

# ecosio Ltd. Terms of Service

We, ecosio Ltd. (“We”) make our Services (as hereinafter defined) available solely on the basis of the Terms of Service set forth in this document (“Terms”). By accepting these Terms during the order process or by subsequently accessing or using any of the Services, You agree to these Terms on behalf of the company or other legal entity for which you are acting (for example, as an employee) or, if there is no company or legal entity, on behalf of yourself as an individual (in either case, “You”). You represent and warrant that You have the authority and capacity to act on behalf of and bind such entity (if any) and that You are entering into these Terms as a business-to-business transaction.

## 1 Our Services

As specified in more detail in our written offer (“Offer”), we may provide electronic data interchange services (“EDI Services”) for an agreed period of time, as well as related set-up and implementation services (“Set-Up Services”) and technical support services (“Support Services”), all such services are collectively referred to as “Services”.

### 1.1

EDI Services. Our EDI Services may include the routing, conversion, monitoring and archiving of electronic data interchange messages through our ecosio Integration Hub, access to the ecosio.Web interface and other services as more fully described in the service description which may be attached hereto or otherwise made available to you upon request (“Service Description”).

### 1.2

Set-Up Services. Our Set-Up Services may include one-off services such as setting up Your network connection, EDI partner connections, mapping rules and assisting in the definition of message implementation guides and other services as more fully described in our Offer.

### 1.3

Support Services. If included in our Offer or subsequently provided at Your request, we may from time to time provide technical support in relation to our EDI Services as set forth in our Service Description. Unless otherwise agreed, technical support services shall be charged in accordance with our then current technical support price list.

## 2 Your Responsibilities

### 2.1

In order to access our EDI Services, You will require specific connectivity, as more fully described in the Service Description. Unless our Offer explicitly includes such connectivity, You will be responsible to procure it from appropriate vendors and maintain it throughout the term of our Service.

## 2.2

You acknowledge and agree that the EDI Services only include the interchange of messages to EDI networks covered by our roaming agreements; if You request access to other EDI networks, You will be responsible to enter into contractual arrangements with such network operators.

## 2.3

You will be responsible for ensuring Your IT environment meets, and maintains compatibility throughout the term of our Service with, the minimum system requirements we specify in the most recent version of the Service Description or in a separate document and that Your system is able to import and export the data required for the Services.

## 2.4

In order to enable us to provide our Services, You shall provide our designated staff (or subcontractors) sufficient working and storage space, documents, files, information and access to Your staff and make any decisions and take any other actions in a timely manner which may be necessary for the provision of our Services. You acknowledge that such cooperation is essential to the performance of any Services as set forth in these Terms and we shall not be liable for any deficiency in performing Services if such deficiency results from Your or Your EDI partners' or Your EDI users' failure to provide full cooperation. Any additional effort resulting from any such failure to provide cooperation and/or accurate information in accordance with this Section shall be chargeable at our regular hourly rates.

## 2.5

You agree that You and Your staff will keep safe, and will not share any user ID or passwords related to our Services. You shall be responsible for any unauthorized use of our Services resulting from insufficient protection of Your ID and passwords.

## 2.6

We provide our Services to You. You may not resell our Services or otherwise make them available to any third party in whole or in part, except to Your affiliated entities or as required for the intended purpose of the exchange of EDI messages with Your suppliers, customers and other partners. If You make our Services available to affiliated entities, You remain jointly and severally liable to us for such affiliates' compliance with these Terms including any payments due to us.

# 3 Your Content

## 3.1

You maintain ownership of all intellectual property rights in, and responsibility for any content You or Your staff uploads to, or distributes via, our Services (Your "Content"). You agree that we may process, copy, make available, and distribute your Content as necessary to provide the Services.

## 3.2

You agree that Your Content and Your conduct in using the Services will comply with all applicable laws, rules and regulations. By creating, submitting, distributing or otherwise making Your Content available to us and/or others through our Services, You acknowledge and agree that: (1) You will evaluate and bear all risks associated with Your Content; (2) You will be solely responsible for Your Content and the legal and tax consequences of

any messages exchanged; and (3) under no circumstances will we be liable in any way for Your Content as You upload or submit it, including, but not limited to any errors or omissions. We will not access Your Content except (a) as part of providing, maintaining, securing or modifying Services, (b) at Your request or with Your consent as part of addressing or preventing a service, support or technical issue, (c) in connection with legal obligations or proceedings, or (d) for statistical purposes.

### 3.3

You hereby grant us a royalty-free, perpetual, worldwide, irrevocable right, unlimited in scope, to include any suggestions for enhancements or additions, any comments or other feedback on the Services, in these Services and to distribute and make the resulting enhancements or changes available to others.

