CUSTOMER TERMS AND CONDITIONS FOR EKEEPER PRODUCTS AND SERVICES
Version number: 1.1 Last updated 2 July 2021.

eKeeper Group Limited, a company registered in England and wales under company number 05144521, having its registered address at Commodity Quay, St. Katharine Docks, London, E1W 1AZ ("**eKeeper**").

These terms and conditions govern the Customer's use of eKeeper's products and services. The Customer agrees to be bound by these terms and conditions and any other additional terms and conditions which apply to its use of eKeeper's products and services as set out in each Order.

1. DEFINITIONS AND INTERPRETATIONS

1.1. The definitions and rules of interpretation in this clause apply in these T&Cs:

'**Affiliate**' means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with a party where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

'**eKeeper Website**' means ekeepergroup.co.uk domains, or any other website notified to Customer Users by eKeeper from time to time.

'**Confidential Information**' means all information (whether oral, written, graphic, electromagnetic or otherwise) already disclosed or which may be disclosed by a party, whether marked confidential or not and in whatever form including (without limitation): information concerning in whole or in part the business and/or operations of a party, network topology information, Intellectual Property Rights, ideas, business methods, finance prices, business, financial, marketing, development or manpower plans market opportunities, processes, strategies, data trade secrets, computer systems and software databases, customer lists or details, designs, photographs, drawings, specifications, technical literature and other information or material and other matters connected with the products or services manufactured, marketed, provided or obtained by a party and information concerning their relationships with actual or potential clients or customers and the needs and requirements of such persons and including without limitation any notes, information or analyses derived from such information however it is produced.

'**Customer**' means the Customer identified in an Order who enters into Order(s) for the provision of Products and Services.

'**Customer Data**' the data inputted by Customer Users, or on Customer User's behalf for the purpose of using the Products and Services or facilitating the Customer User's use of the Products and Services.

'**Customer Personal Data**' means any Personal Data that is processed by eKeeper on behalf of the Customer in relation to an Order or the T&Cs, but excluding data with respect to which eKeeper is data controller.

'**Customer User**' means the Customer and those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Products and Services.

'**Data Protection Law**' means unless and until the EU General Data Protection Regulation ((EU) 2016/679) (GDPR) is no longer directly applicable in the UK, the GDPR, the Privacy and Electronic Communications (EC Directive), Regulations 2003 (SI 2426/2003) and any laws or regulations implementing Council Directive 2002/58/EC; the Data Protection Act 2018 and any national implementing laws, regulations and secondary legislation (including any judicial or administrative interpretation of any of the above, and any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant supervisory authority), as amended or updated from time to time, in the UK; and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018 along with any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK.

'Data Subject' means an individual who is the subject of Customer Personal Data.

'**Delivery Program**' means the delivery program timeline set out in an Order.

'**Direct Debit**' means upon completion of the form set out in an Order as appendix 1 (or such other form as requested by eKeeper from time to time including an electronic form) by the Customer pursuant to clause 4.2 of the T&Cs gives eKeeper and its Affiliates permission to debit the Fees payable under each Order from the Customers nominated bank account.

'**Documentation**' means the user manuals, user instructions or other instructions provided by eKeeper to Customer generally relating to the use of the Licensed Software.

'**Effective Start Date'** means the start date for Products and Services as indicated under each Order.

'**Fees**' means the fees set out in an Order, payable by the Customer to eKeeper in consideration of eKeeper providing Customer Users access to the Products and Services in accordance with the T&Cs, and any other fees payable by Customer to eKeeper under an Order.

