

Licence number:

L 2025 MM DD

ecco solutions ltd

ECCO SaaS Licence and GDPR Data Processing Agreement

Customer:

**Licence Start Date
is the date of signing the
Licence**

THE SERVICE AND CHARGES

The Company will provide the Customer access to the ECCO system (i.e. the software as demonstrated and the associated data hosting and support desk) throughout the period of the agreement to enable the Customer to monitor its clients and so evidence any desired outcomes. The contract begins on the Licence Start Date.

Quarterly charges to commence from:

Date of mobilisation.

Licence Term:

One year rolling – see #13 below.

Modules agreed/charging structure:

Up to NN logins £NNN per month as per ECCO price quote DD.MM.YYYY.
Quarterly Licence fee charges to commence six weeks after the Licence Start Date.
50% of the onboarding fee will be payable on Licence signing to enable ECCO to start configuration of the site and the remaining 50% to paid at the end of the six-week onboarding period.

Payment schedule: Payments are due by Direct Debit as per #7 below.

Additional chargeable work:

The licence fee includes the configuration of ECCO to meet the Customer's ongoing operational requirements in accord with the system as demonstrated—including modifications to configurations for existing services and configurations for new services as the Customer's operational requirements change. Also included are corrections to any faults, an online ticketed support desk, telephone, and email support, routine updates/upgrades. Any work beyond this that the Customer requests, if it fits into the ECCO road map, would be included within the licence fee. However, any other work not already agreed is potentially chargeable, and the company will be happy to quote for it. While the Company looks to include all ongoing support within the licence fee, if the customer does not wish to upgrade an old browser version with known security/operational problems, the Company reserves the right to charge the cost of providing a solution.

ECCO guaranteed system availability:

95%

Ticketed web-based support:

<https://eccosolutions.zendesk.com/>

Support Desk:

email: support@eccosolutions.co.uk

Support Desk:

Tel: 0333 321 1492

Response to urgent calls:

Within 4 hours during business hours.

DETAILS OF ECCO AND THE CUSTOMER

The Parties:1) **ecco solutions ltd** incorporated in England (registration number 07130628 having its registered office at 8 Winmarleigh Warrington WA1 1JW (the “**Company**”);
and (2) the “**Customer**”:

Customer trading name, address, and telephone number:

Customer registered name and address (if different):

Customer Company Number if applicable:

Customer Charity Number if applicable:

Customer email address for signatory:

Customer email address for accounts:

Customer telephone no. for accounts:

SIGNATURE PAGE

CUSTOMER SIGNATORY DETAILS:

Customer signature:

Customer: Name and position in the Company:

(Duly authorised for the Customer)

Date:

ECCO SIGNATORY DETAILS:

ECCO Signature:

ECCO: Name and position in ECCO:

(Duly authorised for the Company)

Date:

AGREEMENT:**1. Definitions and interpretation****1.1** In this Agreement:

"Affiliate" means a company, firm or individual that Controls, is Controlled by, or is under common Control with the relevant company, firm or individual;

"Agreement" means this agreement (including the Schedule) and any amendments to it from time to time;

"Business Day" means any week day, other than a bank or public holiday in England;

"Business Hours" means between 09:00 and 17:00 on a Business Day;

"Charges" means the amounts payable by the Customer to the Company under or in relation to this Agreement (as set out in the Schedule);

"Confidential Information" means any information supplied (whether supplied in writing, orally or otherwise) by one party to the other party marked as "confidential", described as "confidential" or reasonably understood to be confidential; and

"Control" means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** will be construed accordingly);

"Customer's Data" means the data the Customer has input into the ECCO system;

"ECCO software" means the software owned by ecco solutions ltd;

"ECCO system" means the ECCO software, data hosting and support help-desk supplied by ecco solutions ltd as detailed in Clause 4;

"Licence Start Date" means the date of execution of this Agreement and the date the contract as specified in the Schedule begins;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, moral rights, database rights, confidential information, trade secrets, know-how, business names, trade names, domain names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Mobilisation Date" is the date the site is handed to the Customer to start inputting their live data;

"Personal Data" has the meaning given to it in the Data Protection Act 1998;

"Prohibited Content" means:

- (a) material which breaches any applicable laws, regulations or legally binding codes, or infringes any third party Intellectual Property Rights or other third party rights, or may give rise to any form of legal action against the Company or the Customer or any third

party;

- (b) pornographic or lewd material;
- (c) messages or communications which are offensive, abusive, indecent or obscene, are likely to cause annoyance, inconvenience or anxiety to another internet user, or constitute spam or bulk unsolicited mail;

“Schedule” means the schedule attached to this Agreement;

“Term” means the term of this Agreement;

“Year” means a period of 365 days (or 366 days if there is a 29 February during the relevant period) starting on the Licence Start Date or on any anniversary of the Licence Start Date.

