



# **Terms and Conditions Agreement**

This Terms and Conditions Agreement (this "Agreement") is between Elevated Defense, L.L.C. d/b/a Elevated Cyber Security ("ECS"), a Texas limited liability company, and the person or entity designated as "Client" in a Service Level Agreement between such person and ECS ("Client").

**Section 1**        **Definitions** As used throughout this order, the following definitions apply unless otherwise specifically stated:

- 1.1        "Excluded Services" means any effort, service, task, or assistance provided or supplied by ECS, including, without limitation, any design, delivery, support, engineering, installation, repair, maintenance, technical, consulting, or professional services, excluding Included Services.
- 1.2        "Service Ticket" refers to any service requested by Client via email, phone or online submission.
- 1.3        "Facility Survey" is a comprehensive review to compare the proposed Service Ticket to the Client's actual requirements.
- 1.4        "Service Plan" means ongoing and as-needed technology support, as described more particularly in the Service Level Agreement, either on a month-to-month or annual basis.
- 1.5        "Included Services" mean any service performed or provided as part of a Service Plan.
- 1.6        "Work" means an Included Service, an Excluded Service, or both.
- 1.7        "Term" means the term of the Service Plan, which begins on the date Effective Date, and ends one year thereafter, but will automatically renew for successive year long periods unless either party notifies the other in writing at least thirty days before the end of any such year long period that it is terminating the Service Plan.
- 1.8        "Effective Date" means the date upon which the later of the ECS and the Client has signed the Service Level Agreement.
- 1.9        "Emergency Support" means Work in response to the failure of a critical system or systems which, if not serviced, will cause immediate and substantial harm to the Client.
- 1.10      "Service Level Agreement" means one or more certain Service Level Agreements that Client and ECS may enter into from time to time, and that specifies, among other things, prices, the Service Plan, and the Term of such Service Plan.

**Section 2**        **Included Services and Excluded Services**

- 2.1        Subject to Section 3, to request any Work, Client shall deliver a Service Ticket to ECS. If the Service Ticket is for an Excluded Service, ECS may, at its sole option, accept the Service Ticket and perform the Work. Prior to the commencement of any Excluded Service, ECS may perform a Facility Survey at the Client's sole cost and expense. ECS may perform Work for the Client by any means ECS deems satisfactory, including, but not limited to, telephone, electronic mail, remote, or on-site means.
- 2.2        ECS may enter into license agreements on Client's behalf for the use of hardware and software in conjunction with the Work, and the Client agrees to be bound by such license agreements, regardless of whether Client actually executes such license agreements or actually reviews such license agreements. Client shall at all times comply with any applicable copyright, patent and intellectual property laws, codes, rules and regulations. The Client acknowledges that, unless otherwise specified therein, all license agreements are non-exclusive and it shall not reverse engineer, copy, share, transmit, or modify any licensed intellectual property, or otherwise violate any such copyrights or licenses.
- 2.3        If any computers, servers, parts, cables, equipment, materials or other items (collectively, "Materials") are requested or required for the Work and such Materials are not expressly listed as being loaned or leased by ECS (in which case such Materials are governed as provided below), Client shall pay all expenses (including, but not limited to, the Material purchase costs, shipping charges and taxes) related to the purchase of such Materials. ECS may require pre-payment from Client for such Materials, and may require that the Client be billed directly from the vendor.
- 2.4        ECS and Client understand that this Agreement is ongoing, and, to the extent Client requests any Excluded Services and ECS accepts such Excluded Services, this Agreement will govern those Excluded Services.

2.5 Client shall deliver to ECS all documentation on servers, computer systems, peripherals, cabling, phone lines and any other information related to any systems, equipment or materials not installed by ECS.

2.6 Upon Client's written acceptance of the Service Level Agreement, ECS shall provide all of the Included Services for Client during the Term. In consideration therefor, Client shall pay to ECS fees as set forth in the Service Level Agreement, plus applicable taxes, on a monthly basis in advance on the first day of each month.

2.7 Upon receiving a Service Ticket requiring Emergency Support, ECS will determine whether the failure can be resolved by phone, remote access or mandates on-site support. Client may not send Service Tickets requesting Emergency Support by email. ECS cannot guarantee the availability of Emergency Support at all times. Whether a Service Tickets for Emergency Support is an Included Service or Excluded Service, and the fees owed, are determined in accordance with the Service Level Agreement.

2.8 In the event any hardware or equipment (including any Materials) fails, such failed hardware or equipment may be tendered to the Original Equipment Manufacturer ("OEM"), the OEM's designated repair facilities, or other competent repair technicians for repair. If repair is not reasonable or practical, and the OEM has not provided a replacement, Client may be required to purchase new hardware or equipment at its sole cost. Client acknowledges that repair or replacement may be a time-consuming process, that such repair or replacement is an Excluded Service, and that Client will be responsible for all damages, losses, costs, and liability resulting from or arising out of such repair or replacement.

2.9 If the Service Level Agreement sets forth a Term that is longer than one month, the Client may terminate the Service Plan at any time by written notice to ECS, but upon such notice, Client shall pay to ECS an amount equal to 80% of all of the fee payments remaining for the Term.

### **Section 3 Help Desk and Support**

3.1 ECS will provide Remote Helpdesk and Vendor Management of Client's IT networks described the Service Level Agreement to the Client through remote means from 8:00 am – 5:00 pm Monday through Friday, excluding public holidays. Network Monitoring Services will be provided 24/7/365. Whether such Work will constitute Included Services or Excluded Services is determined by the Service Level Agreement.

3.2 ECS will respond to Client's Service Tickets under the provisions of Appendix A, and with best effort after hours or on holidays. Each Service Ticket will be assigned a number for tracking. Our escalation process is detailed in Appendix A.

3.3 Client grants ECS authorization to view any data within the regular routine of the repair or system improvement. Client also authorizes ECS to reasonably delete, change, or rewrite any necessary information to complete the system repair or improvement that is consistent with the standards and practices in the industry.

3.4 The Client acknowledges that:

3.4.1 the Network Monitoring may not protect against all threats to its computers, servers, equipment and systems;

3.4.2 the quality of the Network Monitoring is dependent on the quality of hardware and software currently in use by the Client; and

3.4.3 some errors, problems or defects in the hardware, software, equipment, processes or systems cannot be determined by the Network Monitoring.

### **Section 4 Leased or Loaned Equipment Agreement**

4.1 Client agrees that all equipment listed as being leased or loaned to Client by ECS on Service Level Agreement will remain sole property of ECS. Client will not attempt to sell, lease, encumber, resale, tamper, troubleshoot, repair, move, or add to such equipment without written permission of ECS.

4.2 Upon termination of this Agreement, Client shall return such leased or loaned property to ECS within 10 days after the final cancellation date. ECS may take possession of such equipment after such 10 days, and Client shall compensate ECS for expenses accrued during the recovery.

4.3 Client shall not attempt, or cause to be attempted, any maintenance on any equipment of ECS. Any tampering, repair, or service, except by ECS, on such equipment constitutes a default under this Agreement.

4.4 Client shall make reasonable attempts to keep equipment of ECS safe, secure and protected while in their possession. Client shall keep current insurance on equipment of ECS while in their possession and list ECS as an additional loss payee. Client shall provide proof thereof to ECS and, provide a current copy of its insurance declaration sheet showing ECS as a loss payee specifically for mobile equipment coverage. Client shall pay all costs for the repair or replacement of ECS-supplied equipment while in Client's possession.

4.5 Should Client default under this Agreement, ECS may enter Client's premises at any time and remove all of ECS's hardware, and such entry will be deemed consensual and not a trespass. Client shall fully cooperate and shall not interfere in any way with such removal. Client shall not disturb the peace during such removal.

## **Section 5 Excluded Services**

5.1 Although not an exclusive list of Excluded Services, and without limiting the generality of the definition of Excluded Services, the Service Plan does not include:

- 5.1.1 Parts, equipment or software for Client's telecommunications systems which are not covered by ECS warranty or support;
- 5.1.2 The cost of any software, licenses, renewals, or upgrade fees of any kind unless specified in the Service Level Agreement;
- 5.1.3 The cost of any OEM, vendor, or manufacturer support or incident fees of any kind;
- 5.1.4 The cost to bring Client's environment up to minimum standards required for Services;
- 5.1.5 Failure due to acts of God, terrorism, telecommunications failures, fire, casualty, flood, building modifications, power failures or other adverse environmental conditions or factors;
- 5.1.6 Service and repair made necessary by the alteration or modification of equipment other than that authorized by ECS, including alterations, software installations or modifications of equipment made by Client's employees or anyone other than ECS;
- 5.1.7 Maintenance of applications and software packages, whether acquired from ECS or any other source unless as specified in Service Level Agreement;
- 5.1.8 Programming (modification of software code) and software maintenance unless as specified in Service Level Agreement;
- 5.1.9 Training and instruction of any kind;
- 5.1.10 Replacement of parts on printers, screens or peripherals, PDA's, Point of Sales systems, scanners, cameras, cell phones, smart phones nor any other specialized accessory; or
- 5.1.11 Consumables or items designed to be expended or wear out, such as printer maintenance kits, toner, ink, batteries, or paper.

5.2 Client shall pay for all Excluded Services at the cost or rate which ECS may set forth from time-to-time. **Client understands that Excluded Services may be quoted and billed separately from the Included Services.** ECS is not obligated to provide a quote for such Excluded Services prior to performance or billing, but may do so as a courtesy to Client.

## **Section 6 Limit of Liability**

6.1 Client acknowledges that absolute security against all information or computer related threats is not realistically achievable. ECS is not responsible for any breaches of security, or resulting loss, damage or liability.

6.2 In any event that any Work is carried out on Client's hardware, software, equipment, processes and systems for any reason (whether planned, accidental or caused by unknown or malicious means), ECS cannot be held liable for any loss, damage or liability resulting therefrom.

6.3 **UNLESS EXPLICITLY STATED IN THIS AGREEMENT, ECS HEREBY DISCLAIMS ALL WARRANTIES PROVIDED AT LAW OR IN EQUITY, INCLUDING (BUT NOT LIMITED TO) SUITABILITY, MERCHANTABILITY, GOOD AND WORKMANLIKE QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. NO WARRANTY EXISTS AS TO ANY OF THE WORK, THE MATERIALS, LABOR, HARDWARE, SOFTWARE, EQUIPMENT, PROCESSES, OR SYSTEMS PROVIDED UNDER THIS AGREEMENT. CLIENT WAIVES ALL CLAIMS FOR SPECIAL OR CONSEQUENTIAL DAMAGES AGAINST ECS.**

6.4 Without limiting any other provision of this Section, Client acknowledges that any addition, alteration or reconfiguration of any hardware or software previously installed by ECS is at the Client's own risk, and that ECS has advised Client to seek competent assistance in any such addition, alteration or reconfiguration. If Client possesses, requests, or accepts any administrative privileges to any of the equipment, Client is solely responsible for such equipment, and ECS may place such equipment outside of the Service Plan as a result. Client acknowledges that, with such administrative privileges, ECS no longer has sole control of such equipment, and may not be able to identify who has operated such equipment, or what such persons have done to such equipment. All repairs or replacements of such equipment will be at Client's sole cost and expense, and will not be an Included Service.

6.5 Client understands that any proposal, term sheet, letter of intent, or similar document is not binding on ECS, and that ECS disclaims any representations, promises, warranties, or guarantees made thereunder. Client represents that it has not relied upon any such proposal, term sheet, letter of intent, or other similar document in entering into this Agreement and the Service Level Agreement, that it has not relied upon any written or oral representation, warranty, promise, or guaranty not contained in this Agreement or the Service Level Agreement, and that it has made its own investigation into its technology requirements in making this Agreement.

#### **Section 7 Payment**

7.1 Client shall pay to ECS all amounts owed within ten days of receipt of an invoice from ECS. All payments must be made in United States Dollars. In addition to any other remedies under this Agreement, ECS may charge Client interest on any amounts owed and unpaid within ten days of receipt of an invoice from ECS at a rate equal to the lesser of (i) 18% per annum, compounding daily, or (ii) the maximum rate of interest allowed by law. Client agrees to pay to ECS the sum of \$45.00 for all returned checks.

7.2 If Client increases the amount of the Included Services (whether through an increase in the number of its users, changes to its equipment, or otherwise), ECS may increase the fees set forth in Service Level Agreement or require that Client execute a new Service Level Agreement, and may suspend performance of its services (in addition to any other remedy to which it may be entitled) if Client fails to pay the increased Fees.

7.3 ECS reserves the right to require the Client to deliver a deposit to ECS prior to the initiation or acceptance of any Work. Such deposit may be kept commingled with ECS's other funds (or funds of other clients) and will bear no interest for Client.

#### **Section 8 Representations and Warranties**

8.1 Client makes the following representations and warranties: (i) that, if Client is not a natural person, that Client is in good standing to transact business in the State of Texas; (ii) that Client has the requisite authority to enter into this Agreement; (iii) that, if applicable, the person signing this Agreement on behalf of Client is duly authorized to enter into this Agreement; (iv) that, to the best of Client's knowledge, this Agreement, and any covenants, warranties or representations under it, will not cause Client or ECS to violate any law, code, ordinance or court order; (v) that nothing on the Premises will prevent, restrict, or interfere with ECS's performance of the Work, or will damage or injure ECS, ECS's employees and subcontractors, or ECS's equipment (including, but not limited to, construction defects, insect infestation, environmental hazards, fire code violations, mold, structural problems, or the existence of anything or anyone whatsoever that violates any law of the State of Texas or the United States); (vi) that this Agreement will not violate any other agreement to which Client is a party that would affect ECS's rights or remedies under this Agreement; (vii) that this Agreement will not result in the termination of any license, franchise, lease, permit or consent held by Client; (viii) that this Agreement will not conflict with or result in a breach of Client's Articles of Incorporation or Bylaws or any agreement or instrument to which Client is party or by which it or its property is bound; and (ix) that Client has not encumbered or otherwise granted a lien or security interest against any of the Collateral to any other person or entity.

#### **Section 9 Default and Remedies**

9.1 ECS will be in breach and default of this Agreement ("Event of ECS Default") if ECS fails to substantially perform the Work that it may agree to perform for Client. Upon the occurrence of an Event of ECS Default, Client shall send ECS notice of such default and ECS shall have fifteen (15) days from receipt of such notice to

correct such default. If ECS fails to correct such default, Client may exercise any of the following remedies: (i) terminate this Agreement; (ii) receive a refund for sums paid for the Work which forms the basis of the Event of ECS Default; or (iii) enforce any rights or remedies at law. Each Service Ticket constitutes a separate agreement between the parties, and under no circumstance may Client withhold payment for Work which has been performed in a satisfactory manner because an Event of ECS Default may exist on separate Service Ticket.

9.2 Client will be in breach and default of this Agreement ("Event of Client Default") if any of the following has occurred: (a) Client fails to perform each and every term, condition, and covenant under this Agreement; (b) any of the warranties and representations made in this Agreement by Client become false; or (c) Client prohibits or prevents ECS from completing any Work, or causes ECS to fail to complete such Work. Client shall immediately notify ECS of any Event of Client Default. Upon the occurrence of an Event of Client Default, ECS may send Client notice of such Event of Client Default and Client shall correct such Event of Client default within have ten (10) days from the date such notice is sent. If Client fails to correct such Event of Client Default, ECS may exercise any of the following remedies: (i) terminate this Agreement; (ii) cease performance of any of the Work; (iii) enforce its contractual security agreement hereunder; or (iv) enforce any rights or remedies under this Agreement, at law or in equity. These remedies are cumulative, and any exercise of such remedies does not constitute an election of remedies. If this Agreement is placed in the hands of an attorney for the purposes of collection or enforcement, Client shall pay to ECS any such attorney's fees and expenses. Client acknowledges that, by ceasing performance of the Service Plan, Client's spam filter will be turned off, which in turn will turn off Client's e-mail system. Client agrees that Client will be solely responsible for any damages, losses, liabilities, or other costs or expenses which may arise from, or relate to, ECS's ceasing performance of the Service Plan as a result of an Event of Client Default.

9.3 To secure all sums owed by Client to ECS under any agreement between ECS and Client whatsoever, whether heretofore, now, or hereafter existing, Client hereby irrevocably assigns, transfers, pledges and grants to ECS a security interest ("Security Interest") in any of the following, whether presently owned or after acquired, and any proceeds thereto, that have been delivered, installed, repaired, modified, sold by ECS: (i) fixtures, (ii) equipment, (iii) inventory, and (iv) consumer goods (collectively, "Collateral"). To the extent any sums owed by Client were for the purchase of any Collateral, Client acknowledges that ECS has a purchase money security interest in such Collateral, and ECS may exercise its rights hereunder against such purchase money security interest Collateral after all other Collateral has been exhausted. Upon the occurrence of an Event of Client Default, ECS may enter upon the Client's property and take possession of all Collateral, without liability for trespass or conversion, and keep, or sell at public or private sale, the same in accordance with Article 9 of the Texas Business and Commerce Code. ECS waives all rights to notice of default, notice of intent to accelerate, notice of acceleration, notice of sale, or any other notice whatsoever. The proceeds from any such sale, less any and all expenses connected with the taking of possession, holding and selling of the Collateral (including attorneys fees), will be credited against the indebtedness secured by the Security Interest. Any surplus will be paid to Client or as otherwise required by law; and Client shall promptly pay any deficiencies. This Agreement constitutes a security agreement under the Uniform Commercial Code. ECS may file this Agreement, a Uniform Commercial Code Financing Statement, and a fixture filing, as necessary, to perfect the Security Interest.

9.4 If any dispute arises out of this Agreement, the parties agree that, prior to the filing of any suit, the parties shall promptly mediate the dispute in a good faith effort. The mediation will be conducted by a mediator agreed upon by ECS and the Client, but if both parties cannot agree, either party may petition a court of competent jurisdiction for appointment of a mediator. Both parties shall pay one half of the mediator's fees and expenses.

## **Section 10 Indemnity**

10.1 Client shall indemnify, defend and hold ECS harmless from any damages (including, but not limited to, consequential, punitive, or otherwise), strict liability, negligence, recklessness, malfeasance, costs, expenses, judgments, injuries, attorney's fees, penalties, and/or fees arising or resulting from an Event of Client Default, or by any act or omission of Client whatsoever (including, but not limited to, negligence, recklessness or malfeasance of Client). The provisions of this Paragraph survive the termination of this Agreement.

**Section 11 Server Hosting/Co-Location**

11.1 If Client requests that ECS host Client's data or Client requests the use of ECS's server, the following applies:

11.1.1 UNLESS EXPLICITLY STATED IN THIS AGREEMENT, ECS MAKES NO WARRANTY WHATSOEVER AND EXPRESSLY DISCLAIMS ALL WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ECS MAKES NO WARRANTY REGARDING THE SECURITY, AVAILABILITY, UP TIME, ACCESSIBILITY, OR USABILITY OF ANY SERVER. CLIENT AGREES THAT ECS HAS MADE NO REPRESENTATIONS, WARRANTIES, PROMISES, OR COVENANTS NOT CONTAINED IN THIS AGREEMENT, AND THAT CLIENT HAS NOT RELIED ON ANY REPRESENTATION, WARRANTY, PROMISE, OR COVENANT NOT CONTAINED IN THIS AGREEMENT IN CHOOSING TO EXECUTE THIS AGREEMENT.

11.1.2 ECS may use a third party server provider to provide hosting and server use services.

11.1.3 ECS may limit Client's use of storage space, bandwidth, processor and memory usage in its sole and complete discretion, and it may change such limits from time to time and at any time.

11.1.4 Client acknowledges that, from time to time, servers and their component parts fail, that data may be lost or become inaccessible as a result of such failure, that ECS is not responsible for any loss resulting from such failure, and that Client has been advised to additionally use a back-up server in a separate location from ECS's server (but such back-up server is not included in the Service Plan).

11.1.5 Client shall pay all fees shown on Service Level Agreement related to such hosting or server use. ECS may terminate the hosting and server use services at any time by giving Client ten days written notice of such termination.

11.2 Intentionally Deleted

**Section 12 Miscellaneous**

12.1 If Client so chooses, it may appoint an Authorized Representative in writing. Client's employees who request changes outside of the original agreed scope of work must direct these to the Client's Authorized Representative. If Client has appointed an Authorized Representative, no direction for such tasks to be conducted will be accepted from Client's employees by ECS personnel unless the Client's Authorized Representative signs an additional Formal Service Ticket.

12.2 ECS may terminate any Service Ticket immediately upon written notice and Client is responsible for charges for those services performed or material delivered prior to cancellation date and any charges arising out of or relating to a new service provider.

12.3 The Client shall use all software in compliance with applicable U.S. copyright laws. ECS reserves the right to refuse to install unlicensed copies of any software. The Client represents and warrants that all software it uses, and all uses thereof, are in compliance with all relevant intellectual property laws.

12.4 Client hereby acknowledges and agrees that, from time to time, some or all of the Work may be done by independent subcontractors of ECS.

12.5 Time is of the essence as to all matters contained in this Agreement.

12.6 The waiver by a party of a breach or violation of this Agreement is not a waiver of any subsequent breach hereof.

12.7 Any and all notices required to be given under this Agreement are void and of no effect unless such notice is in writing and is delivered to the party to whom such notice is directed, either in person or deposited in the United States mail, certified and return receipt requested, postage prepaid, and delivered to such party at that party's address set forth below. Any address may be changed by delivery of notice in accordance with these notice provisions.

12.8 This Agreement shall be interpreted, construed and governed according to the laws of the State of Texas. Venue hereof will be in Harris County, Texas for all purposes. The paragraph headings contained in this

Agreement are for convenience only and are not a part of this Agreement. If this Agreement is executed in multiple counterparts, each is deemed an original and together constitutes one and the same Agreement.

12.9 If any of the provisions in this Agreement are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision thereof; and this Agreement will be construed as if such provision had never been contained herein. Whenever the context requires, the gender of all words used in this Agreement include the masculine, feminine, and neuter. This Agreement is binding upon and inures to the benefit of the successors and assigns of ECS. Client has no right to assign this Agreement. There are no third party beneficiaries of this Agreement.

12.10 This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings of written or oral agreements between the parties respecting the within subject matter. The Service Level Agreement and all Service Tickets are hereby incorporated by reference.

### **Section 13 Limited Warranty.**

13.1 Subject to the terms and limitations contained in this Agreement, ECS warrants that the Covered Data will not suffer a Data Loss during the Term (the "Warranty"). If Client experiences such Data Loss of Covered Data, ECS will pay Client the lesser of: (a) the cost to recreate such Covered Data; (b) the fair market value of such Covered Data; or (c) \$1,000,000.00. For the Warranty to apply, Client must notify ECS of a Data Loss within 30 days of such Data Loss.

13.2 "Covered Data" means all computer files, unless excluded below, which Client has saved in Client's partition, directory, or portion of ECS's servers during the Term. "Data Loss" means an irreversible and unrecoverable deletion or loss of Covered Data due to ECS's negligence or intentional misconduct.

13.3 The Warranty does not cover or include files, drivers, programs, software, or data (whether or not it is Covered Data) that is: (a) pirated, or otherwise infringes on the copyright of a third party; (b) inaccessible due to compatibility issues; (c) inaccessible due to power or connection failures; (d) not stored on ECS's servers; (e) in excess of Client's storage allotment, or in violation of any reasonable protocols which ECS may establish for server usage and configuration; (f) recoverable, whether on ECS's computers and servers, Client's computers and servers, or a third party's computers and servers; or (g) deleted by Client.

13.4 The Warranty does not cover any Data Loss (or any other loss of Covered Data) that: (a) is due to Client's or any third party's negligence or intentional misconduct; (b) is due to the failure or corruption of Client's hardware; (c) is due to hurricane, typhoon, earthquake, nuclear risk or disaster, radiation, war or similar hostilities, acts of foreign enemies, civil war, civil commotion, terrorism, or the actions of any government or public legal authority; (d) occurs when Client is in default under any agreement between Client and ECS; (e) is due to Client's deletion of such data; (f) is due to errors in transmitting, copying, or storing such data onto ECS's servers; (g) occurs outside the Term of this Agreement; or (h) occurs for any reason other than ECS's negligence or intentional misconduct.

13.5 The Warranty is void if any of the following occur: (a) Client is in default under this agreement; (b) Client has failed to make any payment when due; (c) Client has notify ECS of a Data Loss within 30 days of the occurrence of such loss; (d) this Agreement is terminated; (e) Client violates any reasonable protocols or limits on storage space, bandwidth, processor and memory usage as ECS has set forth; or (f) Client or any third party has modified, disabled, reinstalled, added, or tampered with any equipment, software, settings, drivers, programs, servers, connections, or processes related to the operation, backup, communication, or recovery of ECS's servers, computers, communications systems, or backup systems.



## Appendix A

### Response and Resolution Times

The following table shows the targets of response and resolution times for each priority level

| Trouble  | Priority | Response time (in hours) * | Resolution time (in hours) * | Escalation threshold (in hours) |
|--|----------|----------------------------|------------------------------|---------------------------------|
| Service not available (all users and functions unavailable).   | 1        | Within 1 hour              | ASAP – Best Effort           | 2 hours                         |
| Significant degradation of service (large number of users or business critical functions affected)             | 2        | Within 4 hours             | ASAP – Best Effort           | 6 hours                         |
| Limited degradation of service (limited number of users or functions affected, business process can continue). | 3        | Within 8 hours             | ASAP – Best Effort           | 12 hours                        |
| Small service degradation (business process can continue, one user affected).                                  | 4        | Within 12 hours            | ASAP – Best Effort           | 18 hours                        |