

Eckoh Order Form

This Agreement is between **Eckoh UK Limited**, a company registered in England and Wales (company number: 02796531) with a registered office at Telford House, Corner Hall, Hemel Hempstead, Hertfordshire, HP3 9HN ("Eckoh"), and the Customer detailed in the table below.

This Order Form, the attached Schedules and any documents referred to therein, set out the terms of a legally binding contract between Eckoh and the Customer for the provision of Products and Services.

Capitalised words and expressions shall have the meaning given to them in Schedule 2. References to a clause shall be to the provisions of Schedule 1.

Customer Name:	
Customer Address:	
Customer Registered Number:	
Products/Services:	☒ as further detailed in Schedule 3.
Service Commencement Date:	
Term:	As stated in Schedule 3.

By signing below, we confirm that:

- A. the contents of this Order Form and the attached Schedules are correct;
- B. we agree to the terms and conditions attached at Schedule 1.

Signed for and on behalf of:
Eckoh UK Limited

Sign:

Name.....

Title.....

Date.....

Signed for and on behalf of:
Customer

Sign:

Name.....

Title.....

Date.....

SCHEDULE 1 – Terms and Conditions

1 PROVISION OF PRODUCTS AND SERVICES

- 1.1 Subject to the Customer paying the Charges in accordance with clause 5, Eckoh will deliver the Products and perform the Services in the Territory as set out in this Agreement.
- 1.2 Additional Products and Services may be purchased by the Customer using an Additional Order Form which will be binding on the Parties once signed by both Parties.
- 1.3 In relation to Services, Eckoh will:
- 1.3.1 provide the Services with the reasonable skill and care of a competent service provider operating in its industry;
 - 1.3.2 use reasonable endeavours to provide the Services without interruption. Eckoh makes no warranty that the Services will be uninterrupted or error free;
 - 1.3.3 be entitled to suspend the Services where required to comply with any order, instruction or request of a Regulatory Body or as necessary to perform maintenance and improvement works to the underlying systems. Eckoh will provide notice as reasonably required in the circumstances;
 - 1.3.4 be entitled to make corrective code and other updates to the Services during the Term. Any such updates will become part the Intellectual Property Rights of Eckoh under clause 7.
- 1.4 In relation to Products:
- 1.4.1 Eckoh will deliver the Products to a location specified in Schedule 3 or the applicable Additional Order Form. Where applicable, shipping terms for Products will be EXW (Incoterms 2010);
 - 1.4.2 The Products, and any software provided as part of the Products, will be provided in accordance with Schedule 3 or the applicable Additional Order Form;
 - 1.4.3 Exchanges will be made provided that (i) Eckoh shipped a Product other than as specified in this Agreement; (ii) the Product is unopened; and (iii) the Product is returned to Eckoh within thirty (30) days of the date of delivery. Exchanges will also be permitted in accordance with clause 3.3. The Customer acknowledges that the Products are created bespoke for each agreement and Eckoh therefore does not accept returns.
 - 1.4.4 Where products are leased from Eckoh, the Customer will return all Products within 30 days of termination of the Agreement or applicable Additional Order Form. If the Customer fails to return such Products, it will be liable to pay to Eckoh an amount equal to the then current price for purchase of the unreturned Products, plus ten percent (10%).
- 1.5 The Customer acknowledges that implementation of the Services requires assistance from the Customer in accordance with Clause 2. Any dates stated in this Agreement for delivery or launch of live Services are for guidance purposes only and time shall not be of the essence.
- 1.6 If the Parties wish to change or expand the scope of the Services or the Products to be provided under this Agreement, or to upgrade the Products or Services, such change will be subject to a mutually agreed variation to this Agreement or Additional Order Form. No change shall be valid unless signed by a representative of both Eckoh and the Customer.

2 CUSTOMER OBLIGATIONS

Customer shall:

- 2.1 not take any of the following actions with respect to the Products or Services: (a) reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the Products or Services or otherwise disrupt the features, functionality, integrity, or performance of the Products or Services (including any mechanism used to restrict or control the functionality of the Products or Services); (b) cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the Products or Services, in whole or in part, including as a service bureau, to or by any third party without Eckoh's prior written consent; (c) cause or permit any change to be made to the Products or Services without Eckoh's prior written consent; (d) bypass or breach any security device or protection used for or contained in the Products or Services; or (e) use the Products or Services for purposes of benchmarking or conducting competitive analysis of the Products or Services or developing, using or providing competing software products or services. Customer shall promptly notify Eckoh if it becomes aware of or reasonably suspects any security breach, including any loss, theft, or unauthorized disclosure or use of the Products or Services. The Customer shall be solely responsible and liable for all activity of any User, in connection with its use of the Products or Services;
- 2.2 not, and shall ensure that no Users are permitted to: (a) use the Products or Services to store or transmit any content that may be infringing, defamatory, threatening, harmful, or otherwise tortious or unlawful, including any content that may violate Intellectual Property Rights, privacy, rights of publicity, or other laws, or send spam or other unsolicited messages in violation of applicable law; (b) upload to, or transmit from, the Products or Services any data, file, software

or link that contains or redirects to a virus, Trojan horse, worm, or other harmful component; (c) attempt to gain unauthorized access to the Products or Services, or related software or networks, or to defeat, avoid, bypass, remove, deactivate, or otherwise circumvent any software protection or monitoring mechanisms of the Products or Services; or (d) use, or otherwise access in connection with Customer's use, the Products or Services in any manner that is not in accordance with applicable laws and government regulations;

