



## GENERAL TERMS AND CONDITIONS

### 1 DEFINITIONS AND INTERPRETATION

1.1 The expressions used in these T&Cs shall have the following meanings:

**“Acceptable Use Policy”** means the Ekco acceptable use policy as may be updated and made available to the Customer from time to time;

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

**“Agreement”** means the Order Form, these T&Cs, the Specification, and any other documents validly incorporated by reference in the Order Form, these T&Cs, and the Specification, pertaining to the Services;

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

**“Authorised Users”** means categories and number of users authorised by Ekco to use the Software as set out in the Specification;

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

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

**“Control”** means (A) the possession, directly or indirectly, of the power to vote fifty percent (50%) or more of the voting stock (other than directors qualifying shares or other de minimis holdings required by Applicable Laws to be held by other person(s)) of such person; (B) ownership, directly or indirectly, of fifty percent (50%) or more of the equity interests (other than directors

qualifying shares or other de minimis holdings required by Applicable Laws to be held by other person(s)) in such person; or (C) having, directly or indirectly, the ability to direct or procure the direction of the management and policies of such person, whether through the ownership of shares, by contract or otherwise, and **“Controlling”**, **“Controlled”** and **“common Control”** have corresponding meanings;

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

**“Customer Claim”** has the meaning set out in Clause 10.1;

**“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 Default”** has the meaning set out in Clause 2.5;

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

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

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

**“Data Protection Laws”** means all Applicable Laws relating to the processing of Personal Data and the protection of privacy, including but not limited to EU and UK GDPR and any other applicable legislation;

**“Data Processing Schedule”** means the data processing schedule set out in Schedule 2 to these T&Cs;

**“Defect”** means, as applicable, any error or failure of the Software to operate in material respects with the Documentation;

**“Denial of Service Incident”** means an incident in which Authorised Users are deprived of the Services or a material part thereof due to a third party direct or indirect attack on the resources of Ekco or its service providers whether such

incident relates directly to the Customer or any other customer of Ekco and its end-users;

“**Dispute**” has the meaning given in Clause 14.2;

“**Dispute Notice**” has the meaning given in Clause 14.2.1;

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

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

“**Ekco**” means the Ekco entity identified in the Order Form;

“**Ekco Claim**” has the meaning set out in Clause 10.3;

“**Ekco Contact**” has the meaning set out in the Order Form;

“**Ekco IP**” means all Intellectual Property owned, developed or licensed by, or on behalf of, Ekco (including any and all Intellectual Property arising out of or in connection with provision of the Services) which is provided by (or on behalf of) Ekco to the Customer in connection with the Agreement, including any Foreground IP;

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

“**Export Control Laws**” means any law, regulation, order, directive, or guidance (with the effect of law) imposed by a Sanctions Authority that applies to the export, reexport, transfer, disclosure, or other release or provision of Regulated Items or services, including without limitation, controls administered pursuant to the U.S. Export Administration Regulations (15 C.F.R. parts 730 774) and EU and EU Member State export controls administered pursuant to Regulation (EU) 2021/821;

“**Fees**” has the meaning set out in Clause 3.1;

“**Foreground IP**” means all Intellectual Property in any and all goods, software, services, documents, specifications, technical information, data, corrections, modifications, improvements, enhancements, and all other materials (in whatever form) relating to the provision of the Services (including the Software);

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

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

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

“**Milestone**” means a date (if any) by which all, or a part, of the Services are to be completed, as set out in the Order Form or Specification;

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

“**Order Date**” means the date on which the Order Form is executed;

“**Order Form**” means the order form signed by the Parties, giving effect to the Agreement for the delivery of the Services;

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

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

“**Regulated Items**” means hardware (including tooling), materials, software, or technology;

“**Relevant Requirements**” has the meaning set out in Clause 13.4;

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

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

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

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

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

“**Services**” means the services to be delivered by Ekco, as set out in the Specification, to the Customer;

“**SLA**” means the service level agreement (if any) appended to the Specification;

“**Software**” means the computer programs, excluding Third Party Products, specified in the Specification and any Maintenance Releases (as applicable) together with any technical information and Documentation necessary for the use of such programs as licensed by Ekco to the Customer pursuant to the Agreement;

“**Specification**” means the statement of work set out in Appendix 1;

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

“**Taxes**” has the meaning set out in Clause 3.3;

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

“**Territory**” means the territory (if any) where delivery of the Services is restricted to, as set out in the Order Form or the Specification;

“**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 in any Third Party Product;

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

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

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

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

## 1.2

### Interpretation.

1.2.1 references to a specific law include that law as amended from time to time, or any law that replaces or amends it;

