

Eckoh Master Services Agreement (Cloud)

This Agreement is dated: [DATE] ("Effective Date")

BETWEEN:

"Eckoh"	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; and
"Client"	[CLIENT NAME], a company registered in [England and Wales] (company number: [INSERT]) with a registered office at [INSERT ADDRESS]

BACKGROUND

The Client agrees to purchase and Eckoh agrees to provide the Services on the terms set out in this Agreement.

AGREED TERMS

1 STRUCTURE AND DURATION

- 1.1 This Agreement (~~the "Agreement"~~) is comprised of:
- 1.1.1 the Order Form and any additional Order Form(s);
 - 1.1.2 the Statement of Work and any additional Statement of Work(s);
 - 1.1.3 the terms and conditions set out in this Agreement;
 - 1.1.4 all Schedules to this Agreement; and
 - 1.1.5 any documents and/or annexures referred or attached to the items listed in ~~C~~lauses 1.1.1 to ~~1.1.4~~~~1.4~~ above.
- 1.2 In the event of any conflict between the terms of this Agreement, the following order of precedence shall be used to resolve such conflict (with documents higher in this list (including any documents or annexures thereto) taking precedence over the documents (including any documents or annexures thereto) lower in this list):
- 1.2.1 any Special Terms set out in an Order Form or an additional Order Form;
 - 1.2.2 the Order Form and any agreed additional Order Form (as applicable) but excluding any Special Terms set out in each of the same;
 - ~~1.2.3~~ the Statement of Work and any agreed additional Statement of Work (as applicable);
 - ~~1.2.3~~~~1.2.4~~ ~~these terms and conditions~~;
 - ~~1.2.4~~~~1.2.5~~ Schedule 1 (Personal Data);
 - ~~1.2.5~~~~1.2.6~~ Schedule 4 (Acceptable Use Policy); and
 - ~~1.2.6~~~~1.2.7~~ Schedule 5 (Maintenance and Support).
- 1.3 **The Agreement.** The Agreement shall commence on the Effective Date and shall continue until expiry or termination of all Order Forms entered into pursuant to this Agreement.
- 1.4 **Order Form.** Each Order Form shall take effect from the date of the last ~~party-Party~~ to sign the Order Form, ~~each Statement of Work~~ shall take effect from the date of the last ~~party-Party~~ to sign the relevant Statement of Work and both shall continue, unless terminated earlier in accordance with the provisions of this Agreement, for the Term set out in the Order Form or any renewal period agreed to by the Parties (each, a "Renewal Period"). Each Order Form shall be in substantially the form set out in Schedule 2 (Order Form Template) and each Statement of Work shall be in substantially the form set out in Schedule 3 (Statement of Work Template).
- 1.5 **Statement of Work.** In addition to the Order Form, the Parties will enter into separate Statements of Work setting out details of the applicable Implementation Services and Professional Services, if any. Each Statement of Work shall be in substantially the form set out in Schedule 3 (Statement of Work Template). The Parties may enter into additional Statements of Work during the Term or during any ~~R~~enewal ~~I~~tems of this Agreement. All Statements of Work are subject to the terms therein as expressly agreed to by the Parties and shall control over any provisions herein.

1.6 **Changes in Scope.** If the Parties wish to modify, expand or change the scope of any Statement of Work and/or Services (a "**Change**"), the Change requires a mutually agreed upon amendment of the applicable Statement of Work and Order Form (as applicable), detailing the Change and any other relevant information that enables the Parties to implement the Change in accordance with the Change Control Process as provided in the applicable Statement of Work. No Change shall be considered authorised unless Eckoh and Client have signed an amendment to the applicable Statement of Work and Order Form (as applicable), and the terms of such amended Statement of Work and/or Order Form shall control over any terms in the previous Statement of Work and/or Order Form of this Agreement.

1.7 **Special Terms.** Where the Parties have agreed to special terms in addition to or in place of certain terms and conditions set out in this Agreement, such agreed special terms shall be as set out in the relevant Order Form and any such special terms shall be applicable only to the relevant Order Form in which they are specified ("**Special Terms**"). Each Party agrees to comply with any Special Terms applicable to it in performing its obligations under the relevant Order Form.

2 PROVISION OF SERVICES

2.1 Subject to the Client paying the Charges in accordance with [Clause 7](#), Eckoh will perform its obligations and make the Services available to the Client specified in the relevant Order Form and Statement of Work in the Territories in accordance with this Agreement.

2.2 Additional Services (or changes to a Client's data centre) may be requested and purchased by the Client using an additional Order Form which will be binding on the Parties once signed by both Parties. Each additional Order Form shall form part of this Agreement and shall not form a separate contract to it and the provisions of this Agreement are expressly incorporated into the additional Order Form. The additional Order Form shall be in substantially the form set out in Schedule 2 (Order Form Template) and shall set out full details for the provision of the Additional Services including: relevant Charges for any Additional Services.

2.3 Eckoh will:

2.3.1 provide the Services with the reasonable skill and care of a competent service provider operating in its industry;

2.3.2 use reasonable endeavours to provide the Services without interruption. Eckoh makes no warranty that the Services will be uninterrupted or error free;

2.3.3 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;

2.3.4 be entitled to make corrective code and other updates to the Services during the term of this Agreement. Any such updates will become part the Intellectual Property Rights of Eckoh under [Clause 10](#).

2.4 Eckoh shall not be liable for any delay, failure and/or non-performance of the Services, including any failure of the Services to meet the description set out in the applicable Specification, in all cases, caused as a result of any act, omission or inaction on the part of the Client (including any failure by the Client to comply with its obligations in [Clause 4](#)).

2.5 Any dates stated in this Agreement (including any Order Form and/or Statement of Work) or otherwise agreed between the Parties for delivery of or launch of live Services are for guidance purposes only and time shall not be of the essence.

2.6 If:

2.6.1 either Party wishes to change the scope of any Services to be provided under an existing Order Form and Statement of Work (excluding any change to a data centre which shall be dealt with in accordance with [Clause 2.6.2](#)), such change shall be dealt with as a mutually agreed variation to the relevant Order Form and Statement of Work in accordance with [Clause 13.6](#); and

2.6.2 the Client wishes to purchase Additional Services or wishes to change its data centre, the provision of such Additional Services or the change to the data centre shall be agreed under an Additional Order Form and Statement of Work pursuant to [Clause 2.2](#).

