**TERMS & CONDITIONS FOR BREXIT TOOLKIT SERVICES**

(Version 2018 v1 180618)

1. **Definitions**

**“Anniversary date”:** 12 months from the date of initial service commencement and every 12 months thereafter

**“Customer”:** any organization or individual which signs up to the Brexit toolkit services

**“Documentation”:** any materials as contained on the Brexit toolkit.

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

**“i2i”:** i2i infinity Limited (registered number 06545924) a company limited by guarantee & third party provider of Brexit Toolkit

**“Licence fee”:** Non-refundable annual upfront fee payable to access the Toolkit

**“Minimum term”:** 12 months from the date of service commencement plus 90 days’ notice thereafter.

**“Notice period”:** 90 days

**“Service”:** provision of an online Brexit Toolkit

**“Toolkit”:** online web service as provided by i2i on behalf of EEF.

**2. These terms**

2.1 These Terms and Conditions apply to any and all Toolkit Services provided by EEF to the Customer.

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 months’ 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 on 90 days’ notice.

**3. Minimum term & contract renewal**

3.1 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 90 days’ written notice in accordance with clause 6. Otherwise your services will automatically renew and will continue indefinitely until the expiry of any served notice period thereafter.

**SERVICE OPTIONS**

**EEF Brexit Toolkit**

**4.0 Toolkit**

4.1 The Customer is entitled to access to the Toolkit as currently provided by i2i on behalf of EEF.

4.2 The Customer acknowledges that the Toolkit is provided by a third party supplier, i2i, and EEF reserves the right to transfer any contractual service relationship in relation to the Toolkit directly to i2i or other third party provider at any time,. In such circumstances EEF will provide a minimum of 90 days’ notice of any intent to transfer any such service provision.

4.3 Any content on the Toolkit which is uploaded by the Customer will continue to be the property of the Customer except to the extent the Customer has copied from EEF or i2i content. All other content except that directly created and uploaded by the Customer remains the property of EEF and/or i2i. The Customer should retain copies of any customer related documentation which is uploaded. EEF accepts no liability for loss of Customer data.

4.4 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 Toolkit. The Customer accepts full liability in such circumstances.

4.5 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.

4.6 Information 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.

4.7 Subject to clause 8 EEF accepts no liability whatsoever for any actions taken by the customer on reliance on documentation.

4.8 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 Toolkit where it is believed that the use of the system is being abused and/or is subject to a possible security breach.

4.9 The Customer acknowledges that there is a maximum number of 5 users permitted to access the Toolkit. Where the Customer requires additional log-ins, additional fees will become due.

**FEES**

**5. Licence fees**

5.1 Licence fees for the Toolkit are payable annually in advance, with access to the system only granted on receipt of cleared funds. EEF reserves the right to revise your licence fees at any point after expiry of the minimum term, upon providing the Customer no less than 90 days’ notice where such fee amendments are as a result of increases placed on EEF by i2i.

5.2 Annual licence fees are non-refundable.

5.3 The Customer has no right to offset licence fees due against any outstanding debts which may be payable by EEF to the Customer.

5.4 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 licence fees are still due in full in the instances where a valid purchase order number has failed to be provided in reasonable time.

5.5 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.

5.6 Access to the system is first granted upon receipt of cleared funds. For subsequent renewals, 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.

5.7 Any sums payable which remain outstanding andwhich 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.

5.8 All licence fees and charges are quoted exclusive of VAT unless otherwise specified. VAT will be applied at the prevailing rate.

**6. Termination**

6.1 Your service contract may be terminated by either party at any time by providing no less than 90 days’ 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).

6.2 EEF shall be entitled to terminate your service contract immediately in the event that you fail to make payment of any licence or other fees which are due and payable or if you are otherwise in material breach of these terms and conditions.

6.3 Either party may terminate this agreement at any time if the other materially breaches this agreement, and in the case of such breach capable of remedy, fails to remedy the breach within thirty (30) days of any notice requiring the breach to be rectified.

6.4 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:

1. 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;
2. a shareholders meeting is convened or a resolution is passed for its winding up (except for a bona fide reconstruction or amalgamation)
3. 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
4. a receiver, manager or administrative receiver is appointed over any or all of its undertaking or assets
5. an administrator is appointed or an application is made for such an appointment or the making of an administrative order, or;
6. it becomes insolvent within the meaning of s.123 of the Insolvency Act 1986, or;
7. a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986.

**7. Limited Warranty**

EEF warrants that the Services will not be substantially different from the service described in the service order form.

The Customer is responsible for assessing its own commercial needs, how the Service relates to the Customer and how the Customer should use the Service. The Customer warrants that it is familiar with Services of this type and that it understands the level of service to be provided and the implications for the Customer’s own business of the choices which the Customer made when procuring the Service. EEF does not warrant the value of the Service to the Customer's business.