1.2.2 the words “**including**” or “**for example**” (or similar) should not be given a restrictive meaning

	because they are followed by particular examples;	2.2.1	provide Ekco, with access to true and complete Customer Data as necessary for Ekco to perform the Services and all such further necessary information, co-operation, authority and access to personnel, premises, sites, offices, facilities, environment, and Customer Systems (including via remote access) as may be reasonably required in order for Ekco to provide the Services;
1.2.3	the singular includes the plural and vice versa and any gender includes all genders;		
1.2.4	headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of the relevant section; and		
1.2.5	a Party means a Party to the Agreement and includes successors and permitted assigns.	2.2.2	where any part of the Services are to be provided at the Customer's premises, ensure that Ekco's staff and contractors have a safe place to work, and the Customer shall notify Ekco of any health and safety rules which apply to the Customer's premises;
2	<b>SUPPLY OF SERVICES</b>		
2.1	<b>Ekco Obligations.</b> Ekco shall (as applicable) use reasonable endeavours to:		
2.1.1	make the Software materially available to the Customer in accordance with the Specification;	2.2.3	maintain adequate insurance cover in respect of any loss, corruption, or damage to the Customer Materials;
2.1.2	perform the Services materially in accordance with the Specification;	2.2.4	use all reasonable endeavours to carry out Ekco's reasonable instructions in relation to the Services;
2.1.3	provide the Loaned Equipment (if any) to the Customer in accordance with the Specification; and	2.2.5	obtain (before the Order Date) and maintain all necessary licences, consents, and permissions (including third-party licences and consents) necessary for Ekco to access and use the Customer Data and the Customer's networks, systems, sites and environments for the purpose of providing the Services (including the Customer Systems);
2.1.4	support any changes to Customer Systems during the term of the Agreement as follows:		
	(a) changes that in Ekco's opinion are reasonably practicable for it to support, including server migrations and upgrades that require a new server setup will be chargeable and quoted for prior to any work being carried out; and	2.2.6	comply with any operating or usage instructions provided in respect of the Loaned Equipment;
	(b) changes or additions that Ekco cannot reasonably practicably support or that the Customer does not wish to pay Ekco for supporting will be considered to be outside of the Agreement,	2.2.7	keep all Loaned Equipment in safe custody at its own risk, fully insured, maintain them in good condition until returned to Ekco, and not dispose of or use Loaned Equipment other than in accordance with Ekco's written instructions or authorisation;
	with due care, skill and diligence, and for the Customer's own internal business only.	2.2.8	provide Ekco with such information and materials as Ekco may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
2.2	<b>Customer Obligations.</b> The Customer shall, during the Term:		

2.2.9	ensure that all Authorised Users:	which is abusive, threatening, malicious, harassing, fraudulent, defamatory or that which encourages criminal activities; and/or
	(a) are aware the Services do not allow for voice calling or provide the ability to access emergency services or emergency services providers; and	(e) sell, and/or resell the Services in whole or in part, to a third party for money or money's worth or otherwise provide use of the Services to anyone else;
	(b) have alternative means of contacting the relevant emergency services providers;	
2.2.10	ensure that its hardware, network, Customer Systems and environments:	2.2.12 co-operate with Ekco in all matters relating to the Services;
	(a) are in good order and working condition and provide prior written notification to Ekco of any changes to the same; and	2.2.13 comply with (and ensure that its Authorised Users comply with) the Acceptable Use Policy, and Applicable Law; and
	(b) comply with the relevant specifications as may be provided by Ekco from time to time;	2.2.14 maintain adequate and up-to-date anti-virus software to protect the security of the Customer's network, systems and environments at all times (including the Customer Systems).
2.2.11	not, and will not permit any third party to:	2.3 The Customer acknowledges that the Services do not include, except where provided for in the Specification:
	(a) interfere with, impair or disrupt the Services;	2.3.1 any services, systems or equipment required to access the internet (and that the Customer is solely responsible for procuring access to the internet and for all costs and expenses in connection with internet access, communications, data transmission and wireless or mobile charges incurred by it in connection with use of the Services); or
	(b) modify, adapt, copy, or create derivative works based on the Services or any part, feature, function or user interface of the Services;	2.3.2 dedicated data back up or disaster recovery facilities, and the Customer should ensure it always maintains backups of all Customer Materials.
	(c) use the Services for any unlawful or otherwise inappropriate purposes;	
	(d) store or distribute:	
	i material protected by third party Intellectual Property (including software, videos, music and written works) without the requisite clearances, consents or licences for such storage or distribution; and/or	2.4 <b>Customer Materials.</b> If Customer Materials are transferred from the Customer to Ekco in connection with the Services (" <b>migration</b> "), Ekco is not responsible for any damage or loss of Customer Materials during the migration. Before a migration, the Customer always has to make its own backup of the data that is going to be migrated.
	ii obscene or illegal material including that	