3 IMPLEMENTATION

3.1 The Client acknowledges that any Implementation Services are dependent on the Client complying with its obligations under [Clause 3.2](#). Eckoh shall, subject to payment by the Client of the relevant Charges pursuant to [Clause 7](#), use ~~reasonable~~ **all best** endeavours to provide the Implementation Services from the relevant Order Form Effective Date in accordance with the timescales and in any event within the Implementation Period set out in the relevant Statement of Work provided always that Eckoh shall not be in breach of this Agreement for any failure to complete, or delays in completion of, the Implementation Services to the extent caused by a client default.

3.2 The Client shall comply with the applicable Client Dependencies and complete the Client Implementation Works within the Implementation Period as set out in the relevant Statement of Work and in accordance with the Project

Plan. The Client shall co-operate with any reasonable request from the Eckoh Project Manager and shall keep the Eckoh Project Manager updated on the progress of the Client Implementation Works against the Project Plan.

- 3.3 Immediately following expiry of the Implementation Period, the Client shall carry out any Client acceptance testing ("Client Acceptance Testing") within the Client acceptance period specified in the relevant Statement of Work ("Client Acceptance Testing Period").
- 3.4 Where the Client fails to comply with its obligations under this Clause:
- 3.4.1 Eckoh shall be entitled to charge additional Professional Services Charges in accordance with clause 7.6.1 for any assistance Eckoh provides to the Client in relation to the Client Implementation Works after expiry of the Implementation Period; and
- 3.4.2 the period Service Charges shall be due and payable from the First Payment Date in accordance with the provisions of this Agreement notwithstanding that any of the Implementation Services or Client Implementation Works or Client Acceptance Testing remains outstanding for completion.
- 3.5 Once the Implementation Services, Client Implementation Works and Client Acceptance Testing under a relevant Statement of Work are complete, Eckoh shall notify the Client that the Solution is ready for production use. The go live date for the Solution ("Go Live Date") will be identified by Eckoh in the notice. If the Go Live Date is not specifically identified in the notice from Eckoh, then it shall be deemed as the next Working Day following the date of such notice. Eckoh shall make the Services available to the Client for production use as of the Go Live Date.
- 3.6 To the extent Client is responsible for any delays in the Go Live Date, including delays related to the Client Implementation Works and Implementation Period, then Client shall be responsible for additional Professional Services Charges as provided for in Clause 7 (Charges). Notwithstanding anything herein regarding Client delays and Implementation Services, Service Charges shall commence on the First Payment Date set out in the applicable Order Form.

4 CLIENT OBLIGATIONS

The Client shall:

- 4.1 only use the Services within the scope of any Usage Limits set out in the relevant Order Form;
- 4.2 procure a Single User Licence and/or Shared User Licence (as applicable) to access the Services. A Single User Licence and/or Shared User Licence granting access to multiple Solutions shall be referred to as a "Universal Single User Licence" or "Universal Shared User Licence" in the relevant Order Form. Secure Call Recording Audio Solution may only be procured via Secure Call Recording Audio Single User Licences. An 'Admin User Licence' is a Secure Call Recording Audio Single User Licence with additional administrative features. The Client may need to purchase SIP Channels to access certain Services.
- 4.3 not take any of the following actions with respect to the 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 Services or otherwise disrupt the features, functionality, integrity, or performance of the Services (including any mechanism used to restrict or control the functionality of the Services); (b) cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the 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 Services without Eckoh's prior written consent; (d) bypass or breach any security device or protection used for or contained in the Services; or (e) use the Services for purposes of benchmarking or conducting competitive analysis of the Services or developing, using or providing competing software products or services. Client 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 Services. The Client shall not permit any unauthorized use of the Services and shall be solely responsible and liable for all activity of any Authorised User, in connection with its use of the Services;
- 4.4 not, and shall ensure that no Authorised Users are permitted to: (a) use the 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 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 Services, or related software or networks, or to defeat, avoid, bypass, remove, deactivate, or otherwise circumvent any software protection or monitoring mechanisms of the Services; or (d) use, or otherwise access in connection with Client's use, the Services in any manner that is not in accordance with applicable laws and government regulations;
- 4.5 ensure that any Client Equipment 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;
- 4.6 engage fully with Eckoh in connection with the Services to be provided with under an Order Form and Statement of Work including by promptly (and in any event within five (5) Working Days of a request): (i) respond to and

provide any information reasonably requested by Eckoh; and (iii) provide any such assistance and take any action as is reasonably requested by Eckoh in connection with Eckoh's performance of the Services;

- 4.7 ~~use best endeavour's to~~ ensure all Client Dependencies are achieved for the duration of the applicable Statement of Work and carry out any applicable Client Implementation Works within the Implementation Period;
- 4.8 provide to Eckoh in a timely manner all Client Documentation specified in any Statement of Work or as otherwise reasonably requested by Eckoh in writing from time to time in connection with the Services and ensure that they are accurate in all material respects;
- 4.9 obtain and maintain all necessary licences, permission and consents and comply with all relevant legislation as required to enable Eckoh to use any Client Documentation and any Client Equipment in connection with the provision of the Services, in all cases before the relevant Order Form Effective Date.
- 4.10 participate in a written case study testimonial. Any written case studies may be displayed on the Eckoh website or distributed as part of Eckoh's sales and marketing practices and shall include use of the Client's logo. Eckoh may identify the relationship with Client on its website and on sales and marketing collateral. Case study content is subject to approval by the Client before publishing;
- 4.11 solely responsible and liable for all activity of any Authorised Users that Client grants access to the Services;
- 4.12 submit a report to Eckoh evidencing the total number of Authorised Users it granted access to the Services each month during the Term and Renewal Period (as applicable). Client reporting frequency shall be set out in the Order Form. For example, if the Usage Limit is 200 Single User Licences and in a quarter the following has occurred: January 200 Authorised Users accessed the Services; February 210 Authorised Users accessed the Services and in March 200 Authorised Users accessed the Services. Eckoh shall raise an invoice for an additional ten (10) Single User Licences payable by the Client to Eckoh for the reporting period.
- 4.13 comply with and adhere to the Acceptable Use Policy (Schedule 4);
- ~~4.14 not and Eckoh shall not use live PANs in pre-production environments, except where those environments are included in the cardholder data environment and protected in accordance with all applicable PCI DSS requirements; and~~
- ~~4.14 ensure that when the platform the Client's applications are deployed on reaches End of Life (EOL), the Client will work with Eckoh to migrate the Client's applications to the new Eckoh platform. Eckoh commits to provide one (1) year notice for the EOL of a platform-~~

5 WARRANTIES

- 5.1 Each Party warrants to the other that it (a) has the authority to enter into this Agreement (including any Order Form and any Statement of Work); (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.
- 5.2 The Client warrants to Eckoh that any Assumptions are correct and the Services to be provided by Eckoh as set out therein meet the Client's requirements.
- 5.3 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 as to quality, performance or fitness or suitability for purpose) in respect of any Services to be provided by Eckoh under this Agreement are excluded to the fullest extent permitted by law.

