



General Terms & Conditions

Note: All of our Services are covered by the General Terms & Conditions below; in addition please refer to the service specific terms and conditions (“Relevant Product Terms”) as appropriate.

1 GENERAL PROVISIONS

These Conditions set out the terms under which Ekco Bournemouth will provide Services to the Client (as such terms are defined below). Ekco Bournemouth reserves the right to change, add, subtract or in way alter these Conditions without the prior consent of the Client. By logging into Your account and/or updating files and/or accessing Services provided by Ekco Bournemouth, You are deemed to have accepted these Conditions.

This Agreement is made up of the following documents. If there are any conflicts or inconsistencies between such documents, to the extent of any conflict or inconsistency only, the following order or priority shall be given:

- 1.1 Service Schedule (as the case may be)
- 1.2 Relevant Product Terms or the Managed Service Terms (as the case may be)
- 1.3 General Terms & Conditions

Nothing in these Conditions shall create a partnership or agency between the parties.

If a dispute arises between the parties in relation to the Agreement in any way, the parties shall first try in good faith to amicably resolve the dispute within 28 days of the dispute arising.

Definitions

The term “Ekco Bournemouth” or “We/Us/Our” refers to Ekco Bournemouth Limited, a limited company registered in England and Wales with registered number 09045808 and whose registered office is C/O Ekco Reading Limited, Merlin House Brunel Road, Theale, Reading, England, RG7 4AB.

“Agreement”: the agreement between Ekco Bournemouth and the Client for the provision of Services formed by these Conditions and the Order Confirmation(s) and/or Service Schedule.

“Activation”: occurs when the relevant Service is available for use by the Client.

“Ancillary Systems”: any Software and/or Equipment.

“Associated Company”: in respect of either party, a subsidiary or holding company of that party or any subsidiary of such holding company and the terms “subsidiary” and “holding company” will have the meanings given to them by sections 736 and 736A Companies Act 1985.

“Business Day”: a day which is not a Saturday or Sunday or public or bank holiday in England and Wales.

“Business Hours”: 9am to 5.30pm on each Business Day.

“Client” or “You/Yours”: the customer, as identified on the Service Schedule and/or Order Confirmation(s) and/or invoice.

“Client System”: the Client’s computer system upon which the Software is loaded or otherwise in connection with which the Services are provided.

“Client Portal”: shall mean the web site at <https://portal.scholarwebservices.com>.

“Colocation”: the act of situating multiple related items, with multiple owners, in a single location.

“Colocated Equipment”: refers to switches, servers, cabling and other assets owned or supplied by or for the Client and housed at one of Ekco Bournemouth data centres or third party data centres.



“Conditions”: these conditions to be read in conjunction with the Order Confirmation(s) and/or Service Schedule and any Relevant Product Terms or Managed Service Terms

“Data Centre”: means the data centre(s) designated by Ekco Bournemouth for this Agreement.

“Equipment”: any hardware, cabling and/or other equipment provided to the Client by Ekco Bournemouth in connection with the Agreement.

“Fees”: the charges due to Ekco Bournemouth under the Agreement in relation to the Services, as set out on the Service Schedule and/or Order Confirmation(s) and/or invoice(s).

“Netiquette”: generally accepted standards and codes of practice for use of the Internet including but not limited to sending bulk unsolicited email, mail bombing or impersonating another person, organisation or website.

“Order Confirmation”: the order confirmation form(s) and/or invoice(s) submitted by Ekco Bournemouth to the Client by email or otherwise in writing for the provision of the Services, in response to the Client’s order or request.

“Service”: those development, implementation, consultancy, hosting and other services (if any) provided to the Client pursuant to the Agreement, as described on a relevant Service Schedule/Order Confirmation/Invoice, together with any Support Services and Domain Services.

“Managed Service Terms”: Ekco Bournemouth terms and conditions in place in relation to Ekco Bournemouth’ Managed Services (as detailed therein) from time to time.

“Service Schedule”: the Ekco Bournemouth schedule form submitted by Ekco Bournemouth to the Client by email or otherwise in writing detailing the payment schedule and particulars for the provision of the Services.

“Scheduled Maintenance”: means any work or maintenance performed on the Ekco Bournemouth’ Ancillary Systems or Client System from time to time which shall be notified to the Client at least 72 hours (unless otherwise agreed between Ekco Bournemouth and the Client) in advance of the commencement of such maintenance.

“Emergency Maintenance”: means any emergency work or maintenance for continued or optimum provision or protection of service performed on the Ekco Bournemouth’ Ancillary Systems or Client System whether or not pre-notified. Ekco Bournemouth shall endeavour to give the Client reasonable notice of such emergency work or maintenance but this may not always be possible.