- 1.2 In this Agreement, a reference to a statute or statutory provision includes a reference to:
 - (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - (b) any subordinate legislation made under that statute or statutory provision.
- 1.3 The Clause headings do not affect the interpretation of this Agreement.
- 1.4 The *ejusdem generis* rule is not intended to be used in the interpretation of this Agreement; it follows that a general concept or category utilised in this Agreement will not be limited by any specific examples or instances utilised in relation to such a concept or category.

2. Term

This Agreement will come into force on the Licence Start Date in the Schedule and will continue in force as per the Schedule, unless and until terminated in accordance with Clause 13.

3. Data input, download, and transfer

- 3.1 The Customer is responsible for its own data input into the ECCO system. However the Company will use all reasonable endeavours to aid the Customer in this task. A Company staff member will be available to deliver initial training for system demonstration. The training will be at the request of the Customer, at a time to be agreed with the Company. This time is included in the contract price, but reasonable travel and accommodation expenses may be chargeable if an onsite meeting is requested.
- 3.2 Although the Company will assist the Customer, it is the responsibility of the Customer to ensure they have input the data into the ECCO system correctly and that their staff are trained in the use of the ECCO system before going “live.”
- 3.3 If the Customer downloads data from ECCO the responsibility for the security of that data rests entirely with the Customer.
- 3.4 If the Customer wants to transmit data to the Company for any reason it needs to be done in a secure manner approved of by the Company—details available on request.

4. ECCO system

- 4.1 The Company will make available the ECCO software, its data hosting and the help-desk.
- 4.2 The Company may suspend some or all of the ECCO system in order to carry out scheduled maintenance or repairs. Subject to this, the Company will use its reasonable endeavours to maintain the ECCO system availability level specified in the Schedule.

- 4.3 For the purpose of providing support to the Customer, the Company will make available an online ticketed support desk, and on Business Days between the hours of 9.00 and 17.00 (London time) a telephone helpdesk. A 24/7 telephone 'hotline' is available if the Customer is unable to access the ECCO system.

5. Customer Responsibilities

- 5.1 The Customer will provide the Company with all co-operation, information, and documentation reasonably required for the implementation of the ECCO system in a timely manner, and the Customer will be responsible for procuring any third-party co-operation reasonably required for its implementation. Unless otherwise informed in writing and/or by email the Company will assume that the Customer staff member ultimately responsible for these requirements is the signatory of this licence.
- 5.2 The ECCO system is provided to the Customer only, and the Customer may not resell access to the system to any third party unless listed on the Schedule or agreed in writing with the Company.
- 5.3 It is the Customer's responsibility to maintain an up-to-date register of passwords and it is the Customer's responsibility to keep any passwords relating to the ECCO system confidential, and to change such passwords on a regular basis. The Customer will notify the Company immediately if it becomes aware that a password relating to the ECCO system is or may have been compromised or misused.

6. Acceptable Use

- 6.1 The Customer must not use the ECCO system:
- (a) to host, store, send, relay or process any Prohibited Content;
 - (b) for any purpose which is unlawful, fraudulent, or infringes any third party rights;
 - (c) in any way which may put the Company in breach of a contractual or other obligation owed by the Company to any internet service provider.
- 6.2 The Company reserves the right to remove content from the ECCO system where it reasonably suspects such content is Prohibited Content.
- 6.3 The Customer's utilisation of the ECCO system must not exceed the limits set out in the Schedule. If the Customer's utilisation of ECCO system exceeds those limits, the parties will endeavour to agree a variation to this Agreement. If the parties cannot agree such a variation within a reasonable period (being not more than 30 days) following notice from the Company to the Customer requesting such variation, and Resource utilisation continues to exceed those limits, the Customer will be deemed to be in material breach of this Agreement for the purposes of Clause 13.
- 6.4 The Customer acknowledges that the Company does not purport to monitor the Customer's use of the ECCO system.
- 6.5 Where the Company reasonably suspects that there has been a breach of the provisions of this Clause 6, the Company may suspend any or all of the ECCO system and/or the Customer's access to any or all ECCO system while it investigates the matter.
- 6.6 Subject to Clause 6.3, any breach by the Customer of this Clause 6 will be deemed to be a material breach of this Agreement for the purposes of Clause 13.
- 6.7 The Customer will indemnify the Company against all damages, losses and expenses arising as a result of any breach by the Customer of this Clause 6.

7. Charges and payment

- 7.1 The Charges to the Customer will be as per Page 2 of this licence based on the maximum number of named logins recorded there. If the number of named logins increases above that limit, the charges will be adjusted in agreement with the Customer.
- 7.2 The Company will issue invoices for the Charges to the Customer quarterly in advance during the Term of the contract.
- 7.3 The Customer will pay the Charges to the Company by Direct Debit on or before the first quarter day in accordance with Clause 7.2.
- 7.4 All Charges stated in or in relation to this Agreement are stated exclusive of VAT, unless the context requires otherwise.
- 7.5 Charges must be paid by Direct Debit using such payment details as are notified by the Company to the Customer from time to time.
- 7.6 If the Customer does not pay any amount properly due to the Company under or in connection with this Agreement, the Company may:
- (a) charge the Customer interest on the overdue amount at the rate of 5% per year above the base rate of HSBC Bank Plc from time to time (which interest will accrue daily until the date of actual payment, be compounded quarterly, and be payable on demand); or
 - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998;
 - (c) if after 2 months payments are still outstanding the Company will notify in writing to the Customer giving 30 days' notice of its intention to suspend any or all of the ECCO system and/or the Customer's access to any or all ECCO system. If after a further 30 days the account has not been settled the Company has the right to assume termination of the agreement and will be entitled to a termination fee equivalent to the current annual fee.
- 7.7 The Company reserves the right to adjust the Charge rate per login on or after the first anniversary of the Licence Start Date, giving 90 days' notice of such.

8. Warranties

- 8.1 The Customer warrants to the Company that it has the legal right and authority to enter into and perform its obligations under this Agreement.
- 8.2 The Company warrants to the Customer:
- (a) that it has the legal right and authority to enter into and perform its obligations under this Agreement; and
 - (b) that it will perform its obligations under this Agreement with reasonable care and skill.
- 8.3 All of the parties' liabilities and obligations in respect of the subject matter of this Agreement are expressly set out in the terms of this Agreement. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

9. Limitations and exclusions of liability

- 9.1 Nothing in the Agreement will:
- (a) limit or exclude the liability of a party for death or personal injury resulting from

negligence;

- (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- (c) limit any liability of a party in any way that is not permitted under applicable law; or
- (d) exclude any liability of a party that may not be excluded under applicable law.

9.2 The limitations and exclusions of liability set out in this Clause 9 and elsewhere in the Agreement:

- (a) are subject to Clause 9.1;
- (b) govern all liabilities arising under the Agreement or in relation to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty; and

9.3 Neither party will be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.

9.4 Neither party will be liable for any loss of business, contracts or commercial opportunities.

9.5 Neither party will be liable for any loss of or damage to goodwill or reputation.

9.6 Neither party will be liable in respect of any loss or corruption of any data, database or software beyond its control.

9.7 Neither party will be liable in respect of any special, indirect or consequential loss or damage.

9.8 Neither party will be liable for any losses arising out of a Force Majeure Event.

9.9 Neither party's liability in relation to any event or series of related events will exceed the greater of:

the total amount paid or (if greater) payable by the Customer to the Company under the Agreement during the 12 month period immediately preceding the event or events giving rise to the claim.

10. Data protection

10.1 The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Company under this Agreement, and that the processing of that Personal Data by the Company for the purposes of and in accordance with the terms of this Agreement will not breach any applicable laws (including the Data Protection Act 1998).

10.2 The Company warrants that:

- (a) it will act only on instructions from the Customer in relation to the processing of any Personal Data/Customer's Data performed by the Company on behalf of the Customer; and
- (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data/Customer's Data and against loss or corruption of Personal Data/Customer's Data processed by the Company on behalf of the Customer.

11. Confidentiality

11.1 Each party will keep confidential the Confidential Information of the other party, and will not

disclose that Confidential Information except as expressly permitted by this Clause 11.

- 11.2 Each party will protect the confidentiality of the Confidential Information of the other party using at least reasonable security measures.
- 11.3 The Confidential Information of a party may be disclosed by the other party to its employees and professional advisers, provided that each recipient is legally bound to protect the confidentiality of the Confidential Information.
- 11.4 These obligations of confidentiality will not apply to Confidential Information that:
- (a) has been published or is known to the public (other than as a result of a breach of this Agreement);
 - (b) is known to the receiving party, and can be shown by the receiving party to have been known to it, before disclosure by the other party; or
 - (c) is required to be disclosed by law, or by an order (binding upon the relevant party) of a competent governmental authority, regulatory body or stock exchange.

12. Publicity

Neither party will make any public disclosure relating to this Agreement (including press releases, public announcements and marketing materials) without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

13. Termination

- 13.1 Either party may terminate this Agreement at any time by giving at least one year's written notice to the other party. If notice is given and at the end of the notice period the Customer continues to use ECCO it will be considered that a new one year notice period applies.
- 13.2 Alternatively the Customer may so notify the Company within the first 90 days from the Licence Start Date to terminate this agreement on that 90th day.
- 13.3 Either party may terminate this Agreement immediately by giving written notice to the other party if the other party:
- (a) commits any material breach of any term of this Agreement, and:
 - (i) the breach is not remediable; or
 - (ii) the breach is remediable, but the other party fails to remedy the breach within 90 days of receipt of a written notice requiring it to do so; or
 - (b) persistently breaches the terms of this Agreement.
- 13.4 Either party may terminate this Agreement immediately by giving written notice to the other party if:
- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or

- (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement);
- (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

14. Effects of termination

- 14.1 Upon termination all the provisions of this Agreement will cease to have effect, save that the following provisions of this Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 6.7, 7.6, 8, 9, 10, 11, 14 and 15.3 to 15.12.
- 14.2 Termination of this Agreement will not affect either party's accrued rights (including accrued rights to be paid) as at the date of termination.
- 14.3 If this Agreement is terminated by either party under Clause 13:
- (a) the Company will promptly provide to the Customer an electronic copy of the Customer's data held on the ECCO system;
 - (b) the Company will provide such assistance as is reasonably requested by the Customer to transfer the Customer's data held on the ECCO system to the Customer or another service provider, subject to payment of the Company's reasonable expenses; and
 - (c) the Customer will be entitled to a refund of any Charges paid by the Customer to the Company in respect of any ECCO system which were to be performed after the date of effective termination, and will be released from any obligation to pay such Charges to the Company (such amount to be calculated by the Company using any reasonable methodology).
- 14.4 Save as provided in Clause 14.3(c), the Customer will not be entitled to any refund of Charges on termination, and will not be released from any obligation to pay Charges to the Company.

15. General

- 15.1 Any notice given under this Agreement must be in writing (whether or not described as "written notice" in this Agreement) and must be delivered personally, sent by post, or by or email, for the attention of the relevant person, and to the relevant address, or email address given in the Schedule (or as notified by one party to the other in accordance with this Clause).
- 15.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
- (a) where the notice is delivered personally, at the time of delivery;
 - (b) where the notice is sent by first class post, 48 hours after posting; and
 - (c) where the notice is sent by email, at the time of the transmission (providing the sending party retains written evidence of the transmission).

- 15.3 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.
- 15.4 If a Clause of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of this Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 15.5 Nothing in this Agreement will constitute a partnership, agency relationship or contract of employment between the parties.
- 15.6 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 15.7 The Company may freely assign its rights and obligations under this Agreement without the Customer's consent. Save as expressly provided in this Clause or elsewhere in this Agreement, the Customer may not without the prior written consent of the Company assign, transfer, charge, license or otherwise dispose of or deal in this Agreement or any rights or obligations under this Agreement – such consent not to be unreasonably withheld.
- 15.8 The Company may subcontract any of its obligations under this Agreement to any third party.
- 15.9 Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under this Agreement.
- 15.10 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 15.11 This Agreement constitutes the entire agreement and understanding of the parties in relation to the subject matter of this Agreement, and supersedes all previous agreements, arrangements and understandings between the parties relating to the subject matter of this Agreement. Subject to Clause [9.1], each party acknowledges that no representations or promises not expressly contained in this Agreement have been made by or on behalf of the other party.
- 15.12 This Agreement will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

DATA PROCESSING AGREEMENT**Definitions in this Agreement:**

Applicable Law	means as applicable and binding on the Customer, the Supplier and/or the Services: (a) any law, statute, regulation, byelaw or subordinate legislation in force from time to time to which a party is subject and/or in any jurisdiction that the Services are provided to or in respect of; (b) the common law and laws of equity as applicable to the parties from time to time; (c) any binding court order, judgment or decree; or (d) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business;
Appropriate Safeguards	means such legally enforceable mechanism(s) for transfers of Personal Data as may be permitted under Data Protection Laws from time to time;
Controller	has the meaning given to that term in Data Protection Laws;
Data Protection Laws	means as applicable and binding on the Customer, the Supplier and/or the Services: (a) in the United Kingdom: (i) the Data Protection Act 2018; and (ii) the GDPR, and/or any corresponding or equivalent national laws or regulations; (b) in member states of the European Union (EU) and/or European Economic Area (EEA): the GDPR and all relevant EU and EEA member state laws or regulations giving effect to or corresponding with the GDPR; and (c) any Applicable Laws replacing, amending, extending, re-enacting or consolidating any of the above Data Protection Laws from time to time;
Data Protection Losses	means all liabilities, including all: (a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses,

losses and damages (including relating to material or non-material damage); and

- (b) to the extent permitted by Applicable Law:
 - (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority;
 - (ii) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and
 - (iii) the reasonable costs of compliance with investigations by a Supervisory Authority;

Data Subject	has the meaning given to that term in Data Protection Laws;
Data Subject Request	means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;
GDPR	means the General Data Protection Regulation, Regulation (EU) 2016/679;
Personal Data	has the meaning given to that term in Data Protection Laws;
Personal Data Breach	means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Protected Data;
Processing	has the meanings given to that term in Data Protection Laws (and related terms such as process have corresponding meanings);
Processing Instructions	has the meaning given to that term in clause 2.1.1;
Processor	has the meaning given to that term in Data Protection Laws;
Protected Data	means Personal Data received from or on behalf of the Customer in connection with the performance of the Supplier's obligations under this Agreement;
Sub-Processor	means another Processor engaged by the Supplier for carrying out processing activities in respect of the Protected Data on behalf of the Customer; and
Supervisory Authority	means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws.

Specific interpretive provision(s)

In this Agreement:

(a) references to any Applicable Laws (including to the Data Protection Laws and each of them) and to terms defined in such Applicable Laws shall be replaced with or incorporate (as the case may be) references to any Applicable Laws replacing, amending, extending, re-enacting or consolidating such Applicable Law (including any new Data Protection Laws from time to time) and the equivalent terms defined in such Applicable Laws, once in force and applicable; and

(b) a reference to a law includes all subordinate legislation made under that law.

Data processing provisions**1 Processor and Controller**

1.1 The parties agree that, for the Protected Data, the Customer shall be the Controller and the Supplier shall be the Processor.

1.2 The Supplier shall process Protected Data in compliance with:

1.2.1 the obligations of Processors under Data Protection Laws in respect of the performance of its obligations under this Agreement; and

1.2.2 the terms of this Agreement.

1.3 The Customer shall comply with:

1.3.1 all Data Protection Laws in connection with the processing of Protected Data, the Services and the exercise and performance of its respective rights and obligations under this Agreement, including maintaining all relevant regulatory registrations and notifications as required under Data Protection Laws; and

1.3.2 the terms of this Agreement.

1.4 The Customer warrants, represents and undertakes, that:

1.4.1 all data sourced by the Customer for use in connection with the Services, prior to such data being provided to or accessed by the Supplier for the performance of the Services under this Agreement, shall comply in all respects, including in terms of its collection, storage and processing (which shall include the Customer providing all of the required fair processing information to, and obtaining all necessary consents from, Data Subjects), with Data Protection Laws;

1.4.2 all instructions given by it to the Supplier in respect of Personal Data shall at all times be in accordance with Data Protection Laws; and

1.5 The Customer shall not withhold, delay or condition its agreement to any Change requested by the Supplier in order to ensure the Services and the Supplier (and each Sub-Processor) can comply with Data Protection Laws.

2 Instructions and details of processing

2.1 Insofar as the Supplier processes Protected Data on behalf of the Customer, the Supplier:

- 2.1.1 unless required to do otherwise by Applicable Law, shall (and shall take steps to ensure each person acting under its authority shall) process the Protected Data only on and in accordance with the Customer's documented instructions as set out in this clause 2 and Schedule 1 (Data processing details), as updated from time to time in accordance with the Change Control Procedure (**Processing Instructions**);
- 2.1.2 if Applicable Law requires it to process Protected Data other than in accordance with the Processing Instructions, shall notify the Customer of any such requirement before processing the Protected Data (unless Applicable Law prohibits such information on important grounds of public interest); and
- 2.1.3 shall promptly inform the Customer if the Supplier becomes aware of a Processing Instruction that, in the Supplier's opinion, infringes Data Protection Laws, provided that:
 - (a) this shall be without prejudice to clauses 1.3 and 1.4; and
 - (b) to the maximum extent permitted by mandatory law, the Supplier shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities (including any Data Protection Losses) arising from or in connection with any processing in accordance with the Customer's Processing Instructions following the Customer's receipt of that information.
- 2.2 The processing of Protected Data to be carried out by the Supplier under this Agreement shall comprise the processing set out in Schedule 1 (Data Processing details), as may be updated from time to time in accordance with the Change Control Procedure.

3 Technical and organisational measures

- 3.1 The Supplier shall implement and maintain, at its cost and expense, the technical and organisational measures:
 - 3.1.1 in relation to the processing of Protected Data by the Supplier, as set out in Schedule 2 (Technical and organisational measures); and
 - 3.1.2 taking into account the nature of the processing, to assist the Customer insofar as is possible in the fulfilment of the Customer's obligations to respond to Data Subject Requests relating to Protected Data.
- 3.2 Any additional technical and organisational measures shall be at the Customer's cost and expense.

4 Using staff and other processors

- 4.1 The Customer authorises the Supplier to appoint a suitable hosting company as a Sub-Processor and permits such to appoint Sub-Processors.
- 4.2 The Supplier shall:
 - 4.2.1 ensure each such Sub-Processor complies with all such obligations; and
 - 4.2.2 remain fully liable for all the acts and omissions of each Sub-Processor as if they were its own.

- 4.3 The Supplier shall ensure that all persons authorised by it (or by any Sub-Processor) to process Protected Data are subject to a binding contractual obligation to keep the Protected Data confidential (except where disclosure is required in accordance with Applicable Law, in which case the Supplier shall, where practicable and not prohibited by Applicable Law, notify the Customer of any such requirement before such disclosure).

5 Assistance with the Customer's compliance and Data Subject rights

- 5.1 The Supplier shall refer all Data Subject Requests it receives to the Customer within *three* Business Days of receipt of the request, provided that if the number of Data Subject Requests exceeds three per *calendar month*, the Customer shall pay the Supplier's reasonable charges, calculated on a time basis, for recording and referring the Data Subject Requests in accordance with this clause 5.1.

- 5.2 The Supplier shall provide such reasonable assistance as the Customer reasonably requires (taking into account the nature of processing and the information available to the Supplier) to the Customer in ensuring compliance with the Customer's obligations under Data Protection Laws with respect to:

5.2.1 security of processing;

5.2.2 data protection impact assessments (as such term is defined in Data Protection Laws);

5.2.3 prior consultation with a Supervisory Authority regarding high risk processing; and

5.2.4 notifications to the Supervisory Authority and/or communications to Data Subjects by the Customer in response to any Personal Data Breach,

provided the Customer shall pay the Supplier's reasonable charges for providing the assistance in this clause 5.2, such Charges to be calculated on a time basis.

6 Records, information and audit

- 6.1 The Supplier shall, in accordance with Data Protection Laws, make available to the Customer such information as is reasonably necessary to demonstrate the Supplier's compliance with its obligations under Article 28 of the GDPR (and under any Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose, subject to the Customer:

6.1.1 giving the Supplier reasonable prior notice of such information request, audit and/or inspection being required by the Customer;

6.1.2 ensuring that all information obtained or generated by the Customer or its auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the Supervisory Authority or as otherwise required by Applicable Law);

6.1.3 ensuring that such audit or inspection is undertaken during normal business hours, with minimal disruption to the Supplier's business, the Sub-Processors' business and the business of other customers of the Supplier; and

6.1.4 paying the Supplier's reasonable costs for assisting with the provision of information and allowing for and contributing to inspections and audits.

7 Breach notification

7.1 In respect of any Personal Data Breach involving Protected Data, the Supplier shall, without undue delay:

7.1.1 notify the Customer of the Personal Data Breach; and

7.1.2 provide the Customer with details of the Personal Data Breach.

8 Deletion or return of Protected Data and copies

8.1 The Supplier shall, at the Customer's written request, either delete, or provide to the Customer a means to extract an electronic copy of the Customer's protected data held on the ECCO system within a reasonable time after the earlier of:

8.1.1 the end of the provision of the relevant Services related to processing; or

8.1.2 once processing by the Supplier of any Protected Data is no longer required for the purpose of the Supplier's performance of its relevant obligations under this Agreement,

and delete existing copies (unless storage of any data is required by Applicable Law and, if so, the Supplier shall inform the Customer of any such requirement).

9 Liability, indemnities and compensation claims

9.1 The Customer shall indemnify and keep indemnified the Supplier in respect of all Data Protection Losses suffered or incurred by, awarded against or agreed to be paid by, the Supplier and any Sub-Processor arising from or in connection with any:

9.1.1 non-compliance by the Customer with the Data Protection Laws;

9.1.2 processing carried out by the Supplier or any Sub-Processor pursuant to any Processing Instruction that infringes any Data Protection Law; or

9.1.3 breach by the Customer of any of its obligations under clauses 1 to 10 (inclusive),

except to the extent the Supplier is liable under clause 9.2.

9.2 The Supplier shall be liable for Data Protection Losses (howsoever arising, whether in contract, tort (including negligence) or otherwise) under or in connection with this Agreement:

9.2.1 only to the extent caused by the processing of Protected Data under this Agreement and directly resulting from the Supplier's breach of clauses 1 to 10 (inclusive); and

9.2.2 in no circumstances to the extent that any Data Protection Losses (or the circumstances giving rise to them) are contributed to or caused by any breach of this Agreement by the Customer (including in accordance with clause 2.1.3(b)).

9.3 If a party receives a compensation claim from a person relating to processing of Protected Data, it shall promptly provide the other party with notice and full details of such claim. The party with conduct of the action shall:

- 9.3.1 make no admission of liability nor agree to any settlement or compromise of the relevant claim without the prior written consent of the other party (which shall not be unreasonably withheld or delayed); and
- 9.3.2 consult fully with the other party in relation to any such action, but the terms of any settlement or compromise of the claim will be exclusively the decision of the party that is responsible under this Agreement for paying the compensation.
- 9.4 The parties agree that the Customer shall not be entitled to claim back from the Supplier any part of any compensation paid by the Customer in respect of such damage to the extent that the Customer is liable to indemnify the Supplier in accordance with clause 9.1.
- 9.5 This clause 9 is intended to apply to the allocation of liability for Data Protection Losses as between the parties, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Laws to the contrary, except:
 - 9.5.1 to the extent not permitted by Applicable Law (including Data Protection Laws); and
 - 9.5.2 that it does not affect the liability of either party to any Data Subject.

10 Survival of data protection provisions

- 10.1 Clauses 1 to 10 (inclusive) shall survive termination (for any reason) or expiry of this Agreement and continue:
 - 10.1.1 indefinitely in the case of clauses 8 to 10 (inclusive); and
 - 10.1.2 until 12 months following the earlier of the termination or expiry of this Agreement in the case clauses 1 to 7 (inclusive),
- provided always that any termination or expiry of clauses 1 to 7 (inclusive) shall be without prejudice to any accrued rights or remedies of either party under any such clauses at the time of such termination or expiry.

SCHEDULE 1: DATA PROCESSING DETAILS**1 Subject-matter of processing:**

Hosting services for our proprietary software

2 Duration of the processing:

Until this agreement ends or is terminated in accordance with our contractual terms

3 Nature and purpose of the processing:

To host the Customers Personal Data entered into our proprietary software

4 Categories of Data Subjects

- Customer's Service Users
- Authorised system users, whose actions are part of the audit trail for GDPR purposes
- Third party contacts, whose names, and potentially addresses, email and phone numbers relating to the service users are stored where their consent for processing might not have been sought and is not required (e.g. details of next of kin, and of GP surgery).

5 Processing Instructions

To encrypt the data whenever it leaves the hosting services servers. For example, through SSL to serve the website, and to backups, and provide encryption 'at rest' for any data on mobile devices.

SCHEDULE 2 TECHNICAL AND ORGANISATIONAL MEASURES

Such measures shall include, as appropriate:

- The ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;
- The ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and
- A process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing.