



## CONFIDENTIAL

All information contained in this document is confidential and proprietary information, and must not be divulged to any third party without prior written consent and authority of Ekco.

## BACKGROUND

Ekco shall, in consideration of the payment of the charges as outlined in Schedule 2, supply the services as outlined in Schedule 1 to this Agreement.

This Agreement is effective upon signature and will remain in force subject to **Clause 19 – Termination**.

### 1. Definitions

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

**Additional Order** means the commission of additional Services pursuant to clause 8 and the entry by the parties into an Additional Order Form;

**Additional Order Form** means the form available at Schedule 7;

**Agreement** means the services agreement reached between the Customer and Ekco as set forth herein comprising **Clauses 1 to 22** hereof and the **Schedules** and any other documents set out or referred to therein;

**Applicable Laws** means all Acts of the Oireachtas, statutory instruments, regulations, orders, other legislative provisions and international law obligations which apply to this Agreement and the provision of the Services;

**Anniversary Date** means an anniversary of the Commencement date;

**Beyond Economical Repair** means greater than four years old and or the cost of repair is greater than 60% of the asset value;

**Business Day** means a day (other than a Saturday or Sunday) on which banks are generally open for business in Ireland;

**Charges** means the charges specified in Schedule 2;

**Commencement Date** means the date from which it is agreed that the Services shall be available as stated in Schedule 2;

**Confidential Information** has the meaning given to it in **Clause 11**;

**Customer** means the customer to whom Ekco shall deliver the Services, and as specified in the relevant supporting documentation (Ekco purchase order or invoice);

**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 as in connection with the Services;

**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 Responsibilities** means the customer responsibilities set out in Schedule 5;

**Data Processing Schedule** means Schedule 6;

**Data Protection Laws** means the Data Protection Acts 1988 to 2018, where applicable, as amended from time to time and any regulations or enactments thereunder, Directive 95/46/EU and any other EU Regulations, Directives, Decisions on data protection or data privacy, codes or practice and guidance issued by the Data Protection Commissioner, including but not limited to, the Personal Data Security Breach Code of Practice and Regulation 2016/679 (“GDPR”);

**Effective Date** means the date of this Agreement;

**Ekco** means Ekco Cloud Limited (registered number 488097) with registered office address Mahon House, The Diamond, Main Street, Malahide, Dublin K36 R623 Ireland;

**Equipment** means the equipment as specified in the Service Descriptions (as amended from time to time in accordance with this Agreement);

**Force Majeure** means, in relation to a party, any of the following events or circumstances beyond the reasonable control of that party and which is not due to the act, error, omission, breach, default or negligence of the party or any of its officers, employees, servants, agents or contractors:

1. Acts of terrorists;

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2. War declared or undeclared, blockade, revolution, riot, insurrection, civil commotion, invasion or armed conflict;
3. Sabotage or acts of vandalism, criminal damage or the threat of such acts;
4. Natural disasters and phenomena including extreme weather or environmental conditions, fire, flood, earthquake, meteorites, explosions including nuclear explosion, radioactive or chemical contamination or ionising radiation or other elements of nature or acts of God; or
5. Acts of national, local or foreign governmental authorities or courts;

**GDPR** means the EU General Data Protection Regulation 2016/679;

**Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, moral rights, trade marks, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights;

**Normal Business Hours** shall mean the hours between 9.00a.m. and 5.30p.m. in hours of cover on a business day;

**Service Level Agreements** means the minimum service levels in accordance with which the Services are to be provided, as set out in Schedule 3;

**Service Descriptions** means the description of the Services set out in Schedule 4;

**Services** mean the services specified in Schedule 1;

**Term** means the term of this Agreement commencing on the Effective Date and ending on expiry of the Initial Term or earlier when lawfully terminated or later when extended in accordance with **Clause 19**;

**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;

**Third Party Product Provider** means a third party holding Intellectual Property Rights in any Third Party Product; and

**Third Party Terms** means the terms applicable between the Customer and the Third Party Product Provider in respect of a Third Party Product.

In this Agreement.

1. References to Ekco where the context requires shall include its permitted subcontractors and agents;
2. References to persons includes individuals, bodies corporate (wherever

- incorporated), unincorporated associations and partnerships;
3. The headings are inserted for convenience only and do not affect the construction of the Agreement;
4. References to one gender includes all genders;
5. Any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re-enacted; and
6. Any words following the terms “including”, “include”, in particular, or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## ***The Schedules form part of this Agreement.***

Where the requirement of consent from any party is expressly provided for in this Agreement, it may not, unless otherwise stated as being at the discretion of the party giving it, be unreasonably withheld or delayed, or subject to unreasonable conditions.

## **2. TERM, SCOPE AND APPOINTMENT**

- 2.1** This Agreement commences on the Commencement Date as set out in Schedule 2 and shall continue for an initial period of thirty six (36) months unless otherwise agreed and thereafter will continue until terminated on the applicable Anniversary Date by either party giving written notice to the other at least three months before the end of the applicable Anniversary Date.
- 2.2** The Services are set out in Schedule 1, the service targets are set out in Schedule 3, and the Service Descriptions are set out in Schedule 4.

## **3. CHARGES AND PAYMENTS**

- 3.1** The Customer shall pay the Charges as set out in Schedule 2 for Services and the Managed Services.
- 3.2** All amounts and fees stated or referred to in this Agreement are exclusive of value added tax, which shall be added to Ekco's invoice(s) at the appropriate rate.
- 3.3** Ekco shall invoice the Customer in advance for all Services that will be performed by Ekco.
- 3.4** Each invoice is due and payable 30 days after the invoice date.

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**3.5** If the Customer fails to make any payment due to Ekco by the applicable due date for such payment, then, without limiting Ekco's remedies under this Agreement or at law:

**3.5.1** Interest shall accrue on any overdue amounts at the rate of 4% over the base lending rate of Ekco's bankers from time to time, commencing on the due date and continuing until fully paid, whether before or after the judgment. No payment shall be considered made until it is received by Ekco.

**3.5.2** Ekco may, at its sole discretion, suspend part of or all of the Services and/or Managed Services.

**3.6** Ekco shall be entitled to increase the Charges:

**3.6.1** on an annual basis, by reference to each Anniversary Date, upon prior written notice to the Customer; and/or

**3.6.2** at any time, to take into account any increases to Ekco's third party costs, over which Ekco has no control (including but not limited to, its supplier costs). Such increase to the Charges 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.

**3.7** 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 Applicable Law).

## 4. SERVICE REVIEW AND GOVERNANCE

**4.1** The Customer nominated representative and Ekco Service Managers (where sold) shall have regular meetings (dates/frequencies to be mutually agreed) to monitor and review the performance of this Agreement, to discuss any changes proposed in accordance with Clause 7.3 and to discuss the Service Level Agreements.

**4.2** Prior to each Meeting, the Customer's nominated representative shall notify Ekco's Service Delivery Manager, and vice versa, of any problems relating to the provision of the Managed Service for discussion at the meeting. At the meeting, the parties shall agree a plan to address such problems. In the event of any problem being unresolved, or a failure to agree on the plan, matter shall be resolved in accordance with the Dispute Resolution

Procedure, Clause 18. Progress in implementing the plan shall be included in the agenda for the next meeting.

**4.3** A review meeting to assess the performance of Ekco in the delivery of the Managed Service shall be held at annual intervals, or as mutually agreed otherwise. Each meeting shall be attended by senior representatives of the Customer and of Ekco, together with the Project/Service Delivery Managers as set out in Schedule 2.

**4.4** The Customer and Ekco shall review the Service Level Agreement at each Review Meeting and will, in accordance with Clause 7.3, agree modifications to reflect changes in the Customer's requirements for the Managed Service.

## 5. RESPONSIBILITIES OF THE CUSTOMER

**5.1** The Customer shall provide Ekco, its employees, agents, consultants and subcontractors with:

**5.1.1** All necessary co-operation in relation to this Agreement; and

**5.1.2** All necessary access to such information as may be required by Ekco in order to render the Service, including but not limited to Customer Data, security access information and software interfaces to the Customer's other business applications; and

**5.1.3** Such personnel assistance, including the Customer Account Team and other Customer personnel, as may be reasonably requested by Ekco from time to time. The Ekco Account Team shall consist of the personnel listed in Schedule 2. Ekco shall use reasonable endeavours to ensure continuity of its personnel assigned to this Agreement;

**5.2** The Customer will:

**5.2.1** Appoint a contract Manager, who shall have the authority to contractually bind the Customer on all matters relating to this Agreement. The Customer shall use reasonable endeavours to ensure continuity of the contract Manager;

**5.2.2** Comply with all Applicable Laws and regulations with respect to its activities under this Agreement; and

**5.2.3** Carry out the Customer Responsibilities and all other Customer responsibilities set out in this Agreement or in any of the Schedules in a timely and efficient manner. In the event of any delays in Customer's

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provision of such assistance as agreed by the parties, Ekco may adjust any timetable or delivery schedule set out in this Agreement as reasonably necessary.

- 5.2.4 Ensure that all applications and software items (e.g. Operating Systems) are maintained within vendor support throughout the lifecycle of this Agreement.
- 5.2.5 Ensure that proper environmental conditions are maintained for the Equipment and shall maintain in good condition the accommodation of the Equipment, the cables and fittings associated therewith and the electricity supply thereto.
- 5.2.6 Keep and operate the Equipment in accordance with the manufacturer's operating instructions and ensure that only suitably trained and authorised employees are allowed to operate the Equipment.
- 5.2.7 Save as aforesaid, not attempt to adjust, repair or maintain the Equipment and shall not request, permit, or authorise anyone other than the Company to carry out any adjustments, repairs or maintenance of the Equipment.

## 6. RESPONSIBILITIES OF EKCO

- 6.1 Ekco warrants that the Managed Service will be performed with all reasonable skill and care and that it will be provided in accordance with the Service Specification.
- 6.2 The warranty at **Clause 6.1** shall not apply to the extent of any non-conformance which is caused by use of the Service contrary to Ekco's instructions.
- 6.3 If the Service does not conform with the warranty at **Clause 6.1**, Ekco will, at its expense, use all reasonable commercial efforts to correct any such non-conformance promptly, or provide the Customer (at no additional cost) with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranty at **Clause 6.1**.
- 6.4 Notwithstanding the foregoing, Ekco does not warrant that the Customer's use of the Service will be uninterrupted or error-free.
- 6.5 This Agreement shall not prevent Ekco from entering into similar agreements with third parties, or from independently developing, using,

selling or licensing materials, products or services which are similar to those provided under this Agreement.

## 6.6 Software Licensing:

- 6.6.1 Ekco reserves the right not to install, configure or support any software package for which the Customer cannot produce valid and sufficient licensing upon request.
- 6.6.2 Ekco will only provide support for software which is bespoke on a case-by-case basis or as otherwise agreed between the parties in writing. Response times will not apply to support requests arising from any inherent software problems, defects or bugs and Ekco will notify the Customer if it reasonably believes this to be the case in relation to specific calls logged. The Customer is requested to provide confirmation of licensing for all software at the outset of the Service Level Agreement.

- 6.7 Ekco employees will not be obligated to proceed with work that they deem to be dangerous, inappropriate, unlikely to succeed, or liable to cause further problems with the Customer infrastructure or for the Customer generally.

## 7. EKCO PERSONNEL

- 7.1 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.
- 7.2 During, or following twelve months from the termination or expiry of, this 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.
- 7.3 Clause 7.2 shall survive the termination or expiry of this Agreement for a period of 12 months.

## 8. CHANGE CONTROL

- 8.1 If either party wishes to change the scope of the Service (including Customer requests for additional services), it shall submit details of the requested change to the other in writing.

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- 8.2** If either party requests a change to the scope or execution of the Services, Ekco shall, within a reasonable time, provide a written estimate to the Customer of:
  - 8.2.1** The likely time required to implement the change;
  - 8.2.2** Any variations to the Charges arising from the change;
  - 8.2.3** The likely effect of the change on the Project Plan; and
  - 8.2.4** Any other impact of the change on the terms of this Agreement.
- 8.3** If Ekco requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 8.4** If the Customer wishes Ekco to proceed with the change, Ekco has no obligation to do so unless and until the parties have completed an Additional Order Form.

## 9. FORCE MAJEURE

- 9.1** Neither party shall be responsible for failure to carry out any of its duties under this Agreement to the extent to which the failure is caused by Force Majeure, provided that the affected party (being the party suffering the Force Majeure):
  - 9.1.1** Has taken all reasonable steps to prevent and avoid the Force Majeure,
  - 9.1.2** Carries out its duties to the best level reasonably achievable in the circumstances of the Force Majeure;
  - 9.1.3** Takes all reasonable steps to overcome and mitigate the effects of the Force Majeure as soon as reasonably practicable, including actively managing any problems caused or contributed to by third parties and liaising with them;
  - 9.1.4** On becoming aware of the Force Majeure promptly informs the other party in writing that something has happened which is a Force Majeure, giving details of the Force Majeure, which element of the System or Services have been affected, together with a reasonable estimate of the period during which the Force Majeure will continue;

- 9.1.5** Within seven (7) calendar days of becoming aware of the Force Majeure provides written confirmation and reasonable evidence of the Force Majeure; and
- 9.1.6** Notifies the other party when the Force Majeure has stopped.

## 10. CUSTOMER DATA

- 10.1** The provisions of the Data Processing Schedule shall apply to the extent Ekco processes Personal Data on behalf of the Customer in the course of performing the Services.
- 10.2** In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Ekco to use reasonable commercial efforts to restore the lost or damaged Customer Data from the latest backup of such Customer Data. Ekco shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Ekco to perform services related to Customer Data maintenance and backup).

## 11. CONFIDENTIALITY

- 11.1** Ekco and the Customer each agree to keep confidential and not to disclose to any third party any information (excluding information which is or becomes public knowledge other than as a result of the Default of the recipient) relating to the business or trade secrets of the other ("Confidential Information"), or to make use of any such Confidential Information for any purpose other than in connection with the Services or as required by law.
- 11.2** The obligations and restrictions contained above do not apply to information:
  - 11.2.1** Which is, or becomes, public knowledge other than by a breach of this clause;
  - 11.2.2** Which is or becomes known from other sources without restriction on disclosure; or
  - 11.2.3** Which is required to be disclosed by any legal or professional obligation or by any regulatory or government authority.
- 11.3** Ekco may, in connection with this Agreement, receive data in relation to the Customer and the Customer's employees, directors and other officers. Such data may be received from the Customer, its employees, its directors, its

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officers, or from other (for example, published) sources. Ekco shall be responsible for compliance with all obligations imposed by the Data Protection Act 1988 to 2018 with regard to the Processing of Personal Data and on the Free Movement of such Data, and any implementing or amending legislation as may be enacted from time to time.