“Third-party Scheduled Maintenance”: means any work or maintenance performed by a third party including but not limited to third party supplier or affiliates from time to time whether or not pre-notified. Ekco Bournemouth shall endeavour to give the Client reasonable notice of such work or maintenance but this may not always be possible.

“Domain Services”: those domain registration and other related services (if any) provided to the Client by Ekco Bournemouth pursuant to the Agreement, as described on a relevant Order Confirmation.

“Internet”: shall mean the worldwide collection of private and public router-based networks that are interconnected via gateways and exchange points, and which all utilise the TCP/IP protocol suite.

“Intellectual Property Rights”: any and all patents, trade marks, service marks, copyright, moral rights, rights in design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating to the same.

“CDR”: means Committed Data Rate which is the minimum amount of IP Transit that the Client is committed to during the Minimum Term or any Subsequent Term.

“IP Transit”: means the act of passing IP traffic from one location to another via a layer 2 or layer 3 connection as measured in Mbps and/or volume of Gigabytes.

“Minimum Term”: shall mean the minimum period of twelve months during which the Client must pay for the relevant Service. In all cases the relevant Notice must be given in writing.



“Subsequent Term”: shall mean the extension of the minimum term during which the Client must pay for the relevant Service. The Subsequent Term shall commence in conjunction with the conclusion of the Minimum Term or any active Subsequent Term. Where no Subsequent Term is explicitly stated, the subsequent term shall mean 90 days. In all cases the relevant Notice must be given in writing.

“Notice”: shall mean 30 days written notice to cancel the relevant Service. Notice must not be considered as received by Ekco Bournemouth unless the Client has received acknowledgement by post or email.

“Software”: any communications software or other software provided to or made available to the Client by Ekco Bournemouth in connection with the Agreement.

“Remote Hands”: remote support assistance for Colocated Equipment or Ancillary Systems provided by Ekco Bournemouth to the Client.

2 INTERPRETATION

2.1 The headings used in the Agreement are inserted for convenience only and are not intended to be part of nor to affect the meaning or interpretation of any of the Agreement.

2.2 The expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture.

2.3 The words “include”, “includes”, “including” and “included” will be construed without limitation unless inconsistent with the context.

3 SERVICE PROVISION

3.1 Ekco Bournemouth reserves the right at any time and from time to time to improve, correct or otherwise modify all or any of the Services (including substituting Software and/or Equipment) provided that such modification does not materially reduce the overall quality of the Services. Ekco Bournemouth will endeavour to give the Client reasonable notice of any such modification, where this is reasonably practicable.

3.2 Ekco Bournemouth will use its reasonable endeavours to provide the Services in accordance with any timescale set out on the Service Schedule and/or Order Confirmation(s), but will not be liable to the Client where, based on those reasonable endeavours, it fails to meet any timescale.

3.3 Ekco Bournemouth will not be liable for any failure to provide the Services resulting from any breach by the Client or its employees, agents or subcontractors of the Agreement.

3.4 Ekco Bournemouth will not be obliged to provide any services not referred to on the Order Confirmation(s)/Invoices and/or Service Schedule. Furthermore, Ekco Bournemouth cannot provide the Services where the Client makes use of incompatible communication systems.

3.5 For the avoidance of doubt, all services exclude:

3.5.1 backup of any data stored on the Ekco Bournemouth servers, Ancillary Systems and Client System(s).

3.6 Without prejudice to its other rights and remedies, Ekco Bournemouth may at its sole discretion suspend the provision of the whole or any part of the Services (temporarily or permanently) and will have no liability to provide the Services on the occurrence of any of the following events:

3.6.1 any Scheduled Maintenance, Emergency Maintenance or Third-party Scheduled Maintenance;

3.6.2 issue by any competent authority of an order which is binding on Ekco Bournemouth which affects the Services;

3.6.3 if the Client fails to pay any Fees or any other sums owing to Ekco Bournemouth by the Client when they fall due;

3.6.4 if any event occurs which would entitle Ekco Bournemouth to terminate the Agreement;

3.6.5 if the bandwidth (IP Transit) or computer resource (CPU, memory, disk space) used by the Client in relation to the Services exceeds any agreed or stipulated level and Ekco Bournemouth determines in its



sole discretion that suspension is necessary to protect all and any internet solutions provided by Ekco Bournemouth from time to time;

3.7 Ekco Bournemouth reserves the right to charge the Client additional fees should the bandwidth (IP Transit) or CDR or computer resource (CPU, memory, disk space) used in relation to the Services exceed the stipulated amount on the Order Confirmation(s) and/or Service Schedule.

3.8 Ekco Bournemouth will, upon arrangement and provided that no Fees are due and payable, allow the Client reasonable access to any Colocated Equipment hosted by Ekco Bournemouth as part of the Services. Access will only be granted to the Client if Ekco Bournemouth is given at least 1 Business Days' notice in writing that access is required and acceptance of that request has been confirmed in writing to the Client by Ekco Bournemouth.