- 2.3 ensure that any equipment (excluding Products) used in connection with the provision of the Services complies with any legal or regulatory requirements and is approved for such use by Eckoh or meets the specifications as notified by Eckoh from time to time; and
- 2.4 provide such assistance as is necessary in Eckoh's performance of the Services, including performing its responsibilities as detailed in Schedule 3 or an Additional Order Form.

3 WARRANTIES

- 3.1 Each Party represents and warrants to the other that it (a) has the authority to enter into this Agreement; (b) will comply with, and perform, all of its obligations under this Agreement; and (c) will comply with all applicable laws in relation to the performance of its obligations under this Agreement.
- 3.2 The Customer warrants to Eckoh that the assumptions stated in Schedule 3 or any Additional Order Form are correct and the Services to be provided by Eckoh as set out therein meet the Customer's requirements.
- 3.3 In relation to any Products provided under this Agreement, Eckoh warrants against defects in materials and workmanship and, subject to Eckoh's policies and procedures, the Customer may return the defective Product to Eckoh for a replacement within 12 months of the date of delivery. This clause 3.3 does not apply where (a) the Product has been altered, except by Eckoh; (b) has not been installed, operated, repaired, used or maintained in accordance with instructions made available by Eckoh; (c) has been subject to abnormal or unusual physical or electrical stress or environmental conditions, misused, or negligently handled or operated; or (d) is acquired by Customer for beta, evaluation, testing, demonstration purposes or other circumstances for which Eckoh does not receive payment of a purchase price or a licence fee.
- 3.4 Except as set out in this Agreement, all warranties, conditions, terms and undertakings, express or implied, whether by statute, common law, custom, trade usage, course of dealings or otherwise (including without limitation as to quality, performance or fitness or suitability for purpose) in respect of any Products or Services to be provided by Eckoh under this Agreement are excluded to the fullest extent permitted by law.

4 DATA SECURITY AND PROTECTION

- 4.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and Eckoh is the Data Processor of the Personal Data.
- 4.2 Eckoh and the Customer hereby agree to comply with their obligations in relation to Personal Data as set out in Schedule 5.
- 4.3 The Customer is entitled, on giving at least thirty (30) days' notice to Eckoh, to inspect or appoint representatives to inspect all facilities, equipment, records, documents and electronic data relating to the Processing of Personal Data by Eckoh under this clause 4 and Schedule 5. Any audit will be conducted so as not to disrupt Eckoh's day to day operations and will be subject to the Customer covering Eckoh's reasonable costs and complying with all security, confidentiality and safety requirements notified by Eckoh.
- 4.4 The requirement under clause 4.3 to give notice will not apply if an audit is required by a Regulatory Body in relation to the Processing of Personal Data or the Customer reasonably believes in good faith that Eckoh is in material breach of any of its obligations under this clause 4 or Schedule 5.
- 4.5 This clause 4 shall survive the termination of this Agreement and shall continue for a period of one (1) year following the destruction or return of all Personal Data Processed by Eckoh under this Agreement.

5 CHARGES

- 5.1 The Customer will pay Eckoh the Charges as set out in this Agreement or an Additional Order Form. In addition, the Customer shall reimburse Eckoh for all materials and reasonable out of pocket expenses it incurs in connection with Eckoh's performance of its obligations under this Agreement including, without limitation, travel costs, subsistence and accommodation (the "Expenses"). Expenses will be incurred in accordance with Eckoh's standard expenses policy (available on request) and Eckoh will take reasonable endeavours to seek prior authorisation from the Customer for any Expenses.
- 5.2 All Charges and Expenses shall be payable by the Customer no later than thirty (30) days following the issue of Eckoh's invoice. All Charges stated are exclusive of VAT and other applicable taxes which will be chargeable to the Customer. Eckoh shall be under no obligation to await a purchase order from the Customer. Where a purchase order is required for the Customer's internal process, it shall be provided within two (2) working days of a request from Eckoh. Eckoh reserves the right to charge interest on all invoices it presents to the Customer in accordance with its statutory right to claim interest and compensation for debt recovery under late payment legislation. Unless stated to

the contrary in Schedule 3 or the applicable Additional Order Form, Eckoh reserves the right to increase the Charges payable by the greater of five percent (5%) or RPI on each anniversary of the Agreement.

- 5.3 If the Customer (acting reasonably) disputes any of the Charges on any invoice (the "Disputed Amount") it shall pay the undisputed portion of the invoice in accordance with the provisions of clause 5.2 and submit a written claim, in accordance with clause 10.14 setting out the reasons for disputing the Disputed Amount. All claims must be received by Eckoh within fifteen (15) days from the date of the relevant invoice. The Parties shall use reasonable endeavours to settle the dispute via discussions between the Parties. In the event that the dispute is resolved in favour of Eckoh, the Customer shall immediately pay the Disputed Amount to Eckoh together with applicable interest calculated in accordance with clause 5.2.
- 5.4 If the Customer does not pay and does not dispute the Charges in accordance with clauses 5.2 and 5.3, Eckoh may, without notice, suspend the provision of the Services or delay delivery of Products in whole or in part until payment is received.
- 5.5 Where Eckoh assists in the provision or support of service on matters that fall outside of Eckoh's obligations under this Agreement, Eckoh shall be entitled to charge the Customer on a time and materials basis at Eckoh's standard rates for any additional resources or level of effort expended by Eckoh. For clarity, this would include technical issues with other third-party suppliers to the Customer which impact the performance of the Eckoh service.

6 TERM AND TERMINATION

- 6.1 This Agreement will commence on the Service Commencement Date and will continue for the Term. Except as provided in clause 6.2, Additional Order Forms will survive termination of this Agreement in accordance with their terms.
- 6.2 Notwithstanding clause 6.1, either Party shall be entitled to terminate this Agreement or any applicable Additional Order Form:
 - 6.2.1 on immediate notice, where the other Party is in material breach of the Agreement and has not remedied the material breach within 30 days of a written notice of such breach. For the avoidance of doubt, Customer's breach of clause 2, failure to make payments due under this Agreement or failure to engage in any project will constitute a material breach;
 - 6.2.2 on immediate notice, where the other Party is found to be in breach of the warranties given at clauses 10.2 or 10.3;
 - 6.2.3 on immediate notice, where the other Party becomes unable to pay its debts or becomes insolvent, or an order is made or a resolution passed for its liquidation, administration, winding-up, or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer is appointed over all or any substantial part of the assets of the other Party and is not discharged within fourteen days of being levied, or the other Party enters into or proposes any composition or arrangement with its creditors generally, or anything analogous to any of these events occurs to the other Party.
- 6.3 Eckoh shall be entitled to suspend the provision of Services or delay delivery of Products on immediate notice: (a) for the Customer's breach of clause 2; (b) in accordance with clause 5.4; or (c) in lieu of exercising its rights of termination under clause 6.2. The Customer will continue to be liable for all Charges due during any period of suspension under this clause 6.3.
- 6.4 Upon termination of this Agreement for any reason:
 - 6.4.1 each recipient of Confidential Information will, at the request of the discloser of Confidential Information, return or permanently destroy any Confidential Information in its possession;
 - 6.4.2 the Customer will immediately cease using the Services and will return any Products which have been leased to it under this Agreement; and
 - 6.4.3 all Charges and Agreed Charges will become due for payment immediately, notwithstanding clause 5.2.
- 6.5 In addition to the provisions at clauses 4.5, 6.1 and 8.3, any provisions of this Agreement which by their nature should survive termination, shall survive termination of this Agreement.

7 INTELLECTUAL PROPERTY RIGHTS

- 7.1 Each Party represents and warrants to the other that:
 - 7.1.1 it owns or is licensed to use all Intellectual Property Rights stated at clauses 7.2 and 7.3;
 - 7.1.2 it has obtained all necessary permissions, consents, waivers and licenses required from any third party in order for it to lawfully fulfil its obligations under this Agreement;
 - 7.1.3 it shall not at any time use the Intellectual Property Rights granted to it by the other Party pursuant to this Agreement in any way which breaches or infringes the rights of the other Party; and

7.1.4 the use by the other Party in accordance with this Agreement of Intellectual Property Rights, granted by it pursuant to this Agreement shall not breach or infringe the rights of any third party.

