

# DATAPHARM COMMUNICATIONS LIMITED

## TERMS OF TRADING (Datapharm Services)

### 1 Definitions

In these Conditions the following terms shall have the meanings respectively assigned to them:

- 1.1 **"Agreement"** means these Conditions together with any terms agreed in writing between the parties describing the provision of the Services to the Company by Datapharm.
- 1.2 **"Company"** means the Party placing an order and unless otherwise stated excludes from its meaning any third party, including any holding company, sister company or subsidiary company.
- 1.3 **"Company Property"** means all data, information, materials and documents received by Datapharm from the Company.
- 1.4 **"Conditions"** means these terms of trading.
- 1.5 **"Documents"** means documents exchanged between the parties pursuant to the Agreement but excludes routine correspondence.
- 1.6 **"Datapharm"** means Datapharm Communications Limited (Co. No.1317421).
- 1.7 **"Fees"** means the amounts payable by the Company to Datapharm pursuant to the Agreement.
- 1.8 **"Intellectual Property Rights"** means all intellectual property rights including without limitation inventions, discoveries, patent rights, design rights (registered or unregistered), copyright, trademarks, and/or confidential know-how, methodology or techniques.
- 1.9 **"Purchase Order"** means any written order for the Services issued by the Company (but for the avoidance of any doubt excludes any terms and conditions or other stipulations set out or referred to therein) as accepted by the issuing by Datapharm of an invoice or other communication from Datapharm to the Company acknowledging receipt and acceptance by Datapharm of the Purchase Order.
- 1.10 **"Services"** means the services to be provided by Datapharm to the Company as set forth in the Agreement.
- 1.11 **"SLA"** means any service level agreement relating to the provision of the Services which has been agreed by the Parties in writing.

### 2 Interpretation

In these Conditions: (a) references to "holding company" and "subsidiary" have the meanings as defined in section 1159 of the Companies Act 2006; (b) words importing the singular include the plural and vice versa and words importing one gender include all genders; (c) headings are for convenience and shall not affect the interpretation; (d) "including" shall be understood to mean "including without limitation" and "includes" or "include" shall be understood similarly.

### 3 Supply of the Services

- 3.1 Datapharm shall provide the Services in accordance with the terms and conditions set out in the Agreement including, for the avoidance of doubt, any SLA.
- 3.2 Datapharm shall use reasonable endeavours to comply with any timetable agreed with the Company for the delivery of the Services. For the avoidance of doubt, any such timetable is an estimate only and may be extended by a reasonable period if required.
- 3.3 The Company shall ensure that all personnel used by it in the provision of the Services possess the necessary qualifications, knowledge and experience to undertake such Services.
- 3.4 Each Party shall promptly provide the other Party with such information as they may reasonably require to enable the Parties to comply with their obligations under the Agreement and each Party shall designate an authorised representative with responsibility for the Agreement to whom all communications regarding the day to day management of the Services and the Agreement shall be addressed. Either Party may change their authorised representative from time to time by written notice to the other.

### 4 Price and Payment

- 4.1 In consideration of the Services, the Company shall pay Datapharm the Fees.
- 4.2 Datapharm shall raise a VAT invoice for the Fees and the Company shall pay the invoice(s), together with any applicable VAT, within sixty calendar days of the date of a correct and properly drawn invoice.
- 4.3 Should the Company not make payments by the agreed date(s), Datapharm reserves the right to suspend the provision of the Services until any outstanding Fees have been paid.

- 4.4 Any dispute concerning an invoice must be notified to Datapharm within 14 days of receipt of the invoice. Undisputed elements of the invoice will remain due and payable by the Company, notwithstanding that part of the invoice which is disputed.

### 5 Warranties and Limitation of Liability

- 5.1 Each of the parties warrants to the other that it has full power and authority to enter into and perform the Agreement.
- 5.2 Datapharm represents, warrants and undertakes to the Company that it shall perform the Services with all reasonable care and skill and in accordance with generally recognised commercial practices and standards and in accordance with all relevant laws, regulations, codes of practice, operating procedures and guidelines. The Company represents, warrants and undertakes to Datapharm that it shall undertake its obligations hereunder with all reasonable care and skill and in accordance with generally recognised commercial practices and standards and in accordance with all relevant laws, regulations, codes of practice, operating procedures and guidelines .
- 5.3 Datapharm shall indemnify the Company against all loss, liability, damages, costs and expenses which the Company may incur as a result of any claim by a third party (including all loss, liability, damages, reasonable costs, and expenses incurred as a result of defending a claim alleging such a liability) to the extent that any such claim arises as a result of any error or act or omission by Datapharm.
- 5.4 The Company shall indemnify Datapharm against all loss, liability, damages, costs and expenses which Datapharm may incur as a result of any claim by a third party (including all loss, liability, damages, reasonable costs, and expenses incurred as a result of defending a claim alleging such a liability) to the extent that any such claim arises as a result of any error or act or omission by the Company
- 5.5 To the maximum extent permissible under law neither Party shall be liable to the other for any special, indirect, economic or consequential loss or damage howsoever arising or howsoever caused (including loss of profit, loss of revenue or loss of goodwill) and whether or not the defaulting Party was previously advised of the likelihood of such loss arising. Save for the indemnities set forth at clauses 5.3, 5.4, 6.3 and 6.4 and the provisions of clause 5.7, the aggregate liability of either Party shall in any event and to the maximum extent permissible under law be limited to the fees received by Datapharm under the Agreement in the twelve month period in which the event of default arises.

- 5.6 Nothing herein shall limit either Party's liability for death or personal injury arising from the proven negligence by itself or its employees or agents or for fraud.

- 5.7 Neither Party shall be liable for any delay or failure to perform arising from circumstances outside its reasonable control.

### 6 Intellectual Property

- 6.1 Any pre-existing Intellectual Property Rights belonging to Datapharm shall belong absolutely to Datapharm.
- 6.2 All Company Property shall belong to the Company absolutely.
- 6.3 Datapharm shall indemnify the Company against all loss, liability, damages, costs and expenses which the Company may incur as a result of any claim by a third party that the provision of the Services by Datapharm infringes the Intellectual Property Rights of that third party (including all loss, liability, damages, reasonable costs, and expenses incurred as a result of defending a claim alleging such a liability) to the extent that any such loss, liability, damages, costs and expenses have not arisen in respect of the Company Property.
- 6.4 The Company shall indemnify Datapharm against all loss, liability, damages, costs and expenses which Datapharm may incur as a result of any claim by a third party that the content of any Document which the Company provides to Datapharm breaches the Intellectual Property Rights of such third party (including all loss, liability, damages, reasonable costs, and expenses incurred as a result of defending a claim alleging such a liability) to the extent that any such loss, liability, damages, costs and expenses have not arisen due to the negligence of Datapharm.

### 7 Data Protection and Online Compliance

- 7.1 Datapharm shall ensure that it complies with all laws, rules and regulations in force from time to time that are relevant to the performance of its obligations under the Agreement.
- 7.2 Each Party shall comply with its obligations under the Data Protection Act 1998 and any associated legislation

## **8 Confidentiality**

- 8.1 Each Party shall maintain in strict confidence in and shall not disclose to any third party any information or material relating to the other or the other's business which comes into that Party's possession and shall not use such information and material save as provided for in the Conditions.
- 8.2 The provisions of this clause 8 will not apply to any confidential information which:
- 8.2.1 is or becomes public knowledge other than as a result of a Party's conduct; is independently developed without access to or use of the Services;
  - 8.2.2 is required to be disclosed by either Party to a Court or regulatory authority who has the legal right to demand such confidential information;
  - 8.2.3 is required to be disclosed to a Party's professional advisors, auditors and bankers; or
  - 8.2.4 prior written approval has been given to such use or disclosure by the other Party.

## **9 Term and Termination**

- 9.1 Either Party may terminate this agreement with immediate effect by:
- 9.1.1 giving 12 (twelve) months written notice of termination for convenience; or
  - 9.1.2 giving written notice to the other if the other Party commits any material breach of any term of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within thirty (30) days of a written request to remedy the same; or
  - 9.1.3 the other Party shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).

## **10 Effect of Termination**

- 10.1 Termination of this agreement shall not affect any rights or obligations of the parties that have accrued before termination, nor shall it affect the coming into or continuance in force of any provisions of this agreement which are expressly, or by implication, intended to come into or continue in force after termination.
- 10.2 On termination each Party will return all Documents and other property belonging to the other Party or provide written proof that all such Documents and other property has been destroyed and that no copies thereof have been retained.
- 10.3 On termination each Party will promptly (and in any event within 14 days thereof) return any of the other Party's Confidential Information which it is holding and, on request, confirm in writing that it has complied with the provisions of this clause.

## **11 Third Party Rights**

These Conditions do not create any rights under the Contracts (Rights of Third Parties) Act 1999 which are enforceable by any person who is not a party to it and no person who is not a party to the Agreement may enforce any of its terms or rely on any exclusion or limitation contained in it.

## **12 Assignment**

These Conditions may not be assigned, transferred or sub-licensed by the Company unless with the prior written consent of Datapharm.

## **13 Entire Agreement**

The Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and replaces all prior agreements and understandings. There are no promises, terms, conditions or obligations; oral or written, express or implied other than those contained therein. No amendment modification or extension of the Agreement or waiver of any terms and conditions thereof shall be binding unless in writing and signed by the parties.

## **14 Invalidity and Severability**

If any term of the Agreement is held to be illegal or unenforceable by any court of competent jurisdiction then that term will to the extent necessary be deemed not to form part of the Agreement and the remainder of the Agreement will not be affected.

## **15 Governing Law**

The Agreement shall be subject to and construed in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English courts.