3.9 The terms of the Agreement and the documents referred to in it form the entire agreement between Ekco Bournemouth and the Client in relation to the Services and all other understandings, agreements, warranties, conditions, terms or representations, whether express or implied, statutory or otherwise, are excluded to the fullest extent permitted by law. The Client may not rely upon any representation made or given by any employee of Ekco Bournemouth prior to the Agreement being entered into unless confirmed in the Agreement.

4 SERVICE DELIVERY

4.1 The Client acknowledges that, given the nature of such services, Ekco Bournemouth cannot guarantee that the Services, when delivered via the Internet, will be uninterrupted or error free. It is technically impracticable for Ekco Bournemouth to provide a 100% fault-free Service and Ekco Bournemouth does not warrant or undertake to do so.

4.2 To the fullest extent permitted by law and save as provided elsewhere in the Agreement, the Services and any Client Systems and Ancillary Systems are provided by Ekco Bournemouth to the Client on an "as is" and "as available" basis and no warranty or representation (express or implied) of any kind are given in connection with the Agreement including as to satisfactory quality and fitness for a particular purpose. In particular, Ekco Bournemouth gives no warranty or representation that:

4.2.1 the Services will meet the Client's requirements;

4.2.2 the Services will be provided on an uninterrupted, timely, secure or error-free basis.

4.3 Where the Client accesses Ekco Bournemouth' services from locations outside the UK, the Client does so, on the Client's own initiative and is responsible for compliance with local laws.

4.4 Where Ekco Bournemouth provides the Client with goods or services from Amazon Web Services (AWS), all such goods and services are supplied exclusively and subject to and in accordance with the terms and conditions of AWS in place from time to time, which the Client agrees to comply with (current details of which are detailed at www.aws.amazon.com/legal ("AWS Terms")).

4.5 Ekco Bournemouth warrants that it will provide the Services with reasonable care and skill and in accordance with any SLA. Ekco Bournemouth will not be liable for a breach of such warranty unless the Client notifies Ekco Bournemouth in writing of such failure within 14 days of the failure.

4.6 If the Client makes a valid claim against Ekco Bournemouth based on a failure by Ekco Bournemouth to comply with the warranty set out in clause 4.5 Ekco Bournemouth may, at its option, take such steps as it deems necessary to remedy such failure or refund such part of the Fees as relates to such Services, provided that the liability of Ekco Bournemouth under such warranty will in no event exceed one times the amount of the Fees paid to Ekco Bournemouth by the Client (excluding VAT and expenses) in the 12 month period prior to the date on which the Client makes the claim. If Ekco Bournemouth complies with this clause, it will have no further liability for a breach of the said warranty.

5 REMOTE HANDS

5.1 Ekco Bournemouth reserves the right to charge the Client £150+VAT per hour for Remote Hands support.



6 CLIENT'S OBLIGATIONS

6.1 The Client agrees that it shall:

6.1.1 save as provided in any Order Confirmation and/or Invoice and/or Service Schedule, be responsible for keeping regular and full back ups of all material and data hosted by Ekco Bournemouth including any web site, email system, spam filtering system or other system operated by the Client on a daily basis (or more frequent basis if required by best computing practice) including the Client System and/or Ancillary Systems. For the avoidance of any doubt Ekco Bournemouth will not attempt to restore any lost material or data of the Client's except where such loss occurred as a direct result of a Ekco Bournemouth server crash.

6.1.2 immediately notify Ekco Bournemouth on becoming aware of any unauthorised use of all or any of the Services and/or relevant part of the Client System;

6.1.3 complete its own checks to ensure that any registration or renewal has been made successfully.

6.1.4 complete its own checks to ensure that any backups on Ekco Bournemouth Cloud Backup service have been completed successfully.

6.1.5 ensure that all communication details which it provides to Ekco Bournemouth are at all times true, current, accurate and complete. The Client will promptly notify Ekco Bournemouth of any change to such details and acknowledges that Ekco Bournemouth will not be liable for any loss suffered or incurred by the Client as a result of its failure to notify such changes to Ekco Bournemouth. Clients are advised that a failure to at all times have true, accurate and complete communication details may result in the temporary suspension of a Client's account;

6.1.6 independently monitor its bandwidth in relation to the use of Services and report to Ekco Bournemouth any use of bandwidth over and above those agreed or stipulated levels set out in the Order Confirmation and/or Service Schedule;

6.1.7 be entirely liable for all activities conducted and charges incurred under its passwords and user names whether authorised by it or not and the Client acknowledges that Ekco Bournemouth shall not be liable for any loss of confidentiality or for any damages arising from the Client's inability to comply with these Conditions;

6.1.8 comply with any security policy notified to it from time to time by Ekco Bournemouth and, in particular, ensure that all passwords and user names provided to it by Ekco Bournemouth are at all times kept confidential, used properly and not disclosed to unauthorised people. If the Client has any reason to believe that any password or user name has become known to someone not authorised to use it or is being or is likely to be used in an unauthorised way or of any other breach of security then the Client will inform Ekco Bournemouth immediately;

6.1.9 promptly provide to Ekco Bournemouth and/or its consultants, employees and agents such information and assistance as they may reasonably require in order to be able to carry out the Services and, where relevant, deliver and install any Ancillary Systems.