6 DATA SECURITY AND PROTECTION

- 6.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Data Controller and Eckoh is the Data Processor of the Personal Data.
- 6.2 Eckoh and the Client hereby agree to comply with their obligations in relation to Personal Data as set out in Schedule 1 (Personal Data).
- 6.3 The Client 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 6 and Schedule 1 (Personal Data). Any audit will be conducted so as not to disrupt Eckoh's day to day operations and will be subject to the Client covering Eckoh's reasonable costs and complying with all security, confidentiality and safety requirements notified by Eckoh.
- 6.4 The requirement under Clause 6.3 to give notice will not apply if an audit is required by a Regulatory Body due to suspected breach by Eckoh of the Data Protection Legislation in relation to the Processing of Personal Data under this Agreement or the Client otherwise reasonably believes in good faith that Eckoh is in material breach of any of its obligations under this Clause 6 or Schedule 1 (Personal Data).
- 6.5 This Clause 6 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.

7 CHARGES

- 7.1 The Client will pay Eckoh the relevant Charges as set out in the Order Form. Eckoh shall be entitled to invoice the Client for the Charges in accordance with the invoicing arrangements set out in Order Form.
- 7.2 In addition, the Client 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 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 Client for any Expenses.
- 7.3 All Charges and Expenses shall be payable by the Client no later than thirty (30) days following the date of issue of Eckoh's invoice. All Charges stated are exclusive of VAT and other applicable taxes which will be chargeable to the Client. Eckoh shall be under no obligation to await a purchase order from the Client. Where a purchase order is required for the Client's internal process, it shall be provided within two (2) Working Day of a request from Eckoh. Eckoh reserves the right to charge interest on all invoices it presents to the Client in accordance with its statutory right to claim interest and compensation for debt recovery under late payment legislation. ~~Unless stated to the contrary in the Specification, Eckoh reserves the right to increase the Charges payable pursuant to an Order Form on each anniversary of the relevant Order Form Effective Date, by the greater of: (i) five percent (5%); or (ii) the percentage increase in CPI in the preceding twelve (12) month period.~~
- 7.4 If the Client (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 7.3](#) and submit a written claim notice to Eckoh 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 ~~within thirty (30) days~~. In the event that the dispute is resolved in favour of Eckoh, the Client shall immediately pay the Disputed Amount to Eckoh together with applicable interest calculated in accordance with [Clause 7.3](#).
- 7.5 If the Client does not pay and does not dispute the Charges in accordance with [Clause 7.4](#), Eckoh may, without notice, suspend the provision of the Services in whole or in part until payment is received.
- 7.6 Where:
- 7.6.1 in connection with any Order Form and/or Statement of Work, Eckoh assists in the provision or support of service on matters that fall outside of Eckoh's obligations under that Order Form and/or Statement of Work, Eckoh shall be entitled to charge the Client 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 Client which impact the performance of the Eckoh service and/or for any assistance provided to the Client by Eckoh in the circumstances specified in [Clause 3.4.1](#);
- 7.6.2 the Client uses the Services in excess of the Usage Limits set out in the relevant Order Form, Eckoh shall be entitled to charge and invoice the Client for such additional usage beyond the Usage Limits in accordance with the charges set out in the relevant Order Form; and/or
- 7.6.3 the Assumptions turn out to be untrue, additional Charges may be due and payable by the Client as may be calculated in accordance with the provisions of the relevant Order Form.
- 7.6.4 in connection with any Order Form and/or Statement of Work, Eckoh provides (A) Professional Services and/or services in connection with Maintenance and Support beyond the scope of Eckoh's obligations under that Order Form and/or Statement of Work, or (B) additional Services as a result of incomplete or inaccurate information provided by Client in connection with Implementation Services, Eckoh shall be entitled to charge the Client on a time and materials basis at Eckoh's standard rates for any additional Services provided by Eckoh. For clarity, this would include technical issues with other third-party suppliers to the Client which impact the performance of the Eckoh Solution and/or for any assistance provided to Client by Eckoh. [3.4.1](#)

8 TERMINATION

- 8.1 Without prejudice to any other rights or remedies of the Parties, either Party shall be entitled to terminate an affected Order Form and associated Statement of Work or any part of the Services provided under an affected Order Form and associated Statement of Work on immediate notice, where the other Party is in material breach of the relevant Order Form (save for a breach of [Clauses 13.2 or 13.3](#) which shall be dealt with pursuant to [Clause 8.2](#)) and has not remedied the material breach within ~~thirty (30)~~ days of a written notice of such breach from the other Party. For the avoidance of doubt: any breach by the Client of [Clause 4](#) (including any failure by the Client to engage with Eckoh) and any failure by the Client to make payments due in accordance with the applicable Order Form will constitute a material breach.
- 8.2 Without prejudice to any other rights or remedies of the Parties, either Party shall be entitled to terminate this Agreement (including any Order Form and associated Statement of Work) on immediate notice, where the other Party:
- 8.2.1 is found to be in breach of the warranties given at [Clauses 13.2 or 13.3](#); or

Commented [JM1]: I spoke to Lisa about the sentence in yellow, we inserted this when we introduced annual inflation in renewals. The thinking being that we needed it to be able to charge annual inflation. However, where a client renews only for a year we have managed to charge 12% inflation, if the above in yellow had been in the MSA, I don't think we would have been able to. Therefore I think we should delete it from UK and US MSA and deal with inflation through Order Forms.

- 8.2.2 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.

8.3 Save as otherwise set out in the Order Form and/or any Statement of Work and outlined in Clauses 8.1 and 8.2, if the Client wishes to terminate the Agreement or terminate the provision of one or more of the Services at any time, three (3) months written notice must be given to Eckoh, to expire not earlier than the end of the Term or a subsequent Renewal Term.

8-38.4 Without prejudice to any other rights or remedies of Eckoh, Eckoh shall be entitled to suspend the provision of Services on immediate written notice: (a) for the Client's breach of clause 4; (b) in accordance with Celause 7.5; or (c) in lieu of exercising its rights of termination under Celause 8.1. The Client will continue to be liable for all Charges due during any period of suspension under this Celause 8-38.4.

9 CONSEQUENCE OF TERMINATION

9.1 Upon termination of this Agreement for any reason:

- 9.1.1 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;
- 9.1.2 the Client will immediately cease using the Services; and
- 9.1.3 all Charges and Expenses due and payable up to and including the date of termination will become due for payment immediately, notwithstanding Celause 7.3.

9.2 Where Eckoh exercises its right to terminate under Celause 8.1 or 8.2, the Client:

- 9.2.1 shall not be entitled to any refund of any Charges paid in advance for Services which, as at the date of termination, have not yet been provided; and
- 9.2.2 where such termination occurs prior to expiry of the Term of an Order Form, the Client shall pay to Eckoh the relevant Charges that would have been payable by the Client to Eckoh had the Order Form not been terminated for the period from (but excluding) the date of termination up to and including the expiry date of the Term.

9.3 Any provision of this Agreement that expressly or by implication is intended to come into force or continue in force on or after termination or expiry of this Agreement, including Clauses 6, 9, 10, 11 and 12, shall remain in full force and effect.

10 INTELLECTUAL PROPERTY RIGHTS

10.1 Each Party warrants to the other that:

- 10.1.1 it owns or is licensed to use all Intellectual Property Rights stated at Clauses 10.2 and 10.3;
- 10.1.2 it has obtained all necessary permissions, consents, waivers and ~~licenses~~licences required from any third party in order for it to lawfully fulfil its obligations under this Agreement;
- 10.1.3 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
- 10.1.4 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.

10.2 All Intellectual Property Rights in the Services and any software provided to the Client by or on behalf of Eckoh are, and shall remain, the exclusive property of Eckoh, Eckoh's Affiliates or its licensors and this Agreement shall not operate as an assignment or other transfer of any such rights to the Client. Eckoh grants to the Client a non-exclusive, royalty free, non-transferable, revocable license to use the Intellectual Property Rights in the Services and any software provided to the Client for the sole purpose of receiving and using the Services and any software in accordance Agreement, subject always to any Usage Limits or other restrictions set out in this Agreement.

10.3 Any Intellectual Property Rights in the Client Documentation shall remain the exclusive property of the Client, its Authorised Users or its licensors and this Agreement shall not operate as an assignment of any such rights to Eckoh. The Client hereby grants (or shall procure from its Authorised Users the grant) to Eckoh and Eckoh's Affiliates a non-exclusive, royalty-free, right to copy, use and distribute the Client Documentation available for the purpose of providing the Services to the Client during the term of this Agreement.

10.4 The Client agrees that Eckoh shall be entitled to make reasonable use of, and reference to, the Clients name and logo for marketing purposes.

- 10.5 Except where a Claim is based on (a) any modification to the Services requested by the Client; or (b) use of the Services other than in accordance with this Agreement, Eckoh agrees to indemnify and keep the Client indemnified from and against any and all Liabilities arising as a result of any breach of its warranties at [Clause 10.1](#).
- 10.6 The Client 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 10.1](#).
- 10.7 In the event of any Claim covered by [Clauses 10.5 or 10.6](#), 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.

11 CONFIDENTIAL INFORMATION

- 11.1 Each Party shall 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 11](#).
- 11.2 Clause 11.1 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.
- 11.3 This [Clause 11](#) 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.

12 LIABILITY

- 12.1 References to 'liability' or 'liable' in this [Clause 12](#), include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.2 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.
- 12.3 Eckoh will not be liable to the Client 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.
- 12.4 The Client will not be liable to Eckoh for any loss of business, anticipated savings, goodwill, reputation, contract, data, use of equipment, wasted management time, special damages, or any indirect or consequential losses whatsoever.
- 12.5 Subject to [Clause 12.2 and 12.3](#), each Party's aggregate liability to the other Party under or 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.
- 12.6 The Parties acknowledge and agree that the limitations on liability under this [Clause 12](#) 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 12](#) reflect a fair apportionment of risk between the Parties.

13 GENERAL

- 13.1 Without the consent of the other Party, during the term of this Agreement, 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.
- 13.2 Each Party will implement a Modern Slavery Policy. Each Party 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 warrants that it will comply with its obligations under, and shall not be in breach of, the Modern Slavery Act 2015.

- 13.3 Each Party 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.
- 13.4 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 three (3) Working Days, after becoming aware of the Force Majeure Event.
- 13.5 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 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 Services, this Agreement shall take precedence.
- 13.6 No variation of this Agreement shall be effective unless made in writing and signed by an authorised representative of each of the Parties.
- 13.7 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.
- 13.8 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.
- 13.9 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.
- 13.10 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.
- 13.11 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.
- 13.12 Subject to Clause 13.13, 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 Affiliates.
- 13.13 Eckoh shall be entitled to subcontract any part of the Services. Where Eckoh subcontracts any part of the Services, Eckoh shall remain fully responsible and liable for any goods or services provided by a subcontractor, together with the acts or omissions of that subcontractor.
- 13.14 Any notices delivered under this Agreement shall be in writing and delivered by registered first class post (deemed served the second Working Day after date of posting) or delivered in person (deemed served on delivery) or by email (deemed served on the next Working Day following transmission of the email), to the address or email of the other Party stated on the Order Form. For the avoidance of doubt, the email address to be used for Eckoh is Legal@eckoh.com
- 13.15 Dispute Resolution Procedure.
- 13.15.1 Any dispute arising out of or in connection with the Agreement (or any part of it) shall be referred by written notice:
- (a) first to the service manager of each party who shall arrange a telephone or video call and endeavour to resolve the dispute between them within 15 (fifteen) Working Days of such notice; and
 - (b) failing resolution of the dispute, to a senior representative of Eckoh and a senior representative of Client (together the "**Senior Representatives**") who shall arrange a telephone or video call and endeavour to resolve the dispute between them within 15 (fifteen) Working Days of such notice (the "**Senior Representatives' Meeting**"). The joint written decision of those Senior Representatives shall be binding on the parties.