2.5	<p><b>Customer Default.</b> If Ekco's performance of any of its obligations under the Agreement is prevented or delayed by any:</p> <p>2.5.1 failure or delay of the Customer in performing any of its obligation under the Agreement; or</p> <p>2.5.2 other act or omission of the Customer,</p> <p>(each a "<b>Customer Default</b>"), Ekco shall:</p> <p style="padding-left: 40px;">(a) not be liable for any failure to provide the affected Services and / or meet any applicable Milestones or for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer Default; and</p> <p style="padding-left: 40px;">(b) the Customer shall reimburse Ekco on written demand for any costs or losses sustained or incurred by Ekco arising directly or indirectly from the Customer Default.</p>	2.9.1	<p>Ekco shall have no obligation to provide such Support Services if the fault is not reported to Ekco or where faults arise from:</p> <p>(a) misuse or incorrect use of the Software, Services or Loaned Equipment;</p> <p>(b) failure to maintain the necessary environmental conditions for use of the Loaned Equipment;</p> <p>(c) use of the Software, Services or Loaned Equipment in combination with any equipment or software not provided by Ekco, or any fault in any such equipment or software;</p> <p>(d) relocation or installation of the Loaned Equipment by any person other than Ekco or a person acting under Ekco's instructions;</p> <p>(e) the Customer's failure to follow Ekco's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Software, Services or Loaned Equipment or (if there are none) good trade practice;</p> <p>(f) the Customer altering or repairing the Software or Loaned Equipment without the written consent of Ekco; or</p> <p>(g) any Customer Default or breach of the Customer's obligations under the Agreement.</p>
2.6	<p><b>Changes to the Services.</b> Ekco may modify any feature or functionality of the Services and reserves the right to amend any part of the Services at any time. Ekco shall provide the Customer with commercially reasonable advance notice, including via email, of deprecation of a material feature that affects the Customer.</p>		
2.7	<p>Ekco shall use reasonable endeavours to ensure that it shall not materially decrease the overall level of functionality applied by it in respect of the Services from that set out in the Specification (other than in connection with any Third Party Product which will be governed by the applicable Third Party Terms),</p>		
2.8	<p>Except where specified in the Specification as being comprised within the Services, the Customer is solely responsible for properly configuring and using the Services and taking its own steps to maintain appropriate security (including maintaining reasonable information security practices) for the protection and backup of Customer Material.</p>	2.9.2	<p>Ekco will provide Support Services only to the Customer's administrative or technical contacts listed on the Customer's account. Ekco will not provide support directly to other Authorised Users unless specifically agreed in writing.</p>
2.9	<p><b>Support Services.</b> Ekco shall provide Support Services as set out in the Specification and as follows:</p>	2.9.3	<p>In the event that any service credits are specified in the SLA,</p>

these shall be the sole and exclusive remedy of the Customer for breach of any agreed service levels specified in such SLA.

2.10 **Loaned Equipment.** Title to any Loaned Equipment shall not at any time transfer to the Customer. The Customer undertakes to keep the Loaned Equipment wholly identifiable and distinguishable from other goods.

2.11 **Monitoring.** Ekco reserves the right to monitor (and suspend if applicable) Customer's use of the Services to ensure the Customer compliance with the Agreement, including the Acceptable Use Policy. Ekco may also monitor and collect configuration, performance, and usage data relating to the Customer's use of the Services to facilitate delivery and improvement of the Services and to improve Ekco's software, products and services. The Customer agrees not to interfere with any such monitoring.

### 3 FEES & PAYMENT

3.1 **Fees.** The Customer shall pay to Ekco the fees and expenses set out in the Order Form (or where applicable in the Specification) ("**Fees**"). Unless otherwise set out in the Agreement, the Fees shall be due and payable by the Customer, within thirty (30) days of the date of the applicable invoice, via bank transfer to a bank account nominated in writing by Ekco from time to time. The Customer hereby acknowledges that:

3.1.1 all Fees shall be payable without any deduction or withholding (except as required by Applicable Law); and

3.1.2 all Fees paid to Ekco in respect thereof are non-refundable except as otherwise provided in the Order Form (or where applicable the Specification).

3.2 **Invoices.** The Customer agrees and acknowledges that, unless otherwise set out in the Order Form, Ekco shall be permitted to invoice the Customer from the Order Date monthly in advance by reference to a pro rata amount of the relevant Fees.

3.3 **Taxes.** The Customer acknowledges that all sums payable under the Order are exclusive of any and all foreign or local taxes and / or duties, including sales, excise, value added, and / or withholding taxes, of whatever nature and howsoever levied imposed by Applicable law ("**Taxes**") and the Customer shall be responsible for paying such Taxes as required by Applicable Law.

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

3.4.1 the Customer shall pay interest on the overdue amount at the rate of eight (8%) above the Barclay's Bank base rate published on the date the invoice was issued but at 8% a year for any period when that base rate is below 0%; and

3.4.2 Ekco may, at its sole discretion, disable the Customer's access to the Software, terminate the Agreement or otherwise suspend the provision of the Services to the Customer.

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

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

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

3.5.2 on the 1st January each year to take into account any inflationary changes in line with the RPI index; and/or

3.5.3 at any time, to take into account any increases to Ekco's third party costs, over which Ekco has no control (including but not limited to, its supplier costs). Such increase to the Fees shall be calculated by reference to the actual increase to the relevant third party costs.

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

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

3.7 If the Customer, acting in good faith, wishes to dispute an invoice or any part of an invoice issued by Ekco, it must do so within 90 (ninety) days of the date of the invoice, providing reasonable details of the dispute, to allow the Supplier to investigate, after which time the

Customer shall be precluded from raising any such dispute.

that cannot be remedied or, if it is capable of remedy, that has not been remedied within twenty (20) Business Days of receiving notice of the breach from the Customer; and/or

#### 4 TERM & TERMINATION

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

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

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

4.4

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

4.2.1 immediately by giving written notice to the Customer if:

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

4.5

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

(b) the Customer commits a material breach of the Agreement that cannot be remedied or, if it is capable of remedy, that has not been remedied within twenty (20) Business Days of receiving notice of the breach from Ekco. A material breach shall include a breach of the Customer's obligations under Clause 2.1 (Fees & Payments); and/or

4.5.1 immediately make payment as set out in Clause 4.4;

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

4.5.3 promptly, and in any event no later than thirty (30) days following the date of such termination, (unless otherwise instructed by Ekco under Clause 4.5.4 below) return all copies of the Documentation, Software, and other all other material associated with the Services furnished to the Customer, including all Ekco Confidential Information;

4.5.4 at its own cost, securely erase all data from any Loaned Equipment and promptly return the same to Ekco. If the Customer fails to do so promptly (and in any event no later than fourteen (14) days from termination), the Customer must on demand pay to Ekco an amount equal to the cost of purchasing new equipment to replace such Loaned Equipment and regardless, Ekco reserves the right to recover such Loaned Equipment and, for that purpose, the Customer grants to Ekco and/or Ekco's subcontractor) a licence to enter the premises

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

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

4.3.1 immediately by giving written notice to Ekco if Ekco commits a material breach of the Agreement



- where the Loaned Equipment is being stored;
- 4.5.5 at Ekco's request, promptly destroy all copies of the Documentation, Software, and all other material associated with the Services furnished to the Customer, including all Ekco Confidential Information; and
- 4.5.6 certify to Ekco in writing that the Customer has complied fully with the requirements of this Clause 4.5.

4.6 **Retention required by Applicable Law.** The Customer may retain such copies of the Software, Documentation and / or Ekco Confidential Information stored electronically on data archives or back-up systems, or to comply with the laws or regulations applicable to the Customer, provided that such copies shall at all times be subject to the terms of the Agreement while in the Customer's possession or control.

5 **INTELLECTUAL PROPERTY**

5.1 **Ownership and Licence of Ekco IP.** Ekco (and its licensors) shall retain ownership of all Intellectual Property in and to the Ekco IP. Except as expressly set out in the Agreement, the Agreement does not grant the Customer any other rights.

5.2 **Ownership and Licence of Customer IP.** The Customer shall retain ownership of all Intellectual Property in and to the Customer IP. The Customer grants to Ekco a worldwide, fully paid-up, non-exclusive, royalty-free, fully transferable, assignable and sub-licensable and irrevocable licence to use, copy and modify the Customer IP solely for the purpose of providing the Services and performing Ekco's obligations under the Agreement during the Term.

5.3 **Further Assurance.** To the extent that any and all Intellectual Property in the Foreground IP does not automatically vest in Ekco upon its existence, the Customer hereby assigns (or shall procure the first owner to assign) to Ekco all present and future Intellectual Property in the Foreground IP and shall execute all documents and complete all asks necessary to perfect such assignment of Intellectual Property in the Foreground IP to Ekco. Where applicable, at the Customer's expense, the Customer shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly assist Ekco in preparing, filing, and maintaining patent applications in relation to any Foreground IP.

5.4 **Third Party IP.** If Ekco reasonably believes the Services are reasonably likely to infringe a third

party's Intellectual Property, then Ekco may, at its sole option and expense:

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

If Ekco considers such remedies not to be reasonably practicable or not commercially reasonable, then Ekco may suspend or terminate the Customer's use of the impacted Services.

6 **DATA PROTECTION & SECURITY**

6.1 **Data Security.** Ekco shall use commercially reasonable efforts to apply appropriate security procedures to preserve the security and integrity of Customer Data and prevent any unauthorised access to Customer Data by third parties.

6.2 **Access to Customer Data by third parties.** The Customer expressly acknowledges that Ekco may provide its Affiliates, subcontractors and third party service providers with access to Customer Data and Customer IP for the purpose of providing the Services and otherwise fulfilling Ekco's obligations under the Agreement. Where Ekco provides such third parties with access to Customer Data, Ekco will ensure that those third parties are bound by confidentiality and security obligations as least as stringent as those contained in the Agreement.

6.3 **Data Protection.** Both Parties will comply with all applicable requirements of Data Protection Laws. If the provision of the Services requires Ekco to process Personal Data, then the Customer shall be the controller with respect to any Personal Data processed under the Agreement and Ekco shall be the processor thereof.