## 12. INTELLECTUAL PROPERTY

- 12.1** All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Ekco and its licensors.
- 12.2** The Third Party Product Providers remain the owners of the Third Party Product at all times.
- 12.3** The Customer grants Ekco a fully paid-up, non-exclusive, royalty-free, fully transferable and sub-licensable licence to use, copy and modify the Customer Materials for the purpose of providing the Services to the Customer. The Customer must ensure that all software (including applications) comprised within the Customer Materials is legally licensed for use by it and by Ekco in the performance of the Services. Should Ekco need to purchase or rent any licence for software comprised in the Customer Materials in order to perform the Services, the Customer shall promptly obtain such a licence for Ekco, or (at Ekco's option) reimburse Ekco for any such costs incurred in doing so itself.
- 12.4** The Customer agrees that Ekco may publicly disclose that Ekco is providing Services to the Customer and may use its name and logo to identify the Customer as Ekco's customer in promotional materials, including press releases. Ekco will not without the Customer's consent use such name or logo in a manner that suggests an endorsement or affiliation.
- 12.5** If Ekco reasonably believes the Services are reasonably likely to infringe a third party's Intellectual Property Rights, then Ekco may, at its sole option and expense:
  - 12.5.1** procure the right for the Customer to continue using the Services;
  - 12.5.2** modify the Services to make them non-infringing without materially reducing their functionality; or
  - 12.5.3** replace the Services with a substantially similar alternative.

- 12.6** 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.

## 13. THIRD PARTY PRODUCTS

- 13.1** 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 specified in respect of it in the Third Party Terms Documentation, as may be supplemented or amended from time to time. 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 this Agreement, the Third Party Terms 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.
- 13.2** As part of the Services, Ekco may provide the Customer with guidance in relation to general principles as to licensing, and place orders for licences on the Customer's behalf, but Ekco cannot police 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.
- 13.3** The Customer authorises Ekco to accept on its behalf any Third Party Terms in respect of any Third Party Products which 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.
- 13.4** Unless agreed otherwise between Ekco and the Customer:
  - 13.4.1** 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
  - 13.4.2** 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



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protection legislation, and claims in respect of the same will be made directly between the Customer and the Third Party Product Provider.

- 13.5** The Customer acknowledges that 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.

## 14. REMEDIES AND LIABILITIES

- 14.1** The Customer agrees to give Ekco a reasonable opportunity to remedy any failure or shortcoming in the provision, by Ekco, of Services as outlined in Schedule 1, including, without limitation, any failure to achieve specified service levels. Ekco undertakes, at its expense to use all reasonable efforts to implement such remedy in accordance with the Service Level Agreement.
- 14.2** Ekco also accepts liability for physical damage or loss to the Customer's tangible property which is caused by the gross negligence of Ekco or its employees, agents and/or subcontractors. Such liability will be limited to a maximum amount of five hundred thousand Euro (€500,000) in respect of each incident or series of connected incidents and limited further, to an aggregate amount of five hundred thousand Euro (€500,000) in respect of all property claims falling within the scope of this **Clause 14.2**.
- 14.3** In respect of any liability which is not within the scope of **Clause 14.2**, Ekco's total liability under or in connection with the Services (whether in contract, tort (including negligence) or otherwise) shall not exceed in aggregate the total fees received by Ekco in respect of the Services in the previous 12 months prior to the date of the claim.
- 14.4** Ekco will not be liable (whether in contract, tort or otherwise) for any indirect, incidental, punitive or consequential loss, damage, cost or expense of any kind whatsoever or howsoever caused or any loss of profits, whether caused directly or indirectly, or for any indirect, incidental, punitive or consequential loss, damage, cost or expense.
- 14.5** Ekco shall not be liable for any loss, damage, cost or expense whatsoever and howsoever caused arising from any fraudulent act, misrepresentation or Default on the part of the Customer, its directors, employees, agents and other contractors.
- 14.6** The allocations of liability in this Agreement represent the agreed and negotiated understanding of the parties.

- 14.7** This section shall survive the termination of the Agreement for any reason.