### 3.4

You acknowledge and agree that the Services do not require, and that we advise against using our Services for, processing of personal data as defined in the EU General Data Protection Regulation (or subsequent legislation which may replace the same in the United Kingdom). If You nevertheless wish to submit or transfer personal data to our Services, You must notify us at least 30 days in advance so that we can enter into a Data Processing Agreement and/or take any other measures required to comply with applicable data protection laws. We advise You that, unless expressly stated otherwise, our Offer has not priced in any compliance costs arising from Your submission of personal data to our Services, and you agree that we may charge any such incremental costs with our then current support price list.

## 4 Our Intellectual Property

### 4.1

You acknowledge and agree that we or our licensors own all right, title, and interest (including, without limitation, patents, copyrights, trademarks, trade secrets, and all other intellectual property rights) in and to the Services (excluding Your Content).

### 4.2

The structure and organization, the underlying algorithms and other internals, the protocols, data structures and other externals, and the source code of the Services and any APIs constitute our proprietary and confidential information, and You will not disclose such information to third parties, or use such information for any purpose other than as required for ordinary-course access to and use of the Services as set forth in these Terms, without our prior written consent. Also, You agree not to access or attempt to access the Services by any means other than the interface we provide or authorize. In addition, You agree not to engage in any decompiling, disassembling or other reverse engineering or otherwise attempting to discover, learn or study the structure or organization, underlying algorithms or other internals, the protocols, data structures or other externals, or the source code of the Services or APIs, except as expressly permitted under applicable law notwithstanding a contractual prohibition to the contrary. You have only the rights expressly granted to You under these Terms. All rights not expressly granted are reserved by us and our licensors and suppliers; we and our licensors and suppliers expressly disclaim (and You agree not to assert) any other rights. You agree not to take any action, or to authorize or encourage any third party to take any action (or cooperate with any third party in taking any action), inconsistent with the foregoing.

### 4.3

To the extent we, in providing the Services, produce work product (“Work Product”) including any software,

scripts, documentation, specifications and other materials, even if developed specifically for You, all rights, ownership, title and interest in and to that Work Product, together with the intellectual property rights therein shall vest in us. However, we hereby grant You a royalty free, world-wide, non-exclusive and non-transferable and non-subliceable license to use such Work Product during the agreed term of our Services and in accordance with our Offer.

#### 4.4

Where, on an exceptional basis, we provide You with any software which may be installed on Your computers, we grant You a worldwide, non-exclusive, non-transferable, non-subliceable license to use such software for the agreed term and within the scope of our Services only, provided that You shall comply with Your obligations under the present Terms.

## 5 Warranty for EDI Services

### 5.1

We warrant that, throughout the term you paid for, our EDI Services will achieve the technical availability targets defined in the Service Description.

### 5.2

In the event of breach of such warranty, Your exclusive remedy and our sole liability shall be a reasonable reduction of the fees payable for the EDI Services for the period affected by the interruption or interruptions. The amount of this reduction shall be agreed between the parties (service-level credits).

### 5.3

You shall notify us in writing (including email), immediately after discovering the same, about any interruption of our EDI Services that You would like considered for any service-level credits. Any such notifications shall include the complete information required for an outage report according to the Service Description.

## 6 Warranty for Set-Up and Support Services

### 6.1

We warrant that any Set-Up Services and any Support Services will be provided with due skill and care, using competent and qualified staff.

### 6.2

In the event of breach of such warranty, Your exclusive remedy and our sole liability shall be limited to our reasonable efforts to replace the relevant staff with a qualified resource.

## 7 Limitation of Warranty and Liability

### 7.1

EXCEPT FOR THE LIMITED WARRANTY FOR EDI SERVICES SET FORTH IN SECTION 5 AND THE LIMITED WARRANTY FOR SET-UP SERVICES and SUPPORT SERVICES SET FORTH IN SECTION 6, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (i) THE SERVICES ARE PROVIDED "AS IS," AND (ii) WE AND OUR LICENSORS AND SUPPLIERS MAKE, AND YOU RECEIVE, NO WARRANTIES, REPRESENTATIONS, CONDITIONS OR COMMITMENTS OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE SERVICES OR ANY OUTPUT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR NON INFRINGEMENT OR OTHER WARRANTIES OR CONDITIONS IMPLIED BY STATUTE, OR ANY WARRANTIES OR CONDITIONS BASED ON A COURSE OF DEALING, USAGE OF TRADE OR INDUSTRY STANDARDS.

### 7.2

SUBJECT TO SECTION 7.4, OUR MAXIMUM CUMULATIVE AND AGGREGATE LIABILITY AND THAT OF OUR AFFILIATES, SUBSIDIARIES AND RELATED COMPANIES, AND THEIR EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES, FOR ALL COSTS, LOSSES OR DAMAGES FROM CLAIMS ARISING UNDER OR RELATED IN ANY WAY TO THE SERVICES, OR ANY BREACH OR NON PERFORMANCE OF IT NO MATTER HOW FUNDAMENTAL, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, IS LIMITED TO YOUR DIRECT DAMAGES ONLY AND SHALL NOT EXCEED THE AMOUNTS YOU PAID TO US DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM.

### 7.3

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY:

- (a) PUNITIVE OR EXEMPLARY DAMAGES, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS;
- (b) LOSS OF PROFITS OR REVENUES;
- (c) LOSS OR CORRUPTION OF DATA;
- (d) LOSS OF USE, GOODWILL, BUSINESS INTERRUPTION, COST OF REPLACEMENT GOODS OR PRODUCTS, OR FAILURE TO REALIZE EXPECTED COST SAVINGS, IN EACH CASE ARISING OUT OF OR IN CONNECTION WITH THE SERVICES, OR ANY BREACH OR NON-PERFORMANCE OF IT, NO MATTER HOW FUNDAMENTAL, (INCLUDING BY REASON OF THAT PARTY'S NEGLIGENCE) EVEN IF YOU HAD BEEN ADVISED OF THE POSSIBILITY OF SAME OR SAME WERE REASONABLY FORESEEABLE.

### 7.4

WHERE WE AGREE TO PROVIDE YOU WITH CONNECTIVITY TO X.400 OR OTHER VALUE ADDED NETWORKS, WE PASS SUCH CONNECTIVITY THROUGH TO YOU AS IT IS PROVIDED BY THE THIRD PARTY PROVIDER. WE SHALL NOT BE LIABLE WITH RESPECT THERETO IN ANY WAY.

### 7.5

NOTWITHSTANDING ANY CONTRARY PROVISION IN THESE TERMS, NEITHER PARTY LIMITS OR EXCLUDES ITS LIABILITY IN RESPECT OF:

- (a) ANY DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE;
- (b) ANY FRAUD ;
- (c) ITS WILFUL DEFAULT OR WILFUL ABANDONMENT OF THIS AGREEMENT OR ANY PART OF IT ; OR
- (d) ANY OTHER STATUTORY OR OTHER LIABILITY WHICH CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

## 7.6

THE PARTIES AGREE THAT EACH OF CLAUSES 7.1, 7.2, 7.3 AND 7.4 ARE SEPARATE AND INDEPENDENT TERMS.

## 7.7

AS FAR AS PERMITTED BY LAW, THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY NOTWITHSTANDING ANY FUNDAMENTAL BREACH, BREACH OF MATERIAL TERM OR FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

# 8 Prices, Payment, Delivery

## 8.1

All prices quoted and amounts payable by You are exclusive of any tax, levy or similar governmental charge that may be assessed by any jurisdiction, including, without limitation, any sales, excise, use or goods and services taxes, including VAT or the equivalent, whether based on the delivery, possession or use of the products, services or subscriptions, or otherwise ("Taxes") except for net income, net worth or franchise taxes assessed on us. Any such Taxes to be collected by us shall be Your responsibility and be invoiced to You unless we receive a valid tax exemption certificate from You prior to processing your order.

## 8.2

Fees for Services quoted in an Offer may be based on information You provided or assumptions we state in the Offer. We may adjust these fees if relevant information You provided, or assumptions we stated in the Offer, turn out to be incomplete or inaccurate.

## 8.3

Fees for EDI Services shall be invoiced on a monthly or annual basis. The minimum monthly fee for our EDI Services will be stated in the Offer when we make the EDI Services available to You. Fees for all other Services shall be invoiced on the milestone dates identified in the Offer, if any, or otherwise upon completion of any separately priced component of the Set-Up Services.

## 8.4

All invoices shall be due and payable without deduction within 14 days of the date of invoice.

## 8.5

In the event of late payment, we shall be entitled to

- A. statutory interest for late payment in business-to-business transactions, which is currently 8% above the Bank of England Base Rate; and
- B. debt recovery fees of GBP 40 in case of late payments smaller than GBP1,000 or GBP 70 in case of late payments of GBP 1,000 or higher; and
- C. we may suspend our Services in whole or in part until we receive payment.

## 8.6

Your obligation to make the payments provided for in these Terms will not be affected by any circumstances, including any right of set-off, counterclaim, recoupment, defense or other right which you may have against us or others.

## 8.7

Unless expressly stated otherwise in writing, any delivery or milestone dates stated in an Offer or otherwise are estimates and shall not be binding.

## 9 Confidentiality

### 9.1

During the term of the Services and for five (5) years after their termination, both parties shall hold any Confidential Information disclosed to them by the other party in confidence. For the purposes of this Section 9, "Confidential Information" shall mean any technical or commercial information relating to the parties' business, facilities, products, services, techniques and processes, including, without limitation, know-how, trade secrets, ideas, inventions, customer or employee data. Confidential Information also includes information about our prices and rebates.

### 9.2

The obligations of Section 9.1 shall not apply to information that from and after the date of disclosure:

- A. is or becomes a matter of public knowledge through no fault of the receiving party; or
- B. was rightfully in the receiving party's possession prior to receipt from the disclosing party free of any obligation of confidence, as shown by receiving party's written records; or
- C. was rightfully disclosed to receiving party by another person without restriction as to use or disclosure; or
- D. is independently developed by receiving party without use of or reference to disclosing party's Confidential Information as shown by receiving party's written records.

### 9.3

Nothing in this Section 9 shall be construed to prevent us from providing the agreed Services.

## 10 Publicity

Unless You object in writing, we may disclose that You are a customer of ours; we may list Your name and company logo on our website or otherwise include Your company name and logo in sales or marketing materials.

## 11 Term and Termination

### 11.1

The EDI Services shall start on the date specified in the Offer, or otherwise on the date on which we first make them available to You (the "Commencement Date"). Unless otherwise stated in the Offer, EDI Services shall continue for a minimum term of 24 months from the Commencement Date.

### 11.2

Unless terminated by either party at least three months prior to the end of the then current term, our EDI Services shall renew for consecutive terms of 12 months thereafter at the prices of the time.

### 11.3

Notwithstanding Sections 11.1 and 11.2 above, either party may terminate the Services at any time with immediate effect if:

- A. a receiver or similar officer is appointed for the benefit of the other party's creditors, or if the other party becomes the object of any proceedings for bankruptcy, insolvency or the like; or
- B. the other party breaches any provision of these Terms or of the Offer, which cannot be remedied (including but not limited to breach of confidentiality, fraud, misconduct or violation of our rights); or
- C. the other party breaches any provision of these Terms or of the Offer and fails to remedy such breach within 30 days after being notified thereof.

## 12 Force Majeure

If the performance of any obligations hereunder is prevented, restricted or interfered with by reason of earthquake, fire, flood or other casualty or due to strikes, riot, storms, interruption of communication networks, loss of connectivity, explosions, acts of God, war, terrorism, or a similar occurrence or condition beyond the reasonable control of the parties, the party so affected shall, upon giving prompt notice to the other party, be excused from such performance during such prevention, restriction or interference, and any failure or delay resulting therefrom shall not be considered a breach of these Terms.

## 13 Service Changes and Update of Terms

### 13.1

As a web service provider, we strive to continually improve and adjust our Services to react to different market needs. You acknowledge and agree that we may make such improvements and adjustments without prior notice.

### 13.2

We further reserve the right to change these present Terms and/or our Service Description at any time following 30 day's prior notice. If you do not agree with such change, You may object in writing within 14 days of receipt of our notice, in which case our agreement with You shall terminate on the date on which our change notification would otherwise have become effective. If You do not object as specified above, the change shall take effect and shall be deemed accepted by You.

## 14 Miscellaneous

### 14.1

We and You are independent contractors with respect to each other, and nothing contained in these Terms shall be deemed or construed to create, and the parties do not intend to create, a contract of employment or a joint venture, partnership, agency, fiduciary, franchise or other form of legal relationship between the parties.

### 14.2

Notices under these Terms shall be in writing, sent by registered mail or delivered by hand, or by telefax or email, where applicable to the addresses stated above or to such other addresses as may be notified

hereunder.

#### 14.3

Neither party may assign its rights and duties under these Terms unless in the event of a merger, restructuring or sale of all or substantially all of its assets.

#### 14.4

These Terms, the Offer (if any) and any documents referred to herein or therein contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings between the parties, whether oral or written. In the event of any discrepancy between the Offer, these present Terms and/or the Service Description, the following order of precedence shall apply: (a) the Offer; (b) the present Terms; (c) the Service Description.

#### 14.5

No different or pre-printed terms which may be included in any purchase order or other customer document shall be binding on us unless expressly accepted in writing.

#### 14.6

No failure or delay in exercising any right shall operate as a waiver of that right. Any waiver, modification or amendment of any provision of these Terms will be effective only if in writing and signed by the authorized representatives of both parties.

#### 14.7

The various section headings are inserted for convenience of reference only and shall not affect the meaning or interpretation of these Terms.

#### 14.8

If any term, provision, covenant or condition of these Terms is held by a court or arbitral panel of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

#### 14.9

Any agreement based on these Terms shall be governed by and construed under the laws of England and Wales without regard to choice of laws principles. The parties submit to the exclusive jurisdiction of the courts of England and Wales for all disputes arising out of, or in connection with, Your purchase hereunder. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these terms and conditions.