6.4 **Processor Obligation.** With respect to any Personal Data processed under the Agreement, the Data Processing Schedule shall apply.

6.5 **Transfer of Customer Data.** The Customer hereby acknowledges and consents to the transfer of Customer Data and/or Customer IP to such jurisdictions required for the purpose of providing the Services and otherwise fulfilling Ekco's obligations under the Agreement.

7 **CONFIDENTIALITY**

7.1 Each Party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-

	how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ( <b>Disclosing Party</b> ), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain including, for the avoidance of doubt, all information which may come into the Company's possession as a result of providing the Services and/or Software, and the terms of the Agreement.		
7.2	The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Agreement, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 7 shall survive termination of the Agreement.		8.2.1 represent, guarantee or warrant the completeness, accuracy, timeliness or suitability of any results, savings and/or value arising from use of or in connection with the Services;
			8.2.2 accept any liability (whether in contract, tort or otherwise howsoever and whether or not they have been negligent) for any loss or damage (including, without limitation, loss of profit), which may arise directly or indirectly from use of or reliance on the Services.
7.3	Nothing in this clause 7 shall be construed as preventing a Receiving Party from making any disclosure of the Disclosing Party's information to the extent that such disclosure is required by law.	8.3	<b>Customer Warranties.</b> The Customer represents and warrants that, at all times, it shall:
			8.3.1 agree and accept the Services do not allow for voice calling or provide the ability to access emergency services or emergency services providers; and
			8.3.2 comply with (and ensure that its Authorised Users comply with) Applicable Law the Acceptable Use Policy and any other policies provided by Ekco from time to time.
7.4	<b>Publicity.</b> Neither Party shall make any public announcement concerning the Agreement and/or the Services without the prior written consent of the other Party. Notwithstanding the foregoing, the Customer hereby gives Ekco the right or licence to use any trade names, trademarks, service marks or other brand indicia of the Customer solely for the purpose of identifying the Customer as a service recipient in marketing and promotional materials (including press releases).	8.4	<b>Customer Data Back-up.</b> Ekco is not responsible for the loss or destruction (or for the backup of) any Customer Data or results. The Customer acknowledges that data conversion, processing and manipulation are subject to the likelihood of human and machine errors, omissions, delays, and losses, including inadvertent loss of data or damage to media that may give rise to loss or damage. The Customer is solely responsible for independent backup of data generated or stored by the Software. The Customer is responsible for adopting measures to limit the impact of such problems, including backing up data, and adopting procedures to ensure the accuracy of the Customer Data; examining and confirming results prior to use; and adopting procedures to identify and correct errors and omissions, replace lost or damaged media, and reconstruct data.
7.5	<b>Return of Confidential Information.</b> At the written request of the disclosing Party, the recipient Party will promptly return or destroy all material embodying Confidential Information of the disclosing Party.		
8	<b>REPRESENTATIONS, WARRANTIES &amp; DISCLAIMERS</b>		
8.1	<b>General Warranties.</b> Each Party represents and warrants to the other that, at all times it is a duly authorised and validly existing legal entity having all the necessary rights, approvals, permits and consents to enter into and perform the Agreement, and to grant the rights and licences referred to herein.	8.5	<b>Disclaimer of Warranty.</b> Except for the warranties expressly set out in these T&Cs, the Services are provided "as-is" and Ekco makes no representation, or warranty of any kind, express or implied, as to the condition, character, quality, accuracy, nature, timeliness, capability, performance, security, availability, suitability, or any other characteristic of the service or any portion thereof. To the fullest extent permitted by law, Ekco hereby disclaims all warranties, conditions and covenants (express or implied) with respect to the Services, including:
8.2	<b>General Disclaimer.</b> The Customer agrees and accepts that Ekco does not:		