## 15. WARRANTY

Ekco warrants that the Services shall be provided with appropriate professional skill, care and diligence using appropriately qualified and experienced personnel. Ekco agrees that if any of the personnel are found (in the reasonable opinion of the Customer) not to be capable of carrying out the Services, Ekco will within a reasonable period of the Customer notifying Ekco in writing of this, supply another person or persons capable of fulfilling the said duties.

## 16. INDEMNITIES

- 16.1** Ekco will defend, at its expense, any third party claim that any component of the Services provided by Ekco infringes an existing copyright or other intellectual property right provided that the Customer (a) allows Ekco conduct of the defence of such claim, including any settlement, (b) makes no prejudicial admission or statement, (c) notifies Ekco promptly of any claim and (d) co-operates and assists Ekco, at its expense, in the defence of the claim. This indemnity constitutes the Customer's sole and exclusive remedy and Ekco's entire liability with respect to any part of the Project infringing any third-party rights of any kind.
- 16.2** Save as set out in **Clause 16.1**, the Customer shall notify Ekco if any claim or demand is made or action brought against the Customer for infringement or alleged infringement of any intellectual property right in connection with the Services. Ekco shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the Customer hereby agrees to grant to Ekco the exclusive control of any such litigation and such negotiations.
- 16.3** The Customer shall defend, indemnify and hold harmless Ekco and its employees and associated companies from and against any and all claims made by third parties for damages, losses, expenses or costs (including legal fees and expenses) arising out of or in connection directly or indirectly with the use by the Customer of the Services provided by Ekco, provided that Ekco (a) allows the Customer conduct of the defence of such claim, including any settlement, (b) makes no prejudicial admission or statement, (c) notifies the Customer promptly of any claim and (d) actively co-operates and assists the Customer, at its expense, in the defence of the claim.

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## 17. INSURANCE

- 17.1** Without prejudice to the provisions of **Clause 16** (Indemnities), Ekco shall effect and maintain adequate insurance policies, suitable for the provision of the Services, for the Term.
- 17.2** Ekco shall, if so requested, provide evidence of all insurances required herein, and shall provide certificates with respect to the policies carried, together with any other relevant information Customer may reasonably require.

## 18. DISPUTE RESOLUTION

- 18.1** The parties will use reasonable commercial efforts to negotiate in good faith and settle any dispute that may arise out of or relate to this Agreement, or any breach thereof.
- 18.2** If any such dispute cannot be settled amicably through ordinary negotiations by the nominated representative from Ekco and the Customer for the Services, the dispute will be referred to the senior representatives nominated by the Executive Chairman of Ekco and the CEO of the Customer, who will meet in good faith in order to try and resolve the dispute.
- 18.3** If the dispute or difference is not resolved as a result of such meeting either party may (at such meeting or within 14 days of its conclusion) propose to the other in writing that structured negotiations be entered into with the assistance of a neutral adviser or mediator before resorting to litigation.
- 18.4** Nothing contained in this Clause shall restrict either parties' freedom to commence legal proceedings to preserve any legal right or remedy or protect any proprietary or trade secret right.

## 19. TERMINATION

- 19.1** Notwithstanding anything else contained herein this Agreement may be terminated by either party forthwith on giving notice in writing to the other if the other party: -
- 19.1.1** Being a company shall have a receiver manager, administrator administrative receiver, or liquidator appointed or shall pass a resolution for winding up (otherwise than for the purpose of amalgamation or reconstruction) or a Court shall make an Order to that effect or being a partnership shall be dissolved or being an individual shall have a bankruptcy order made against him or shall die or if the other party

(whether a company or not) shall enter into any composition or arrangement with its creditors or shall become insolvent.

- 19.1.2** Commits a material breach of any material term of this Agreement (and in case of a material breach capable of being remedied) shall have failed within 14 days after receipt of a request in writing from the other party so as to remedy the breach. A material breach shall include a breach of the Customer's obligations under Clause 3.