6.1.10 will procure all necessary rights from third parties (including intellectual property licences of computer software and website content including ringtones and music) which are from time to time required in order for Ekco Bournemouth to be able legally to provide the Services to the Client.

6.1.11 obtain and maintain insurance over all parts of the Client System and/or Colocated Equipment which are located on the premises of Ekco Bournemouth or any of its Data Centres and to provide evidence that such insurance is in place, upon Ekco Bournemouth's demand.

6.1.12 procure all necessary rights from third parties which are from time to time required in order for Ekco Bournemouth to be able legally to provide the Services.

6.1.13 ensure that its systems (including the Client System) meet any minimum system specifications notified to the Client from time to time.



6.2 The Client acknowledges and understands that it is required to comply with PCI DSS. The Client is responsible to encrypt sensitive data using appropriate methods. For further details on PCI DSS Compliance and the Client's responsibilities in upholding the standard they need to contact the PCI Security Standards Council (<https://www.pcisecuritystandards.org>).

6.3 The Client agrees that it shall not:

6.3.1 use the Services, Ancillary Systems and/or Client System or allow them to be used for any unlawful purpose or for the publication, linking to, issue or display of any unlawful material (including any pirated software or any material which is obscene, pornographic, threatening, malicious, harmful, abusive, defamatory or which breaches the rights including Intellectual Property Rights of any third party or which is or encourages criminal acts or contains any virus, worm, trojan horse or other harmful code) whether under English law or regulation, the laws or regulations of the Client's country or any other place where the results of such purpose or the material in question can be accessed.

6.3.2 use the Services, Ancillary Systems and/or Client System or allow them to be used in breach of good Netiquette practices.

6.4 The Client acknowledges and agrees that it will not own or acquire any rights under this Agreement in any Intellectual Property in or relating to the Services or created in performing the Services and that it will have no other rights in or to the Services other than the rights expressly granted by the Agreement.

6.5 No Intellectual Property Rights created or acquired by Ekco Bournemouth will transfer or be assigned to the Client unless Ekco Bournemouth and the Client have signed a written assignment document to that effect.

7 DELIVERY AND COLLECTION

7.1 The Client accepts full responsibility for the delivery and collection of Colocated Equipment to the Data Centre, and shall ensure that it reaches the Data Centre in working conditions. Ekco Bournemouth does not accept any liability for any loss or damage caused in transit to and from the Data Centre or on the installation of the Colocated Equipment by or for the Client. When the Colocated Equipment is delivered, the package it is delivered in must be removed from the Data Centre by the Client. The Client shall not be entitled to collect their Colocated Equipment for maintenance or otherwise unless all unpaid fees for the Services are paid in full prior to such collection.

7.2 The Client accepts;

7.2.1 Where all the Services are terminated, Ekco Bournemouth will arrange for the Colocated Equipment to be stored without charge for 7 days. If the Colocated Equipment is stored beyond this period, there will be a storage charge of £50+VAT per week per item of equipment. Ekco Bournemouth reserves the right to exercise a lien over the Colocated Equipment in respect of any unpaid fees. It shall also be entitled, without any liability to the Client, but not obliged, to sell the Colocated Equipment if it is not collected after 3 days from the termination date in order to recoup any unpaid fees and costs of sale.

7.2.2 Upon termination of a Colocation Service, the Client shall ensure that the Colocation Space is completely vacated and returned to Ekco Bournemouth in the physical and aesthetic condition that the Colocation space was originally provided to the Client prior to the commencement of the Colocation Services. The Client shall be solely responsible for all remedial work required to return the Colocation space to its original state, and to this respect, the Client indemnifies Ekco Bournemouth against any such costs incurred as a result of the Client, its employees or representatives. In such circumstance, Ekco Bournemouth shall provide a quotation and invoice to the Client for all reasonable direct costs incurred and the Client shall make immediate payment on the outstanding amount.

8 PAYMENT TERMS

8.1 The Fees are payable to Ekco Bournemouth subject to the following conditions:

8.1.1 Fees payable monthly, quarterly or yearly will be paid in advance and will not be refundable in whole or part if the Agreement or any relevant part is terminated during the period to which the payment relates.

8.2 The Client agrees to pay Ekco Bournemouth' invoices within 14 days of invoice date.



8.3 All Accounts that have any unsettled fees 14 days after their invoice due date will be suspended.

8.4 If invoices are not settled in full by then, the Client will without prejudice to its other rights and remedies (including the right to suspend the Services under clause 3.6.3) be liable to pay interest on any sum outstanding from the due date for payment at the annual rate of 7% above the base lending rate from time to time of Natwest Bank plc accruing on a daily basis until payment is made whether before or after any judgement.

8.5 Ekco Bournemouth only accepts payment by Direct Debit, standing order or electronic payment i.e. BACS. Ekco Bournemouth may at its discretion only restrict the methods by which it will accept payment.

8.6 Prices stated or quoted by Ekco Bournemouth do not include VAT unless explicitly stated in writing.

8.7 Services invoiced monthly can only be paid via Direct Debit which has to be setup at the time of order.

8.8 If Ekco Bournemouth cannot collect a Direct Debit payment, because the Client has cancelled the instructions with the Client's bank or there are insufficient funds in the Client's account, a processing fee of £75+VAT will be applied to the outstanding balance.

8.9 Ekco Bournemouth reserves the right to immediately suspend all Services on the Client's account should the Client's Direct Debit fail for any reason outside Ekco Bournemouth's control.

8.10 Without prejudice to any other of its rights and remedies, Ekco Bournemouth will be entitled to remove the Client's data from its systems and any Equipment and/or put the Equipment to any use other than the Client's if any amount due under the Agreement is not paid within 28 days of its due date for payment. Ekco Bournemouth is not required to back up such data or return the same to the Client prior to any such removal or following termination of the Agreement.

8.11 All accounts that have any unsettled invoices 28 days after the due date will be passed onto a Debt Recovery Agency, where additional recovery charges and court cost may accrue.

9 INFLATION

9.1 In this clause "RPI" is defined as Retail Prices Index published by the Office of National Statistics or any successor body. Ekco Bournemouth reserves the right to apply annual price increases at any time during the contract duration, but no more than once a year, at the level of RPI plus five per cent giving not less than 30 days notice to the Client.

10 UTILITY COSTS

10.1 The Client and Ekco Bournemouth acknowledge that wholesale utility costs of the Data Centre Facilities can vary, and Ekco Bournemouth reserves the right to make annual adjustments in respect of the cost of the Services in line with utility cost fluctuations. However, should utility cost fluctuate more than 5% from the most recent adjustment under this clause or if none then the start of the relevant Service Schedule, Ekco Bournemouth may make an adjustment provided the frequency of this adjustment does not exceed once a quarter.

11 COMMENCEMENT AND TERM

11.1 Following Activation, the Service shall continue to be provided for a period equal to the Minimum Term. If the Client cancels this Agreement during the Minimum Term they will be charged for the remainder of the Minimum Term. If the Client cancels this Agreement during the Subsequent Term they will be charged for the remainder of the Subsequent Term.

11.2 Unless otherwise stated in the Relevant Product Terms or Managed Service Terms cancellation requires 30 days prior written notice (by either party) unless otherwise stated on the Service Schedule

11.2.1 Termination notification by the Client must be made in writing to Ekco Bournemouth to the following address:

Ekco Bournemouth Limited
Basepoint Business Centre



Office 59
Aviation Park West
Hurn
Christchurch
Dorset
BH23 6NX

Or by email to;
support@ek.co

11.2.2 Any notification of termination by the Client must be authorised by the contact on the order or a staff member with suitable authority and must specify the Service Schedule reference of the Service and the date on which Service is to be terminated.

11.2.3 Termination notification by Ekco Bournemouth to the Client will be made by email to the contact stated on the Services Schedule and/or Order Confirmation by the Client's Account Manager or a member of the Accounts Department. The Client must not assume that Ekco Bournemouth has received notice of Termination unless Ekco Bournemouth has confirmed this in writing, or the Client has used registered post. Proof of postage is not taken as proof of delivery.

11.3 Either party may terminate the Agreement (or, at its option, any part of it) forthwith by notice in writing to the other if the other party:

11.3.1 is in material breach of the Agreement and fails (where the breach is capable of remedy) to remedy the breach within 30 days of the receipt of a request in writing to remedy the breach, such request setting out the breach and indicating that failure to remedy the breach may result in termination of the Agreement;

11.3.2 becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986;

11.3.3 is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

11.3.4 has a receiver, manager, administrator or administrative receiver appointed over all or any parts of its undertaking, assets or income, has passed a resolution for its winding-up, or has a petition presented to any court for its winding-up or for an administration order; or

11.3.5 has ceased or threatened to cease to trade.

11.4 Upon termination of the Agreement, the Client will forthwith:

11.4.1 cease to use the Software, Equipment and Services;

11.4.2 erase the Software from the Client System and certify to Ekco Bournemouth that this has been done;

11.4.3 return to Ekco Bournemouth any hardware or other equipment loaned to the Client in connection with the Services or any other materials and equipment owned by Ekco Bournemouth; and

11.4.4 pay all outstanding invoices and Fees raised by Ekco Bournemouth pursuant to the Agreement.