'**Force Majeure Event**' means any circumstance not within a party's reasonable control including, without limitation: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or

	biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; collapse of buildings, fire, explosion or accident; and any labour or trade dispute, strikes, industrial action or lockouts.
'**Good Industry Practice**'	means the exercise of that degree of skill, care, diligence, prudence and foresight which would ordinarily be expected from a suitably skilled and experienced person performing services similar to the Products and Services.
'**Initial Period**'	unless otherwise stated in an Order, the initial period has the meaning given to it in clause 3.2 of the T&Cs.
'**Intellectual Property Rights**'	means patents, inventions, trade marks, trade secrets, service marks, logos, get-up, business names, trade names, internet domain names, rights in designs, copyright (including rights in computer software) and moral rights, database rights, semi-conductor topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered (including rights in the nature of unfair competition rights and rights to sue for passing off) and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world and 'Intellectual Property' shall be construed accordingly.
'**Licensed Software**'	means the customer relationship management software owed by eKeeper and licensed to the Customer pursuant to these T&Cs and as specified in an Order, which then permits Customer Users access to the software by signing into an Account.
'**Order(s)**'	means an order for the provision of Products and Services executed by eKeeper and Customer, which incorporates these terms, schedules, appendices, attachments and any documents expressly referred to in an Order and any subsequent order executed between the parties from time to time.
'**Personal Data**'	means any personal data which is subject to protection under the applicable Data Protection Law.
'**Privacy Policy'**	eKeeper's privacy policy which is available on eKeeper Websites, such document may be amended by eKeeper at its sole discretion from time to time.
'**Products'**	means any eKeeper products identified in an Order including but not limited to the licence(s) purchased by the Customer () in accordance with the T&Cs which entitles Customer Users to access and use the Licensed Software and Updates upon execution of an Order.
'**Renewal Term**'	has the meaning given to it in clause 3.2 of the T&Cs.
'**Services**'	means any services set out in an Order including any additional services, integration services, configuration services (including analysis and design), training services, data import service and Support Services.
'**Service Levels'**	means eKeeper's standard service levels in respect of the Products and Services (where applicable) which is available on the eKeeper Website.
'**Specification**'	means the Documentation, and any technical and functional specifications made available by eKeeper to the Customer for any part of the Licensed Software.
'**Special Terms**'	means any special terms and conditions set out in an Order which apply to the Products and Services.
'**Support Services**'	means eKeeper's standard customer support services in respect of the Products and Services which is available on the eKeeper Website.
'**T&Cs**'	means these terms and conditions, as amended from time to time in accordance with 13.1 and 13.2 including its schedules, appendices, each Order entered into by the Customer and eKeeper and any additional terms and conditions which apply to the Products and Services set out in an Order.
'**Taxes**'	means all remittance to the appropriate governmental authority of all levies, duties, assessments, deductions and withholding taxes, sales, use, property, ad valorem, value added or similar taxes imposed as a result of the T&Cs and/or the Products and Services to the extent noted in the relevant invoice, except for any corporate business taxes, taxes based on Customer's or eKeeper's income or personnel related taxes.
'**Term**'	means collectively, the Initial Period and each Renewal Period, if any.
'**Updates'**	means any enhancement, development, modification, update, patch, revision, new release, new version, new module or upgrade of the Licensed Software made available by eKeeper from time to time that adds new functions or features to the Licensed Software or that addresses bugs or errors.
'**Working Day**'	means a day other than a Saturday, Sunday or an English Bank Holiday.
'**Working Hours'**	means the hours of 9:00 to 17:00 UK time on a Working Day.

1.2. The terms, "**Data Controller**", "**Data Processor**", "**processing**" and "**appropriate technical and organisational measures**" shall have the same meaning as in Data Protection Law, and their cognate terms shall be construed accordingly.

1.3. References to the T&Cs include its schedules, appendices and the T&Cs as amended from time to time.

1.4. If there is an inconsistency between any of the provisions of the T&Cs, an Order, the schedules or the appendices, the following order of precedence shall apply where those items earlier in the list shall take precedence over those items later on: (i) the Order; (ii) these T&Cs (excluding the schedules and appendices); (ii) the schedules; (iv) the appendices.