13.15.2 If the service managers or Senior Representatives are unable to resolve the dispute, the parties shall, if both parties agree, within 15 (fifteen) Working Days of the Senior Representatives' Meeting refer the dispute to mediation to such mediation provider as is agreed by the parties or failing agreement as may be nominated upon the request of either party to the President for the time being of the Law Society (of England). The parties agree to hold such mediation as soon as possible and in any event within one month of the Senior Representative's Meeting.

13.15.3 If the parties are unable to resolve the dispute in accordance with [Clause 13.15.2](#), either party shall be entitled to refer the dispute to be dealt with in accordance with [Clause 13.16](#).

13.15.4 Nothing in this clause 13.15 shall prevent either party from applying to a court of competent jurisdiction for urgent or interim relief.

13.16 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.

14 DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement:

14.1 Definitions

Additional Services	Any additional services beyond the scope of the services set out in this Agreement as at the Effective Date (or beyond the scope of any other services already included in an additional Order Form) that the Parties have agreed in accordance with clause 2 that Eckoh will provide to the Client;
Admin User	is a Secure Call Recording-Audio Single User License-Licence with additional administrative features;
Acceptable Use Policy	means the terms of acceptable use applicable to the Services set out in Schedule 4;
Affiliate(s)	any company or other entity (including a partnership) that directly or indirectly controls, is controlled by, or is under common control of a Party. An entity shall be regarded as in control of another company or entity if it owns or directly or indirectly controls more than 50% (fifty per cent) of the voting rights of that company or entity;
Agreement	has the meaning given in Clause 1.1 ;
Appendix	means an appendix to an Order Form or Statement of Work (and "Appendices" shall be construed accordingly);
Assumptions	the assumptions in relation to the supply by Eckoh of the Services to the Client as set out in the applicable Statement of Work and upon which the Charges set out in the Order Form are offered by Eckoh to the Client are conditional;
Authorised User	means any person authorised by Client to use the Services, for whom a Single User License-Licence or Shared User License-Licence to access the Services has been procured. Authorised Users may include, for example, Clients' employees, contractors, and call centre agents;
Call RecordingAudio	means core capability of Eckoh Secure Call Recording-Audio that enables a person to record and playback voice recordings;
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;
Change	has the meaning given in Clause 1.6 ;
Charges	all sums payable by the Client to Eckoh set out in the relevant Order Form;
Confidential Information	any information, however conveyed or presented, that relates to the business, affairs, operations, Clients, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated by a party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential, but excluding Personal Data.
Client	means the entity identified as such at the start of this Agreement; Order Form and Statement of Work;
Client Acceptance Testing	has the meaning given in Clause 3.3 ;
Client Acceptance Testing Period	has the meaning given in Clause 3.3 ;

Client Dependencies	those items identified in the relevant Statement of Work in connection with the Services as the responsibility of the Client;
Client Equipment	any equipment, including tools, systems, operating environments, network, cabling or facilities, provided by the Client, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services, and including any such equipment as listed in a Statement of Work;
Client Implementation Works	those works, identified in the relevant Statement of Work or as otherwise as agreed between the Parties in writing, which the Client is required to carry out during the Implementation Period;
Client Documentation	all documents, information, items and materials in any form (whether owned by the Client or a third party) supplied by the Client (or any of their Authorised Users) in connection with this Agreement, and including any such equipment as listed in a Statement of Work;
CPI	the rate of inflation in line with the Consumer Price Index published by the Office of National Statistics in the month immediately preceding each anniversary of the Agreement;
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 (the UK Data Protection Act 2018 and the UK GDPR 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;
Default	any failure by either Party to comply with its obligations under this Agreement;
Disputed Amount	has the meaning given to it in Clause 7.4 ;
Eckoh	has the meaning stated in the Order Form and Statement of Work. In relation to the provision of Services, any references to Eckoh shall include its Affiliates;
Eckoh Project Manager	the individual nominated by Eckoh as its project manager during the Implementation Period as identified in the relevant Statement of Work or otherwise as notified by Eckoh to the Client in writing from time to time;
Effective Date	has the meaning given at the start of this Agreement;
Expenses	as defined in Clause 7.2 ;
Fault	are any feature or failure of the Service which does not meet the technical requirements within the Agreement or where the Service fails to perform the agreed specification;
First Payment Date	means the date specified in the relevant Order Form;
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 (a) explosions, fires, flood, stability or availability of the internet, 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);
Fully Managed Service Charge	the fully managed charges set out in the Order Form for provision of the Services, subject to the Usage Limits and the Assumptions, and shall be the minimum commitment of Charges payable by the Client to Eckoh;
Go Live Date	has the meaning given in Clause 3.5 ;
Implementation Services	the initial implementation, installation and configuration services to be provided by Eckoh to the Client to implement the Solution from the relevant Order Form Effective Date as detailed in the relevant Statement of Work;

Indicative Timescales	the indicative timescales for completion by Eckoh of the Implementation Services as set out in the relevant Project Plan;
Term	the term specified in the relevant Order Form;
Intellectual Property Rights	any copyright and related rights, patents, rights to inventions, registered designs, database rights, design rights, topography rights, trade marks, service marks, trade names and domain names, trade secrets, rights in unpatented know-how, rights of confidence and any other intellectual or industrial property rights of any nature including all applications (or rights to apply) for, and renewals or extensions of such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
Liabilities	all losses, liabilities, damages, costs and expenses (including reasonable legal fees and other reasonable professional costs), disbursements, costs of investigation, litigation, settlement, judgment interest and penalties;
Maintenance and Support Services	the ongoing maintenance and support services to be provided by Eckoh to the Client in respect of the Solution from the relevant Go Live Date;
Order Form	the Order Form and/or any additional Order Form as the context requires;
Order Form Effective Date	means the effective date specified in the relevant Order Form;
PAN	means primary account number;
Party	Eckoh or Client, and includes their representatives, successors and permitted assignees. Parties shall accordingly be interpreted as both Eckoh and the Client;
PCI-DSS	the Payment Card Industry Data Security Standard;
Permitted Recipients	means a natural or legal person, public authority, agency who under the direct authority of the Data Controller or Data Processor are authorised to process Personal Data;
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 1;
Process	has the meaning set out in the Data Protection Legislation. Processed and Processing shall be interpreted accordingly;
Professional Services	those ad/hoc professional services charges as specified in the relevant Order Form payable by the Client to Eckoh for the provision of the Implementation Services;
Implementation Period	the time period identified as such in the relevant Statement of Work;
Project Plan	the project plan for the carrying out of the Implementation Services and Client Implementation Works (and the provision by the Client of the Client Dependencies) prepared during the Implementation Period;
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;
Renewal Period	has the meaning given in Clause 1.4 ;
Schedules	the schedules attached to this Agreement;
Services	means collectively the Solution, Implementation Services, Maintenance and Support Services and Professional Services to be provided by Eckoh to the Client as set out in the relevant Order Form and relevant Statement of Work;
Service Charges	Service charges (excluding Professional Services Charges) set out in the relevant Order Form;
Shared User Licence	means a licence that allows a maximum number of concurrent persons to access one Solution and its related Services, provided that the maximum number of concurrent persons does not exceed the maximum number of Shared Users Licenses Licences set out in the relevant Order Form at any one time;
Single User Licence	means a license licence for a single person who has been specifically provisioned by the Client to access one Solution and its related Services, subject any Usage Limits and any Client reporting obligations set out in the relevant Order Form;
Solution	the Eckoh solution described in an Order Form and Statement of Work;
SIP Channel	means a single voice channel that allows voice calls to be made to and from the Secure Voice Cloud solution by Authorised Users over the internet;
Special Terms	has the meaning given in Clause 1.7 ;
Specification	the relevant specification for the Solution and Services set out in the relevant Statement of Work as applicable;
Statement of Work or SOW	the relevant Statement of Work as the context requires;
Territory	the territory as stated in the relevant Order Form in relation to the Services;

Transcription	means the conversion of a Call Recording <u>Audio</u> into written words stored as plain text; Transcription shall include Transcribed and/or Transcript;
Transcription Hours	means the number of hours of Transcription set out in the applicable Order Form, subject to the Usage Limits and Assumptions;
UK GDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;
Universal Single User Licence	has the meaning given in Clause 4.2 ;
Universal Shared User Licence	has the meaning given in Clause 4.2 ;
Usage Limits	any limits or restrictions relating to the Services as specified in the relevant Order Form;
Working Day	Monday to Friday inclusive, excluding English bank and public holidays.

- 14.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 14.3 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant Schedule to this Agreement. References to an Appendix or Appendices shall be to the relevant Appendix or Appendices of an Order Form.
- 14.4 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 14.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 14.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 14.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 14.8 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 14.9 A reference to writing or written includes email but excludes fax.
- 14.10 Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

Signed for and on behalf of:
ECKOH UK LIMITED

Sign:

Name.....

Title.....

Date.....

Signed for and on behalf of:
CLIENT

Sign:

Name.....

Title.....

Date.....

SCHEDULE 1 PERSONAL DATA

This Schedule 1 shall apply and deemed to be incorporated in the Agreement only in event of exchange of Personal Data between the Client and Eckoh.

SECTION A

- 1.1 The Client 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 Client 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 Client to Eckoh, or requested by the Client 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 Client'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 Clients;
 - 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 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 Client with regard to the security and Processing of the Personal Data;
 - 1.2.6 notify the Client within forty-eight (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 Client 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 1 (Personal Data) and not disclose any Personal Data to any other person without the prior written consent of the Client;
 - 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 Client 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 Client within ~~forty-eight (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 Client such assistance as is reasonably required by the Client in this 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 Client;
- 1.2.13 promptly notify the Client of any request for disclosure of the Personal Data by a law enforcement authority unless otherwise prohibited;
- 1.2.14 promptly notify the Client 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 Client to meet any time limit imposed by any Regulatory Body (as applicable);
- 1.2.15 promptly notify the Client of any request from a Data Subject for access to that person's Personal Data and provide the Client with reasonable co-operation and assistance in complying with any such request; and
- 1.2.16 promptly on request, provide to the Client a copy of all Personal Data held or controlled by it in the format and on the media deemed reasonable by Eckoh.
- 1.3 With respect to Personal Data Processed by Eckoh in connection with the Services under this Agreement, Parties acknowledge and agree that the Client is a Data Controller and Eckoh acts as the Data Processor.
- 1.4 Client shall disclose Personal Data to Eckoh for the intended purpose as outlined in the Agreement. The details of such Personal Data to be captured in Section B of this schedule.
- 1.5 Eckoh will abide by the Data Protection Legislation. To ensure that Personal Data can be transferred from the EEA in the provision of Services, Eckoh shall, where necessary reasonably agree to incorporate standard contractual clauses for the transfer of Personal Data to processors in a third country. 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.
- 1.6 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 Client and it shall provide the Client with reasonable co-operation and assistance in relation to any such complaint, notice or communication.
- 1.7 Client consents to Eckoh engaging third parties to process Client Personal Data provided that Eckoh:
 - ~~1.7.1 — gives notice of any change in sub-processors at least thirty (30) days prior to any such change;~~
 - ~~1.7.2 1.7.1~~ imposes data protection obligations on any sub-processor to a standard no less stringent than as required by this Agreement; and
 - ~~1.7.3 1.7.2~~ 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.
- ~~1.8 — Client may object to the appointment or replacement of a sub-processor prior to its appointment or replacement within the fourteen (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, Client may suspend or terminate the Agreement without cause.~~
- ~~1.9 1.8~~ We will abide by the data protection laws of the United Kingdom and United States. Where Personal Information is transferred outside of the UK by us, we will ensure that such transfer is carried out on the basis of either:
 - (a) an adequacy decision made by the Information Commissioner's Office ("ICO") in accordance with the Data Protection Legislation; or
 - (b) where necessary, we shall agree to sign standard contractual clauses for the transfer of Personal Information to processors in a third country as set out in a decision of the ICO or European Commission, as applicable.

SECTION B

Categories of Data Subjects:

Individuals who engage with, or purchase services from, the Client

Categories of Personal Data:	Name, address, date of birth, cardholder data, telephone numbers and email address of Clients
Special Categories of Personal Data:	If Secure Call <u>Recording Audio</u> applies: A Call <u>Recording Audio</u> may process Special Category Data (as defined in the Data Protection Legislation) if such Special Category Data is disclosed during a Call <u>Recording Audio</u> .
Processing Activities:	If CallGuard or other card payment services applies: For the purpose of processing of card payment transactions. If Secure Call <u>Recording Audio</u> applies: Call <u>Recordings Audio</u> and the storage, transcription, transmission and deletion of Call <u>Recordings Audio</u> .
Legal Basis of Processing:	Performance of a contract

SECTION C

Eckoh's data processing facilities are located within UK based Tier 4 Data Centres. Physical security is supplied at each data centre.

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 2
ORDER FORM TEMPLATE**

SCHEDULE 3
STATEMENT OF WORK TEMPLATE

SCHEDULE 4 ACCEPTABLE USE POLICY

This Acceptable Use Policy ("AUP") sets out the actions that Eckoh prohibits when it provides Services to the Client.

The Client may not use Eckoh Services without agreeing to the terms of this AUP.

Unless specified otherwise, all capitalised terms used herein shall have the same meaning as those given in the Agreement. This AUP is incorporated into and governed by the Agreement between Eckoh and the Client which contains defined terms and takes precedence over any conflicting provisions in this AUP.

Section A

The Client agrees not to, and agrees not to encourage or permit any Authorised User to:

1. use the Service to commence Call ~~Recordings~~ Audio or any other media without all legally required advance notices having been provided to all end customer and/or participants;
2. ~~licensel~~licence, sub ~~licensel~~licence, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party, other than Authorised Users as expressly permitted under the Agreement;
3. use the Services to Process data (including Personal Data) on behalf of any third party other than Authorised Users and the Client's end customer/ participants as expressly permitted under the Agreement;
4. modify, adapt or otherwise attempt to gain unauthorised access to Service or related Eckoh systems or networks;
5. use the Service in an illegal manner, including but not limited to violation of any person's data privacy rights;
6. use the Service to store or transmit files, data, text, audio, video, images or other content that infringes on any person's intellectual property rights;
7. use the Service in any manner that interferes with or disrupts the integrity or performance of the Service;
8. use the Service to knowingly transmit, upload, send or store any content that is illegal, racist, hateful, abusive, libelous, obscene, or discriminatory;
9. use the Service to knowingly transmit, upload, send or store any viruses, malware, trojan horses or any other similar malicious, harmful or deleterious software or program; and
10. use the Services in violation of the Agreement.

Section B

Authorised Users

1. The Client shall be entitled to designate persons as Authorised Users of the Services subject to the Usage Limits.
2. Subject to the Usage Limits specified in the Agreement, each Authorised User is limited to a maximum of 160 hours of Call ~~Recording~~ Audio per calendar month.
3. Any usernames and passwords may not be shared and may not under any circumstances be used by anyone who is not an Authorised User. If any Authorised User's login credentials are disclosed to any person who is not an Authorised User but who would satisfy the qualification requirements of Sections 6 and 7 below, such disclosure shall constitute the Client's purchase as of the time of such disclosure to the number of additional Authorised Users equal to the number of persons to whom such credentials were disclosed.
4. If the Client designates additional persons as Authorised Users beyond the Usage Limits, such designation may be deemed by Eckoh as the Client's purchase of such additional number of Authorised Users. In this event, Eckoh may charge the Client the additional fees set out in the relevant Order Form until the end of Term or Renewal Period (as applicable).
5. The Client shall be responsible for compliance with the terms of this Agreement by all Authorised Users, including, without limitation, the Client Obligations described in this ~~C~~elause 4. The Client acknowledges and agrees that Authorised Users must provide Eckoh with certain identifying information, including their name and a business email address, and that Authorised Users may be required to accept an end-user ~~license~~-licence agreement agreeing to Eckoh's privacy policy and representing that they are authorised to access the Services on the Client's behalf.

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~~5.6.~~ Where the Client's Services are on a Transferrable Product or a Universal Product basis then Authorised Users may be assigned to an alternative product only once each month.

Qualification of Authorised Users

~~6.7.~~ The Client shall not designate any person as an Authorised User unless such person is: (a) a natural person (b) an employee of the Client and (c) a non-employee (i.e., an independent contractor) as an Authorised User and provided the Client takes reasonable steps to ensure such non-employee uses the Services only as permitted under this Agreement.

~~7.8.~~ If the employment of any Authorised User that was in effect as of the date such person was designated as an Authorised User terminates, such person's authorisation to access the Services shall be revoked automatically without any further action by Eckoh. In the event of a termination as described in the previous sentence, the Client shall promptly notify Eckoh and take all reasonable steps to ensure that such person ceases accessing the Services. The Client may reassign Authorised User designations in good faith, subject to the terms of this Agreement.

SCHEDULE 5 MAINTENANCE AND SUPPORT

Client will report any Faults to Eckoh's Network Operations Centre ('NOC') via telephone or email:

- ⇒ 24x7 Technical Support no: 0800 022 4240
- ⇒ Technical support email address: noc@eckoh.com
- ⇒ Technical support portal: <https://portal.eckoh.com>

Field Code Changed

Eckoh will log the Fault within the Fault reporting system and assign a call reference number to the caller reporting the issue. That number will be used to track the matter pending resolution. The NOC will then liaise with the relevant technical staff within Eckoh to ensure that any reported Fault is responded to, resolved or escalated within the agreed timescales.

1. Fault Logging

To manage the Fault rectification effectively Client will be required to provide information relevant to the Fault, including but not limited to:

- Name of person reporting the Fault / and department.
- Contact phone number and email address.
- Description of the Fault (including any steps that have already been taken).
- Examples (where applicable) – must include date/time.
- Debug Logs (where applicable i.e., Web/CGH).
- Screenshots (where applicable).

2. Fault Response

All Faults and issues shall be tracked and assigned a severity level. Typically, Faults are classified in to three levels as follows:

For the purposes of this Appendix 4, "Business Hours" are 0900-1800 GMT, Monday to Friday excluding UK Public Holidays. For the purposes of this Appendix 4, "Business Hours" are 08900-17800 Eastern Standard Time on Business Days. Business Days means, Monday to Friday.

Error Severity	Initial Response Goal	Target Fix Time	Activity	Resolution Method
Priority 1	15 Minutes	1 Hour	continuous effort	patch/ work around
Priority 2	15 Minutes	6 Business Hours	continuous during Business Hours	patch/ work around
Priority 3	15 Minutes	28 Days	as required	as needed
Priority 4	15 Minutes	as agreed	as required	as needed

Severity Level Definitions
Priority 1: This means a catastrophic error in the Services, which causes a complete loss of service on a particular channel.
Priority 2: This means a catastrophic error in the Services that causes significant degradation of application functionality or Client access on the majority of contacts in a particular channel.
Priority 3: This means a non-catastrophic error in the Services that has an impact on the operational availability or performance but is not considered to significantly impact overall application availability.