12. DATA PROTECTION, CLIENT DATA AND WARRANTIES

12.1 In performing its obligations under the Agreement, Ekco Bournemouth shall comply with:

12.1.1 up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the General Data Protection Regulation ((EU) 2016/679) ("GDPR") is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998; and

12.1.2 any privacy and/or data protection notice issued by it from time to time.



12.2 Subject always to clause 12.1:

12.2.1 Ekco Bournemouth does not warrant the integrity of the data that is provided by the Client in connection with the Services (“Client Data”).

12.2.2 The Client accepts that Ekco Bournemouth has no control over the way in which any third party (other than its employees, agents and subcontracts) treat Client Data including but not limited to the way in which it shall be stored and whether it is free from corruption, received, transferred or accessible to the Client or inaccessible by third parties. The Client shall not hold Ekco Bournemouth responsible for the actions or omissions of such third parties.

12.2.3 The Client accepts full responsibility and liability in relation to the Client Data and shall defend and hold harmless Ekco Bournemouth against any actions arising against Ekco Bournemouth as a result of the use of the Ekco Bournemouth’ Services, Ancillary Systems and/or Client system(s), save to the extent that this is caused by any breach by Ekco Bournemouth of its obligations under the Agreement. The Client shall ensure at all times that it has adequate copies and backups stored independently of Ekco Bournemouth Ancillary Systems.

12.2.4 Ekco Bournemouth does not monitor Client Data movement or the content of such data. To this extent Ekco Bournemouth is a mere conduit and all responsibility in relation to the use of Services, Ancillary systems and/or Client System(s) resides solely with the Client (including without limitation software licensing, data licensing, integrity, content, dissemination, format, backups schedules and transfers).

12.3 The Client shall comply with any privacy and/or data protection notice provided to it by Ekco Bournemouth from time to time.

13 SOFTWARE AND LICENSING

13.1 Ekco Bournemouth may provide software licences to the Client as a part of the provision of Services. The Client agrees that it shall not copy or redistribute any Software Ekco Bournemouth provides to the Client, unless expressly permitted by this Agreement or use such Software after the expiration or termination of the Agreement. You may not remove, modify or obscure any copyright, trade mark, or other proprietary rights notices that appear on any Software Ekco Bournemouth provides to the Client. Unless permitted by the terms of an open source Software licence, you may not reverse engineer, decompile or disassemble any Software Ekco Bournemouth provides to the Client except and to the extent that you are expressly permitted by applicable law to do this, and then following at least ten (10) days advance written notice to Ekco Bournemouth.

13.2 If the Client uses any non-Ekco Bournemouth provided Software on the Client System and/or Ancillary Systems, the Client represents and warrants to Ekco Bournemouth that the Client has the legal right to use the Software in that manner.

13.3 Whereby the Client installs software as a part of the provision of Services or whereby Ekco Bournemouth installs software under instruction from and/or on behalf of the Client as a part of the provision of Services, the Client agrees that they are solely responsible for ensuring licensing compliance under the terms of the Software vendors licensing agreement for the Software. Whereby the Client does not comply with those licensing agreements and permitted usage, Ekco Bournemouth reserves the right to pass on all costs relating to non-compliant use of the Software and/or license.

13.4 Ekco Bournemouth may perform audits of the Clients Software license usage from time to time providing the Client with reasonable notice of such audit where reasonably practicable.

13.5 The Client acknowledges that: Software in general is not error-free, and agrees that the existence of such errors will not constitute a breach of the Agreement.

14 IP ADDRESSES

14.1 Ekco Bournemouth may assign to the Client IP addresses as part of the provision of Services. Such IP addresses shall (upon Ekco Bournemouth request and to the extent permitted by law) revert to Ekco



Bournemouth after termination of the Clients Services, whereupon the Client shall cease using such addresses. At any time after such termination, Ekco Bournemouth may re-assign such addresses to another user or Client.

14.2 All IP addresses requested by the Client shall be accompanied with a RIPE IP justification form as provided by Ekco Bournemouth from time to time.

14.3 In the event that the Client wishes to use their own PI (Provider Independent) space, the Client shall advise Ekco Bournemouth in writing. If the Client utilises its own PI space, it shall retain ownership of the PI space until such point where it is surrendered by the Client.

15 DOMAIN SERVICES

15.1 The Client undertakes and warrants to Ekco Bournemouth that the registration of any domain name requested by it (a "Requested Domain"):

15.1.1 and the manner in which it is to be directly or indirectly used will not infringe any third party rights; and

15.1.2 is not being made in bad faith or could be considered to be an abusive registration under the ICANN or Nominet dispute resolution policies, whichever is appropriate. The Client also confirms and warrants that any Requested Domain is not being registered and will at no time whatsoever be used for any unlawful purpose.

15.2 The Client acknowledges that, whilst Ekco Bournemouth will use its reasonable endeavours to register a Requested Domain, Ekco Bournemouth will not be obliged to accept any request to register or continue to process any registration of a Requested Domain.

15.3 The Domain Services are limited to forwarding the application for registration to the relevant naming authority, providing reasonable administration services in relation to the application and notifying the result of the application to the Client within a reasonable period after communication from the authority. Ekco Bournemouth will use reasonable endeavours to notify the Client of any renewal dates however Ekco Bournemouth accepts no liability for the loss of registration of any Requested Domain.

15.4 Ekco Bournemouth makes no representations or warranties (expressed or implied) of any kind (and they are expressly disclaimed) with respect to availability or likelihood of registration of any Requested Domain. The Client acknowledges that Ekco Bournemouth cannot guarantee the reservation or registration of any Requested Domain and that the registration of such domain name will be subject to any registration requirements of the appropriate registry.

15.5 The Client will check that the domain name as reported on all documents sent to the Client (such as invoices and e-mail notifications) is spelt correctly. The Client will notify Ekco Bournemouth of any incorrect spellings of a Requested Domain promptly and in any event within 24 hours of receiving such document.

15.6 The Client will at all times comply with the terms and conditions (from time to time subsisting) applying to the registration of domain names published by the relevant naming authority (including the domain dispute resolution policy of that authority) and any other authority having similar force.

15.7 If the Client wishes to transfer ownership of a Requested Domain then it will procure that all necessary consents to that transfer are obtained and will deliver up to Ekco Bournemouth, on demand, documentary evidence of that all such consents have been obtained. The Client agrees that prior to transferring ownership of a Requested Domain to another person (the "Transferee") the Client will procure that the Transferee agrees in writing to be bound by the terms of the Agreement. A Requested Domain will not be transferred until Ekco Bournemouth receives such written assurances as it requires that the Transferee is bound by the terms of the Agreement.

15.8 Ekco Bournemouth will not transfer ownership of a Requested Domain until all Fees attributable to the Domain Services which are due have been paid by the Client to Ekco Bournemouth.

15.9 Ekco Bournemouth may from time to time change the registrar that a Requested Domain is held with, at its discretion and without notice to the Client.



15.10 The Client agrees and acknowledges that Ekco Bournemouth will make registration information provided by the Client in relation to the Requested Domain available to ICANN, Nominet or any other appropriate registration authority, the registry administrators, and other third parties as applicable laws may require or permit including the police or other enforcement authority. The Client further acknowledges that Ekco Bournemouth may make publicly available, or directly available to third party vendors, some, or all, of the domain name registration information provided, for purposes of inspection (such as through the WHOIS service) or other purposes as required or permitted by ICANN, Nominet and applicable law. The Client consents to any and all such disclosures, whether during or after the term of registration of the Requested Domain. The Client irrevocably waives any and all claims and causes of action arising from such disclosure or use of the domain name registration information by Ekco Bournemouth.

15.11 The Client agrees that following any upgrades, downgrades or any other changes made by the Client to their Domain or Hosting package the Client will at all times independently manage their Domain(s)

15.12 The Client may renew the Requested Domain by logging in to the Client Portal and paying the relevant renewal fee.

15.12.1 For .uk domains (Nominet registry); If the Client does not renew the Requested Domain before its expiry date, the Client will have up to 30 days (“Protected Period”) to renew the Requested Domain at the original renewal fee shown on the domain renewal notice emails. After the 30 days Protected Period, the Requested Domain will be suspended. Once the Requested Domain has been suspended, a 60 day “Grace Period” will commence upon which the Client can renew the Requested Domain (at no extra cost/but with an additional redemption fee of £75+VAT). If the Requested Domain is not renewed during the “Grace Period”, it will be cancelled and deleted from the register after 90 days from the expiry date and made available for resale through a third party registrar.

15.12.2 A Requested Domain registered with a registry which does not allow for a grace and/or redemption period may be unrecoverable by the Client or Ekco Bournemouth following the expiry date. Further, Ekco Bournemouth is under no duty to attempt to recover such Requested Domain. Upon expiry the Requested Domain may be made available for resale through a third party registrar.