- 7.2 All Intellectual Property Rights in the Products and Services and any software provided to the Customer are, and shall remain, the exclusive property of Eckoh, Eckoh's Associates or its licensors and this Agreement shall not operate as an assignment of any such rights to the Customer. Eckoh grants to the Customer a non-exclusive, royalty free, non-transferable, revocable license to use the Intellectual Property Rights in the Services and any software provided to the Customer for the sole purpose of receiving the Services and making such Services available to its customers for the Term.
- 7.3 Any Intellectual Property Rights in the Content and/or other materials supplied by the Customer to Eckoh in connection with this Agreement shall remain the exclusive property of the Customer or its licensors and this Agreement shall not operate as an assignment of any such rights to Eckoh. The Customer hereby grants Eckoh and Eckoh's Associates a non-exclusive, royalty-free, right to copy, use, distribute, and make the Content available to the public via the Services during the Term. The Customer further agrees that Eckoh shall be entitled to make reasonable use of, and reference to, the Customers name and logo for marketing purposes.
- 7.4 Except where the Claim is based on (a) any modification to the Services requested by the Customer; or (b) use of the Products and Services other than in accordance with this Agreement, Eckoh agrees to indemnify and hold the Customer harmless from and against any and all Liabilities arising as a result of any breach of its warranties at clause 7.1.
- 7.5 The Customer agrees to indemnify and hold Eckoh harmless from and against any and all Liabilities arising as a result of any breach of its warranties at clause 7.1.
- 7.6 In the event of any Claim covered by clauses 7.4 or 7.5, the indemnified Party will (a) inform the indemnifying Party as soon as practical of the circumstances of the claim; (b) permit the indemnifying Party to take control of the claim; and (c) not make any admission of liability on behalf of the indemnifying Party without the indemnifying Party's consent.

8 CONFIDENTIAL INFORMATION

- 8.1 Each Party shall use its best endeavours to preserve the confidentiality of the Confidential Information and accordingly will not (a) use Confidential Information for any purpose other than the performance of its obligations under this Agreement; or (b) disclose Confidential Information to any third party other than to those of their employees, agents and advisers with a need to know (and then to such extent only as is necessary for the purposes contemplated by this Agreement or as is required by law) and subject in each case to the disclosing Party using all reasonable endeavours to ensure that such employees, agents and advisers agree to be bound by confidentiality obligations no less onerous than this clause 8.
- 8.2 Clause 8.1 shall not apply to (a) confidential communications between the Parties and their respective professional advisers and bankers; (b) disclosures required to be made by either Party by law, to any Regulatory Body or in accordance with the rules from time to time in force of any applicable recognised securities or investment exchange; and then, to the extent legally permissible, only after giving as much notice as is reasonably possible to the Party who initially disclosed the Confidential Information concerned; or (c) any information which is already public knowledge or in the public domain or become so at a future date (otherwise than through unauthorised disclosure by either Party or its employees); or is trivial or obvious; or is rightfully and already in the possession of the receiving Party at the commencement of negotiations leading to the execution of this Agreement.
- 8.3 This clause 8 shall survive the termination of this Agreement and shall continue for a period of five (5) years following the effective termination date of this Agreement.

9 LIABILITY

- 9.1 Nothing in this agreement will limit either Party's liability in respect of (a) death or personal injury caused by its negligence; (b) fraud or fraudulent misrepresentation; or (c) anything that cannot be lawfully limited or excluded.
- 9.2 Neither Party will be liable to the other in contract, tort (including negligence and breach of statutory duty) or otherwise for any loss of revenue, profit, business, anticipated savings, goodwill, reputation, contract, data, use of equipment, wasted management time, special damages, or any indirect or consequential losses whatsoever.
- 9.3 Subject to clause 9.1 and 9.2, Eckoh's aggregate liability in contract, tort (including negligence and breach of statutory duty) or otherwise in connection with this Agreement shall be limited to an amount equal to one hundred percent (100%) of the Charges received in the 12 months preceding the date on which the liability arose.
- 9.4 The Parties acknowledge and agree that the limitations on liability under this clause 9 have been agreed by the parties having all due regard to (a) the nature and extent of their respective obligations under this Agreement; (b) the commercial terms upon which Eckoh has agreed to provide the Services (including any discounted or other preferential fee arrangements offered by Eckoh); and (c) all other relevant factors, including internal risk management procedures implemented by Eckoh to help minimise the impact of any failure or breach which may give rise to liability, and on that basis the Parties acknowledge and agree that the limitations set out in this clause 9 reflect a fair apportionment of risk between the Parties.

10 GENERAL

- 10.1 Without the consent of the other Party, during the Term, and for a period of one (1) year thereafter, each Party shall not, directly or indirectly, solicit or entice away (or attempt to solicit or entice away) from the other Party any person employed or engaged by the other Party in the delivery of the Services under this Agreement other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the individuals employed or engaged by the other Party.
- 10.2 Each Party will implement a Modern Slavery Policy. Each Party represents and warrants that it, its officers, employees, agents or subcontractors (a) has not committed an offence under the Modern Slavery Act 2015, (b) has not been notified that it is subject to an investigation relating to an alleged offence under the Modern Slavery Act 2015; or (c) is not aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged offence under the Modern Slavery Act 2015. Each Party represents and warrants that it will comply with its obligations under, and shall not be in breach of, the Modern Slavery Act 2015.
- 10.3 Each Party represents and warrants that it is familiar with, has read and understands, and will comply in all respects with its respective obligations under, and shall not be in breach of, the Bribery Act 2010.
- 10.4 Neither Party shall be liable for any failure or delay in performing its obligations under this Agreement if and to the extent that such failure or delay is the result of a Force Majeure Event. A Party whose performance is or may be affected by a Force Majeure Event shall inform the other party as soon as reasonably practicable, but no later than 3 working days, after becoming aware of the Force Majeure Event.
- 10.5 This Agreement and any documents referred to herein constitutes the whole agreement between the Parties in relation to its subject matter and replaces and supersedes any existing agreement between the parties relating to the Products and/or Services. Each party acknowledges that it will have no remedy for any untrue statement or misrepresentation (other than a fraudulent statement) made by the other party before entering into the Agreement. In the event of any conflict between this Agreement and any other agreement for the provision of Products and Services, this Agreement shall take precedence.
- 10.6 No variation of this Agreement shall be effective unless made in writing and signed by an authorised representative of each of the Parties.
- 10.7 This Agreement may be executed in any number of counterparts, each of which will be an original and all of which will together constitute a single Agreement. The Parties agree that electronic signatures shall be a valid method of signing this Agreement and any variation.
- 10.8 If any provision or part of a provision of this Agreement shall be, or be found by any authority or court of competent jurisdiction to be, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of this Agreement, all of which shall remain in full force and effect.
- 10.9 In the event of any conflict between the terms of this Agreement, the following order of precedence shall be used to resolve such conflict: (1) Schedule 1 (Terms and Conditions); (2) Schedule 2 (Definitions); (3) Order Form; (4) Schedule 5 (Personal Data); (5) Schedule 3 (Services); (6) Schedule 4 (Charges). With regards to an Additional Order Form, the terms of such order form shall take precedence over the main provisions and schedules of this Agreement in relation to the Products and Services provided under the that Additional Order Form.
- 10.10 The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law or otherwise. For the avoidance of doubt, neither Party shall be prevented from seeking interim relief under this Agreement.
- 10.11 No breach by any Party of any provision of this Agreement shall be waived or discharged except with the express written consent of the other Party. No failure or delay by any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver of that right, power or privilege and no single or partial exercise by any Party of any right, power or privilege shall preclude any further exercise of that right, power or privilege.
- 10.12 The Parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.
- 10.13 Neither Party shall be entitled to assign the benefit (or transfer the burden) of this Agreement, without the prior written consent of the other Party (such consent not to be unreasonably withheld, delayed or conditioned), except that Eckoh shall be entitled to assign or otherwise transfer the agreement to any one of its Associates upon written notice to the Customer.
- 10.14 Any notices delivered under this Agreement shall be in writing and delivered by registered first class post (deemed served the second business day after date of posting) or delivered in person (deemed served on delivery), to the address of the other Party stated on the Order Form.
- 10.15 This Agreement shall be governed by and construed in accordance with English law and the Parties irrevocably submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising in relation to this Agreement.

SCHEDULE 2 – Definitions

Additional Order Form	- an agreement between the Parties for the provision of additional Products and Services under this Agreement, a template for which is included at Schedule 6;
Agreed Charges	- means the agreed charges as stated in Schedule 4 or an Additional Order Form and shall be the minimum commitment of fees payable to Eckoh;
Agreement	- means the Order Form, the attached Schedules and any documents referred to therein;
Associate(s)	- shall have the meaning given to it under section 345 of the Companies Act 2006;
Charges	- means the amount to be paid by the Customer to Eckoh for the provision of services under this Agreement, as set out in Schedule 4 or an Additional Order Form and includes any Agreed Charges or additional charges;
Claims	- any actual or potential claims, demands, cause of action, proceeding or complaint of any nature or kind received from a third party which relates to an infringement of that third party's Intellectual Property Rights;
Confidential Information	- all information of a Party oral or written which is either expressly stated to be confidential or which is by its nature implicitly or manifestly confidential and which is disclosed by a Party to the other or discovered by the other Party during the Term and includes the terms and conditions of this Agreement, but does not include Personal Data;
Content	- means any information provided by the Customer or User which is processed as part of the Services;
Customer	- means the entity identified as such in the Order Form;
Data Controller	- has the meaning set out in the Data Protection Legislation;
Data Processor	- an entity that processes Personal Data on behalf of a Data Controller;
Data Protection Legislation	- laws and regulations that apply in relation to the Processing of Personal Data including (without limitation) the UK Data Protection Act 2018 and any replacement legislation coming into effect from time to time together with any codes of practice or other guidance issued by a Regulatory Body responsible for data protection in the jurisdiction from which the Services are provided. For Personal Data originating from the EEA the General Data Protection Regulation (EU) 2016/679 shall apply;
Data Subject	- the individual to whom Personal Data relates;
Disputed Amount	- has the meaning given to it in clause 5.3 of Schedule 1;
Eckoh	- has the meaning stated in the Order Form. In relation to the provision of Products and Services, any references to Eckoh shall include its Associates;
Expenses	- as defined in clause 5.1 of Schedule 1;
Force Majeure Event	- an occurrence of an event or circumstance beyond the reasonable control of a Party, provided that the non-performing Party is without fault in causing or failing to prevent such occurrence and includes without limitation (a) explosions, fires, flood, earthquakes, catastrophic weather conditions, diseases, epidemics or elements of nature or acts of God; (b) acts of war (declared or undeclared), acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage; (c) acts of national, local or foreign governmental authorities or courts, national or state of emergencies; (d) labour disputes, lockouts, strikes or other industrial action, whether direct or indirect and whether lawful or unlawful; (e) failures or fluctuations in electrical power or telecommunications service or equipment, expropriation, condemnation of facilities or destruction, in whole or part, of the equipment or property necessary to perform the Services; (f) acts or omissions of a third party Network Operator; or (g) delays or failures caused by the other Party or the other Party's performance or third party non-performance (except that a Party will not be excused for delays or failures caused by such Party's subcontractors or agents unless the event or circumstance is a Force Majeure Event as to such subcontractor or agent);
Intellectual Property Rights	- means (a) copyright, rights related to or affording protection similar to copyright, rights in databases, design rights, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names and designs; (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and (c) all other rights having equivalent or similar effect in any country or jurisdiction;

Liabilities	- all losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties;
Order Form	- means the first page of this Agreement;
Party	- means Eckoh or Customer, and includes their representatives, successors and permitted assignees. Parties shall accordingly be interpreted as both Eckoh and the Customer;
PCI-DSS	- means the Payment Card Industry Data Security Standard;
Personal Data	- personal data (as such term is defined in the Data Protection Legislation) that is Processed by Eckoh in connection with the provision of the Services, as described in Schedule 5;
Process	- has the meaning set out in the Data Protection Legislation. Processed and Processing shall be interpreted accordingly;
Products	- means the products to be provided by Eckoh as set out in Schedule 3 or an Additional Order Form;
Regulatory Body	- any relevant regulatory body in the UK, whether governmental or self-regulatory, competent tribunal, governmental or administrative body, and any body to which any of their functions is delegated or outsourced;
RPI	- means the rate of inflation in line with the Retail Price Index published by the Office of National Statistics in the month immediately preceding each anniversary of the Agreement;
Schedules	- means the schedules attached to the Order Form;
Service Commencement Date	- has the meaning stated in the Order Form;
Services	- means the services to be provided by Eckoh as set out in Schedule 3 or an Additional Order Form;
Term	- means the period from the commencement of this Agreement until all Products are delivered or Services are completed in accordance with Schedule 3 or an Additional Order Form;
Territory	- means the territory as stated in Schedule 3 or an Additional Order Form in relation to each Service;
User	- means any person that Customer grants access to the Products and Services.

SCHEDULE 3 – Products and Services

SECTION A

SCHEDULE 4 – Charges

‘AGREED CHARGES’

Details	Includes	Charge (£)
Implementation		
Monthly Management Fee	[x] minutes per month [x] transactions per month	
Total Agreed Charges	[x] month Term	

ADDITIONAL CHARGES

Where the limits stated above are exceeded, the following charges shall apply:

Details	Range	Charge (£)
Implementation	[e.g. Additional man days.]	
Additional transactions		
Additional minutes		
Additional Support		

See Table 1, below for details on international call charges.

NOTES

- Implementation charges will be invoiced on signature of this Agreement.
- Invoices for the Agreed Charges set out above (except for Implementation) will be issued monthly in advance, commencing on the earlier of the Service Commencement Date or the date the Services are first used in a live environment. Except where this Agreement is terminated for Eckoh's breach, the Customer agrees that it will be liable for the Agreed Charges for the Term and the Customer agrees to pay to Eckoh any unpaid portion of the Agreed Charges for the remainder of the Term in the event of termination of the Agreement prior to the end of the Term.
- Invoices for additional charges will be issued monthly in arrears following the month in which they were incurred.
- [A "transaction" is defined as an attempt by Eckoh to have a payment authorised by the PSP. Declined payments are considered as transaction attempts as the Eckoh service has functioned correctly.]
- [Call charges are subject to change where the underlying classifications of certain numbers with Ofcom or telephony providers is changed. Where this occurs, Eckoh will make reasonable endeavours to provide you with 30 days' prior notice of the changes to the Charges.]
- Eckoh reserves the right to charge additional fees relating to professional services or support which are provided in addition to the services set out in this Agreement. Eckoh will use its best endeavours to advise you of such charges before they are incurred.

Table 1

International rates

SCHEDULE 5 – Personal Data

SECTION A

- 1.1 The Customer undertakes to Eckoh that it shall:
- 1.1.1 comply with the Data Protection Legislation;
 - 1.1.2 not knowingly do or omit to do, permit anything to be done, or instruct Eckoh to do, anything which causes Eckoh to breach the Data Protection Legislation or any relevant enactments, regulations, orders, standards and other similar instruments;
 - 1.1.3 for any Personal Data transferred to Eckoh, have sole responsibility for the accuracy, quality and legality of Personal Data, and the means by which the Customer acquired Personal Data and shall ensure that it has recorded the necessary legal basis for Eckoh to lawfully and fairly Process Personal Data in connection with the provision of the Services and as otherwise contemplated by this Agreement;
 - 1.1.4 notify Eckoh upon becoming aware that Personal Data has become inaccurate or out of date;
 - 1.1.5 be responsible for the security of any systems provided by the Customer to Eckoh, or requested by the Customer to be used for the provision of Services by Eckoh; and
 - 1.1.6 only provide to Eckoh, or request Eckoh to obtain, Personal Data limited to that which is necessary for Eckoh to fulfil its obligations under this Agreement.
- 1.2 Eckoh shall:
- 1.2.1 Process the Personal Data only to the extent, and in such a manner, as is necessary for the provision of Services under this Agreement, and in accordance with Customer's instructions, and shall not Process the Personal Data for any other purpose;
 - 1.2.2 keep a record of any Processing of Personal Data it carries out on behalf of its customers;
 - 1.2.3 comply with Data Protection Legislation when Processing the Personal Data;
 - 1.2.4 ensure that it has appropriate technical and organisational measures in place to protect against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data held or Processed by it, including but not limited to the measures set out in Section C, below;
 - 1.2.5 comply with, and ensure that its employees, representatives, agents or sub-contractors comply with, Eckoh's obligations under this clause and otherwise comply with reasonable requests of the Customer with regard to the security and Processing of the Personal Data;
 - 1.2.6 notify the Customer within 48 hours of any breaches of any applicable laws, enactments, regulations, orders, standards and other similar instruments relating to the Processing of the Personal Data (including the Data Protection Legislation), the Security Measures and, as soon as reasonably practical upon becoming aware of the same, investigate and notify the Customer of the outcome of the investigations into such breaches. Eckoh shall provide further information where so required by a Regulatory Body;
 - 1.2.7 restrict access to the Personal Data to Permitted Recipients (and in the case of any access by any employee, ensure that access to the Personal Data is limited to such part or parts of the Personal Data as is strictly necessary for performance of that employee's duties), impose upon such person's obligations of confidentiality and security equivalent to those contained in this Schedule 5 and not disclose any Personal Data to any other person without the prior written consent of the Customer;
 - 1.2.8 ensure that all Permitted Recipients have undertaken training in the laws relating to handling personal data and are aware both of Eckoh's duties and their personal duties and obligations under such laws and this Schedule. Eckoh shall keep training records to show training is being provided adequately and shall produce such training records, where necessary, following a request from the Customer to allow it to defend Claim(s);
 - 1.2.9 take reasonable steps to ensure the reliability of all Permitted Recipients who have access to the Personal Data;
 - 1.2.10 Ensure that any copies of Personal Data in the possession or under the control of Eckoh are permanently destroyed when they are no longer required for the performance of the Services;
 - 1.2.11 notify the Customer within 48 hours of any unauthorised, unlawful or accidental Processing, disclosure, loss of, damage to, access to or destruction of the Personal Data or if the Personal Data is or becomes corrupted or unusable, and give to the Customer assistance as reasonably required by the Customer in such respect;

- 1.2.12 except as necessary to comply with an overriding contractual, regulatory or legal obligation as permitted under the Data Protection Legislation, promptly amend, transfer, vary and/or delete any Personal Data held by or on behalf of Eckoh upon request from the Customer;
- 1.2.13 promptly notify the Customer of any request for disclosure of the Personal Data by a law enforcement authority unless otherwise prohibited;
- 1.2.14 promptly notify the Customer of any request of a Regulatory Body in relation to the Personal Data and co-operate and comply with the directions or decisions of any Regulatory Body in relation to the Personal Data, and in each case within such timescale as would enable the Customer to meet any time limit imposed by any Regulatory Body (as applicable);
- 1.2.15 promptly notify the Customer of any request from a Data Subject for access to that person's Personal Data and provide the Customer with reasonable co-operation and assistance in complying with any such request; and
- 1.2.16 promptly on request, provide to the Customer a copy of all Personal Data held or controlled by it in the format and on the media deemed reasonable by Eckoh.
- 1.2.17 Eckoh will abide by the data protection laws of the United Kingdom. To ensure that Personal Data can be transferred from the EEA in the provision of Services, Eckoh shall, where necessary reasonably agree to sign standard contractual clauses for the transfer of Personal Data to processors in a third country as set out in a decision of the European Commission.
- 1.3 If Eckoh receives any complaint, notice or communication which relates to the Processing of the Personal Data or to either party's compliance with the Data Protection Legislation, it will immediately notify the Customer and it shall provide the Customer with reasonable co-operation and assistance in relation to any such complaint, notice or communication.
- 1.4 Customer consents to Eckoh engaging third parties to process Customer Personal Data provided that Eckoh:
 - 1.4.1 gives notice of any change in sub-processors at least thirty (30) days prior to any such change;
 - 1.4.2 imposes data protection obligations on any sub-processor to a standard no less stringent than as required by this Agreement; and
 - 1.4.3 remains liable for any breach of this Agreement that is caused by its sub-processor, subject to the limitations of liability set out in the Agreement.
- 1.5 Customer may object to the appointment or replacement of a sub-processor prior to its appointment or replacement within the 14 days of receipt of the notice from Eckoh. In such event, the parties shall discuss commercially reasonable alternative solutions in good faith. If the parties cannot reach resolution, Eckoh will either not appoint or replace the sub-processor or, if this is not possible, Customer may suspend or terminate the Agreement without cause.
- 1.6 Where Personal Data is transferred outside of the UK by Eckoh, Eckoh will, at its sole discretion, ensure that such transfer is carried out on the basis of an adequacy decision by the Data Protection Legislation.

SECTION B

Categories of Data Subjects:	Individuals who engage with, or purchase services from, the Customer
Categories of Personal Data:	[data]
Special Categories of Personal Data:	None
Processing Activities:	[activities]
Legal Basis of Processing:	[legal basis]

SECTION C

Eckoh's data processing facilities are located within UK based Tier 4 Data Centres. Physical security is supplied by each provide and is audited by Eckoh annually.

These data processing facilities and head office locations are included fully in scope for the Payment Card Industry Data Security Standard ("PCI DSS") and have been audited annually since 2010. An Attestation of Compliance is available on request. Eckoh is ISO27001 and ISO9001 certified.

Physical Security includes:

- Approved Access control lists and visitor approval procedure
- 24/7 CCTV, both externally and internally, including some motion sensor activated CCTV
- Card access control system
- Man trap entrance doors
- Manned reception and on duty security guards on duty

Logical Security includes:

- Fully segmented networks, with all segments protected with firewalls and 'deny all' rule as standard
- Perimeter network (DMZ) for web traffic termination
- Inbound web traffic protected via a Web Application Firewall
- Access control lists for access to restricted personnel on a needs basis
- Multi-factor authentication for all admin access
- Jump server for restricted access control
- Restricted transmission for secure traffic to block non-secure transmission (TLS1.2)
- Intrusion detection and prevention systems at segments edge and host based
- Segmented and secure database infrastructure for transient data storage
- Data classification and retention policies backup the scheduled tasks of data cleansing
- White list and black list for public IP address space allocation
- Segregated and separate development and testing environments
- Centralized logging aggregation and real-time alerting of security incidents
- Perform periodic vulnerability scanning to ensure strong security posture
- Engage with 3rd party consultants to perform penetration testing

Administrative controls:

- Annually reviewed security policies
- Annual security awareness training for all staff
- Background checks for employees
- Annual audit against PCI DSS
- Regular review of access rights

SCHEDULE 6 – Additional Order Form Template

This Additional Order Form is entered into between Eckoh UK Limited a company registered in England and Wales (company number: 02796531) with a registered office at Telford House, Corner Hall, Hemel Hempstead, Hertfordshire, HP3 9HN ("Eckoh"), and the Customer detailed in the table below.

This Additional Order Form fully incorporates the Agreement made between Eckoh and the Customer. Except as expressly stated in this Additional Order Form, all terms and conditions of the Agreement shall remain unchanged.

Date of Original Agreement:	
Customer Name:	
Customer Address:	
Customer Registered Number:	
Additional Services:	☐ as further described in Annex ☐
Term of Additional Services:	☐ from the Service Commencement Date for Additional Services
Service Commencement Date for Additional Services:	
Additional Products:	☐ as further described in Annex ☐
Lease or Sale:	
Term of Lease:	
Anticipated Delivery Date for Additional Products:	

By signing below, we confirm that:

- A. the contents of this Additional Order Form and the attached Annexes are correct;
- B. the Term of the Agreement shall be extended as set out above, for the purposes of this Additional Order Form;

The Customer agrees to pay the Charges as set out in Annex ☐.

Signed for and on behalf of:
Eckoh UK Limited

Sign:

Name.....

Title.....

Date.....

Signed for and on behalf of:
Customer

Sign:

Name.....

Title.....

Date.....

[Note - Annexes to be added for Services and Charges as per Schedules 3 and 4 of the Agreement, as required]