**19.2** Ekco may by prior written notice to the Customer: -

- 19.2.1** Summarily suspend work under this Agreement for the duration of such breach in the event that the Customer shall owe any sums to the company for more than 5 Working Days after the due date;
- 19.2.2** Without prejudice to **Clause 19.2.1** forthwith terminate this Agreement if the Customer shall fail to pay any sum due under the terms of this Agreement within seven days of the due date; or
- 19.2.3** Terminate this Agreement by giving three months' notice in writing to the Customer if Ekco is unable to obtain an appropriate level of support from its suppliers. In the event of termination pursuant to this **Clause 19.2.3** (but not otherwise) a pro rata refund of the Service fee shall be made to the Customer.

**19.3** Upon termination of this Agreement, the Customer Shall:

- 19.3.1** immediately pay to Ekco all unpaid amounts due;
- 19.3.2** immediately cease using the Services (and all rights granted to the Services under this Agreement shall cease);
- 19.3.3** promptly, and in any event no later than thirty (30) days following the date of such termination, (unless otherwise instructed by Ekco in writing) return all copies of material associated with the Services furnished to the Customer, including all Confidential Information of Ekco; and
- 19.3.4** certify to Ekco in writing that the Customer has complied fully with the requirements of this **Clause 18.3**.

**19.4** Any termination of this Agreement (however occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into force on or after such termination.



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## 20. NOTICES

- 20.1** Any notice to be given by one party to the other party under, or in connection with, this Agreement shall be in writing and signed by or on behalf of the party giving it. It shall be served by delivering it by hand, or sending it by pre-paid recorded delivery or registered post, to the address set out in the parties to this Agreement and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this clause). Any notice so served by hand or post shall be deemed to have been duly given in the case of:
- 20.1.1** Delivery by hand, when delivered;
  - 20.1.2** Prepaid recorded delivery, special delivery or registered post, at 10am on the second Business Day following the date of posting,
  - 20.1.3** Provided that in each case where delivery by hand occurs after 6pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9am on the next following Business Day.
- 20.2** References to time in this clause are to local time in the country of the addressee.
- 20.3** A party may notify the other party to this Agreement of a change to its name, relevant addressee or address for the purposes of this clause, provided that, such notice shall only be effective on:
- 20.3.1** The date specified in the notice as the date on which the change is to take place; or
  - 20.3.2** If no date is specified or the date specified is less than five (5) Business Days after the date on which notice is given, the date following five (5) Business Days after notice of any change has been given.

## 21. LEGAL RELATIONSHIP

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power.

## 22. GENERAL

- 22.1** Failure by either party to enforce any of the terms of this Agreement will not be constructed as a waiver of rights.
- 22.2** This Agreement sets forth the entire Agreement between the parties and supersedes and cancels all prior communications representations warranties and agreements whether oral or written between the parties in relation to the subject matter of this Agreement, except in respect of any fraudulent misrepresentation made by either party.
- 22.3** Where the terms of a Schedule are inconsistent with the terms of this Agreement, the terms of the Schedule shall prevail.
- 22.4** If the Customer is more than one person all agreements and undertakings on the part of the Customer contained herein shall be joint and several.
- 22.5** Any notice given by either party to the other under this Agreement shall be in writing to the address given in the Schedule.
- 22.6** No variation to this Agreement shall be effective unless and until accepted in writing by authorised signatories of Ekco and the Customer.
- 22.7** The headings contained in this Agreement are for ease of reference only.
- 22.8** The invalidity or un-enforceability for any reason of any Clause apart of this Agreement shall not prejudice or affect the validity or enforceability of the remainder.
- 22.9** Virus, malware or any other data / network / user / server corruption or intrusion issues are chargeable.
- 22.10** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter is governed by and shall be construed in accordance with the laws of Ireland. The parties irrevocably submit to the exclusive jurisdiction of the courts of Ireland to settle any disputes and claims which may arise out of, or in connection with, this Agreement