Priority 4: This means all other degradation of service not falling within the above categories.

3. Fault Management

1. Faults are logged with the Eckoh NOC.
2. If email is received the Client will receive a response within fifteen (15) minutes. If contact is by phone the incident will be deemed responded to when the call is answered.
3. Client details are taken by a member of the Network Operations Team and they are provided with an incident reference number.
4. The incident is allocated to a member of the Network Operations Team to investigate.
5. Once the issue has been identified it is given a severity rating.
6. The Client is informed of the severity rating and given timescales for resolution.
7. During this time, your Account Manager will have been made aware of the issue and will be in contact with the support desk.
8. The Network Operations Team will agree a timeframe for keeping the Client informed of progress and progress will be communicated by telephone or by email as appropriate.
9. As soon as a Fault has been tested and resolved, the Client will be informed and asked to confirm that the service has resumed correct operation.

4. Fault Closure

Client reported Faults will only be closed with Client agreement. For Priority 1 incidents, an incident report is issued within 2 working days of the incident closure. The incident report will cover:

- How the issue was identified.
- How the issue was managed.
- Full details of the incident and the total time service was affected.
- The resolution/fix that was put in place.
- Figures detailing the impact on service.
- Preventative measures.

5. Service Availability

The Eckoh platform is built from highly resilient components and is spread across two geographically separate locations each providing resilient solutions for communications and power. As such the platform provides an availability figure of 99.95% availability per month, excluding planned maintenance, in terms of its capability to handle calls.

Where:

$$\text{Availability Rate} = \frac{\text{Total Successful calls}}{\text{Total Effective Calls}}$$

- *Total Successful Calls* includes those calls where no platform intervention or error caused the unexpected termination or transfer of the call.
- *Total Effective Calls* is the total of all calls successfully presented to the Eckoh service platform.

Eckoh may on giving the Client as much notice as is reasonable in the circumstances:

- Suspend the Services or change the technical specification of the Services, if deemed necessary to comply with any order, instruction or request of a regulatory body.
- Temporarily suspend the Services because of an emergency or for scheduled maintenance or improvements to the services or its platform (maintenance detailed below).
- Give the Client instructions which it believes are necessary for reasons of health, safety or the quality of any hosted service.

As part of the Service Account Management reviews, Eckoh shall provide a measure of the Availability Rate and the performance against the Service level.

6. Escalation Process

All Faults are logged, assigned a priority, and subject to the following internal escalation procedure.

If at any point Client feels that the problem is not being managed in a satisfactory manner, they may choose to escalate the issue in accordance with the following table.

<u>Order of Contact</u>	<u>Name</u>	<u>Title</u>	<u>Phone Number</u>	<u>Email</u>	<u>Mobile</u>
<u>First</u>	<u>NOC UK</u> <u>NOC US</u>	<u>Global Support Desk</u>	<u>08000 224240</u> <u>1-888-455-2285</u>	<u>noc@eckoh.com</u> -	-
<u>Second</u>	- <u>US: Jack Maddux</u> -	<u>NOC Lead Support</u>	- <u>1-602-829-2027</u>	- <u>jack.maddux@eckoh.com</u>	- <u>1-602-481-2826</u>
<u>Third</u>	<u>UK: Mel Taylor</u> -	<u>Head of IT Operations</u> -	<u>+44 7870 219670</u> -	<u>mel.taylor@eckoh.com</u> -	<u>+44 7870 219 670</u> -
<u>Fourth</u>	- <u>UK: Lisa Parrott</u>	<u>Global Director of Client Services</u> -	<u>+44 1442 458303</u> -	<u>lisa.parrott@eckoh.com</u> -	<u>+44 7827 158 489</u> -
<u>Last</u>	<u>UK: David Holliday</u> <u>US: Justin Crawford</u>	<u>Global IT Director</u> - <u>Sr. VP of Engineering</u>	<u>+44 1442 458499</u> - <u>1-602-829-2148</u>	<u>david.holliday@eckoh.com</u> - <u>justin.crawford@eckoh.com</u>	<u>+44 7717 497 000</u> - <u>1-623-824-2747</u>

7. Planned Maintenance

Eckoh is entitled to schedule routine maintenance of the Services on a fortnightly basis between the hours of 10 p.m. to 2 a.m., London, UK (GMT).

Eckoh shall provide at least 2 weeks' notice of any planned maintenance that may disrupt the Services.

8. Change Control - Client initiated 'Requests for Change'

During the term of this Agreement, changes to the configuration of the Service may be requested by the Client. Any such requests will be managed in accordance with the process described below.

Any changes requested by Client will initially be requested through the Eckoh Account Manager. Upon receipt of a Change Request from Client, Eckoh will investigate the likely impact of the requested change upon the Services and charges and shall, within five (5) working days, submit to Client an impact statement ("**Impact Statement**"). This will set out:

- The title, date and full details of the proposed change;
- The Party originating the change and the anticipated date of when the potential change is to occur;
- The reason for the change;
- A detailed breakdown of any charge including provision for the review of any ongoing costs for the continuing provision of any part of the products or services;
- A timetable for implementation together with any proposals for acceptance of the change;

- The anticipated impact, if any, on the Services or on other aspects of the contract as may be appropriate; and
- The date of expiry of validity of the Impact Statement.

Client may then agree or decline to proceed with the change based on the Impact Statement.

For all chargeable changes, Client must place a Purchase Order and complete and sign a Change Request Form with Eckoh prior to Eckoh commencing work on the delivering the change.

9. Account Management & Service Review Meetings

The Account Management service may be provided by Eckoh at additional cost:

- Acting as a central point of contact to co-ordinate all service and support activities:
- Reporting MIS (monthly).
- Change management requests.
- Order / invoice handling.

In addition to this monthly reporting, quarterly review calls and annual Service level review meetings will be attended by relevant Eckoh and Client personnel.

The purpose of these meetings is to:

- Review results as shown in the monthly reports.
- Present any proposed improvement plans regarding any recent incidents.
- Review and accept or reject the proposed improvement changes proposed by Eckoh.
- Analysis of trends and overall Service performance.
- Review to ensure Service continues to meet Client business requirements.
- Proactive suggestions for Service improvement and enhancement.

SCHEDULE 6

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CLIENT REPORT

Commented [JM2]: Chrissie - is this schedule required for UK as well?

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