The Customer is solely responsible for the use of any information or other material obtained through the Service. EEF specifically excludes any responsibility for the accuracy or quality of any information obtained through the Service, or that any other material obtained through the Service may be used in any way by the Customer without infringing the rights of any third parties. The Customer further acknowledges that these matters are outside the control of EEF.

**8. Limitation of Liability**

8.1 Without prejudice to the express warranties contained in clause 7 above and to the maximum extent permissible in law, all conditions and warranties which are to be implied by statute or otherwise by general law into this agreement or relating to the service are hereby excluded.

8.2 The following provisions in this clause 8 set out EEF’s entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Customer in respect of:

8.2.1 a breach of EEF’s contractual obligations;

8.2.2 a tortious act or omission for which EEF is liable;

8.2.3 an action arising out of a misrepresentation by or on behalf of EEF; arising in connection with the performance of this agreement or out of an act done or omission made as a consequence of the entry into by EEF of this agreement.

8.3 Subject to clause 8.7, the total liability which EEF shall owe to the Customer and in respect of all claims shall not exceed the value of the Licence Fee for the twelve (12) month period during which the event giving rise to the liability arose.

8.4 The Customer acknowledges that the EEF host network has not been designed for use in circumstances where its failure could cause pure economic loss, loss of profit, loss of business or like loss.

8.5 EEF shall in no circumstances be liable to the Customer, whether in tort or otherwise, for loss, whether direct or indirect, of business opportunities, revenues, profits, anticipated savings or for any indirect or consequential loss whatsoever, or for the acts or omissions of other providers of telecommunications services or for faults or failures in their apparatus.

8.6 EEF shall in no circumstances (whether before or after termination of this agreement) be liable to the Customer for any loss of or corruption to data.

8.7 Notwithstanding anything to the contrary herein contained EEF’s liability to the Customer for:

8.7.1 death or personal injury resulting from the negligence of EEF or its employees, agents or subcontractors;

8.7.2 damage suffered by the Customer as a result of a breach by EEF of the condition as to title or the warranty as to quiet possession implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods

and Services Act 1982; and

8.7.3 damage for which EEF is liable to the Customer under Part 1 of the Consumer Protection Act 1987; shall not be limited save that nothing in this clause 11 shall confer a right or remedy upon the Customer to which the Customer would not be otherwise entitled.

8.8 The exclusions from and limitations of liability set out in this clause 8 shall be considered severably. The validity or unenforceability of any one clause, sub-clause, paragraph or sub paragraph of this clause 8 shall not affect the validity or enforceability of any other part of this clause 8.

8.9 The provisions of this clause 8 shall survive the termination of the whole or a part of this agreement.

**9. General Terms**

9.1 Assignment. The Customer may not sell, transfer or assign the whole or part of this agreement without the prior written consent of EEF, such consent not to be unreasonably withheld. No such assignment, even if consented to, shall relieve the other party of its obligations under this agreement prior to the date of such assignment.

9.2 Waiver. The waiver or failure of either party to exercise any right provided for in this agreement shall not be deemed a waiver of that or any other right in this agreement.

9.3 Invalidity. If any provision of this agreement is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this agreement will remain in full force and effect.

9.4 Whole agreement. This agreement, together with any document expressly referred to in any of its terms, contains the entire agreement between the parties relating to the subject matter covered and supersedes any previous agreements, arrangements, undertakings or proposals, written or oral, between the parties in relation to such matters. No oral explanation or oral information or e-mail given by any party shall alter the interpretation of this agreement. The Customer confirms that, in agreeing to enter into this agreement, it has not relied on any representation save insofar as the same has expressly in this agreement been made a representation and agrees that it shall have no remedy in respect of any misrepresentation which has not become a term of this agreement save the agreement of the Customer contained in this Clause shall not apply in respect of any fraudulent or negligent misrepresentation whether or not the same has become a term of this agreement.

9.5 Notices. Notices sent pursuant to this agreement shall be in writing and may be delivered by hand or sent by post or faxed with hard copy confirmation by post to the recipient at its address shown on the service order from or at such other address as may be notified in accordance with this clause or, in the case of a company, to its registered office. Notices hand delivered or faxed shall be deemed received on delivery and those posted on the second working day after they are posted.

9.6 Headings. The headings shall be disregarded in construing this agreement.

9.7 Law. This agreement shall be governed by English Law. The parties submit to the non-exclusive jurisdiction of the English courts.

9.8 Capacity. Both parties acknowledge that they have read and understood this agreement and agree to be bound by its terms.

9.9 Representations. The parties acknowledge that in entering into this agreement they have not relied upon any representations other than those reduced to writing in this agreement. The provisions of this clause 9.9 shall not apply in the case of any fraudulent misrepresentation.