8.5.1	any implied warranty, condition or covenant of merchantability or fitness for a particular purpose;		for any issues related to the performance, operation or security of the Services that arise from Customer Data or Third Party Products or any other services provided by a third party to the Customer.
8.5.2	any implied warranty condition or covenant arising from any course of dealing, course of performance or usage of trade;		
8.5.3	any warranty that the Services shall be compatible with any other software or service or with any hardware or equipment except that which is provided to the Customer by Ekco; or	9	<b>LIMITATION OF LIABILITY</b>
		9.1	<b>Exclusions from Limitation of Liability.</b> Nothing in the Agreement shall limit either Party's liability to the other Party for:
8.5.4	any warranty, condition or covenant that any of the Services will be secure or error-free, will meet the Customer's requirements, will contain any particular features or functionality, will perform in a particular or generate particular results or values, will always be available, accessible, uninterrupted, timely, secure, operate without error or that Ekco will correct all Service Defects.		9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
			9.1.2 fraud or fraudulent misrepresentation; or
			9.1.3 anything else which cannot be excluded or limited under Applicable Law.
		9.2	<b>Exclusion for Consequential and Indirect Damages.</b> To the extent permitted under Applicable Law, under no circumstances will either Party or its Affiliates be liable (whether in contract, tort, breach of statutory duty or otherwise) for any loss of profits, loss of opportunity, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of revenue, economic loss, loss of data or business interruption, replacement software or services, loss of goodwill or reputation (whether direct or indirect) or any indirect, incidental, special, consequential or exemplary loss or punitive damages relating to the Services or otherwise arising out of or in connection with the Agreement, each of which (however caused) is excluded by agreement of the Parties regardless of whether such losses and / or damages were foreseeable or whether the other Party has been advised of the possibility of such damages.
8.6	<b>Unauthorised Access Exclusion.</b> Without in any way limiting the generality of Clause 8.5, the Customer acknowledges and agrees that despite the efforts of Ekco, the Services, like any service provided using the internet, are not immune from unauthorised access. Without prejudice to Ekco's obligations in the Data Processing Schedule, the Customer acknowledges and agrees that Ekco shall have no liability in respect of any loss of use or corruption of the Customer Materials or Customer Systems arising in connection with any unauthorised access to it by any third party.		
8.7	<b>Applicable Laws.</b> Any obligation of Ekco under the Agreement to comply or ensure compliance by any person or the Services with any law shall be limited to compliance only with laws within the United Kingdom as generally applicable to businesses and to providers of cloud services. Such obligations shall not be construed to create any obligation on Ekco (or anyone acting on its behalf) or any part of the Services to comply with any laws or regulations which apply solely to specific commercial or other activities (such as insurance, legal advice or banking or other professional services) or which apply solely to a specific commercial or non-commercial sector (or part thereof) (such as the public, legal, accountancy, actuarial, insurance, banking or financial service sectors).	9.3	<b>Exclusion of Ekco's Liability.</b> Ekco shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement for:
			9.3.1 any defects or deficiencies in Customer Materials or Customer Systems;
			9.3.2 any failure of the Services that is due to any failure of a Third Party Product;
8.8	<b>Third Party Warranties.</b> Warranties for third-party software will be governed by the applicable Third Party Agreements. Ekco is not responsible		

9.3.3	any defect or default arising out of or in connection with changes made to the Services which have not been made or expressly approved in writing by Ekco or resulting from what Ekco reasonably considers to be abnormal usage;		“ <b>Customer Claim</b> ”) and will indemnify the Customer from any damages, liabilities, costs and expenses finally awarded against the Customer (or for amounts paid by the Customer under a settlement approved by Ekco in writing) as a result of any Customer Claim, provided that the Customer:
9.3.4	any unauthorised access to any Customer System, except to the extent that the Agreement specifies that Ekco is responsible for security of such Customer System and the access results from a breach by Ekco of its security responsibilities in the Agreement;		10.1.1 promptly (and in any event no later than 30 (thirty) days after the Customer becomes aware of the Customer Claim) gives Ekco written notice of the Customer Claim;
9.3.5	any failure to the Customer’s delay in providing information as reasonably requested by Ekco;		10.1.2 gives Ekco sole control of the defence and settlement of the Customer Claim; and
9.3.6	any failure of the Services that is due to any integration or interoperability issues arising with any third party or Customer systems or legacy systems;		10.1.3 gives Ekco all reasonable assistance, information and authority it requests in respect of the defence and / or settlement of such Customer Claim.
9.3.7	any loss arising from corruption of data or damage to equipment or facilities, due to the introduction of a Virus or arising as a result of a problem with the internet (unless demonstrated by the Customer to be due to Ekco’s negligence or failure to meet the description of the Services under the Agreement if applicable); and/or	10.2	<b>No Indemnification.</b> Ekco’s defence and indemnification obligations do not apply to the extent that:
9.3.8	any loss arising out of the use of or provision of access to any Third Party Services or any Open Source Software, including any Virus therein.		10.2.1 the allegation does not state with specificity that the Software or Ekco IP is the sole basis of the Customer Claim;
9.4	<b>Limitation of Liability.</b> Subject to Clauses 9.1, 9.2 and 9.3, in no event shall the aggregate liability of Ekco and its Affiliates arising out of or related to the Agreement or the Services (whether in contract, tort, breach of statutory duty or otherwise) exceed the lower of one million pounds (£1,000,000) or one hundred percent (100%) of the total Fees paid under the Order giving rise to the liability during the twelve (12) months immediately preceding the event giving rise to such liability.		10.2.2 the Customer Claim arises from the use or combination of the Software or Ekco IP (or any part thereof) with software, hardware or data not provided by Ekco, if the Software or Ekco IP or use thereof would not infringe without such combination;
<b>10</b>	<b>INDEMNIFICATION</b>		10.2.3 the Customer alters the Software or Ekco IP or uses it outside the scope of the licences granted by Ekco under the Agreement;
10.1	<b>Indemnification by Ekco.</b> Ekco shall defend the Customer against any claim brought against the Customer by a third party alleging that the Software or Ekco IP infringes or misappropriates such third party’s Intellectual Property (a		10.2.4 the Customer uses a version of the Software which has been superseded, if the infringement claim could have been avoided by using the most recent version of the Software which was made available to the Customer; or
			10.2.5 a Customer Claim arises from Customer Data, Third Party Services or Customer’s breach of the Agreement or use of the Software in a manner prohibited or contrary to the Documentation.
			Notwithstanding anything to the contrary in the Agreement, in no event shall Ekco’s liability

under Clause 10.1 exceed the total Fees paid to Ekco under the Order in the preceding twelve (12) months to any claim.

10.3

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

10.3.1

resulting from:

- (a) any breach of the Agreement (including but not limited to the Customer's failure to make payments pursuant to Clause 3);
- (b) a breach of an Applicable Law; or
- (c) the Customer's use of the Services and/or Documentation; or

10.3.2

made or brought against Ekco by a third party alleging that any Customer Data or Customer IP infringes or misappropriates any third party's Intellectual Property,

(each an "**Ekco Claim**"). Ekco shall:

- (a) promptly give the Customer written notice of the Ekco Claim;
- (b) give the Customer sole control of the defence and settlement of the Ekco Claim; and
- (c) give the Customer all reasonable assistance, information and authority it requests in respect of the defence and/or settlement of such Customer Claim.

11

### THIRD PARTY PRODUCTS

11.1

Unless otherwise specified, Third Party Products shall not be deemed to be incorporated within the Services. Use of each Third Party Product shall be subject to the applicable Third Party Terms specified provided to the Customer by Ekco, 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 these T&Cs, 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.

11.2

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.

11.3

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.

11.4

Unless agreed otherwise between Ekco and the Customer:

11.4.1

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

11.4.2

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

11.5

The Customer acknowledges that 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.

12 **NON SOLICITATION**

12.1 Neither the Customer, nor any subsidiary or associated company of the Customer, nor any client of the Customer shall, during the Term, or for a period of twelve months thereafter, be permitted to utilise the services of any of Ekco's employees other than through Ekco.

12.2 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.

12.3 Clauses 12.2 shall survive the termination or expiry of this Agreement for a period of 12 months.

13 **COMPLIANCE & AUDIT**

13.1 **Policies.** The Customer shall comply with any policies and procedures provided by Ekco from time to time.

13.2 **Audit.** The Parties shall have the right (acting through their own personnel or through their third-party auditors) during reasonable business hours and on reasonable notice to audit the other Party in order to verify the other Party's compliance with its obligations under the Agreement. The Parties shall, and shall procure that its personnel, professional advisors and subcontractors will, provide the other Party with all reasonable information, documentation, assistance and co-operation for the purpose of such audits and agree that such audit right may be exercised by governmental or regulatory bodies as required under Applicable Law.

13.3 **Sanctions and compliance with international trade controls.** Each Party represents, warrants and undertakes that: (i) neither it nor its Affiliates or subcontractors, or any of its or their respective directors, officers, representatives, advisers, or agents is a Sanctions Target; and (ii) neither it nor, to its knowledge (having conducted due and careful inquiry), its Affiliates or subcontractors, or any of its or their respective directors, officers, representatives, advisers, or agents has or will engage in any conduct that it can reasonably foresee may render it or any one of them a Sanctions Target.

13.4 **Anti-bribery and anti-corruption.** Ekco shall: (i) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including the Bribery Act 2010 ("**Relevant Requirements**"); (ii) have and shall maintain in place throughout the Term its own policies and procedures, including adequate

procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements; and (iii) notify the Customer (in writing) if it has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with the performance of this Agreement. For the purpose of this Clause 13.4:

13.4.1 the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively; and

13.4.2 a person associated with Ekco includes any subcontractor of Ekco.

14 **GOVERNING LAW & DISPUTE RESOLUTION PROCEDURE**

14.1 The Agreement is governed by, and shall be construed in accordance with, the laws of England and Wales. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

14.2 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (the "**Dispute**"), the Parties shall follow the procedure set out in this Clause 14.2:

14.2.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the Ekco Contact and a contact at the Customer with authority, shall attempt in good faith to resolve the Dispute;

14.2.2 if the Customer contact and Ekco Contact are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to the senior management of the Customer and Ekco who shall attempt in good faith to resolve it; and

14.2.3	if the senior management of the Customer and Ekco are for any reason unable to resolve the Dispute within sixty (60) days of service of the Dispute Notice, the Dispute shall be referred to and finally resolved by the courts of England and Wales in accordance with Clause 14.1.	15.2	The Parties also consider and intend that the termination or expiry of the provision of the Services by Ekco under the Agreement will not constitute a relevant transfer for the purposes of TUPE and accordingly if any Ekco employee asserts or establishes that their employment or any claim, right or liability in connection with their employment or the termination of that employment has transferred to the Customer pursuant to TUPE at any time arising from or in connection the provision of the Services or the termination or expiry of the Services, Ekco shall indemnify the Customer up to the date being three (3) months after the termination or expiry of the provision of the Services by Ekco, in respect of all awards, losses, damages, reasonable costs, liabilities, expenses which it may reasonably sustain arising under or in connection with that person's contract of employment and/or the termination of their employment.
14.3	The commencement of any of the above steps shall not prevent the Parties commencing or continuing court proceedings.		
<b>15</b>	<b>TUPE</b>		
15.1	The Parties hereto consider and intend that the commencement of the provision of the Services by Ekco under the Agreement will not constitute a relevant transfer for the purposes of TUPE and accordingly if any employee of or any person engaged by the Customer ( <b>Customer Personnel</b> ) assert or establish that their employment or any claim, right or liability in connection with their employment or the termination of that employment has transferred to Ekco upon commencement of the Services pursuant to the Contract under TUPE:		
15.1.1	the Customer shall indemnify Ekco and keep Ekco fully indemnified, up to the date being six (6) months after the commencement of the provision of the Services by Ekco, against all liabilities to or in respect of or on behalf of such Customer Personnel incurred by Ekco arising out of the employment of or the termination of employment of such Customer Personnel prior to the commencement of the Services by Ekco and against all and any costs, expenses or damages reasonably incurred by Ekco in contesting any claim in respect thereto; and	16	<b>GENERAL</b>
15.1.2	Ekco shall be entitled to terminate that person's employment and, provided that such termination occurs within three (3) months of Ekco becoming aware of the Customer Personnel asserting or establishing that their employment has transferred to Ekco shall be indemnified and kept indemnified by the Customer in respect of all awards, losses, damages, costs, liabilities, expenses and legal fees which it may reasonably sustain arising under or in connection with that person's contract of employment and/or the termination of their employment.	16.1	<b>Limitation Period.</b> Except for actions of non-payment or a breach of Ekco's Intellectual Property, no action, regardless of form, arising out of the Services or relating to the Agreement may be brought by either Party more than two (2) years after the cause of action accrues.
		16.2	<b>Force Majeure.</b> With the exception of the Customer's obligation to may any payment under the Agreement, neither Party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, including without limitation an act of war, hostility, or sabotage; act of God; pandemic; electrical, internet, or telecommunication outage; default of suppliers, subcontractors or other utility service providers (including Third Party Services); government restrictions (including the denial or cancelation of any export, import or other licence). In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for thirty (30) days, the Party not affected may terminate the Agreement by giving thirty (30) days' written notice to the affected Party.
		16.3	<b>Notices.</b> All enquiries and notices between the Parties to be addressed are to be in writing in the English language and directed as follows. Such notices and other communications (other than routine operational communications) shall be in letter format on the headed paper of the notifying Party and served by registered mail or courier (with copy by email (with such letter attached thereto)) to the registered office address of the Parties.

- 16.4 **Waiver.** No delay or omission by either Party to exercise any right or remedy provided for by law or under the Agreement will operate to waive, limit or otherwise affect that right or remedy.
- 16.5 **No Partnership or Agency.** Nothing contained in the Agreement will be construed as creating a joint venture, partnership, agency, fiduciary or employment relationship among or between the Parties.
- 16.6 **Assignment and Subcontracting.** The Customer shall not be permitted to assign, novate or otherwise transfer any of its rights or obligations under the Agreement to any third party without the written permission of Ekco, not to be unreasonably withheld.
- 16.7 **Entire Agreement.** The Agreement constitutes the whole and only agreement between the Parties relating to its subject matter and supersedes and excludes all prior agreements or arrangements made between them that relate to it. Each Party acknowledges and confirms that it has not entered into the Agreement on the basis of any representation, warranty, undertaking or other statement whatsoever, whether made negligently or innocently, by any person (whether a Party or not) other than as expressly set out in the Agreement.
- 16.8 **Variation.** Except as set out in these T&Cs, any variation, including the introduction of any
- additional terms and conditions, to the Agreement, shall only be binding when agreed in writing and signed by both Parties.
- 16.9 **Severability.** If any provision (or part of a provision) in the Agreement is unenforceable, invalid or illegal for any reason, the other provisions of the Agreement will remain in force as if they had been executed without the offending provision appearing in the Agreement.
- 16.10 **Third party rights.** A person who is not a Party to the Agreement has no rights to enforce any term of the Agreement.
- 16.11 **Counterparts.** The Agreement may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of the Agreement. The Parties may enter into the Agreement by executing any such counterpart.
- 16.12 **Language.** The Agreement has been prepared in English. In the event of any inconsistency between the original English version and any translation, the English version shall prevail.
- 16.13 **Survival.** Notwithstanding anything to the contrary in the Agreement, the following provisions shall survive the termination or expiry of the Agreement: 4, 7, 0, 11, 14, 16 and any provision of the Agreement which by its nature is intended to survive.

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**APPENDIX 1**  
**SPECIFICATION**