Domain names may be subject to additional terms and conditions as laid down by the respective governing bodies, reseller, registrar or registry; where possible relevant links have been provided below:

.uk

- Registrant terms: www.nominet.org.uk/nominet-terms
- Domain dispute policy: www.nominet.org.uk/disputes/drs/policy/

.eu

- Dispute resolution: <http://www.eurid.eu/en/eu-domain-names/disputes>
- Further information can be found at www.eurid.eu

.com, .net, .org, .info, .biz, .name, .cc, .tv, .cn, .be, .at, .es, .me
user/

- Registrants Rights and Responsibilities (ICANN) <http://www.icann.org/en/registrars/registrar-rights-responsibilities-en.htm>
- Mesh Digital terms and conditions <http://www.domainterms.com/user/>

.uk.com, .gb.com, .eu.com, .de.com, .jpn.com, .uk.net, .gb.net, .us.com, .qc.com, .web.com

- CentralNic terms and conditions: www.centralnic.com/support/terms/domains
- Further information can be found at www.centralnic.com



16 LIMITATION OF LIABILITY

16.1 Nothing in this agreement shall limit or exclude the Ekco Bournemouth liability for:

- death or personal injury caused by its negligence;
- fraud or fraudulent misrepresentation; or
- any other liability which cannot be limited or excluded by applicable law.

16.2 Subject to clause 16.1, Ekco Bournemouth will not be liable to the Client in contract, tort, misrepresentation or otherwise (including negligence or breach of statutory duty), whether or not caused by the negligence of Ekco Bournemouth or its employees, agents or authorised representatives, which arises out of or in connection with the Agreement for:

- loss of profit;
- loss of business;
- loss of revenue;
- loss of agreements or contracts;
- loss of anticipated savings;
- loss of goodwill or otherwise (whether direct or indirect);
- loss of data and/or corruption of data;
- loss of software and/or other information; or
- any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever;

16.3 Subject to clause 16.1, Ekco Bournemouth total liability to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement shall be limited to one hundred per cent (100%) of the average annual fees paid for the Service by the Client (excluding VAT and expenses) during the preceding 12 month period.

17 CLIENT INDEMNITY

17.1 The Client will fully indemnify and keep Ekco Bournemouth its subsidiaries and affiliates, officers, partners, directors employees and agents fully indemnified from and against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including legal fees) whatsoever incurred by it and arising from any of the following:

- 17.1.1 the Client's breach of the Agreement, negligence or other default;
- 17.1.2 the operation or break down of any IT systems owned or used by the Client including the Client System but not the Equipment; or
- 17.1.3 the Client's use or misuse of the Services.

18 FORCE MAJEURE

Neither party is under any liability to the other party in respect of anything which, apart from this provision, may constitute a breach of the Agreement arising by reason of force majeure which means, in relation to either party, circumstances beyond the reasonable control of that party including acts of God, acts of any governmental or supra-national authority, war or national emergency, riots, civil commotion, fire, network failure, systems fault, unauthorised use or access to the IT systems of Ekco Bournemouth or the Client, explosion, flood, epidemic, lock outs (whether or not by that party), strikes and other industrial disputes (in each case, whether or not relating to that party's workforce), restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials and currency restrictions, to the extent outside of its reasonable control.



19 SEVERABILITY

The illegality, invalidity or unenforceability of any provision of the Agreement will not affect the legality, validity or enforceability of the remainder. If any such provision is found by any court or competent authority to be illegal, invalid or unenforceable, the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without thereby rendering them illegal, invalid or unenforceable.

20 WAIVER

20.1 The failure or delay by either party in exercising any right, power or remedy of that party under the Agreement will not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by either party of any right, power or remedy under the Agreement will not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.

20.2 Any waiver by either party of a breach of or default under any of the terms of the Agreement by the other party is not deemed a waiver of any subsequent breach or default and in no way affects the other terms of the Agreement.

21 ASSIGNMENT AND SUBCONTRACTING

The Client may not assign the benefit or delegate the burden of the Agreement nor sub-license any of its rights under the Agreement (including to its Associated Company) without the prior written consent of Ekco Bournemouth. Any consent provided by Ekco Bournemouth under this clause is given on condition that the assignee or licensee, as the case may be, agrees to comply with the terms of the Agreement as if they were the Client. Ekco Bournemouth may sub-contract or assign any or all of its rights and obligations under the Agreement.

22 AMENDMENTS

No variation or amendment to the Agreement (including any Order Confirmation or Service Schedule) is effective unless agreed in writing and signed by an authorised representative of Ekco Bournemouth.

23 LAW

This Agreement shall be governed by and construed exclusively in accordance with English law, and the parties hereby submit to the exclusive jurisdiction of the English courts.

24 MISCELLANEOUS

The Client shall not at any time during the duration of the Agreement or for 6 months after the termination of the Agreement, solicit or entice away from Ekco Bournemouth or employ or attempt to employ any person who is an employee of Ekco Bournemouth. If the Client does at any time during the duration of the Agreement or for 6 months after the termination of the Agreement, solicit or entice away from Ekco Bournemouth or employ any person who is an employee of Ekco Bournemouth (including any key contractors related to or in connection with the Agreement) an immediate fee of £45k (forty five thousand pounds sterling) will be charged to the Client followed by legal action.