9.10 Neither party shall be liable for any breach of this agreement due to any cause beyond its reasonable control (save obligation in respect of the payment of monies) including but not limited to Acts of God, inclement weather, flood, lightening or fire, industrial action, act or omission of government, or other competent authority, riot, war or act or omission of any other party for whom that party is not responsible (“an event of FORCE MAJEURE”).

1. **General Data Protection Regulations (“GDPR”)**

10.1 EEF shall comply with the obligations placed on it as a data processor by the GDPR. Nothing in the agreement shall relieve EEF of such obligations.

* 1. In relation to the processing of personal data, EEF shall not process Customer personal data other than on the written instructions of the Customer or other than to provide the Services under this agreement, or where EEF is legally obliged to do so.
	2. EEF shall take reasonable steps to ensure the reliability of anyone to whom it grants access to Customer personal data, ensuring in each case that access is limited to those individuals who need to know or access the relevant Customer personal data for the purposes of the agreement.
	3. EEF shall ensure that all persons acting on its behalf to process personal data are subject to appropriate obligations of confidentiality.
	4. EEF shall ensure that the processing of personal data is subject to appropriate measures (including organisational and technical measures) to ensure the security of the personal data is appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR. In assessing the appropriate level of security, EEF shall take account the risks from processing, in particular from a personal data breach. When looking at what is appropriate EEF shall take into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons.
	5. Without prejudice to any restrictions on sub-contracting set out in the Agreement, EEF may engage a sub-processor but only if it first takes the following steps:
	6. before the sub-processor first processes personal data, carry out adequate due diligence to ensure that the sub-processor is capable of providing the right level of protection for this personal data;
		1. ensure that the arrangement between EEF, and the relevant intermediate sub-processor is governed by a written contract including terms which offer at least the same level of protection for EEF Confidential Information as those set out in the Agreement (as amended) and meet the requirements of Article 28(3) of the GDPR; and
		2. provide a copy of the agreement with the sub-processor for review by EEF within a reasonable time of EEF’s written request.
	7. EEF will cooperate and assist the Customer in responding to any data subject’s rights as laid down in Chapter III of the GDPR to the extent that the Customer does not have access to such Information.
	8. EEF shall promptly notify the Customer within 12 hours upon EEF or i2i becoming aware of a personal data breach affecting Customer personal data, providing the Customer with sufficient information to allow the Customer to meet any obligations to report or inform data subjects of the personal data breach. The timing of EEF’s report will in any case be prompt enough so as to allow the Customer a reasonable time to assess and act on it within the 72 hours which the Customer has to submit its own report.
	9. EEF shall provide reasonable assistance, at the Customer’s cost (such costs to be agreed in advance) and on reasonable notice, with any data protection impact assessments which the Customer reasonably considers are required by Article 35 or 36 of the GDPR.
	10. Where EEF is required to collect consent from a data subject under the Agreement it shall ensure such consent is freely given, specific, informed and unambiguous indication of the data subject's wishes by a statement or by a clear affirmative action which signifies agreement to the processing of their personal data.
	11. EEF/i2i shall promptly delete (and confirm deletion in writing) or return securely all copies of personal data processed by it pursuant to this Agreement as requested at the end of the Agreement provided that EEF/i2i may retain personal data where it is legally required to do so and then only to the extent and for such period as required by law.
	12. EEF shall within a reasonable time of written request from the Customer submit information necessary to demonstrate compliance with its obligations relating to personal data under this Agreement, including the requirement to cooperate with audits and inspections by the Customer, or by a relevant regulator, or by an independent, suitably qualified representative of the Customer acting subject to obligations of confidence,EEF may nominate an appropriate independent, suitably qualified auditor, and the Customer shall accept such auditor unless it can show it has good reason not to accept the nomination. Such audits shall be on reasonable notice and at the Customers request, and shall be on the basis that the audit shall be conducted so as to respect the confidentiality of the other clients of EEF and so as to not unnecessarily disrupt the Customers business. EEF shall provide any other information that is needed to ensure that the parties are complying with the GDPR.

10.14 If the arrangement involves a transfer of data outside the EEA, EEF shall not (and shall ensure that its sub-processors shall not) under any circumstances transfer Customer Information outside the EEA unless authorised in writing by the Customer and in doing so ensure that the Standard Contractual Clauses are at all relevant times incorporated into the relevant agreement

* 1. EEF shall inform the Customer if it is in breach of or requested to do anything that would infringe the GDPR or any data protection law of other UK or EU member.

**11. Confidentiality**

11.1 EEF agrees that while we are providing services and support under these terms and thereafter keep secret and confidential all business, technical or commercial information disclosed to one of us by the other (and shall procure that its agents and/or employees are similarly bound) and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of these terms or save as expressly authorised in writing to be disclosed by the other.