1.5. Headings have been included for convenience only and will not be used in construing any provision of the T&Cs.

2. LICENCE, PRODUCTS, SERVICES AND ORDERS

2.1. In consideration of the Customer paying the Fees, eKeeper hereby grants to the Customer a non-exclusive, non-transferable

licence, without the right to grant sublicences, to permit the Customer Users to use the Products and Services in accordance with the T&Cs during the Term and solely for the Customer's business operations.

2.2. eKeeper shall:

(a) provide to the Customer Updates of the Licensed Software, as advised to the Customer and subject to the payment of any additional fees which may apply from time to time, such fees to be agreed between the parties prior to being incurred). eKeeper shall provide support to the Customer for the Updates and will provide a telephone advice and guidance service. This service will be provided via eKeeper's help desk between Working Hours. Any assistance or service requested by the Customer outside of these hours will be subject to additional costs in accordance with the rates specified in the relevant Order.

(b) on reasonable request by the Customer, diagnose and rectify faults in the Licensed Software, provided that if eKeeper determines that the fault is not within the Licensed Software the Customer shall demonstrate to the reasonable satisfaction of eKeeper that such fault or defect is within the Licensed Software to enable eKeeper to diagnose and rectify the identified fault.

(c) host, configure, manage, maintain and secure the Licensed Software in line with Good Industry Practice and with all reasonable care, skill and diligence.

2.3. If the Customer wishes to decrease the number of Customer Users, Customer may only do so at the end of the relevant Initial Period, or a relevant Renewal Term and the decrease shall take effect at beginning of the subsequent Renewal Term.

2.4. The Customer may increase the number of Customer Users at any time during the Term upon providing notice to eKeeper, and the parties shall execute an Order in respect of such increase. The increase in Customer Users shall be available within 24 hours following execution of the relevant Order and the Customer shall pay eKeeper the additional Fees for such increase in Customer Users. Notwithstanding the date that an increase takes effect, the increase in Customer Users shall expire at the same time that the initial number of Customer Users expires.

2.5. The Customer shall promptly notify eKeeper, if it becomes aware that any password has been provided to any individual who is not a Customer User, and without prejudice to eKeeper's other rights, eKeeper shall promptly disable such Account and shall not issue any new Account to any such individual.

2.6. The Customer may reasonably request in writing that eKeeper visits the Customer's site (which eKeeper may in its absolute discretion refuse or accept), to provide implementation, advice, guidance or training in respect of the Products and Services. Any site visits undertaken by eKeeper shall be chargeable at the rates specified in the relevant Order. The Client shall also pay eKeeper's reasonable expenses as agreed between the parties in respect of such site visit.

2.7. eKeeper shall use commercially reasonable endeavours to make Products available 24 hours a day, seven days a week, except for:

(a) planned maintenance as published on the eKeeper Website from time to time; and

(b) unscheduled maintenance.

2.8. eKeeper shall, provided that the relevant support fees set out in an Order are paid by Customer, provide the Customer with Support Services in respect of the Products and Services during Working Hours or as set out in an Order.

2.9. Should the Client require additional products and/or services to those already set out in an Order, the Client shall notify eKeeper and if eKeeper (in its absolute discretion) agrees to deliver such additional products and/or services the parties shall enter into a new Order in respect of such additional products and services. No Order is effective until signed by both parties.

2.10. The Customer acknowledges that, other than the functionality in the specification, the Services have not been prepared to meet the Customer's individual requirements. eKeeper shall not be liable for any failure of the Services to provide any expected facility or function, nor for any aspect, or content of the Customer Data.

2.11. Except as expressly provided in the T&Cs no warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the condition, quality, performance, merchantability or fitness for purpose of the Products and Services is given or assumed by the Customer and all such warranties, conditions, undertakings and terms are hereby excluded.

3. TERM AND TERMINATION

3.1. The T&Cs shall commence on the date that the first Order is executed by the Customer and eKeeper and shall remain in force until the first occurrence of any of the following events: (a) all Orders expire; or (b) all Orders or the T&Cs are terminated in accordance with clause 3.5(b) or 3.9.

3.2. Unless otherwise set out in an Order or terminated earlier in accordance with the T&Cs, each Order shall commence on the Effective Start Date and shall continue for an initial period of 24 months ("**Initial Period**"), thereafter each Order shall automatically renew for 12-monthly periods (**Renewal Term**) at the end of the Initial Period and at the end of each Renewal Term.

3.3. The Customer may terminate an Order upon giving no less than 1 month's written notice to eKeeper prior to the end of the Initial Period or a Renewal Term, in which case the relevant Order shall terminate at the end of the Initial Period or the relevant Renewal Term, as applicable. For the avoidance of doubt upon termination of the relevant Order the parties agree that there shall be no refund of any payments made in advance to eKeeper for the Products and Services.

3.4. Unless otherwise stated in the T&Cs, the parties acknowledge and agree that no Order may be terminated during the Initial Period or a Renewal Period.

3.5. Either party may terminate the T&Cs or an Order at any given time without liability to the other, upon written notice with immediate effect in the event that the other party:

(a) materially breaches its obligations under the T&Cs or an Order, and such breach is incapable of remedy, or if the breach is capable of remedy, and the party does not remedy the breach within 30 days of written notice from the other party of such breach; or

(b) becomes bankrupt, suspends, or threatens to suspend payments or ceases, or threatens to cease the carrying on all or a substantial part of its business, applies for company reconstruction, goes into liquidation or otherwise may be considered to be insolvent.

3.6. If the T&Cs are terminated in accordance with clause 3.5, all Order's between the parties shall terminate with immediate effect from the date of termination of the T&Cs.

3.7. If an Order is terminated under clause 3.5 (a), all other Order's between the parties shall continue until they expire or are terminated in accordance with the T&Cs.

3.8. Without prejudice to its other rights and remedies under the T&Cs if Customer fails to pay any amount due under an Order and eKeeper provides written notice of this fact to Customer, eKeeper shall be entitled to suspend access to the Products or Services or terminate the T&Cs or the applicable Order (at its option) if the amount due remains unpaid for a further 30 days from such notice.

3.9. eKeeper may terminate an Order or these T&Cs at any time for convenience upon 30 days' prior written notice to the Customer. If an Order or these T&Cs are terminated under this clause 3.9,

eKeeper shall refund the pro rata portion of the Fees that may have been paid by Customer for the portion of the Product or Service not rendered to Customer as a result of eKeeper's termination.

3.10. The Parties acknowledge and agree that the initial implementation, consultancy & remote key user training may be waived at the discretion of eKeeper. If it is waived and for any reason any Fees or charges are not paid by the Customer to eKeeper; or the T&C or an Order is terminated prior to the end of the Initial Period, a sum equal to the implementation, consultancy & remote key user training and the full charges for any discounted and waived costs shall become due and payable by Customer to eKeeper immediately.

3.11. On termination of the T&Cs or an Order for any reason:

(a) all licences granted under the T&Cs or the relevant Order shall immediately terminate, and the Customer shall immediately cease use of all or the applicable Products and Services;

(b) if applicable, each party shall return (or destroy as requested by the other party) and make no further use of any Confidential Information, equipment, property, documentation and other items (and all copies of them) belonging to the other party;

(c) eKeeper shall delete the Customer Data and at the written request of the Customer, return any Customer Data to the Customer on payment of a data return fee as specified in the relevant Order. The database is extracted into flat files and no other interpretation or programming is provided within the stated fee;

(d) eKeeper reserves the right to remove all copies of the Licensed Software from the designated location;

(e) Customer shall immediately pay all Fees and charges outstanding at and resulting from termination (whether or not due at the date of termination);

(f) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the T&Cs or the applicable Order which existed at or before the date of termination shall not be affected or prejudiced; and

(g) Termination of these T&Cs shall not affect the accrued rights or liabilities of the parties or affect the coming into force or the continuance in force of any provision that is expressly or by implication intended to come into or continue in force on or after termination.

4. PAYMENT

4.1. The Customer shall pay the Fees to eKeeper in accordance with this clause 4 and the relevant Order.

4.2. The Customer shall on the Effective Start Date provide to eKeeper valid, up-to-date and complete contact and billing details for invoices or Direct Debit collection and if Direct Debit is agreed between the parties Customer authorises eKeeper on the Effective Start Date and thereafter on each monthly or annual anniversary as indicated in an Order to debit the Fees payable from the Customer's bank account.

4.3. Without prejudice to its other rights and remedies under the T&Cs and subject to clause 3.8, eKeeper may disable access to all or part of the Products and Services and eKeeper shall be under no obligation to provide any or all or the Products and Services while any amount due to be paid by the Customer under the relevant Order remains unpaid.

4.4. Without prejudice to its other rights and remedies under the T&Cs, eKeeper shall be entitled to interest on overdue sums at the rate of 4% per annum above the base rate of Lloyds Bank PLC accruing on a daily basis and compounded on a six-monthly basis from the due date until full settlement.

4.5. All Fees referred to in each Order are exclusive of and net of any Taxes, and shall be added to invoices by eKeeper, as applicable, and paid by the Customer.

4.6. eKeeper shall be entitled to increase the Fees and any other costs (including in respect of any miscellaneous additional services) set out in an Order:

(a) beginning on the Renewal Term of each Order in line with the percentage increase in the Retail Price Index plus 2%; and

(b) at any time during the Term, by any other amount (for example but not limited to if an additional feature and/or functionality (including Updates) is added to the Products and Services) provided that the Customer shall be given an invoice for such increase. If the Customer does not agree to such increase, Customer must within 28 days following the date of eKeeper's invoice ("**28 Day Period**") notify eKeeper of its intention to terminate the relevant Order, in which case such Order shall terminate at the end of the 28 Day Period. If notice to terminate is not received by Customer prior to the end of the 28 Day Period, the Customer shall be bound to the new Fees and costs upon expiry of the 28 Day Period.

4.7. All Fees and charges (including in respect of any miscellaneous additional services set out in an Order) shall be paid by the Customer within 30 days from the date of the relevant invoice. Without prejudice to its other rights and remedies under the T&Cs if payment is not received within such timeframe and Direct Debit collection has been agreed pursuant to clause 4.2, the Customer consents that eKeeper shall be entitled to debit the amount payable from the Customer's bank account.

5. CUSTOMER OBLIGATIONS

5.1. Other than in accordance with clause 5.7 (a), (b) and (c), the Customer shall not permit any third party to use the Products and Services without the express written permission of eKeeper.

5.2. The Customer shall and shall procure that Customer Users shall

(a) keep their Account name and password secure and confidential and ensure that such password is changed frequently;

(b) not attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Products and Services in any form or media or by any means;

(c) not attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Products and Services; and

(d) not access all or any part of the Products and Services in order to build a product or service which competes with any part of the Service.

5.3. The Customer undertakes that:

(a) it shall permit eKeeper to carry out an audit to establish the numbers of Customer Users. Such audit may be conducted no more than once per quarter, and this right shall be exercised with reasonable written prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;

(b) if any of the audits referred to in clause 5.3 (a) reveal that any access to the Products and Services has been provided to any individual who is not a Customer User then without prejudice to eKeeper's other rights, eKeeper shall promptly disable such access;

(c) if any of the audits referred to in clause 5.3 (a) reveal that the Customer has underpaid Fees to eKeeper, then without prejudice to eKeeper's other rights, the Customer shall pay to eKeeper an amount equal to such underpayment as calculated in accordance with the prices set out in the relevant Order within 10 business days of the date of the relevant audit;

(d) the maximum number of Customer Users that is authorised to access and use the Products and Services shall not exceed the number of Customer Users included within the applicable Order;

(e) Subject to clause 2.3 and 2.4, it shall notify eKeeper if it wishes to add or remove any Customer User; and

(f) (if applicable) it shall comply with the Delivery Program and any Special Terms set out in each Order.

5.4. The Customer is solely responsible for all Customer Data that Customer Users upload, attach, access, use or modify using any part of the Products and Services.

5.5. If integration with a third party is required for the provision of Products and/or Services, eKeeper shall notify the Customer within a reasonable time prior to the integration of such third party software or services. If the Customer wishes to take advantage of the integration, the Customer shall enter into a separate agreement with such third party for the provision of the additional software or services.

5.6. The Customer warrants that:
(a) Customer Data is made available to eKeeper only to the extent that the Customer has all necessary rights to do so;
(b) eKeeper is not liable for unauthorised access to or use of any Customer Data unless the unauthorised access or use results from eKeeper's failure to comply with its obligations in the T&Cs or an Order;
(c) it retains sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data;

5.7. The Customer shall indemnify eKeeper against any loss or damage sustained or incurred by eKeeper as a result of any breach of the warranties in clause 5.6.

5.8. The Customer may:

(a) permit third parties to access and use the Licensed Software incidentally to the receipt of the services;
(b) permit a service provider to access and use the Licensed Software and Documentation for the purposes of providing services to the Customer and its Affiliates;
(c) make a reasonable number of copies of the Documentation as is necessary to support the Customer's use of the Licensed Software in accordance with the terms these T&Cs.

6. EKEEPER OBLIGATIONS

6.1. eKeeper undertakes that the Products and Services will perform substantially in accordance with the Specification and Documentation during the Term.

6.2. The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Products and Services contrary to eKeeper's instructions, or modification or alteration of the Products and Services by any party other than eKeeper or eKeeper's duly authorised contractors or agents. If the Products and Services do not conform with the foregoing undertaking, eKeeper shall, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1.

6.3. eKeeper shall maintain all necessary licenses, consents and permissions necessary for the performance of the Products and Services.

6.4. eKeeper shall provide the Products and Services in accordance with the Service Levels.

6.5. eKeeper warrants that:

(a) the Licensed Software will operate on the recommended equipment and systems set out in an Order as appendix 2;
(b) the Licensed Software will conform materially to the Specification and such warranty continues for a period of 90 days from the Effective Start Date ("**Warranty Period**"). If, within the Warranty Period, the Customer notifies eKeeper in writing of any defect and that this defect does not wholly and directly arise from any modifications to the Licensed Software made by or on behalf of the Customer or from any third-party software, then (without prejudice to any cause of action the Customer may have) eKeeper shall at its own option:
(i) (subject to the Customer providing such information as is reasonably necessary to assist eKeeper in resolving the defect or fault including a documented example or sufficient information to enable eKeeper to re-create the effect or fault) correct or extend the Licensed Software in line with the Specification within a further period of 30 days;
(ii) (provided always that replacement software is substantially of a similar quality and functionality as the Licensed Software, replace the Licensed Software; or
(ii) (having exhausted all efforts in implementing the options set out in sub-clauses (i) and (ii)) terminate the relevant Order by notice in writing to the Customer and refund any Fees paid by the Customer at the date of termination.

6.6. eKeeper does not warrant that:
(a) the Customer User's use of the Products and Services will be uninterrupted or error free; or
(b) that the Products and Services or any information obtained by the Customer Users through the Products and Services will meet Customer User's requirements.

6.7. eKeeper is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Products and Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.8. The T&Cs or any Order shall not prevent eKeeper from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, Products and/or Services which are similar to those provided under each Order.

6.9. eKeeper shall follow its retention procedures for Customer Data as set out in its Privacy Policy. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against eKeeper shall be for eKeeper to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by eKeeper. eKeeper shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by eKeeper to perform services related to Customer Data maintenance and back-up for which it shall remain liable.

7. CONFIDENTIAL INFORMATION

7.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under the T&Cs. A party's Confidential Information shall not be deemed to include information that:
(a) is or becomes publicly known other than through any act or omission of the receiving party;
(b) was in the other party's lawful possession before the disclosure;
(c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
(d) is independently developed by the receiving party, which independent development can be shown by written evidence.

7.2. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

7.3. Subject to clause 7.2, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the T&Cs.

7.4. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the T&Cs.

7.5. The Customer acknowledges that details of the Products and Services constitute eKeeper's Confidential Information.

7.6. No party shall make, or permit any person to make, any public announcement concerning the T&Cs without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

7.7. This clause 7 shall survive termination of the T&Cs, however arising.

8. INDEMNITY

8.1. eKeeper shall defend the Customer, its officers, directors and employees against any claim that the Customer User's use of the Products and Services in accordance with the T&Cs infringes, any patent, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
   (a) eKeeper is given prompt notice of any such claim;
   (b) the Customer provides reasonable co-operation to eKeeper in the defence and settlement of such claim, at eKeeper 's expense; and
   (c) eKeeper is given sole authority to defend or settle the claim.

8.2. In the defence or settlement of any claim, eKeeper may procure the right for the Customer to continue using the Products and Services, replace or modify the Products and Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the T&Cs immediately and repay to the Customer a pro-rata portion of any Fees which may have been paid by the Customer for the balance of the Products and Services period outstanding at the date of such termination. Other than as set out in the foregoing eKeeper shall have no additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

8.3. In no event shall eKeeper, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
   (a) a modification of the Products and Services by anyone other than eKeeper; or
   (b) the Customer's use of the Products and Services in a manner contrary to the instructions given to the Customer by eKeeper; or
   (c) the Customer's use of the Products and Services after notice of the alleged or actual infringement from eKeeper or any appropriate authority.

8.4. The foregoing and clause 9.3 state the Customer's sole and exclusive rights and remedies, and eKeeper's (including eKeeper's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

9. LIABILITY

9.1. Nothing in the T&Cs shall operate to limit or exclude either party's liability for:
   (a) death or personal injury resulting from negligence;
   (b) fraud or fraudulent misrepresentation; and
   (c) any other liability which cannot be excluded or limited under applicable law.

9.2. In no event shall either party, be liable to the other party under the T&Cs for loss of profits, or loss of business, or deletion of goodwill or similar losses, or loss of anticipated savings, or loss or corruption of data, or any special, indirect, consequential or pure economic loss, costs damages, charges or expenses howsoever arising under the T&Cs.

9.3. Each party's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these T&Cs shall under no circumstances exceed the total Fees paid or payable by the Customer to eKeeper for the provision of the Products and Services during the 12 months immediately preceding the date on which the claim arose.

9.4. This clause 9 shall survive termination of the T&Cs, however arising.

10. INTELLECTUAL PROPERTY RIGHTS

10.1. Customer acknowledges and agrees that all Intellectual Property Rights in the Products and Services belong to eKeeper or its licensors (as the case may be), and except as expressly stated herein, the T&Cs or any Order do not grant the Customer any rights to, under, or in, any Intellectual Property Rights in respect of the Products and Services.

10.2. eKeeper confirms that it has all the rights in relation to the Products and Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the T&Cs.

10.3. This clause 10 shall survive termination of the T&Cs, however arising.

11. DATA PROTECTION

11.1. With respect to the parties' rights and obligations under the T&Cs, the parties agree that, for the purposes Data Protection Law, the Customer is the Data Controller and eKeeper is the Data Processor.

11.2. The parties shall each comply with their respective obligations under Data Protection Law. Neither party shall do any act that puts the other party in breach of its obligations set out under Data Protection Law. Nothing in the T&Cs shall be deemed to prevent any party from taking the steps it reasonably deems necessary to comply with Data Protection Law.

11.3. In relation to any Customer Personal Data processed by eKeeper in connection with the T&Cs, eKeeper shall:
   (a) process that Customer Personal Data in accordance with the Privacy Policy;
   (b) ensure that all personnel who have access to and/or process Customer Personal Data are obliged to keep the Customer Personal Data confidential;
   (c) ensure that it has in place appropriate technical and organizational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data;
   (d) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Law with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
   (e) notify the Customer without delay upon becoming aware of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Customer Personal Data;
   (f) at the written direction of Customer, delete or return Customer Personal Data and copies thereof to Customer on

termination of the T&Cs unless required by applicable law to store the Customer Personal Data; and

(g) may transfer Customer Personal Data outside the European Economic Area, and the Customer consents to any such transfer so long as:

1. eKeeper provides appropriate safeguards in relation to the transfer;
2. the Data Subject has enforceable rights and effective legal remedies;
3. eKeeper complies with its obligations under Data Protection Law by providing an adequate level of protection to any Customer Personal Data that is transferred;
4. eKeeper complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Customer Personal Data; and
5. the relevant transfer takes place without breach of applicable Data Protection Law.

11.4. eKeeper shall use reasonable endeavours to execute all such documents and provide any assistance as the Customer may reasonably request from time to time in order for the Customer to comply with its obligations under Data Protection Law. For the avoidance of doubt, unless otherwise required by applicable law any assistance provided by eKeeper under this clause may be charged to the Customer on a time and materials basis at the rates agreed between the parties from time to time.

11.5. The Customer consents to eKeeper engaging sub-processors with respect to Customer Personal Data for the sole and exclusive purpose of delivering the Products and Services and subject always to compliance with the T&Cs and Privacy Policy.

12. FORCE MAJEURE

12.1. If eKeeper is prevented, hindered or delayed in or from performing any of its obligations under the T&Cs by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of the T&Cs or otherwise liable for any such failure or delay in the performance of such obligations. The Affected Party shall be entitled to a reasonable extension of time for the performance of such obligations. The Affected Party shall:

(a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the T&Cs; and

(b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

12.2. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 3 months, the Customer may terminate the T&Cs by giving one months' written notice to the Affected Party.

13. GENERAL

13.1. Any notice required to be given under these T&Cs, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice at its registered office set out in an Order (if a company) or its principal place of business (in any other case).

13.2. Any notice shall be deemed to have been duly received (i) if delivered personally, on signature of a delivery receipt; or (ii) if sent by pre-paid first-class post or recorded delivery, at 9.00am on the second business day after posting; or (iii) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed. In addition to the aforementioned a party may send a copy of any notice issued in accordance with clause 13.1 by email, to the email address specified in an Order for the relevant party. For the avoidance of doubt a notice required to be given under the T&Cs shall not be validly given if sent by e-mail.

13.3. eKeeper may vary these T&Cs from time to time (including but not limited to):

(a) reflect changes in the Products and Services or how eKeeper does business (e.g., when eKeeper adds or changes new or existing products or services, features, technologies, pricing, usage limits or benefits or removes old ones); or

(b) for legal, regulatory, or security reasons.

13.4. If eKeeper changes these T&Cs (except when a new service or feature is launched or in urgent situations, such as responding to legal or security requirements, in which case a prior review period may not be given to the Customer), eKeeper shall publish the revised T&Cs on the eKeeper Website and the Customer shall have 14 days from the publication date to review the revised terms ("Review Period"). If Customer does not agree to the revised terms, Customer may prior to the end of the Review Period, notify eKeeper of its intention to terminate the T&Cs, in which case the T&Cs shall terminate at the end of the Review Period. If notice to terminate is not received by eKeeper prior to the end of the Review Period, the Customer shall be bound to the revised T&Cs upon expiry of the Review Period.

13.5. The Customer shall not be entitled to assign, sub-licence or otherwise transfer the licence in whole or in part without the written agreement of eKeeper.

13.6. If any provision (or part of a provision) of the T&Cs is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

13.7. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

13.8. The T&Cs, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

13.9. Each of the parties acknowledges and agrees that in entering into the T&Cs it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of the T&Cs, other than as expressly set out in the T&Cs.

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

13.11. These T&Cs do not confer any rights on any person or party (other than the parties to the T&Cs and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

13.12. These T&Cs or any dispute or claims arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

13.13. The parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these T&Cs or its subject matter or formation.