



## GENERAL TERMS AND CONDITIONS

### 1 DEFINITIONS AND INTERPRETATION

1.1 **Definitions and Interpretation.** The expressions used in these terms and conditions (**GTCs**) shall have the meanings set out in Appendix 1. Further:

- 1.1.1 references to a specific law include that law as amended from time to time, or any law that replaces or amends it;
- 1.1.2 the words “**include**”, “**includes**”, “**including**”, or “**for example**” (or similar) and any succeeding words shall be construed without limitation to the generality of any preceding words or concepts and should not be given a restrictive meaning because they are followed by particular examples;
- 1.1.3 the singular includes the plural and vice versa and any gender includes all genders;
- 1.1.4 headings are for reference purposes only and in no way define, limit, construe, or describe the scope or extent of the relevant section;
- 1.1.5 a Party means a Party to the Agreement and includes successors and permitted assigns; and
- 1.1.6 in the event of a conflict between the GTCs, an Order Form, and the Specification within the applicable Order Form, unless expressly stated otherwise, the documents shall govern in the following order of precedence: the Order Form, the Specification, and the GTCs.

### 2 SUPPLY OF SERVICES

2.1 **Ekco Obligations.** Ekco shall (as applicable) use commercially reasonable endeavours to:

- 2.1.1 make the Software materially available to the Customer in accordance with the Specification;
- 2.1.2 perform the Services in material accordance with the Specification;
- 2.1.3 provide the Loaned Equipment (if any) to the Customer in accordance with the Specification; and
- 2.1.4 support any changes to Customer Systems during the term of the Agreement that, in Ekco’s opinion, are reasonably practicable for it to support (including server migrations and upgrades that require a new server setup), which will be chargeable and quoted for prior to any work being carried out, (provided, however, that changes or additions that Ekco cannot reasonably practicably support or that the Customer does not wish to pay Ekco for supporting will be considered to be outside of the Agreement),

with due care, skill and diligence, and for the Customer’s own internal business only.

2.2 **Customer Obligations.** The Customer shall, during the Term:

- 2.2.1 provide Ekco with access to true and complete Customer Data as necessary for Ekco to perform the Services and all such further necessary information, co-operation, authority, and access to personnel, premises, sites, offices,

facilities, environment, and Customer Systems (including via remote access) as may be reasonably required in order for Ekco to provide the Services;

- 2.2.2 where any part of the Services are to be provided at the Customer’s premises, ensure that Ekco’s staff and contractors have a safe place to work (the Customer shall notify Ekco of any health and safety rules which apply to the Customer’s premises);
- 2.2.3 maintain adequate insurance cover in respect of any loss, corruption, or damage to the Customer Materials;
- 2.2.4 use all commercially reasonable endeavours to carry out Ekco’s reasonable instructions in relation to the Services;
- 2.2.5 obtain (before the Order Date) and maintain all necessary licences, consents, and permissions (including third-party licences and consents) necessary for Ekco to access and use the Customer Data and the Customer’s networks, systems, sites, and environments for the purpose of providing the Services (including the Customer Systems);
- 2.2.6 comply with any operating or usage instructions provided in respect of the Loaned Equipment, keep all Loaned Equipment in safe custody at its own risk, fully insured, maintained in good condition until returned to Ekco, and not dispose of or use Loaned Equipment other than in accordance with Ekco’s written instructions or authorisation;
- 2.2.7 provide Ekco with such information and materials as Ekco may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 2.2.8 ensure that its hardware, network, Customer Systems, and environments:
  - (a) are in good order and working condition and provide prior written notification to Ekco of any changes to the same; and
  - (b) comply with the relevant specifications as may be provided by Ekco or a Third-Party Product Provider from time to time;
- 2.2.9 not, and will not permit any third party to:
  - (a) interfere with, impair, or disrupt the Services;
  - (b) modify, adapt, copy, or create derivative works based on the Services or any part, feature, function, or user interface of the Services;
  - (c) use, copy, modify, rent, loan, lease, sublicense, create derivative works of, or distribute the Software or Documentation

- for any other purpose other than as set forth in the Agreement or allow use of the Software or Documentation by, or for the benefit of, any persons other than the Authorised Users;
- (d) decompile, disassemble, or reverse engineer the Software or any elements of the Software, or otherwise derive source or object code from the Software or any elements thereof;
- (e) transmit any Viruses or programming routines intended to damage, surreptitiously intercept, or expropriate any system, data, or personal information;
- (f) use the Services for any unlawful or otherwise inappropriate purposes;
- (g) to store or distribute material protected by third-party Intellectual Property (including software, videos, music, and written works) without the requisite clearances, consents, or licences for such storage or distribution; and/or obscene or illegal material including that which is abusive, threatening, malicious, harassing, fraudulent, defamatory, or that which encourages criminal activities; and/or
- (h) sell and/or resell the Services, in whole or in part, to a third party for money or money's worth or otherwise provide use of the Services to anyone else except as permitted pursuant to a separate Reseller Agreement;
- 2.2.10 co-operate with Ekco in all matters relating to the Services;
- 2.2.11 comply with (and ensure that its Authorised Users comply with) the Agreement, the Acceptable Use Policy, and Applicable Law;
- 2.2.12 maintain adequate and up-to-date anti-virus software to protect the security of the Customer's network, systems, and environments at all times (including the Customer Systems); and
- 2.2.13 in the event that the Customer resells the Services pursuant to a Reseller Agreement, these GTCs shall apply to Customer and the Customer shall be responsible for all use of the Services and/or Software by any party to the same extent as if the Customer were using the Services directly.
- 2.3 Except where specified in the Specification as being comprised within the Services, the Customer acknowledges that the Services do not include:
- 2.3.1 any services, systems, or equipment required to access the internet (and that the Customer is solely responsible for procuring access to the internet and for all costs and expenses in connection with internet access, communications, data transmission, and wireless or mobile charges incurred by it in connection with its use of the Services); or
- 2.3.2 dedicated data back up or disaster recovery facilities, and the Customer should ensure it always maintains backups of all Customer Materials.
- 2.4 **Customer Materials.** Ekco is not responsible for any damage or loss of Customer Materials during a Migration. Before a Migration, the Customer must make its own backup of the data that is going to be included in the Migration.
- 2.5 **Customer Default.** If Ekco's performance of any of its obligations under the Agreement is prevented or delayed by any Customer Default, Ekco shall not be liable for any failure to provide the affected Services, meet any applicable delivery date, or for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer Default, and the Customer shall reimburse Ekco, on written demand, for any costs or losses sustained or incurred by Ekco arising directly or indirectly from the Customer Default.
- 2.6 **Changes to the Services.** Ekco may modify any feature or functionality of the Services and reserves the right to amend any part of the Services at any time. Ekco shall provide the Customer with commercially reasonable advance notice, including via email or the Customer Portal where available, of deprecation of a material feature that affects the Customer.
- 2.7 **Functionality.** Ekco shall use commercially reasonable endeavours to ensure that it shall not materially decrease the overall level of functionality applied by it in respect of the Services from that set out in the Specification (other than in connection with any Third-Party Product, which will be governed by the applicable Third-Party Terms).
- 2.8 **Security.** Except where specified in the Specification as being comprised within the Services, the Customer is solely responsible for properly configuring and using the Services and taking its own steps to maintain appropriate security (including maintaining reasonable information security practices) for the protection and backup of Customer Material.
- 2.9 **Support Services.** Ekco shall provide Support Services as set out in the Specification and as follows:
- 2.9.1 Ekco shall have no obligation to provide such Support Services if the fault is not reported to Ekco or where faults arise from:
- (a) misuse or incorrect use of the Software, Services, or Loaned Equipment;
- (b) failure to maintain the necessary environmental conditions for use of the Loaned Equipment;
- (c) use of the Software, Services, or Loaned Equipment in combination with any equipment or software not provided by Ekco, or any fault in any such equipment or software;
- (d) relocation or installation of the Loaned Equipment by any person other than Ekco or a person acting under Ekco's instructions;
- (e) the Customer's failure to follow Ekco's oral or written instructions as to the storage, installation,

- commissioning, use, or maintenance of the Software, Services, or Loaned Equipment or (if there are none) good trade practice;
- (f) the Customer altering or repairing the Software or Loaned Equipment without the written consent of Ekco; or
- (g) any Customer Default or breach of the Customer's obligations under the Agreement.
- 2.9.2 Ekco will provide Support Services only to the Customer's administrative or technical contacts listed on the Customer's account. Ekco will not provide support directly to other Authorised Users unless specifically agreed in writing.
- 2.9.3 In the event that any service credits are specified in the SLA, these shall be the sole and exclusive remedy of the Customer for breach of any agreed service levels specified in such SLA. Any service credits must be requested in writing by the Customer from Ekco within thirty (30) days of the date on which the relevant event giving rise to a credit occurred; otherwise, they shall be deemed waived.
- 2.10 **Loaned Equipment.** Title to any Loaned Equipment shall not at any time transfer to the Customer. The Customer undertakes to keep the Loaned Equipment wholly identifiable and distinguishable from other goods.
- 2.11 **Monitoring.** Ekco reserves the right to monitor (and suspend if applicable) Customer's use of the Services to ensure the Customer's compliance with the Agreement, including the Acceptable Use Policy. Ekco may also monitor and collect configuration, performance, and usage data relating to the Customer's use of the Services to facilitate delivery and improvement of the Services and to improve Ekco's software, products, and services. The Customer agrees not to interfere with any such monitoring.
- 2.12 **Software Licence.** Subject to the Customer's compliance with this Agreement, Ekco grants the Customer, during the Term, a Software Licence solely for the Customer's internal business purposes and in accordance with the Documentation.
- 2.12.1 Ekco grants no rights to the Software or Documentation other than those granted pursuant to the Software Licence and the Customer shall not exceed the scope of the Software Licence.
- 2.12.2 Ekco reserves the right to disable or suspend the Customer's access to the Software if it believes that:
- (a) there is a significant threat to the functionality, security, integrity, or availability of the Software or any content, data, or applications in the Software;
- (b) the Customer or its Authorised Users are accessing or using the Services to commit an illegal act; or
- (c) there is a violation of the terms of the Agreement.
- 2.12.3 The Services shall be subject to the usage limits specified in the Agreement, if any. If the Customer exceeds the specified contractual usage limits, Ekco may, at its sole discretion:
- (a) work with the Customer to seek to reduce Customer's usage so that it conforms to that limit; or
- (b) require that the Customer pay any invoice for excess usage in accordance with this Agreement.
- 2.12.4 The Customer shall allow Ekco full and free access to the Software for operations monitoring and remote maintenance and be responsible for all work required to integrate and configure the Software on the Customer Systems, unless otherwise set out in the Order Form and/or the Specification.
- 2.12.5 The Software may contain Open Source Software, which is distributed under and subject to the terms and conditions of the applicable open source licence and provided "as is" without any express or implied warranties of any kind
- 2.13 Services may be delivered by Ekco or any one of its Affiliates from time to time. Ekco reserves the right to use its Affiliates or subcontractors to deliver all or part of the Services provided that Ekco shall remain fully liable to the Customer under the Agreement for all the acts and omissions of each Affiliate or subcontractor as if they were its own.
- 3 **FEES & PAYMENT**
- 3.1 **Fees.** Unless otherwise set out in the Agreement, the Fees shall be due and payable by the Customer, and the Customer shall pay Ekco the Fees, within thirty (30) days of the date of the applicable invoice, via bank transfer to a bank account nominated in writing by Ekco from time to time. The Customer hereby acknowledges that:
- 3.1.1 all Fees shall be payable without any deduction or withholding (except as required by Applicable Law); and
- 3.1.2 all Fees paid to Ekco in respect thereof are non-refundable except as otherwise provided in the relevant Order Form (or, where applicable, the Specification).
- 3.2 **Invoices.** The Customer agrees and acknowledges that, unless otherwise set out in the Order Form, Ekco shall be permitted to invoice the Customer from the Order Date monthly in advance by reference to a pro rata amount of the relevant Fees.
- 3.3 **Taxes.** The Customer acknowledges that all sums payable under the Order are exclusive of Taxes and the Customer shall be responsible for paying such Taxes as required by Applicable Law.
- 3.4 **Overdue Amounts.** If the Customer fails to make any payment due to Ekco under the Agreement by the applicable due date for such payment, then, without limiting Ekco's remedies under the Agreement or at law:
- 3.4.1 the Customer shall pay interest on the overdue amount at the rate of eight percent (8%) above the Barclay's Bank base rate published on the date the invoice was issued, but at 8% a year for any period when that base rate is below 0%; and
- 3.4.2 Ekco may, at its sole discretion, disable the Customer's access to the Software,

terminate the Agreement, or otherwise suspend the provision of the Services to the Customer.

obligations under Clause (Fees & Payments); and/or

All interest amounts due pursuant to this Clause 3.4 shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

4.2.2 notwithstanding the foregoing, for any reason upon providing the Customer ninety (90) days' prior written notice.

3.5 **Fee Increase.** Ekco shall be entitled to increase the Fees:

3.5.1 on an annual basis, by reference to the Order Date, and at the start of each Renewal Term upon prior written consent of the Customer;

3.5.2 once per year to take into account any inflationary changes in line with the RPI index; and/or

3.5.3 at any time to take into account any increases to Ekco's third party costs, over which Ekco has no control (including its supplier costs). Such increase to the Fees shall be calculated by reference to the actual increase to the relevant third-party costs;

and the Agreement shall be deemed to have been amended accordingly.

3.6 **No Set-off.** All amounts due under the Agreement shall be paid in full without any set-off, counterclaim, deduction, or withholding (other than any deduction or withholding of tax as required by law).

3.7 **Disputed Invoices.** If the Customer, acting in good faith, wishes to dispute an invoice or any part of an invoice issued by Ekco, it must do so within ninety (90) days of the date of the invoice, providing reasonable details of the dispute to allow Ekco to investigate, after which time the Customer shall be precluded from raising any such dispute.

#### 4 **TERM & TERMINATION**

4.1 **Term.** The Order shall commence on the Order Date and continue for the Term unless terminated earlier in accordance with the terms of the Agreement.

4.2 **Termination by Ekco.** Ekco may terminate the Agreement:

4.2.1 immediately by giving written notice to the Customer if:

(a) the Customer becomes insolvent, or makes an assignment for the general benefit of creditors, or any proceedings are commenced by or against the Customer under any bankruptcy or insolvency laws, or if proceedings for the appointment of a trustee, custodian, receiver, or receiver manager for the Customer are commenced, or if Customer ceases or threatens to cease to carry on business; and/or

(b) the Customer commits a material breach of the Agreement that cannot be remedied or, if it is capable of remedy, that has not been remedied within twenty (20) Business Days of receiving notice of the breach from Ekco. A material breach shall include a breach of the Customer's

4.3 **Termination by Customer.** The Customer may terminate the Agreement:

4.3.1 immediately by giving written notice to Ekco if Ekco commits a material breach of the Agreement that cannot be remedied or, if it is capable of remedy, that has not been remedied within twenty (20) Business Days of receiving notice of the breach from the Customer; and/or

4.3.2 subject to Clause 4.4, for any reason upon providing Ekco ninety (90) days' prior written notice.

4.4 **Early Termination Fee.** In the event Ekco terminates the Agreement pursuant to Clause 4.2.1 or the Customer terminates the Agreement pursuant to Clause 4.3.2, the Customer shall immediately pay all unpaid amounts due under the Order plus the Early Termination Fee to Ekco. Both Parties agree and acknowledge that the Early Termination Fee is a genuine pre-estimate of the loss to be suffered by Ekco in the event of termination pursuant to Clause 4.2.1 or Clause 4.3.2.

4.5 **Consequences of Termination.** Upon termination of the Agreement, the Customer shall:

4.5.1 immediately cease (and cause all Authorised Users to cease) using the Software (and all rights granted under the Agreement shall cease);

4.5.2 promptly, and in any event no later than thirty (30) days following the date of such termination, return or, upon Ekco's request, delete or destroy, all copies of the Documentation, Software, and other all other material associated with the Services furnished to the Customer, including all Ekco Confidential Information;

4.5.3 at its own cost, securely erase all data from any Loaned Equipment and promptly return the same to Ekco. If the Customer fails to do so promptly (and in any event no later than ten (10) Business Days from termination), the Customer must, upon demand, pay to Ekco an amount equal to the cost of purchasing new equipment to replace such Loaned Equipment; Ekco reserves the right to recover such Loaned Equipment and, for that purpose, the Customer grants to Ekco and/or Ekco's subcontractor, a licence to enter the premises where the Loaned Equipment is being stored; and

4.5.4 certify to Ekco in writing that the Customer has complied fully with the requirements of this Clause 4.5.

4.6 **Cessation of Services.** Upon termination of the Agreement, Ekco shall have no obligation to continue to provide the Services or keep or deliver any of the systems or data, including Customer Data and Customer Materials, previously held by it on the Customer's behalf or as used by or stored as part of the Services or otherwise. It is the Customer's responsibility to arrange for the retrieval or transfer of Customer Data and/or Customer Materials prior to termination. Where Customer Data and/or Customer Materials have not been retrieved or transferred prior to termination of the Agreement and alternative

	arrangements have not been made and agreed in writing with Ekco, such Customer Data and/or Customer Materials may be irrecoverably deleted and/or destroyed.		any person without the written consent of the disclosing Party;
4.7	<b>Retention Required by Applicable Law.</b> The Customer may retain such copies of the Software and/or Documentation stored electronically on data archives or back-up systems. Each Party may retain such copies of the other Party's Confidential Information stored electronically on data archives or back-up systems or to comply with Applicable Law. Such copies retained pursuant to this Clause 4.6 shall at all times be subject to the terms of the Agreement while in the relevant Party's possession or control.	7.1.2	use Confidential Information solely for the purpose of the fulfilling its obligations under the Agreement and not for any other purpose; and
		7.1.3	keep Confidential Information securely and properly protected against theft, damage, loss, and unauthorised access (including access by electronic means) and shall use the degree of care which is equivalent to the standard it would use in protecting its own Confidential Information (but in no event using less than reasonable care and skill).
5	<b>INTELLECTUAL PROPERTY</b>		
5.1	<b>Ownership and Licence of Ekco IP.</b> Ekco (and its licensors) shall retain ownership of all Intellectual Property in and to the Ekco IP and the Services. Except as expressly set out in the Agreement, the Agreement does not grant the Customer any other rights.		A Party shall notify the other immediately upon becoming aware that any of the Confidential Information has been (or is likely to be) disclosed to, or obtained by, a third party (otherwise than as permitted by the Agreement) and shall take such steps as may reasonably be necessary to mitigate any adverse effect of such disclosure on the other Party or an Affiliate thereof.
5.2	<b>Ownership and Licence of Customer IP.</b> The Customer shall retain ownership of all Intellectual Property in and to the Customer IP. The Customer grants to Ekco a worldwide, fully paid-up, non-exclusive, royalty-free, fully transferable, assignable, sub-licensable, and irrevocable licence to use, copy, and modify the Customer IP solely for the purpose of providing the Services and performing Ekco's obligations under the Agreement during the Term.	7.2	<b>Permitted Disclosures.</b> Each Party may disclose the other Party's Confidential Information:
6	<b>DATA PROTECTION &amp; SECURITY</b>	7.2.1	to those persons who have the need to access the Confidential Information for such Party to perform its obligations under the Agreement, provided that such persons to whom Confidential Information is disclosed, including Customer's Authorised Users, are bound by confidentiality obligations that are no less stringent than those contained in this Clause 7;
6.1	<b>Data Security.</b> Ekco shall use commercially reasonable endeavours to apply appropriate security procedures to preserve the security and integrity of Customer Data and prevent any unauthorised access to Customer Data by third parties.	7.2.2	to its (and its Affiliates') legal counsel, auditors, insurers, accountants, or other operational advisers for the purposes of reporting to or seeking advice, provided that such persons to whom Confidential Information is disclosed are bound by confidentiality obligations that are no less stringent than those contained in this Clause 7;
6.2	<b>Access to Customer Data by Third Parties.</b> The Customer expressly acknowledges that Ekco may provide its Affiliates, subcontractors, and Third-Party Product Providers with access to Customer Data and Customer IP for the purpose of providing the Services and otherwise fulfilling Ekco's obligations under the Agreement. Where Ekco provides such third parties with access to Customer Data, Ekco will ensure that those third parties are bound by confidentiality and security obligations as least as stringent as those contained in the Agreement.	7.2.3	to the extent necessary to enforce the Agreement in proceedings (or defence to such proceedings), provided that such Party uses commercially reasonable efforts to:
6.3	<b>Data Protection.</b> Both Parties will comply with all applicable requirements of Data Protection Laws. If the provision of the Services requires Ekco to process Personal Data, then the Customer shall be the controller with respect to any Personal Data processed under the Agreement and Ekco shall be the processor thereof.	(a)	disclose only that part of the Confidential Information as is reasonably necessary for its enforcement of the Agreement (or defence to such proceedings);
6.4	<b>Processor Obligation.</b> With respect to any Personal Data processed under the Agreement, the Data Processing Schedule shall apply.	(b)	disclose only to those persons reasonably necessary for its enforcement of the Agreement in such proceedings (or defence to such proceedings); and
6.5	<b>Transfer of Customer Data.</b> The Customer hereby acknowledges and consents to the transfer of Customer Data and/or Customer IP to such jurisdictions required for the purpose of providing the Services and otherwise fulfilling Ekco's obligations under the Agreement.	(c)	cooperate with the other Party to obtain a protective order or similar device to maintain the confidential status of the Confidential Information; and
7	<b>CONFIDENTIALITY</b>	7.2.4	to the extent required by Applicable Laws or requirement of a Governmental Authority, provided that such Party uses commercially reasonable efforts to:
7.1	<b>Confidentiality obligations.</b> Each Party acknowledges that Confidential Information of the other is valuable to it and shall:	(a)	provide the other Party with prompt notice of such
	7.1.1 subject to Clause 7.2, hold Confidential Information in strict confidence and shall not disclose, copy, reproduce, or distribute any Confidential Information or otherwise make Confidential Information available to		

- requirement in order to enable such Party to:
- i seek an appropriate protective order (or equivalent remedy); and/or
  - ii consult with such Party with respect to taking steps to resist or narrow the scope of such requirement (in each case to the extent permitted by Applicable Law); and
- (b) disclose only that part of the Confidential Information as is required if such protective order or other remedy is not obtained.
- 7.3 **Confidentiality Exceptions.** Nothing in this Agreement shall restrict either Party from disclosing Confidential Information that:
- 7.3.1 was already known to the recipient free from any obligation of confidentiality before it was disclosed by (or on behalf of) the other Party;
  - 7.3.2 becomes available to the recipient on a non-confidential basis via another third party who was not bound by confidentiality obligations with respect to such information;
  - 7.3.3 is independently developed by the recipient without using the other Party's Confidential Information; or
  - 7.3.4 comes into the public domain other than as a result of any unauthorised act or omission of the recipient or its Affiliates, agents, or subcontractors.
- 7.4 **Publicity.** Neither Party shall make any public announcement concerning the Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, the Customer hereby gives Ekco the right or licence to use any trade names, trademarks, service marks, or other brand indicia of the Customer solely for the purpose of identifying the Customer as a service recipient in marketing and promotional materials (including press releases).
- 7.5 **Return of Confidential Information.** Subject to Clauses 4.6 and 7.3, at the written request of the disclosing Party, the recipient Party will promptly return or destroy all material embodying the Confidential Information of the disclosing Party.
- 8 **REPRESENTATIONS, WARRANTIES, & DISCLAIMERS**
- 8.1 **General Warranties.** Each Party represents and warrants to the other that, at all times it is a duly authorised and validly existing legal entity having all the necessary rights, approvals, permits, and consents to enter into and perform the Agreement, and to grant the rights and licences referred to herein.
- 8.2 **General Disclaimer.** The Customer agrees and accepts that Ekco does not:
- 8.2.1 represent, guarantee, or warrant the completeness, accuracy, timeliness, or suitability of any results, savings, and/or value arising from use of or in connection with the Services;
  - 8.2.2 accept any liability (whether in contract, tort, or otherwise, howsoever and whether or not they have been negligent) for any loss or damage (including, without limitation, loss of profit), that may arise directly or indirectly from use of or reliance on the Services.
- 8.3 **Customer Warranties.** The Customer shall and represents and warrants that, at all times, it shall comply with (and ensure that its Authorised Users comply with) Applicable Law, the Acceptable Use Policy, and any other policies Ekco reasonably provides from time to time.
- 8.4 **Customer Data Back-up.** Ekco is not responsible for the loss or destruction (or for the backup of) any Customer Data or results. The Customer acknowledges that data conversion, processing, and manipulation are subject to the likelihood of human and machine errors, omissions, delays, and losses, including inadvertent loss of data or damage to media that may give rise to loss or damage. The Customer is solely responsible for independent backup of data generated or stored by the Software. The Customer is responsible for adopting measures to limit the impact of such problems, including backing up data, and adopting procedures to ensure the accuracy of the Customer Data, examining and confirming results prior to use, and adopting procedures to identify and correct errors and omissions, replace lost or damaged media, and reconstruct data.
- 8.5 **Disclaimer of Warranty.** Except for the warranties expressly set out in these GTCs, the Services are provided "as-is" and Ekco makes no representation or warranty of any kind, express or implied, as to the condition, character, quality, accuracy, nature, timeliness, capability, performance, security, availability, suitability, or any other characteristic of the Services or any portion thereof. To the fullest extent permitted by law, Ekco hereby disclaims all warranties, conditions, and covenants (express or implied) with respect to the Services, including:
- 8.5.1 any implied warranty, condition, or covenant of merchantability or fitness for a particular purpose;
  - 8.5.2 any implied warranty, condition, or covenant arising from any course of dealing, course of performance, or usage of trade;
  - 8.5.3 any warranty that the Services shall be compatible with any other software or service or with any hardware or equipment except that which is provided to the Customer by Ekco; or
  - 8.5.4 any warranty, condition, or covenant that any of the Services will be secure or error-free, will meet the Customer's requirements, will contain any particular features or functionality, will perform in a particular manner or generate particular results or values, will always be available, accessible, uninterrupted, timely, secure, or operate without error, or that Ekco will correct all defects.
- 8.6 **Unauthorised Access Exclusion.** Without in any way limiting the generality of Clause 8.5, the Customer acknowledges and agrees that, despite the efforts of Ekco, the Services, like any service provided using the internet, are not immune from unauthorised access. Without prejudice to Ekco's obligations in the Data Processing Schedule, the Customer acknowledges and agrees that Ekco shall have no liability in respect of any loss of use or corruption of the Customer Materials or Customer Systems arising in connection with any unauthorised access to it by any third party. Any activity using the

	Customer's credentials for accessing the Customer Portal shall be deemed to have been carried out by the Customer unless Ekco has been notified by the Customer in advance that the security of such credentials has been compromised.		resulting from what Ekco reasonably considers to be abnormal usage;
8.7	<b>Applicable Laws.</b> Any obligation of Ekco under the Agreement to comply or ensure compliance by any person or the Services with any law shall be limited to compliance only with laws within the United Kingdom as generally applicable to businesses and to providers of cloud services. Such obligations shall not be construed to create any obligation on Ekco (or anyone acting on its behalf) or any part of the Services to comply with any laws or regulations which apply solely to specific commercial or other activities (such as insurance, legal advice, banking, or other professional services) or which apply solely to a specific commercial or non-commercial sector (or part thereof) (such as the public, legal, accountancy, actuarial, insurance, banking, or financial service sectors).	9.3.4	any unauthorised access to any Customer System, except to the extent that the Agreement specifies that Ekco is responsible for security of such Customer System and the access results from a breach by Ekco of its security responsibilities in the Agreement;
		9.3.5	any failure due to the Customer's delay in providing information as reasonably requested by Ekco;
		9.3.6	any failure of the Services that is due to any integration or interoperability issues arising with any third-party or Customer systems or legacy systems;
8.8	<b>Third-Party Warranties.</b> Warranties for third-party software will be governed by the applicable Third-Party Terms. Ekco is not responsible for any issues related to the performance, operation, or security of the Services that arise from Customer Data or Third-Party Products or any other services provided by a third party to the Customer.	9.3.7	any loss arising from corruption of data or damage to equipment or facilities due to the introduction of a Virus or arising as a result of a problem with the internet (unless demonstrated by the Customer to be due to Ekco's negligence or failure to meet the description of the Services under the Agreement, if applicable); and/or
	<b>THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE</b>	9.3.8	any loss arising out of the use of or provision of access to any Third-Party Products or any Open Source Software, including any Virus therein.
9	<b>LIMITATION OF LIABILITY</b>		
9.1	<b>Exclusions from Limitation of Liability.</b> Nothing in the Agreement shall limit either Party's liability to the other Party for:	9.4	<b>Limitation of Liability.</b> Subject to Clauses 9.1, 9.2, and 9.3, in no event shall the aggregate liability of Ekco and its Affiliates arising out of or related to the Agreement or the Services (whether in contract, tort, breach of statutory duty, or otherwise) exceed the lower of one million pounds (£1,000,000) or one hundred percent (100%) of the total Fees paid for the Services that are the subject of the claim during the twelve (12) months immediately preceding the event giving rise to such liability.
	9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents, or subcontractors;		
	9.1.2 fraud or fraudulent misrepresentation; or		
	9.1.3 anything else that cannot be excluded or limited under Applicable Law.		
9.2	<b>Exclusion for Consequential and Indirect Damages.</b> To the extent permitted under Applicable Law, under no circumstances will either Party or its Affiliates be liable (whether in contract, tort, breach of statutory duty, or otherwise) for any loss of profits, loss of opportunity, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of revenue, economic loss, loss of data or business interruption, replacement software or services, loss of goodwill or reputation (whether direct or indirect), or any indirect, incidental, special, consequential, or exemplary loss or punitive damages relating to the Services or otherwise arising out of or in connection with the Agreement, each of which (however caused) is excluded by agreement of the Parties regardless of whether such losses and/or damages were foreseeable or whether the other Party has been advised of the possibility of such damages.	10	<b>INDEMNIFICATION</b>
		10.1	<b>Indemnification by Ekco.</b> Ekco shall defend the Customer against any Customer Claim and will indemnify the Customer from any damages, liabilities, costs, and expenses finally awarded against the Customer (or for amounts paid by the Customer under a settlement approved by Ekco in writing) as a result of any Customer Claim, provided that the Customer:
		10.1.1	promptly (and in any event no later than thirty (30) days after the Customer becomes aware of the Customer Claim) gives Ekco written notice of the Customer Claim;
		10.1.2	gives Ekco sole control of the defence and settlement of the Customer Claim; and
		10.1.3	gives Ekco all reasonable assistance, information, and authority it requests in respect of the defence and/or settlement of such Customer Claim.
9.3	<b>Exclusion of Ekco's Liability.</b> Ekco shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise arising under or in connection with the Agreement for:	10.2	<b>No Indemnification.</b> Ekco's defence and indemnification obligations do not apply to the extent that:
	9.3.1 any defects or deficiencies in Customer Materials or Customer Systems;	10.2.1	the allegation does not state with specificity that the Software or Ekco IP is the sole basis of the Customer Claim;
	9.3.2 any failure of the Services that is due to any failure of a Third-Party Product;	10.2.2	the Customer Claim arises from the use or combination of the Software or Ekco IP (or any part thereof) with software, hardware, or data not provided by Ekco, if the Software or Ekco IP or use thereof would not infringe without such combination;
	9.3.3 any defect or default arising out of or in connection with changes made to the Services that have not been made or expressly approved in writing by Ekco or		

- 10.2.3 the Customer alters the Software or Ekco IP or uses it outside the scope of the licences granted by Ekco under the Agreement;
- 10.2.4 the Customer uses a version of the Software that has been superseded, if the infringement claim could have been avoided by using the most recent version of the Software that was made available to the Customer; or
- 10.2.5 a Customer Claim arises from Customer Data, Third-Party Products, or Customer's breach of the Agreement or use of the Software in a manner prohibited or contrary to the Documentation.

10.3 **Third Party IP.** If Ekco reasonably believes the Services are likely to infringe a third party's Intellectual Property, then Ekco may, at its sole option and expense:

- 10.3.1 procure the right for the Customer to continue using the Services;
- 10.3.2 modify the Services to make them non-infringing without materially reducing their functionality; or
- 10.3.3 replace the Services with a substantially similar alternative.

If Ekco considers such remedies not to be reasonably practicable or not commercially reasonable, then Ekco may suspend or terminate the Customer's use of the impacted Services. Ekco's sole liability for suspension or termination under this Clause shall be a refund of any unused, prepaid Fees prorated as to portions of the impacted Services.

10.4 **Indemnification by the Customer.** The Customer shall indemnify Ekco and its Affiliates against all losses, damages, penalties, costs, and expenses arising out of or in connection with any claim:

- 10.4.1 resulting from:
  - (a) any breach of the Agreement (including the Customer's failure to make payments pursuant to Clause 3);
  - (b) a breach of an Applicable Law; or
  - (c) the Customer's misuse of the Services and/or Documentation; or
- 10.4.2 made or brought against Ekco by a third party alleging that any Customer Data or Customer IP infringes or misappropriates any third party's Intellectual Property, (each an "**Ekco Claim**"). Ekco shall:
  - (a) promptly give the Customer written notice of the Ekco Claim;
  - (b) give the Customer sole control of the defence and settlement of the Ekco Claim; and
  - (c) give the Customer all reasonable assistance, information, and authority it requests in respect of the defence and/or settlement of such Ekco Claim.

**11 THIRD-PARTY PRODUCTS**

11.1 Unless otherwise specified, Third-Party Products shall not be deemed to be incorporated within the Services. Use of each Third-Party Product shall be subject to the applicable

Third-Party Terms. The Customer shall at all times comply with the Third-Party Terms. The Customer agrees to co-operate with any compliance review required by any Third-Party Product Provider. To the extent that there is any conflict in respect of any Third-Party Product between the Third-Party Terms and these GTCs, the Third-Party Terms shall prevail except to the extent the conflict relates to any disclaimer of representations, warranties, liabilities, or indemnification obligations of Ekco, in which case the GTCs shall prevail. The Customer acknowledges and agrees that the Third-Party Product Provider and the Customer will deal with each other in respect of any loss or damage suffered by either of them in relation to the Third-Party Product; Ekco will not be liable or responsible for such loss or damage.

11.2 As part of the Services, Ekco may provide the Customer with guidance in relation to general licensing principles and place orders for licences on the Customer's behalf, but Ekco cannot control the Customer's compliance. The Customer acknowledges that it shall ensure that it shall have sufficient licences or usage allocation for each Third-Party Product. The Customer will indemnify Ekco in respect of liability or losses Ekco incurs as a result of Customer's failure to adhere to any applicable Third-Party Terms.

11.3 The Customer authorises Ekco to accept on its behalf any Third-Party Terms in respect of any Third-Party Products that are used or provided by Ekco for the benefit of the Customer as part of the Services, including when supporting, maintaining, configuring, installing, or upgrading Third-Party Products as part of the Services.

11.4 Unless agreed otherwise between Ekco and the Customer:

11.4.1 any processing of personal data by or in connection with the use of a Third-Party Product will be subject to the Third-Party Terms (not the Data Processing Schedule), and the Third-Party Product Provider shall be the 'data processor' of the Customer in respect of such processing; and

11.4.2 Ekco will not be liable for such processing of personal data, including any claim arising out of or in connection with a failure by the Third-Party Product Provider to comply with the Third-Party Terms or any data protection legislation; any claims in respect of the same will be made directly between the Customer and the Third-Party Product Provider.

11.5 The Customer acknowledges that:

11.5.1 any Third-Party Product Provider or Ekco may at any time, and without notice, incorporate licence management features into the Third-Party Product for the purposes of ensuring that licence rights and allocation are not exceeded; and

11.5.2 Ekco may restrict, modify, or discontinue access to any Third-Party Product at any time, provided that Ekco will use reasonable endeavours to promptly notify the Customer should access to the Third-Party Product be restricted, modified, or discontinued.

**12 NON-SOLICITATION**

12.1 Neither the Customer, nor any subsidiary or associated company of the Customer, nor any client of the Customer shall, during the Term, or for a period of twelve months

	thereafter, be permitted to utilise the services of any of Ekco's employees other than through Ekco.	15	<b>GOVERNING LAW &amp; DISPUTE RESOLUTION PROCEDURE</b>
12.2	During, or following twelve months from the termination or expiry of, the Agreement, should the Customer or any subsidiary or associated company of the Customer permanently employ any of Ekco's employees, then the Customer will pay Ekco an upfront sum of either 50% of such employee's annual Ekco salary, or £50,000, whichever is higher, as an introduction fee, unless otherwise agreed in writing.	15.1	The Agreement is governed by, and shall be construed in accordance with, the laws of England and Wales. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.
12.3	Clauses 12.1 and 12.2 shall survive the termination or expiry of this Agreement for a period of 12 months.	15.2	In the event of a Dispute, the Parties shall follow the procedure set out in this Clause 15.2:
13	<b>COMPLIANCE &amp; AUDIT</b>	15.2.1	either Party may initiate this procedure by serving a Dispute Notice. On service of the Dispute Notice, Ekco and the Customer shall each appoint individuals with authority who shall attempt in good faith to resolve the Dispute;
13.1	<b>Audit.</b> The Parties shall have the right to audit the other Party in order to verify the other Party's compliance with its obligations under the Agreement (acting through their own personnel or through their third-party auditors) provided that such audit take place during reasonable business hours and on reasonable notice. The Parties shall, and shall procure that its personnel, professional advisors, and subcontractors will, provide the other Party with all reasonable information, documentation, assistance, and co-operation for the purpose of such audits and agree that such audit right may be exercised by governmental or regulatory bodies as required under Applicable Law.	15.2.2	if the Customer contact and Ekco contact are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to the senior management of the Customer and Ekco who shall attempt in good faith to resolve it; and
13.2	<b>Sanctions and Compliance with International Trade Controls.</b> Each Party represents, warrants, and undertakes that: (i) neither it nor its Affiliates or subcontractors, or any of its or their respective directors, officers, representatives, advisers, or agents is a Sanctions Target; and (ii) neither it nor, to its knowledge (having conducted due and careful inquiry), its Affiliates or subcontractors, or any of its or their respective directors, officers, representatives, advisers, or agents has or will engage in any conduct that it can reasonably foresee may render it or any one of them a Sanctions Target.	15.2.3	if the senior management of the Customer and Ekco are for any reason unable to resolve the Dispute within sixty (60) days of service of the Dispute Notice, the Dispute shall be referred to and finally resolved by the courts of England and Wales in accordance with Clause 15.1.
13.3	<b>Anti-Bribery and Anti-Corruption.</b> Ekco shall comply with all applicable laws, statutes, and regulations relating to anti-bribery and anti-corruption.	15.3	The commencement of any of the above steps shall not prevent the Parties from commencing or continuing court proceedings.
14	<b>SUSPENSION</b>	16	<b>TUPE</b>
	Ekco may suspend the Services (in part or in whole) if:	16.1	The Parties hereto consider and intend that the commencement of the provision of the Services by Ekco under the Agreement will not constitute a relevant transfer for the purposes of TUPE; if any employee of or any person engaged by the Customer ( <b>Customer Personnel</b> ) assert or establish that their employment or any claim, right, or liability in connection with their employment or the termination of that employment has transferred to Ekco upon commencement of the Services pursuant to the Agreement under TUPE:
14.1	Ekco has a reasonable belief that an interruption is necessary to prevent fraud or any other unlawful, illicit, or illegal activity taking place;	16.1.1	the Customer shall indemnify Ekco and keep Ekco fully indemnified, up to the date being six (6) months after the commencement of the provision of the Services by Ekco, against all liabilities to or in respect of or on behalf of such Customer Personnel incurred by Ekco arising out of the employment of or the termination of employment of such Customer Personnel prior to the commencement of the Services by Ekco and against all and any costs, expenses, or damages reasonably incurred by Ekco in contesting any claim in respect thereto; and
14.2	the Customer's use of the Services may impair the proper functioning of the infrastructure, hardware, or software used to provide services to Ekco's other customers;	16.1.2	Ekco shall be entitled to terminate that person's employment and, provided that such termination occurs within three (3) months of Ekco becoming aware of the Customer Personnel asserting or establishing that their employment has transferred to Ekco, shall be indemnified and kept indemnified by the Customer in respect of all awards, losses, damages,
14.3	Ekco reasonably considers there to be an emergency, or problems arise caused by any denial-of-service attack or an intentional attack against the Ekco systems used to provide the Services designed to overwhelm the capacity or security of those systems; or		
14.4	Ekco has reasonable grounds to believe that the Customer is in breach of the Customer's obligations under the Agreement, and the Customer either fails to remedy that breach or fails to demonstrate to Ekco's reasonable satisfaction that no breach took place within five (5) Business Days of written notice from Ekco of the suspected breach;		
	and the duration of such suspension shall not be included in any calculation of 'unavailability', 'downtime', or similar in any SLA.		

costs, liabilities, expenses, and legal fees that it may reasonably sustain arising under or in connection with such Customer Personnel's contract of employment and/or the termination of their employment.

16.2 The Parties hereto also consider and intend that the termination or expiry of the provision of the Services by Ekco under the Agreement will not constitute a relevant transfer for the purposes of TUPE; if any Ekco employee (**Ekco Personnel**) asserts or establishes that their employment or any claim, right, or liability in connection with their employment or the termination of that employment has transferred to the Customer pursuant to TUPE at any time arising from or in connection the provision of the Services or the termination or expiry of the Services, Ekco shall indemnify the Customer up to the date being three (3) months after the termination or expiry of the provision of the Services by Ekco, in respect of all awards, losses, damages, reasonable costs, liabilities, expenses which it may reasonably sustain arising under or in connection with such Ekco Personnel's contract of employment and/or the termination of their employment.

## 17 GENERAL

17.1 **Limitation Period.** Except for actions of non-payment or a breach of Ekco's Intellectual Property, no action, regardless of form, arising out of the Services or relating to the Agreement may be brought by either Party more than two (2) years after the cause of action accrues.

17.2 **Force Majeure.** With the exception of the Customer's obligation to make any payment under the Agreement, neither Party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure results from events, circumstances, or causes beyond its reasonable control, including an act of war, hostility, or sabotage; act of God; pandemic; electrical, internet, or telecommunication outage; default or disruption of suppliers, subcontractors, or other utility service providers (including Third-Party Products); government restrictions (including the denial or cancelation of any export, import, or other licence); or factory closure, strikes, labour disputes, labour stoppages or slowdowns, or other industrial disturbances. In such circumstances, the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for thirty (30) days, the Party not affected may terminate the Agreement by giving thirty (30) days' written notice to the affected Party.

17.3 **Notices.** All enquiries and notices between the Parties to be addressed are to be in writing in the English language and directed as follows. Such notices and other communications (other than routine operational communications) shall be in letter format on the headed paper of the notifying Party and served by registered mail or courier (with copy by email (with such letter attached thereto) to legal@ek.co for notices to Ekco and to the email address Ekco has on file for the Customer's account for notices to the Customer) to the registered office address of the Parties.

17.4 **Waiver.** No delay or omission by either Party to exercise any right or remedy provided for by law or under the Agreement will operate to waive, limit, or otherwise affect that right or remedy.

17.5 **No Partnership or Agency.** Nothing contained in the Agreement will be construed as creating a joint venture, partnership, agency, fiduciary, or employment relationship among or between the Parties.

17.6 **Assignment and Successors.** The Customer shall not be permitted to assign, novate, or otherwise transfer any of its rights or obligations under the Agreement to any third party without the written consent of Ekco, not to be unreasonably withheld. This Agreement shall be binding upon and enure to the benefit of any successors in interest or title of the Parties. Nothing in this Agreement shall prevent or restrict Ekco from assigning, sub-licensing, transferring, or otherwise disposing of all or any of its rights or obligations hereunder to an Ekco Affiliate or to any legal entity which succeeds to all or part of the business or assets of Ekco.

17.7 **Entire Agreement.** The Agreement constitutes the whole and only agreement between the Parties relating to its subject matter and supersedes and excludes all prior agreements or arrangements made between them that relate to it. Customer's issuance of a purchase order or other document against a proposal, the Agreement, or any component thereof shall not constitute a counteroffer, and no provision of such purchase order or any other document that varies from the Agreement shall become a part of the Agreement. Any proposed terms by the Customer that are different from or in addition to those in the Agreement shall be of no effect unless separately and specifically agreed to in writing by both Parties. Each Party acknowledges and confirms that it has not entered into the Agreement on the basis of any representation, warranty, undertaking, or other statement whatsoever, whether made negligently or innocently, by any person (whether a Party or not) other than as expressly set out in the Agreement.

17.8 **Variation.** Except as set out in the Agreement, any variation, including the introduction of any additional terms and conditions, to the Agreement, shall only be binding when agreed in writing and signed by both Parties.

17.9 **Severability.** If any provision (or part of a provision) in the Agreement is unenforceable, invalid, or illegal for any reason, the other provisions of the Agreement will remain in force as if they had been executed without the offending provision appearing in the Agreement.

17.10 **Third-Party Rights.** A person who is not a Party to the Agreement has no rights to enforce any term of the Agreement.

17.11 **Counterparts.** The Agreement may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of the Agreement. The Parties may enter into the Agreement by executing any such counterpart.

17.12 **Language.** The Agreement has been prepared in English. In the event of any inconsistency between the original English version and any translation, the English version shall prevail.

17.13 **Survival.** Notwithstanding anything to the contrary in the Agreement, any provision of the Agreement which by its nature is intended to survive shall survive the termination or expiry of the Agreement, including: 3, 4, 7, 9, 10, 11, 15, 17.

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## APPENDIX 1

**“Acceptable Use Policy”** means the [Ekco Acceptable Use Policy](#) as may be updated and made available to the Customer from time to time.

**“Affiliate”** means any person Controlling, Controlled by, or under common Control with a Party.

**“Agreement”** means the Order Form, these GTCs, the Specification, and any other documents pertaining to the Services and validly incorporated by reference in the relevant Order Form, these GTCs, and the Specification.

**“Applicable Law”** means any applicable national, federal, supranational, state, regional, provincial, local, or other statute, law, ordinance, decree, ruling, regulation, rule, code, guidance, order, measure, published practice or concession, determination, judgment, requirement, or decision of a Governmental Authority.

**“Authorised Users”** means categories and number of users authorised by Ekco to use the Software and Documentation as set out in the relevant Order Form or Specification, as applicable.

**“Business Day”** means a day other than a Saturday, Sunday, or public holiday in England, when banks in London are open for business.

**“Confidential Information”** means the terms of this Agreement and any information in whatever form (including, without limitation, in written, oral, visual, or electronic form or on any magnetic or optical disk or memory, and wherever located) relating to the business, customers, products, affairs, and finances of a Party (or its Affiliates) for the time being confidential to the relevant Party (or its Affiliates) and trade secrets, specifications, technical data, and know-how relating to the business of the relevant Party or any of its Affiliates, suppliers, customers, agents, distributors, shareholders, management, or business contacts and including information that Ekco or its personnel creates, develops, receives, or obtains in connection with the Services, whether or not such information (if in anything other than oral form) is marked confidential.

**“Control”** means (A) the possession, directly or indirectly, of the power to vote fifty percent (50%) or more of the voting stock (other than directors qualifying shares or other de minimis holdings required by Applicable Laws to be held by other person(s)) of such person; (B) ownership, directly or indirectly, of fifty percent (50%) or more of the equity interests (other than directors qualifying shares or other de minimis holdings required by Applicable Laws to be held by other person(s)) in such person; or (C) having, directly or indirectly, the ability to direct or procure the direction of the management and policies of such person, whether through the ownership of shares, by contract, or otherwise; **“Controlling”**, **“Controlled”**, and **“common Control”** have corresponding meanings.

**“Customer”** means the Party Ekco is delivering the Services to as identified in the relevant Order Form.

**“Customer Claim”** means a claim brought against the Customer by a third party alleging that the Software or Ekco IP infringes or misappropriates such third party’s Intellectual Property.

**“Customer Data”** means any data, datasets, information, technology, or other content, including Personal Data, software applications, or operating systems, provided or made available by the Customer to Ekco in connection with the Services.

**“Customer Default”** means a failure or delay of the Customer in performing any of its obligation under the Agreement or other act or omission of the Customer that may impact Ekco’s provision of the Services.

**“Customer IP”** means all Intellectual Property, excluding any Ekco IP, owned, developed, or licensed by or (on behalf of) the Customer (including all which is provided by (or on behalf of) the Customer to Ekco in connection with the Agreement and that which subsists in the Customer Data and Customer Materials).

**“Customer Materials”** means any operating software, applications, files, or material in respect of which the Services are used by or provided to the Customer, including any Customer Data comprised therein.

**“Customer Portal”** means the online application provided by Ekco as part of the Services that enables the Customer to monitor and update certain aspects of the Customer’s account, including configuring its use of the Services and (subject to payment of additional Fees) increasing its allocation of the Services.

**“Customer Systems”** means the extent of the Customer’s operational servers and workstations, including applications, in respect of which the Services are provided or received.

**“Data Processing Schedule”** means the data processing schedule set out in Appendix 2 to these GTCs.

**“Data Protection Laws”** means all Applicable Laws relating to the processing of Personal Data and the protection of privacy, including EU and UK GDPR and any other applicable legislation.

**“Dispute”** means a dispute between the Parties arising out of or in connection with this Agreement or the performance, validity, or enforceability of it.

**“Dispute Notice”** means written notice by either Party the other of the Dispute, setting out its nature and full particulars, together with relevant supporting documents.

**“Documentation”** means all user and reference manuals, specifications, operating information, and any other documentation that is provided by Ekco to the Customer in connection with the Agreement.

**“Early Termination Fee”** means an amount equal to the full amount of Fees payable under the Order less the sum of any Fees (i) paid under the Order up to the date of termination and (ii) due, but unpaid on the date of termination.

**“Ekco”** means Ekco Cloud and Security Limited (CRN 08470397) or one of its Affiliates that is a Party, as identified in the relevant Order Form or Specification or invoice for Services, as applicable.

**“Ekco Claim”** has the meaning set out in Clause 10.4.

**“Ekco IP”** means all Intellectual Property owned, developed, or licensed by, or on behalf of, Ekco (including any and all Intellectual Property arising out of or in connection with provision of the Services) that is provided by (or on behalf of) Ekco to the Customer in connection with the Agreement, and all Intellectual Property in any and all goods, software, services, documents, specifications, technical information, data, corrections, modifications, improvements, enhancements, and all other materials (in whatever form) relating to the provision of the Services (including the Software) but excludes any Third-Party Product or any Third-Party Product Provider IP.

**“EU GDPR”** means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

**“Export Control Laws”** means any law, regulation, order, directive, or guidance (with the effect of law) imposed by a Sanctions Authority that applies to the export, reexport, transfer, disclosure, or other release, or provision of services or hardware (including tooling), materials, software, or technology, including controls administered pursuant to the U.S. Export Administration Regulations (15 C.F.R. parts 730 774) and EU and EU Member State export controls administered pursuant to Regulation (EU) 2021/821.

**“Fees”** means the fees and expenses set out in the relevant Order Form (or, where applicable, in the Specification or these GTCs)

**“Governmental Authority”** means any national, federal, supranational, state, regional, provincial, local, or other government, government department, ministry, governmental or administrative authority, council, regulator, agency, commission, secretary of state, minister, court, tribunal, judicial or arbitral body, recognized stock exchange or other financial market infrastructure body, or any other person exercising judicial, executive, interpretative, enforcement, regulatory, investigative, fiscal, taxing, or legislative powers or authority anywhere in the world with competent jurisdiction.

“**Initial Term**” has the meaning set out in the relevant Order Form or Specification, as applicable.

“**Intellectual Property**” means all rights, title, and interest (anywhere in the world, whether statutory, common law, or otherwise) relating to, arising from, or associated with, intellectual property, including patents, utility models, rights to inventions, discoveries, ideas, processes, technology, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill, and the right to sue for passing off or unfair competition, rights in designs, rights in software (including underlying code in any form), databases and database rights, algorithms and methods, rights to use and preserve the confidentiality of information (including know-how and trade secrets), in each case which may now or in the future subsist in any part of the world (whether registered or unregistered), including any applications, registrations, or rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights in any country or jurisdiction and all forms of protection of a similar nature, or having equivalent, or similar effect to any of them which may subsist anywhere in the world.

“**Loaned Equipment**” means any server, computer hardware, or other articles that are made available to the Customer as part of the Services.

“**Migration**” means the transfer of Customer Materials from the Customer to Ekco in connection with the Services.

“**Open Source Software**” means any software programs that are licensed under a licence approved by the Open Source Initiative or meeting the definition of “open source” as defined by the Open Source Initiative or “free software” as defined by the Free Software Foundation.

“**Order**” means the order to deliver the Services, given effect by the Order Form.

“**Order Date**” means the date on which the Order Form is executed or as otherwise set out in the Order Form (e.g., a specified start date, commencement date, deployment date, or license activation date other than the date the Order Form is executed).

“**Order Form**” means the order form signed or completed by the Customer, giving effect to the Agreement for the delivery of the Services.

“**Party**” means a party to the Agreement, being Ekco and the Customer. “**Parties**” shall be construed accordingly.

“**Personal Data**” shall have the meaning given to it under Data Protection Laws.

“**Renewal Term**” has the meaning set out in the relevant Order Form or Specification, as applicable.

“**Reseller Agreement**” means a separate agreement signed by Ekco and the Customer permitting the Customer to resell specific Services and/or Software.

“**Sanctioned Country**” means any country or territory that is, or whose government is, the target of comprehensive economic or trade sanctions or restrictive measures imposed by any Sanctions Authority, which currently include the Crimea region and those certain portions of the Donetsk and Luhansk regions over which Sanctions Laws impose targeted restrictions, Cuba, Iran, North Korea, Syria, and Venezuela.

“**Sanctions Authority**” means the United Nations Security Council (the Council as a whole and not its individual members), the U.S. Department of State, the U.S. Department of Commerce Bureau of Industry and Security, the U.S. Department of the Treasury Office of Foreign Assets Control, the European Union Council and/or Commission (including any present or future member state of the European Union), His Majesty’s Treasury of the United Kingdom, the United Kingdom Department for International Trade, and any other applicable government or regulatory body, institution, or agency having similar jurisdiction.

“**Sanctions Laws**” means Export Control Laws together with any other law, regulation, order, directive, or guidance (with the effect of law) imposed by a Sanctions Authority that imposes trade or economic restrictive measures against countries, territories, individuals, or entities on grounds of national or international security, human rights, or foreign policy.

“**Sanctions Target**” means (i) the government of any Sanctioned Country; (ii) to the extent restricted under Sanctions Laws, any individual or entity that is resident in, located in, organized under the laws of, or subject to the jurisdiction of, a Sanctioned Country; (iii) any individual or entity that is designated on any list promulgated, administered, or enforced by a Sanctions Authority; or (iv) any entity that is owned or controlled directly or indirectly by, or any individual or entity acting for or on behalf of, any of the foregoing.

“**Services**” means the services to be delivered by Ekco to the Customer as set out in the Order Form and Specification or, absent an Order Form, as set forth in the relevant proposal, quote, and/or invoice for the proposed, pending, or delivered services

“**SLA**” means the service level agreement (if any) appended to or set forth in the Specification or Order Form.

“**Software**” means the computer programs, excluding Third-Party Products, specified in the Specification and any corrections, bug fixes, remediations, and/or additional functionality, amendments, or upgrades (as applicable) together with any technical information and Documentation necessary for the use of such programs as licensed by Ekco to the Customer pursuant to the Agreement.

“**Software Licence**” means a royalty-free, non-transferable, non-sublicensable, non-exclusive licence to install, integrate, and use (in object code form only) the Software and Documentation, in the Territory (if applicable).

“**Specification**” means the statement of work, service description, product description, or equivalent attached to or set forth or referenced in the Order Form.

“**Support Services**” means the support and maintenance services to be provided by Ekco to the Customer as set out in the SLA.

“**Taxes**” means any and all foreign or local taxes and/or duties, including sales, excise, value added, and/or withholding taxes, of whatever nature and howsoever levied imposed by Applicable law.

“**Term**” means the Initial Term, and all Renewal Terms (if any), set out in the relevant Order Form, as applicable.

“**Territory**” has the meaning set forth in the Documentation, Order Form, Specification, or Third-Party Terms, as applicable.

“**Third-Party Product**” means any software or service used in the provision of the Services or to which the Customer is provided access in connection with the Services or any hardware, devices, or equipment sold, resold, or provided to the Customer.

“**Third-Party Product Provider**” means a third party holding Intellectual Property in any Third-Party Product.

“**Third-Party Terms**” means the terms applicable between the Customer and the Third-Party Product Provider in respect of a Third-Party Product as specified, provided, or made available to the Customer by Ekco or the Third-Party Product Provider, which may be supplemented or amended from time to time.

“**TUPE**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006.246).

“**UK GDPR**” has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

“**Virus**” means any program that contains malicious code or infiltrates or damages a computer system without the owner’s informed consent or is designed to do so or that is hostile, intrusive or annoying to the owner or user and has no legitimate purpose.

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**APPENDIX 2  
DATA PROCESSING SCHEDULE**

**Part A  
Operative provisions**

**1 Definitions**

1.1 In this Schedule:

<b>Controller</b>	has the meaning given in applicable Data Protection Laws from time to time;
<b>Data Protection Laws</b>	is as defined in the Agreement;
<b>Data Subject</b>	has the meaning given in applicable Data Protection Laws from time to time;
<b>Personal Data</b>	has the meaning given in applicable Data Protection Laws from time to time;
<b>Personal Data Breach</b>	has the meaning given in applicable Data Protection Laws from time to time;
<b>processing</b>	has the meaning given in applicable Data Protection Laws from time to time (and related expressions, including <b>process</b> , <b>processed</b> and <b>processes</b> shall be construed accordingly);
<b>Processor</b>	has the meaning given in applicable Data Protection Laws from time to time;
<b>Protected Data</b>	means Personal Data received from or on behalf of the Customer (including from the Customer's other data processor(s)) in connection with the performance of Ekco's obligations under the Contract; and
<b>Sub-Processor</b>	means any agent, subcontractor or other third party (excluding its employees) engaged by Ekco for carrying out any processing activities on behalf of the Customer in respect of the Protected Data.

**2 Roles under Data Protection Laws**

The parties agree that the Customer is a Controller and that Ekco is a Processor for the purposes of processing Protected Data pursuant to the Agreement.

**3 Customer's compliance with Data Protection Laws**

The Customer shall, at all times, comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to Ekco in respect of Protected Data (including the terms of the Agreement) shall at all times be in accordance with Data Protection Laws. Nothing in the Agreement relieves the Customer of any responsibilities

or liabilities under any Data Protection Laws. For the avoidance of doubt, any third party data processor appointed by the Customer to integrate or co-operate with the Services shall be the data processor of the Customer, not Ekco, and Ekco shall have no responsibility for the acts or omissions of the third party.

#### **4 Ekco's compliance with Data Protection Laws**

Ekco shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of the Agreement.

#### **5 Instructions**

Ekco shall only process the Protected Data in accordance with the Agreement including Part B of this Schedule, except to the extent:

5.1.1 that alternative processing instructions are agreed between the parties in writing; or

5.1.2 otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest).

5.2 Without prejudice to paragraph 3 of this Part A, if Ekco believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.

#### **6 Security**

Taking into account the state of technical development and the nature of processing, Ekco shall implement and maintain the technical and organisational measures set out in Section 2 of this Schedule to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.

#### **7 Sub-processing and personnel**

7.1 The Customer hereby authorises Ekco to engage third-party Sub-Processors in connection with the provision of the Services. A list of Sub-Processors engaged by Ekco from time to time is available on reasonable written request.

7.2 Ekco shall:

7.2.1 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this Schedule (including those relating to sufficient guarantees to implement appropriate technical and organisational measures) that is enforceable by Ekco and ensure each such Sub-Processor complies with all such obligations;

7.2.2 remain fully liable to the Customer under the Agreement for all the acts and omissions of each Sub-Processor as if they were its own; and

7.2.3 ensure that all persons authorised by Ekco or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.

#### **8 Objection right for new Sub-Processors**

Ekco may engage new Sub-Processors from time to time, provided always that Ekco shall comply with paragraph 7.2 of this Part A, before engaging the same in connection with the provision of the

applicable Services. The Customer may object to Ekco's use of a new Sub-Processor by notifying Ekco in writing within 7 days after receipt of Ekco's confirmation of the appointment of such Sub-Processor. In the event the Customer notifies Ekco in writing of a reasonable objection to a new Sub-Processor within such 7 day period, Ekco will use reasonable endeavours to avail the Customer of a change in the Services or recommend a change to the Customer's configuration or use of the Services to avoid processing of Personal Data by the new Sub-Processor. For the avoidance of doubt, Ekco shall have no liability for any failure to provide the Services which (i) arises due to the Customer's objection to the new Sub-Processor, or (ii) would not have arisen in the absence of the Customer's objection to the new Sub-Processor. If Ekco does not make available such change (or ensure that the Sub-processor will not process the Protected Data) within a reasonable period of time, either party may terminate the Agreement on 180 days written notice to the other (provided that the Customer's notice shall be ineffective if Ekco notifies the Customer prior to expiry of the Customer's notice of termination that the proposed additional Sub-processor shall not be engaged to process the Protected Data). Ekco will not be obliged to refund the Customer any prepaid Charges with respect to such termination, and the Customer shall pay any Fees due but unpaid on the date of termination.

## **9 Assistance**

Ekco shall (subject to payment of Ekco's reasonable charges) assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the EU GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to Ekco.

Ekco shall (subject to payment of Ekco's reasonable charges) and taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the EU GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.

## **10 International transfers**

The Customer agrees that Ekco (or its Sub-Processors) may process and/or transfer, or otherwise directly or indirectly disclose, Protected Data in or to countries outside the European Economic Area and the United Kingdom without the prior written authorisation of the Customer, provided all such processing and/or transfers shall (to the extent required under Data Protection Laws, and excepting any transfer to the Customer or to another data processor appointed by the Customer) be effected by means of such legally enforceable mechanisms for transfers of Personal Data outside the United Kingdom and the European Economic Area as may be permitted under Data Protection Laws from time to time. This paragraph comprises part of the Customer's instructions to Ekco.

## **11 Audits and processing**

Ekco shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is necessary to demonstrate Ekco's compliance with the obligations placed on it under this Schedule and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28 of the GDPR). Ekco shall maintain, in accordance with Data Protection Laws binding on it, written records of all categories of processing activities carried out on behalf of the Customer. Ekco shall, in accordance with Data Protection Laws, contribute and allow for audits either by (at its option): (i) making available to the Customer interviews with Ekco personnel, and such reports, audits or other information in its possession as it considers appropriate, which the Customer must treat confidentially under the confidentiality provisions of the Agreement or under a non-disclosure agreement concluded between the parties; or (ii) responding to a written security questionnaire submitted to it by the Customer provided that

the Customer will not exercise this right more than once per year and will hold Ekco's responses in confidence under the confidentiality provisions of the Agreement.

## **12 Breach**

Ekco shall notify the Customer without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Protected Data.

## **13 Deletion/return and survival**

On the end of the provision of the Services relating to the processing of Protected Data, at the Customer's cost and the Customer's option, Ekco shall either return all of the Protected Data in its possession to the Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires Ekco to store such Protected Data. This Schedule shall survive termination or expiry of the Agreement.

**Part B**  
**Data processing and security details**

**Section 1 — Data processing details**

Processing of the Protected Data by Ekco under the Agreement shall be for the subject-matter, duration, nature and purposes and involve the types of Personal Data and categories of Data Subjects set out in this Part B. The Customer acknowledges that any processing of Personal Data is incidental to the Services and not a primary part of the Services.

**1 Subject-matter of processing:**

The provision by Ekco of the Services to the Customer, including the backup, storage and recovery of the Customer's data for the purposes of protecting the secure availability of data and information technology services to the Customer.

**2 Duration of the processing:**

*The duration of the Agreement and for an additional period of up to 30 days.*

**3 Nature and purpose of the processing:**

Storage, support, and other activities comprised in the Services.

**4 Type of Personal Data:**

*Any Personal Data comprised in the Customer Data.*

**5 Categories of Data Subjects:**

Any Data Subjects identified in the Customer Data.

**Section 2 — Minimum technical and organisational security measures**

Customers expect robust information security and need to know that any data they share with Ekco is securely protected. Likewise, it is essential for Ekco to protect its own information assets and Ekco recognises that the best way of achieving this is to adopt internationally accepted information security best practices, ensuring alignment with international standards. Ekco has developed an Integrated Management System (**IMS**) to oversee our approach to information security, quality management, IT service management, business continuity management, and environmental management. The Ekco IMS includes ISO/IEC 27001 certification.

The IMS is overseen by senior stakeholders from across the Ekco business in the form of the IMS Audit & Risk Committee (**IMS ARC**). The IMS ARC are responsible for the conduct of the IMS, directing Ekco's information security and privacy policies, procedures, and operations to identify potential areas of vulnerability and risk and assist with the strategic direction for information security. Ekco have appointed a chief information security officer, who is responsible for the day-to-day operation of Ekco's information security controls as well as a head of governance, risk, and compliance, who is responsible for developing, implementing, and operating Ekco's information security, risk & privacy programme in accordance with all applicable laws, rules and regulatory requirements.

Ekco is one of Europe's leading cloud & cyber security specialists, with a network of infrastructure and security specialists across Europe. Ekco's managed security services practice (**MSSP**), Ekco Security, provides the company with managed security services to support the IMS, including managed SIEM, managed security testing and managed vulnerability management services. The IMS is audited internally by our governance, risk & compliance audit team and externally by independent external certification bodies.