Liability and Insurance

- 23.1 EEF's aggregate liability including the liability of their partners, agents, subcontractors and employees in respect of any services provided to you by EEF in connection with your service contract will be limited to the lower of the total fees payable over the subscription period or 12 months fees, or in the case of PAYG work, the PAYG fees.
- 23.2 Nothing in these terms will limit or exclude EEF's liability for death or personal injury arising as a result of EEF's negligence.

## 24. Intellectual Property and Confidentiality

- 24.1 All intellectual property rights of any nature (including copyright) created or provided by EEF or its employees or Associates shall be and remain the property of EEF and any such materials shall be licensed to you for your internal use only.
- 24.2 You undertake to keep all Publications materials created by EEF confidential and not to copy, publish or distribute any such information, materials or documents to any third party without EEF's prior written consent (save where such information is in the public domain or you are required to disclose such information by law).
- 24.3 Each party agrees with the other not to divulge or allow to be divulged any confidential information relating to the other's business or affairs other than to its employees or subcontractors who need to know such information or where the other party has consented to such disclosure.

## 25. General

- 25.1 Each of the parties warrants its power to enter into this agreement and has obtained all necessary approvals to do so.
- 25.2 EEF and the customer are independent of each other and nothing in these terms shall be taken as creating a relationship of agent to principal, employer to employee, partnership or joint venture between EEF any other party. Neither party shall be entitled to enter into agreements or other arrangements on behalf of the other.
- 25.3 Neither party shall be liable to the other or be deemed to be in breach of these terms by reason of any delay in performing, or any failure to perform, any of their obligations in relation to these terms, if the delay or failure was due to any cause beyond their reasonable control such as severe weather, a natural disaster, strikes, governmental action, terrorism, war and civil unrest.
- 25.4 These terms, together with the contract represent the entire agreement between the parties and supersede any previous representations or agreements whether recorded in writing or otherwise (save in the event of fraud or fraudulent misrepresentation).
- 25.5 The parties agree that these terms are fair and reasonable in all the circumstances. However if any provision of these terms is held not to be valid by a court of competent jurisdiction but would be valid if part of the wording were deleted, then such provision shall apply with such deletions as may be necessary to make it valid. If any of the provisions in these terms are held not to be valid the remaining provisions of these terms shall remain in full force and effect.
- 25.6 Both parties agree that these terms shall not be enforceable by any person who is not party to this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 25.7 By providing personal data relating to your employees or agents to us, you confirm that you are entitled to disclose that data to us under the terms of the Data Protection Act 1998 and related legislation and that we are entitled to process such data for the purposes of providing your contracted Services.
- 25.8 Either party may give any notice to the other by sending it by post addressed to their registered address or by sending it to such electronic communications address as may be notified to the other from time to time.
- 25.9 These terms will be governed and construed according to the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts.