

## SERVICE MODULE DEFINITIONS

### 1.1 Unlimited remote and on-site support

- 1.1.1 The Customer may report break-fix faults against the Equipment located at the Service Address specified in the Scope of Service, by logging a Call. This can be achieved by telephone to our call centre number, by email or via the internet as directed by ECOM. The Customer will be given a unique call reference which indicates the Call has been logged.
- 1.1.2 A Call can be placed using the above methods during Normal Working Hours.
- 1.1.3 ECOM will attempt to respond to the Call within the Service Level Response Time period specified in the Scope of Service, either by telephone or by email.
- 1.1.4 ECOM will work to diagnose and correct the fault to the Equipment as is, by remote services.
- 1.1.5 If ECOM cannot correct the fault to the Equipment, by either telephone or remote services, ECOM may schedule the Call to become an on-site visit to one of the Customer locations specified in the Scope of Service within the Services level response time period specified in the Scope of Service.
- 1.1.6 The Services will only be provided on the following desktop operating systems; Windows 7, Windows 8 / 8.1, Windows 10 and later Windows operating systems when released and approved by ECOM. Earlier versions are not supported without prior written consent from ECOM.
- 1.1.7 The Services will only be provided on the following server operating systems; Windows Server 2008 / 2008 R2, Windows 2012 / 2012 R2 and later Windows operating systems when released and approved by ECOM. Windows Server 2003 and 2003 R2, will be supported on a reasonable endeavours basis only (due to limitations with the manufacturer). Earlier versions are not supported without prior written consent from ECOM.
- 1.1.8 At the request of the Customer and wherever possible, ECOM will liaise directly with third parties such as software providers, internet and phone companies, web developers and those involved in delivering technical services to the Customer. On occasion ECOM may hand over direct support of the third party to the Customer, typically where it makes technical sense to do so.
- 1.1.9 Call volume and fair usage of the Service will be reviewed at the discretion of ECOM periodically.
- 1.1.10 Fair usage of the Service is calculated at ECOM's discretion. This generally forms a calculation that ascertains whether the Customer is operating within profitable boundaries of the Scope of Service and Service Charges of this Contract. It should be noted this is simply a trigger for ECOM to review profitability of this Contract internally and forms the basis of a potential conversation between ECOM and the Customer at a later stage.
- 1.1.11 The Customer will allow ECOM a permanent connection between the ECOM and Customer offices to allow support to be delivered by remote services.
- 1.1.12 ECOM will at times continue to work to resolve the fault outside Normal Working Hours subject to arrangement with the Customer on a reasonable endeavours basis.

### 1.2 Proactive Advanced Infrastructure Monitoring (AIM)

- 1.2.1 ECOM will install relevant software agents and / or probes on agreed servers and devices to enable pro-active monitoring of Customer infrastructure and networks.
- 1.2.2 When operational the software agents and / or probes will alert ECOM of faults detected on each monitored device.
- 1.2.3 The Customer acknowledges that there are potential limitations with the Equipment. Pro-active alerts generated by the software agents and / or probes cannot be specifically listed due to the limitations. A typical expectation of these alerts can be found using up to date ECOM marketing material.
- 1.2.4 An alert will be generated and a Call will be logged automatically or manually (whichever is deemed relevant by ECOM) into ECOM's appropriate call management software.
- 1.2.5 ECOM will attempt to respond to the Call and diagnose an alert within a response time appropriate to its nature. Critical alerts will be responded to within the Service Level Response Time period specified in the Scope of Service. Other alerts will be responded to dependant on the severity of the fault or alert, either by telephone or by remote services or where relevant by visit to the Service Address.
- 1.2.6 ECOM will work to diagnose and correct the alert as is, by remote services.
- 1.2.7 ECOM will at times continue to work to resolve the fault outside Normal Working Hours subject to arrangement with the Customer on a reasonable endeavours basis.

1.2.8 ECOM will continue to receive alerts outside of Normal Working Hours (24/7/365) however Calls will only be logged and responded to during Normal Working Hours.

### **1.3 Administration**

1.3.1 The Customer may log service requests, additions, moves or changes, against the Equipment located at the Service Address specified in the Scope of Service, by logging a Call. This will be classed as Administration and covered under this module. This can be achieved by telephone to our call centre number, by email or via the internet as directed by ECOM. The Customer will be given a unique call reference which indicates the Call has been logged.

1.3.2 Typically Administration includes the following types of Call; new users, user security changes / group changes, pin and password resets, minor re-configurations, mailbox setup or changes, small / individual / mailbox restorations.

1.3.3 For the avoidance of doubt Administration does not include; installations or upgrades, Scoped Projects, major re-configurations or virus removal.

1.3.4 Call volume and fair usage of the Service will be reviewed at the discretion of ECOM periodically.

### **1.4 VIP escalation pack**

1.4.1 Upon logging any Call the Customer may invoke and attach a VIP escalation.

1.4.2 A Call with a VIP escalation associated to it will be prioritised over all other Calls. If there is more than one VIP escalation within a queue ECOM will prioritise the earliest logged Call with a VIP escalation.

1.4.3 The Customer may invoke up to five VIP escalations within one VIP escalation pack.

1.4.4 VIP escalations can only be made to Calls that are serviced by telephone or remote services. They do not apply to on-site visits or any Call that isn't serviced remotely.

1.4.5 Replenishment of any allocated pack will be automatic on an annual basis. A pack can also be replenished or purchased on an ad-hoc basis at an additional charge (please see prevailing rates), outside of this agreement.

### **1.5 24/7/365 incident pack**

1.5.1 The Customer may log a Call outside of Normal Working Hours. This can be achieved by telephoning our dedicated 24/7/365 out of hours support number.

1.5.2 ECOM will attempt to respond to the Call within a 1 hour period either by telephone or by email.

1.5.3 ECOM will continue to diagnose and work to resolve the fault outside of Normal Working Hours subject to arrangement with the Customer, inclusive of weekends and public holidays.

1.5.4 The Customer may log up to two remote Calls or one onsite Call within one 24/7/365 incident pack.

1.5.5 Replenishment of any allocated pack will be automatic on an annual basis. A pack can also be replenished or purchased on an ad-hoc basis at an additional charge (please see prevailing rates), outside of this Contract.

### **1.6 Loan equipment**

1.6.1 In the event that any critical item of Equipment cannot be repaired on failure then a suitable exchange loan unit may be requested by the Customer. If available, ECOM will provide a loan unit for an amount of time agreed in writing between the Customer and ECOM.

1.6.2 For the avoidance of doubt exchange loan units provided may not be identical in aesthetics or performance.

1.6.3 Critical items of Equipment are classed as any that impact more than 5 users (or effecting departments or the entire company). Reasonable endeavours will be used when making this assessment and will rely on sufficient information to be provided by the Customer.

1.6.4 Please note that for servers ECOM recommend that the Customer implements sufficient disaster recovery processes to compliment this module. This module will not be effective without such.

### **1.7 Full 24/7/365 support**

1.7.1 The Customer may log a Call outside of Normal Working Hours. This can be achieved by telephoning our dedicated 24/7/365 out of hours support number.

1.7.2 ECOM will attempt to respond to the Call within a 1 hour period either by telephone, by email or by visit to the Service Address.

1.7.3 ECOM will continue to diagnose and work to resolve the fault outside of Normal Working Hours subject to arrangement with the Customer, inclusive of weekends and public holidays.

1.7.4 Call volume and fair usage of the Service will be reviewed at the discretion of ECOM periodically.

**1.8 Scheduled on-site visits**

1.8.1 ECOM will provide a technical engineer on-site for the frequency specified in the Scope of Service excluding weekends and public holidays.

1.8.2 ECOM technical engineers can be present from 0900hrs to 1700hrs for a full day, including a 1 hour lunch break, or for half day 0900hrs to 1300hrs or 1300hrs to 1700hrs, or otherwise as specified in the Scope of Service.

1.8.3 The Customer agrees to make available a desk, phone and data point to enable the ECOM technical engineer to carry out the Services function. These costs are to be covered by the Customer.

1.8.4 The technical engineer will be rotated with other technical engineer(s) to assist in knowledge of the Customer network being shared and enhancing consistency of support. This is at the discretion of ECOM.

**1.9 Private Cloud / Virtualised Server**

1.9.1 Private Cloud is an Infrastructure-as-a-Service (IaaS) service that is provided by ECOM and its supplier, which is accessed by Customer using independently supplied network services, which for the avoidance of doubt, are not covered by the terms of this Agreement. References to ECOM in relation to Private Cloud and Virtualised Server Service means ECOM and / or its supplier of Private Cloud.

1.9.2 ECOM shall use reasonable endeavours to provide each of the Private Cloud or Virtualised Server Services to the Customer subject to acceptance of Customer's order by ECOM's supplier, from the Commencement Date. The details of the Services are set out in the Scope of Service attached hereto and such shall be provided subject to the terms of this Agreement. ECOM shall use reasonable endeavours to provide the Services twenty-four hours per day, subject to the limitations expressed in this Agreement.

1.9.3 During the term of this Agreement, ECOM shall be entitled to:

- a) Change the technical specification of the Data Centre for operational reasons, statutory or regulatory requirements PROVIDED THAT such changes do not materially adversely affect the quality or performance of the Services;
- b) Make alterations to the Services. Such alterations may result in temporary disruption to the Services and ECOM will use reasonable endeavours to minimise such disruption and will provide as much notice as possible.
- c) ECOM cannot guarantee and does not warrant that the Services will be free from interruptions, including interruption of the Services for operational reasons and temporary degradation of the quality of the Services.

## **PART 3 - SALE OF GOODS**

The following terms and conditions in this Part 3 apply to the sale of Goods by ECOM.

### **1.1 Formation of Contract**

1.1.1 ECOM will sell and the Customer will buy the Goods in accordance with ECOM's written quotation (if accepted by the Customer) or the Customer's written order (if accepted by ECOM) subject in either case to these Terms. No order submitted by the Customer is deemed to be accepted by ECOM unless ECOM confirms this in writing.

### **1.2 Accuracy of Order**

1.2.1 The Customer is responsible for ensuring the accuracy of the terms and specification of any order submitted by the Customer.

### **1.3 Software**

1.3.1 All software, whether supplied, installed or implemented is provided within the terms and conditions and licence of the software provider.

1.3.2 If the software comprised in the Goods is not owned by ECOM then the Customer will be required to enter into an end-user licence agreement with the owner of the software concerned.

1.3.3 If any software has to any extent been written or developed by ECOM then subject to clause 1.3.2 above, ECOM hereby grants a non-exclusive, non-transferable licence for the use of such software by the Customer for the duration of this Contract and all copies of such software are the property of ECOM and notwithstanding clause 1.5.1 no title or ownership thereof will be transferred to the Customer.

1.3.4 Where software has been written or developed by ECOM for the Customer, the Customer acknowledges that such software may only be compatible with the current versions of other software and/or hardware and ECOM provides no guarantee that it will be compatible with earlier or later versions of other software and/or hardware. For the avoidance of doubt, unless otherwise agreed between the parties in writing, ECOM is under no obligation to supply the Customer with any updates or add-ons to the software.

### **1.4 Delivery**

1.4.1 Delivery of the Goods will take place by ECOM delivering the Goods to the place agreed in writing with the Customer.

1.4.2 Any dates and times quoted for delivery are estimates only and are not of the essence of the contract. ECOM will not be liable for any loss or damage (howsoever arising) to the Customer should ECOM be unable to deliver the Goods within the quoted period.

1.4.3 ECOM is entitled to make partial deliveries by instalments and these Terms will apply to each partial delivery.

1.4.4 If the Goods are to be delivered in instalments, each delivery will constitute a separate contract and failure by ECOM to deliver any one or more instalments in accordance with these Terms will not entitle the Customer to treat the Contract as a whole as terminated.

### **1.5 Transfer of Property and Risk**

1.5.1 Risk in respect of the Goods passes to the Customer at the time of delivery but the title in the Goods will not pass to the Customer until ECOM has received payment in full of the price of the Goods and all other goods agreed to be sold or services to be provided by ECOM to the Customer for which payment is then due.

1.5.2 Until title in the Goods has passed to the Customer, ECOM will be entitled at any time to require the Customer to deliver up the Goods to ECOM and, if the Customer fails to do so forthwith, it gives consent for ECOM to enter upon any premises the Customer owns, occupies or has control of where the Goods are stored and repossess the Goods.

1.5.3 Until title in the Goods has passed to the Customer, the Customer will hold the Goods as ECOM's fiduciary agent and bailee, will not dispose of the Goods and will keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as ECOM's property.

### **1.6 Cancelling of an Order by the Customer**

1.6.1 No order, which has been accepted by ECOM, may be cancelled by the Customer except with the agreement in writing of ECOM. If the order is cancelled the Customer shall pay fifty per cent of the order value plus VAT of the cancelled order, which is to be paid within 30-days of ECOM's invoice.

1.6.2 If a Customer order contains training all training must be paid in advance. Cancellation of training requires at least 48 hours written notice and in any event will only be refunded up to a maximum of 50% of the training fee.

1.6.3 Training that is booked in advance must be used within 12 months at which point the block booking expires and the Customer shall not be entitled to a refund for any training not used.

- 1.6.4 If a Customer order contains licensing, all licensing which has been ordered by ECOM to fulfil the order is non-refundable. Cancellation of the order which contains licensing will result in an invoice being generated to cover such licensing costs incurred by ECOM.

### **1.7 Installation**

1.7.1 Where ECOM's written quotation for the sale of the Goods or the Customer's written order for the Goods (if accepted by ECOM in accordance with 1.1.1) specifies installation of the Goods or ECOM otherwise undertakes any such installation then the Customer will complete all necessary works that may be required to receive the installation of the Goods including all necessary IT infrastructure and suitable electrical supply. If ECOM is prevented or delayed from carrying out the installation through no fault of ECOM then ECOM is entitled to charge the Customer at ECOM's then current prices, available on written request or detailed in the Scope of Service (whichever is current), for any additional works carried out by or on behalf of ECOM to enable it to complete the installation and/or for compensation for any losses or costs incurred by ECOM by reason of such delay.

### **1.8 Warranty**

- 1.8.1 The Goods supplied hereunder are warranted to be free from defects in materials and workmanship for a period of 90 days from the date of delivery by ECOM. The Customer must within the said period of 90 days notify ECOM in writing of any such defects and permit ECOM to inspect the Goods as required by ECOM. If the Customer does not so notify then the Customer will not be entitled to reject the Goods and ECOM will have no liability for such defect.
- 1.8.2 The above warranty only applies where the Goods have been properly used in accordance with the relevant manufacturer's specifications and any instructions by ECOM and does not apply to any Goods that have been repaired or modified by anybody other than ECOM.
- 1.8.3 If a valid claim is notified under clause 1.8.1 above then ECOM may at its discretion repair or replace the Goods free of charge or refund the price of the Goods (or a proportionate part) in which case ECOM will have no further liability to the Customer.

### **1.9 Service Charges and Payment**

- 1.9.1 In respect of the sale of Goods:
- 1.9.1.1 Payment will be made by the Customer on the date(s) agreed in writing between the Customer and ECOM or within 30 days in the absence of any agreement.
- 1.9.1.2 Invoices for Goods will ordinarily be issued on delivery of the Goods. If the Customer fails to take delivery when required ECOM may invoice the Customer at any time after the Goods become available.
- 1.9.1.3 ECOM may require the Customer at any time prior to delivery to pay a deposit to secure any order or part thereof.
- 1.9.1.4 Any quantity discount given by ECOM at the point of order may be removed if the order quantity is subsequently reduced.

## **PART 4 – SUPPLY OF SERVICES**

The following terms and conditions apply to the service described in the Scope of Service and Service Modules.

### **2.1 ECOM Responsibilities**

- 2.1.1 ECOM will, subject to these Terms, provide Services in accordance with the terms of the Scope of Service and Service Modules.
- 2.1.2 ECOM will use its reasonable endeavours to respond to a valid Call within the response time set out in the Scope of Service
- 2.1.3 ECOM will use its reasonable endeavours to rectify defects or malfunctions in the Equipment on the telephone or by use of remote access in accordance with the Services.
- 2.1.4 If a defect or malfunction in the Equipment cannot be resolved on the telephone or by remote access, ECOM will use its reasonable endeavours to visit the Service Address within the response times set out in the Scope of Service.
- 2.1.5 When carrying out work in accordance with these Terms, ECOM will use its reasonable endeavours to return the Equipment to service and, subject to these Terms, reinstate the Customer's third party software.
- 2.1.6 ECOM may at its discretion provide a permanent replacement part for the Equipment to be charged to the Customer at the ECOM published rates for replacement parts. Replacement parts can either be new or refurbished, and will on exchange, become the property of the Customer, and the faulty part replaced becomes the property of ECOM.
- 2.1.7 ECOM may repair the Equipment away from the Service Address when it considers it necessary to do so.
- 2.1.8 ECOM may, at its discretion, lend the Customer temporary replacement equipment (as compatible as may be available) while repairs are carried out. Such equipment loaned to the Customer remains ECOM's property and will be returned to ECOM on demand. The Customer is entirely responsible for such equipment and will indemnify ECOM in respect of any loss or damage to that equipment.
- 2.1.9 ECOM may make use of new releases, patches and updates of Third Party Software to rectify known problems where this is permitted under the applicable software licence agreement.
- 2.1.10 Where ECOM is required to carry out or does carry out work that is subsequently found to be outside Services, ECOM will be entitled to charge for that work at ECOM's then current rates.

### **2.2 Term**

- 2.2.1 Services shall have effect on the Commencement Date as indicated in Part 1 Service Charge, and, subject to these Terms, shall continue for the Initial Term and will thereafter continue from year to year, subject to termination at the end of such period or any subsequent year by either party giving the other at least three months (90 days) notice in writing of termination expiring on the last day of the Initial Term or on any anniversary date or Renewal Period thereafter (as the case may be).

### **2.3 Period of Availability**

- 2.3.1 ECOM will only provide Services during the Scheduled Service Hours. If the Customer requests ECOM to carry out any Services outside the Scheduled Service Hours then, ECOM will use its reasonable endeavours to comply with this request but will charge the Customer for such services at ECOM's then current rates.
- 2.3.2 The time taken by ECOM to respond to a Call will only be measured during the Scheduled Service Hours.

### **2.4 Customer Responsibilities**

- 2.4.1 The Customer will keep the Equipment in the environmental conditions recommended by the Equipment manufacturer and ensure that the external surfaces, cables and fittings of the Equipment are kept clean and in good condition.
- 2.4.2 The Customer will ensure that the Equipment is only used by properly trained staff in accordance with the manufacturer's user instructions, current computing practice and instructions issued by ECOM from time to time.
- 2.4.3 The Customer will ensure that only personnel authorised by ECOM or the Customer's in house IT support personnel, adjust, modify, configure, maintain, repair, replace or remove any part of the Equipment.
- 2.4.4 The Customer will maintain adequate records of the use, maintenance and malfunction of the Equipment and will provide ECOM with such information and assistance concerning the Equipment, its application, use, location and environment as ECOM may reasonably require to enable it to carry out Services.
- 2.4.5 The Customer will immediately notify ECOM if there is any failure of the Equipment and will allow ECOM full and free access to the Equipment and all documentation, software, materials and services necessary for the provision of the Services maintenance.
- 2.4.6 The Customer will ensure that relevant trained and experienced staff are available when required by ECOM to provide ECOM with information required by ECOM to diagnose and/or repair the Equipment.

- 2.4.7 Where ECOM provides remote diagnostic services in respect of the Equipment, the Customer will put and keep in place a remote access link to the Equipment which is acceptable to ECOM. The Customer hereby agrees that ECOM shall have the right at any time to access the Customer's Equipment remotely for the purpose of providing Services. The Customer acknowledges and agrees that such remote diagnostic services may be undertaken at times where the Customer is unavailable (for example, outside the Customer's working hours) and ECOM shall have the right to perform any diagnostic and maintenance services as it sees fit even if it has not been possible to contact the Customer and inform the Customer of the proposed performance of such services.
- 2.4.8 The Customer will notify ECOM in writing immediately if the Equipment or any part of it is changed.
- 2.4.9 The Customer will notify ECOM of any change in the location or Service Address of any part of the Equipment. Whilst any Equipment is being moved, all ECOM's obligations to provide Services will be suspended. Services will be reinstated following re-installation of the Equipment provided that the Equipment has been installed in an area and region that ECOM agree in writing is within its service coverage territory and the Equipment has not been damaged or affected during the move. If the Equipment has been damaged or affected during the move ECOM shall have the option to inspect such Equipment which will be charged at ECOM's then current rates.
- 2.4.10 Unless specifically included in the Scope of Service, the Customer is responsible for the cost of any Third Party Software upgrades which ECOM advise are required.
- 2.4.11 It is the Customer's sole responsibility, in a manner acceptable to ECOM, to operate and verify a proper back up routine, maintaining all back-up copies in a secure environment such that they can and will be provided to ECOM when required.
- 2.4.12 The Customer undertakes to put and keep in place adequate security measures to protect the Equipment and any other software or data from viruses, harmful code or unauthorised access. ECOM shall not be responsible for any unauthorised access to the Equipment by means of hacking, any unauthorised access of the Equipment with intent to commit or facilitate the commission of an offence or any unauthorised modification of Equipment by a third party.
- 2.4.13 Whilst every effort is made to maintain a remote access link to the Equipment, ECOM will not be liable for any loss suffered by the Customer if for any reason the remote access link is unavailable or interrupted for any period of time.
- 2.4.14 The Customer is solely responsible for any connection charges, line rental charges and call charges in relation to any Equipment.
- 2.4.15 The Customer is responsible for ensuring Third Party Software is maintained with an adequate support contract with the software vendor directly, wherever possible, to ensure access to software updates is readily available. It is also required to enable ECOM to liaise with the vendor wherever necessary.
- 2.4.16 The Customer will ensure media and licenses of any Third Party Software are kept up to date and accessible to ECOM when required.

## **2.5 Proactive Support Visits**

- 2.5.1 During the Initial Term and any Renewal Period, ECOM will provide to the Customer the number of Scheduled On-site Visits specified in the Scope of Service during Normal Working Hours, the purpose of which is to provide general support in respect of the operation of Services. Any unused support visits that are remaining at the end of the Initial Term and/or any Renewal Period will automatically lapse and shall not be rolled on to the next Renewal Period.

## **2.6 System Audit**

- 2.6.1 ECOM will, as often as ECOM thinks necessary and (save in the event of an emergency) upon reasonable notice carry out a System Audit within the Normal Working Hours to confirm that, in ECOM's opinion, the Equipment is in reasonable operating condition.
- 2.6.2 If work is required to put the Equipment in full working order ECOM will notify the Customer accordingly. If the Customer declines to have such work carried out at its expense within thirty days of such notification, ECOM may on written notice exclude such Equipment from Services and will refund to the Customer by way of credit note a fair proportion of any Service Charges which have been paid by the Customer in respect of such equipment from the end of the notice period

## **2.7 Service Exclusions**

- 2.7.1 Services does not extend to:
  - 2.7.1.1 any Equipment not specified or included in the Scope of Service including any part of the Equipment which is in any way changed from that included in the Scope of Service and Service Modules;
  - 2.7.1.2 any Equipment which was, in ECOM's reasonable opinion, operating in an unstable or unsuitable manner prior to the commencement of Services;
  - 2.7.1.3 any work arising as a result of any breach by the Customer of any of its obligations under these Terms;

- 2.7.14 any work arising from any incident, wilful act or any error or omission in the operation of the Equipment or any other cause (except for wear and tear) which is not due to the neglect or default of ECOM;
- 2.7.15 any failure or defect caused by hardware or software not covered by these Terms;
- 2.7.16 failures or defects due to manufacture or design defects over which ECOM has no control;
- 2.7.17 refurbishment or repair of casings or outer surfaces;
- 2.7.18 any work to accessories, alterations, attachments or any other equipment that is external to the Equipment not identified within the Scope of Service;
- 2.7.19 reinstatement of customised versions of the standard desktop/operating system described in the Scope of Service;
- 2.7.110 reinstatement of the Customer's software and data not identified within the Scope of Service;
- 2.7.111 any consultancy, training or software or hardware ECOM may provide as additional project work;
- 2.7.112 integration of the Equipment or any part thereof with other systems;
- 2.7.113 due to industry security manufacturers and vendors only guaranteeing detection of an average of 45% of all security threats; cleansing of viruses and spyware, or resolving the consequences of security breaches. ECOM reserves the right to use its discretion in the event of the Customer having implemented all then current security recommendations made by ECOM, subject to reasonable endeavours and fair usage;
- 2.7.114 incompatibilities in hardware and/or software;
- 2.7.115 upgrading the Operating Platform to be able to operate the Customer's selected software applications;
- 2.7.116 consumable supplies or accessories such as, but not limited to, magnetic media, batteries, print heads, toner cartridges, ink, paper, and any other items identified as consumable by the Equipment manufacturer;
- 2.7.117 any Equipment in respect of which a notice has been served by ECOM under clauses 2.8 or 2.9;
- 2.7.118 any work arising by reason of any maintenance or repair work carried out in respect of the Equipment by a third party not previously approved in writing by ECOM;
- 2.7.119 any personal digital assistants or other mobile solutions comprised within the Equipment anything other than support of the Third Party Software to enable synchronisation to such server of the Customer as is specified in the Scope of Service;
- 2.7.120 any services which are specifically excluded in the Scope of Service.

## **2.8 Beyond Economic Repair**

- 2.8.1 ECOM will notify the Customer in writing if, in its reasonable opinion, the Equipment (or any part of it) is identified as "end of life", becomes beyond reasonable repair or spare parts become not readily available, or if faults and/or its condition are such that overhaul or replacement is necessary at which point any obligations of ECOM to provide Services in respect of such equipment will be suspended. If the Customer declines to have the Equipment overhauled or replaced at its expense within thirty days of such notification, ECOM may on written notice exclude such Equipment from this Contract and refund to the Customer by way of credit note a fair proportion of any Service Charges which have been paid by the Customer in respect of such Equipment from the end of the notice period and will remove any Loan Equipment relating to the said Equipment from the end of the notice period.
- 2.8.2 The provisions of clause 2.8.1 will apply equally in respect of any software included within the Equipment which, in the reasonable opinion of ECOM, is no longer economically viable to maintain or requires upgrading or updating by the Customer at the request of ECOM.

## **2.9 Take on Visit**

- 2.9.1 Prior to commencement of Services, ECOM may during Normal Working Hours inspect the Equipment, or any part of it, at the Service Address to confirm that it is, in ECOM's reasonable opinion, in full working order in accordance with the manufacturer's requirements. If work is required to put the Equipment in such full working order ECOM will notify the Customer accordingly. If the Customer declines to have such work carried out at its expense within thirty days of such notification, ECOM may on written notice exclude such Equipment from Services and will refund to the Customer by way of credit note a fair proportion of any Service Charges which have been paid by the Customer in respect of such Equipment from the end of the notice period.

## **2.10 Service Charges and Payment**

- 2.10.1 The Service Charges as indicated in Part 1 Service Charge of these Terms are for the Initial Term only;
- 2.10.2 In respect of Services for the Initial Term the Customer will pay the Service Charges to ECOM on the Commencement Date, or within 30 days of the date of ECOM's invoice, whichever is earlier, and thereafter in respect of any Renewal Period the



Customer will pay the Service Charges to ECOM within 15 days prior to the commencement of any subsequent Renewal Period.

## **2.11 Virtualised Server / Private Cloud**

2.11.1 Subject to the terms and conditions of this section, ECOM shall provide the Customer with the following SLA for the Service of Virtualised Server / Private Cloud detailed in the corresponding section of the Scope of Service:

2.11.1.1 Service Availability shall be determined using the formula: Service Cover Time minus Total Unavailability x 100. Where: "Service Cover Time" shall mean the total number of minutes comprised in a calendar month; and "Total Unavailability" means the total time in minutes (rounded up or down to the nearest integer) in any calendar month during which the Service, excluding the Network, is unavailable due to a Service Affecting Fault.

2.11.1.2 ECOM' target is to achieve Service Availability of 99.99% per calendar month in respect of the High Availability Service.

2.11.1.3 If Service Availability falls below the target the Customer may claim a Service Credit (up to a limit of £1,000 per month) based on the monthly recurring charge for the Service (excluding any variable charges) calculated as a percentage as follows:

High Availability Service; Service Availability taken over relevant calendar month and Service Credit (% of monthly recurring charge for that month). Over 99.99% = 0% (service level achieved), 99.50% - < 99.99% = 2%, 99.00% - < 99.50% = 4%, < 99.00% = 10%.

2.11.1.4 The credits set out in this section are based upon the cumulative elapsed time of unavailability in relation to a particular calendar month for the total number of servers hosted pursuant to provision of the Service (i.e. credits are not payable on an individual server basis).

2.11.1.5 The period of Total Unavailability shall begin to be measured upon the earlier of: (a) the Customer reporting a malfunction in the Service to ECOM that is verified by ECOM; or (b) ECOM detecting a malfunction in the Service, where, in either case, the malfunction is solely due to a failure of ECOM. The Total Unavailability period shall end when the Service re-established.

2.11.1.6 The Customer shall not be entitled to credits if ECOM has granted "Root administration privileges" to the Customer.

2.11.2 All faults must be reported by telephone, web portal or e-mail to ECOM by a Customer authorised user. Faults will be dealt with in the manner detailed in Service Modules and corresponding sections of this agreement.

2.11.3 The provisions of this SLA, including the applicability of credits contemplated above, are subject to the following conditions and limitations:

2.11.3.1 No credits will be given for failures to meet any part of this SLA that:

2.11.3.1.1 are caused by any act, omission or default of the Customer, any third party or occur during any period of time within any cure period of a notice served by ECOM or of any termination notice served under this Service Schedule;

2.11.3.1.2 occur as a result of loss of Service that is the result of actions/requests by the Customer (or third parties on behalf of the Customer) (excluding ECOM sub-contractors and agents);

2.11.3.1.3 occur during any period of time within any cure period of a notice served by ECOM;

2.11.3.1.4 occur due to implementation or investigation of a Customer request;

2.11.3.1.5 are due to scheduled service and repair;

2.11.3.1.6 faults or delays in providing the Service, which have been reported by the Customer, but have not been verified by ECOM or which are not capable of verification.

2.11.4 The different guarantees and credits available under this SLA are not cumulative. If the Customer is entitled to claim under more than one credit scheme set out in this SLA for Service Credits, the Customer may choose which scheme it wishes to claim under. The Customer may not make double claims for any service failure under this SLA and any other SLA that the Customer has with ECOM.

2.11.5 The Customer's and ECOM UK Limited Obligations (in addition to section 2.4):

2.11.5.1 The Customer warrants that the content that it or its users make available through the Service will not: (a) include any indecent, offensive or obscene material; or (b) constitute defamation or liable of ECOM or any ECOM company to any third party.

2.11.5.2 The Customer acknowledges that ECOM exercises no control and accepts no responsibility for the information, services and content accessible on the Network or the Internet or for any Customer Hardware, Customer Software or Customer Third Party Software or any equipment placed in the Data Centre by or on the instruction of the Customer. The Customer assumes entire responsibility for the Customer's use and its Users' use of the Service, software and equipment, whether or not provided by ECOM.

- 2.11.5.3 ECOM will provide the Services as detailed within the Agreement in accordance with the Service Level Agreement set out in this Section, using reasonable skill and care in the provision of the Service. ECOM does not warrant that the Service, software, or equipment provided by ECOM will be error free, secure or uninterrupted. No advice or information given by ECOM shall create a warranty other than as expressly recorded in this Agreement.
- 2.11.5.4 Where the Customer requests that the Service be accessible via Internet, the Customer assumes total responsibility for the Customer's use and its Users' use of the Service, software, hardware and equipment, whether or not provided by ECOM, and the Internet. The Customer acknowledges and agrees that ECOM has no control over, and expressly disclaims any liability of responsibility for Internet content. The Customer and the Users access the Service at their own risk.
- 2.11.5.5 ECOM reserves the right to terminate the Service if it determines, acting reasonably, that the Customer or any of its Users is actually or allegedly engaged in activities that are illegal, fraudulent or wrongful or which may be harmful to ECOM in any way.
- 2.11.6 Remote Access: ECOM will configure user authentication accounts and passwords for accessing the Platform remotely, for the purpose of remotely accessing the Platform for service and operation purposes. ECOM accepts no responsibility for unauthorised access to the Service.
- 2.11.6.1 The Customer shall be responsible for maintaining the confidentiality of, and shall keep secret and protected from access by third parties (subject to any provision of the same to the Users for which the Customer shall remain wholly responsible), its logins, passwords and other confidential information relating to its use of the Remote Access (the "Access Information"). The Customer shall be responsible for amending and/or updating its Access Information in the event of loss of or notification to unauthorised third parties of the Access Information. ECOM shall have no liability for any action that it may take in response to the provision of correct Access Information.
- 2.11.7 Support of the Platform: ECOM reserves the right to perform any routine or scheduled service that may limit or suspend the availability of the Service and shall provide reasonable prior notice of any such service. ECOM also reserves the right to perform any emergency service that may limit or suspend the availability of the Service and shall use reasonable endeavours to provide prior notice to the Customer provided that, where ECOM is unable to provide prior notice, it shall provide such notice as soon as reasonably practicable after the commencement of such service. Any suspension in the availability of the Service pursuant to this section shall not be deemed to be a breach by ECOM of any of its obligations under this Agreement, nor shall credits be payable under the Service Level Agreement.
- 2.11.7.1 ECOM shall be responsible for support and service of the ECOM Platform only. The Customer shall be responsible for support and service of Customer Software and its own equipment not listed in Scope of Service or Schedules in relation to the Service.

## **PART 5 – SUPPLY OF PROJECT SERVICES**

The following terms and conditions apply to all Services provided or to be provided to the Customer in project format.

### **3.1 Formation of Contract**

3.1.1 ECOM will sell and the Customer will buy the Services in accordance with ECOM's written quotation (if accepted by the Customer) or the Customer's written order (if accepted by ECOM) subject in either case to these Terms. No order submitted by the Customer is deemed to be accepted by ECOM unless ECOM confirm this in writing.

### **3.2 ECOM's obligations**

3.2.1 ECOM shall use reasonable endeavours to provide the Services to the Customer.

3.2.2 ECOM may at its discretion appoint a project manager on a chargeable basis, to be agreed with the Customer, to liaise with the Customer on all matters relating to the Services. ECOM shall use reasonable endeavours to ensure that the same person acts as project manager throughout the provision of the Services, but may replace him or her from time to time where reasonably necessary in the interests of ECOM's business.

3.2.3 ECOM shall use reasonable endeavours to meet any performance dates, but any such dates shall be estimates only and time shall never be of the essence of the Contract.

### **3.3 Customer's obligations**

3.3.1 The Customer shall:

3.3.1.1 co-operate with ECOM in all matters relating to the Services and appoint a project manager (or a suitably qualified member of staff), who shall have the authority to contractually bind the Customer on matters relating to the Services;

3.3.1.2 provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by ECOM;

3.3.1.3 provide in a timely manner such information and documentation as ECOM may request, and ensure that such information and documentation is correct and accurate in all material respects;

3.3.1.4 be responsible (at its own cost) for preparing the relevant premises for the supply of the Services; and

3.3.1.5 ensure in the interests of health and safety that ECOM's personnel, while on the Customer's premises, are at all times familiar with the Customer's premises and safety procedures.

3.3.2 If ECOM's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall be liable to pay to ECOM on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of opportunity to deploy resources elsewhere), subject to ECOM confirming such costs, charges and losses to the Customer in writing.

### **3.4 Service Charges and payment**

3.4.2 Where the Services are provided on a time-and-materials basis:

3.4.2.1 the Service Charges payable for the Services shall be calculated in accordance with ECOM's standard daily fee rates as amended from time to time;

3.4.2.2 ECOM's standard daily fee rates are calculated on the basis of a 8 hour day within Normal Working Hours on weekdays (excluding weekends and public holidays) either spent at the Customer's premises or at ECOM's premises;

3.4.2.3 ECOM shall be entitled to charge overtime rate at its standard rates for time worked by members of the project team outside the hours referred to in clause 3.4.2.2;

3.4.2.4 ECOM shall invoice the Customer for it's for time, travelling, expenses and materials (and VAT, where appropriate) either at the start of a project or monthly in advance for the month concerned.

3.4.3 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Proposal. The total price shall be paid by the Customer to ECOM in instalments as set out in the Proposal (and VAT, where appropriate).

### **3.5 Intellectual Property Rights**

3.5.1 Intellectual Property Rights and all other rights in the System and any associated or other documentation produced as a result of the Services (other than the Third Party Software) shall be owned by ECOM and the Customer shall have no right title or interest therein except as expressly set out in this Contract.

3.5.2 Providing the Customer shall have made all payments due under this Contract in accordance with its terms and subject to the terms of clause 3.3, ECOM shall grant to the Customer a non-exclusive, non-transferable licence to such extent as is necessary to enable the Customer to make reasonable use of the System and the Services as is envisaged by the parties. If ECOM terminates the Contract, this licence will automatically terminate.

## **PART 6 – GENERAL PROVISIONS**

The following terms and conditions apply to all Equipment and Goods sold or to be sold, Scope of Services, Services and Service Modules, Software licensed or to be licensed, Software Development to be developed or provided, Services provided or to be provided to the Customer.

### **4.1 General**

- 4.1.1 These Terms may only be amended, or varied with ECOM's agreement in writing. The parties agree that these Terms will prevail notwithstanding any conflicting or additional terms or any orders or other notifications submitted by the Customer.
- 4.1.2 Words of a technical nature used in these Terms will (unless inconsistent with the context) be construed in accordance with general trade use in the computer industry in the United Kingdom.
- 4.1.3 Headings in these Terms are for convenience only and have no effect on the interpretation.
- 4.1.4 Failure by ECOM to exercise or enforce any rights, or the giving of any forbearance, delay or indulgence, will not be construed as a waiver of its rights under these Terms or otherwise nor will any single or partial exercise thereof preclude any further or subsequent exercise.

### **4.2 Specification**

- 4.2.1 The description of any Goods contained in any order form, invoice, descriptive matter, specifications, catalogue or advertising material published or issued by ECOM is for identification only and the use of such description will not constitute a sale by description. Any typographical or other error or omission in any such literature or any other document issued or provided by ECOM may be corrected by ECOM without any liability on the part of ECOM.
- 4.2.2 ECOM reserve the right to supply Goods which differ from the specifications agreed between the parties and/or to modify any specifications in respect of those provided that does not materially affect the performance of the Goods.

### **4.3 Prices**

- 4.3.1 Unless otherwise stated in writing, quotations are valid for 30 days from the date of issue and are exclusive of VAT and any other relevant taxes which are payable by the Customer in addition.
- 4.3.2 All waiting time spent by any employees or agents of ECOM (which includes any time which had been allocated to a Customer by ECOM and which is not utilised by such Customer for any of the reasons set out in this clause) as a result of any delay, variation or failure by the Customer to comply with these Terms (which for these purposes includes any delays or postponements by the Customer of any installation dates specified by ECOM, or dates of Scheduled On-site Visits or otherwise) will be payable by the Customer to ECOM at ECOM's then current rates.
- 4.3.3 The Customer shall pay any chargeable expenses and disbursements which are incurred by ECOM personnel on behalf of the Customer including but not limited to hotels, subsistence, travelling, mileage at rate approved by HM Revenue & Customs from time-to-time, supplies, telephone charges, copying charges and the cost of any materials or services reasonably and properly provided by third parties required by ECOM for the supply of Services.

### **4.4 Payment**

- 4.4.1 If no payment date(s) has been agreed in writing in accordance with these Terms then payment by the Customer will be made within 30 days after the date of ECOM's invoice.
- 4.4.2 If any payments from the Customer under these Terms are payable by instalments, the Customer will pay such instalments in advance by direct debit or such other method and at such intervals as ECOM may agree in writing.
- 4.4.3 If the Customer fails to make any payment due to ECOM (whether under these Terms or otherwise) on its due date then ECOM may (without prejudice to any other remedy) cancel the Contract or suspend any further performance of any obligations by ECOM to the Customer or appropriate any money received from the Customer against such sums as ECOM may determine (notwithstanding any instructions from the Customer). For the avoidance of doubt, ECOM will be entitled to suspend the performance of Services in the event that there are any sums owing by the Customer in respect of any other Goods and/or Services provided by or on behalf of ECOM to the Customer.
- 4.4.4 All payments due to ECOM under these Terms will be paid in full without any set off, deduction, counterclaim or withholding of any sum for whatever reason.
- 4.4.5 ECOM reserves the right to charge interest on the amount of any delayed payment at the rate of 4% over the base rate of Lloyds Bank Plc from time to time per calendar month or part thereof on the outstanding amount until payment has been made in full.
- 4.4.6 ECOM reserves the right to vary the agreed Service Charge at any time, provided that 30 days' notice is given to the customer. The Customer may terminate the agreement upon giving 30 days written notice if ECOM increases the price by more than the rate of ten percent per annum unless the increase is as direct result of Third Party costs directly incurred by ECOM facilitating the Service to the Customer in respect of this Contract.

### **4.5 Lease**

- 4.5.1 If any payments due to ECOM in respect of Goods or Services is to be paid by a third party then the Customer agrees that immediately on delivery of the Goods in question the Customer will sign the acceptance note for the leasing company or

other third party and will generally take all steps as may be necessary to ensure that payment is made to ECOM for the Goods and/or Services in accordance with these Terms.

#### **4.6 ECOM Employees**

- 4.6.1 The Customer will take all such steps as may be necessary to ensure the safety and welfare of any ECOM employees or representatives who visit any Service Address or any other premises of or on behalf of the Customer.
- 4.6.2 The Customer will fully indemnify and hold harmless ECOM from and against any claim for loss, damage or injury to any person or property occasioned by or arising directly or indirectly from any negligence or misuse of the Goods or the Equipment or any other breach of these Terms by or on behalf of the Customer.

#### **4.7 Liability**

- 4.7.1 Subject as expressly provided in these Terms and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in these Terms will affect the liability of ECOM for any fraudulent misrepresentation.
- 4.7.2 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transaction (restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Terms.
- 4.7.3 The Customer accepts that in respect of the sale of the Goods, whilst ECOM will endeavour to use its expertise and experience to advise the Customer, ECOM is acting as a supplier only and it is the Customer's responsibility to ensure that the Goods will be suitable for its requirements and the Customer acknowledges that prior to the Contract it has fully and accurately advised ECOM of its requirements, both present and anticipated, in respect of the Goods.
- 4.7.4 If ECOM is unable, other than through the act or default of the Customer, within a reasonable time to repair or replace any defective Goods in accordance with the Warranty set out in these Terms and where such Goods are unusable due to such defect then, the Customer's only remedy is to reject such Goods and on their return to ECOM's premises the Customer is entitled to recover the price paid for such Goods provided the Customer notified such defect in accordance with these Terms. Such payment shall be the extent of ECOM's liability to the Customer.
- 4.7.5 Except in the case of death or personal injury caused by ECOM's negligence, or liability for defective products under the Consumer Protection Act 1987, ECOM will not have any Liability to the Customer for Loss of profit or any indirect, special or consequential Loss of the Customer arising out of or in connection with the provision of any Goods or Services or any delay in providing or failure to provide any Goods or Services even if ECOM had been advised of the possibility of such potential loss.
- 4.7.6 Without prejudice to clause 4.7.7, if ECOM fails to provide Services in accordance with its obligations hereunder, the total Liability of ECOM in any one year for any Loss suffered by the Customer as a result of such failure will not exceed the Support Charge paid in one year by the Customer in respect of such Services or £20,000 inclusive of VAT, whichever is the lesser amount.
- 4.7.7 Notwithstanding the express provisions of clause 4.7.6, except in the case of death or personal injury caused by ECOM's negligence, or liability for defective products under the Consumer Protection Act 1987, in no event shall ECOM's Liability in respect of any Loss to the Customer exceed £20,000 inclusive of VAT.
- 4.7.8 Except in the case of death or personal injury caused by ECOM's negligence, or liability for defective products under the Consumer Protection Act 1987, no action regardless of form may be brought by the Customer more than 12 months after the cause of action has accrued.
- 4.7.9 ECOM will have no liability under these Terms or otherwise to the Customer arising out of:
  - 4.7.9.1 any loss or corruption of any documents, data, memory erasure of media stored on disk, whether total or partial howsoever arising by reason (in whole or in part) of the Customer's failure to maintain adequate back-up copies of all of its Operating Platform, operating system software, application software, data files and other documentation;
  - 4.7.9.2 any loss or corruption of any documents, data, memory erasure of media stored on disk, whether total or partial howsoever arising, including but not limited to loss which may occur, whilst installation, service or maintenance work is being carried out by or on behalf of ECOM in accordance with these Terms or any other reason;
  - 4.7.9.3 any act or omission of any third party telecommunication provider, or fault or failure of their equipment (including any prevention of any remote servicing facility in respect of the Equipment);
- 4.7.10 and if any damage to any of the program or data files of the Customer occurs then ECOM's responsibility will be confined to assisting the Customer to restore the latest backup copy and installing application software made available on site by the Customer. If on site assistance is required to reconstruct the files then ECOM may charge the Customer for the cost of such assistance at ECOM's then current rates.
- 4.7.11 The Customer warrants to ECOM that none of its employees nor the employees of any other party will become employees of ECOM by reason of the provision of the Services by ECOM under these Terms, the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("the Regulations") or otherwise. The Customer will repay to ECOM any

costs, expenses or other sums for which ECOM is or may be liable by reason of the applicable or alleged application of the Regulations in relation to provision of such Services by ECOM including (without limitation) any compensation or damages which ECOM pays to any such person.

#### **4.8 Warranties**

4.8.1 The Customer warrants and represents that the use by ECOM of any data, materials or equipment supplied by the Customer for use by ECOM, will not infringe the Intellectual Property Rights of any third party and the Customer will fully indemnify ECOM for any loss or damages in this respect.

#### **4.9 Confidentiality**

4.9.1 Except as expressly provided, neither party may at any time whether during or after the expiry of these Terms use or disclose the other party's Confidential Information and the Customer will take all reasonable steps to ensure that its employees are bound by the same obligations and that such obligations will continue beyond the termination of employment with the Customer.

4.9.2 ECOM may as a consequence of providing any Services to the Customer be exposed to information which the Customer may consider to be Confidential Information. It is the Customer's responsibility to ensure that any such Confidential Information is marked appropriately or otherwise identified in writing to ECOM.

4.9.3 The obligations of this clause 4.9 shall survive the termination of these Terms.

#### **4.10 Performance**

4.10.1 ECOM will not be liable for any failure or delay in complying with these Terms if the failure or delay was due to Force Majeure, including any circumstances whatsoever beyond the reasonable control of ECOM in which event ECOM will as soon as reasonably practicable notify the Customer of the nature and extent of the circumstances in question. If the Force Majeure continues for more than 30 days then ECOM may cancel this Contract (or any part thereof) without liability to the Customer.

#### **4.11 Sub-Contracts**

4.11.1 ECOM may assign, sub-contract or otherwise transfer the benefit of, and/or its obligations under this Contract to any person at any time.

4.11.2 The Customer acknowledges that this Contract is personal to the Customer and that it may not assign or in any way make over to any third party, whether in whole or in part, the benefit of, and/or its obligations under this Contract without the prior written authority of ECOM and on such terms as ECOM may reasonably require.

4.11.3 Save where expressly stated in these Terms, no person will become entitled to enforce any of its provisions of these Terms who would not have been so entitled but for the provisions of the Contracts (Rights of Third Parties) Act 1999, the provisions of which do not apply to these Terms.

#### **4.12 Termination**

4.12.1 ECOM may without prejudice to any other remedy available to it at any time by giving written notice to immediately terminate or suspend this Contract or such part of it as ECOM may elect (including stopping any Goods in transit) if:

4.12.1.1 the Customer commits any continuing or material breach of these Terms and if the breach is capable of remedy, is not remedied within thirty days of a written notice detailing the breach;

4.12.1.2 a resolution is passed or an order is made for the liquidation of or the winding up of the Customer (save for the purpose of a bona fide reconstruction or amalgamation);

4.12.1.3 the Customer becomes subject to an administration order, a receiver or manager or administrative receiver is appointed over the Customer's property or assets;

4.12.1.4 the Customer suffers execution or distress or takes or suffers any similar action in consequence of a debt;

4.12.1.5 the Customer is insolvent or would be taken as insolvent under section 123 Insolvency Act 1986;

4.12.1.6 the Customer is dissolved or otherwise threatens or ceases to carry on business or a substantial part of it;

4.12.1.7 in the case of a sole trader or partnership anything analogous to any of the above occurs.

4.12.2 On termination of this Contract for any reason the Customer will return or delete any of ECOM's Confidential Information and return to ECOM all property of ECOM under the Customer's possession or control and ECOM will return or delete any of the Customer's Confidential Information and return to the Customer all property of the Customer under ECOM's possession or control.

4.12.3 On termination of the Contract any licence to use software granted by ECOM will immediately terminate and the Customer will return to ECOM any such software and all copies thereof and will not use or permit the use of any such software. The Customer acknowledges and agrees that ECOM will be entitled to remove such software from all operating systems of the Customer whether by means of remote access or otherwise. The Customer will not do or omit to do anything which might prevent or hinder such removal.

- 4.12.4 If the Customer terminates this Contract (or ECOM terminates by reason of any acts or omissions of the Customer) then:
- 4.12.4.1 in respect of any Goods such termination can only be made with ECOM's written consent and on terms that the Customer will indemnify ECOM in full against all loss (including loss of profit) costs, charges and expenses incurred by ECOM as a result of such termination;
- 4.12.4.2 In respect of Services if the termination occurs prior to the end of the Initial Term or any Renewal Period, ECOM may without prejudice to any other remedies available to it demand and receive from the Customer an early termination charge. This charge will be calculated to recover such costs as ECOM has reasonably incurred in equipping itself to deliver Services and which have not been fully recovered by ECOM from the Service Charges paid by the Customer at the date of termination; and
- 4.12.4.3 in respect of Services the Customer shall be liable for the full value of ECOM's charges set out in the Proposal as well as any and all fees and additional costs accrued up to the point of termination, which may include but not be limited to software costs and travelling expenses.

#### **4.13. DATA PROTECTION**

- 4.13.1 In this Agreement the terms:
- 4.13.1.1 'Data Protection Legislation' means the Data Protection Act 2018, the General Data Protection Regulation (GDPR) any amendments and re-enactments made thereto from time to time and any other data protection regulations currently in force;
- 4.13.1.2 'Personal Data', 'Data Subject', 'Data Controller', 'DataProcessor' Subject 'Access Request', 'Process' and 'Processing' shall have the meanings defined in the Data Protection Legislation;
- 4.13.1.3 'Sub-Processor' means a subcontractor or supplier to ECOM who Processes Customer Data and Customer Information on ECOM' behalf.
- 4.13.2 ECOM and the Customer each agree to comply with their respective obligations under the Data Protection Legislation and to maintain all necessary registrations and notifications and the Customer agrees:
- 4.13.2.1 To obtain and maintain all necessary consents (including the consents of all relevant Data Subjects) which are required by ECOM for the purpose of performance of this Agreement.
- 4.13.3 The parties to this Agreement acknowledge that the provision of the Services will include the Processing of Customer Information and may include the processing of Customer Data and that such Customer Information and Customer Data may contain Personal Data.
- 4.13.4 The parties agree that in relation to Personal Data contained within both Customer Information and Customer Data, the Customer shall be the Data Controller and ECOM shall be the Data Processor. For the avoidance of doubt, ECOM shall not be deemed to be a Data Processor in relation to any Personal Data that ECOM:
- 4.13.4.1 Does not store within its or its supplier's infrastructure;
- 4.13.4.2 Does not transmit via the Services.
- 4.13.5 If under the terms sub-clause 8.4, any attached Supplements and the Services provided there-under, ECOM is deemed not to be a Data Processor in relation to Customer Data, the provisions of clauses 8.6 to 8.9 hereof, save the relevant provisions of sub-clauses 4.13.7.3 to 4.13.7.8 (when ECOM has access to Customer Data), shall not be binding on ECOM insofar as they relate to Customer Data.
- 4.13.6 The Customer hereby acknowledges that certain Services that ECOM provides under the terms of this Agreement will be provided to ECOM by one or more suppliers or subcontractors of ECOM' sole choice and in respect of Personal Data, ECOM' suppliers or subcontractors may act in the capacity of a Sub-Processor.
- 4.13.7 The Customer, in its capacity of Data Controller hereby authorises ECOM, in its capacity of Data Processor to Process Customer Data and Customer Information and to permit its suppliers and subcontractors, whether direct or indirect, acting in the capacity of Sub-Processor to Process Customer Data and Customer Information, subject to ECOM', its suppliers' and subcontractor's compliance with the following conditions:
- 4.13.7.1 To restrict Processing of Customer Data to the transmission and storage thereof;
- 4.13.7.2 Notwithstanding the provisions of sub-clause 6.6.1, ECOM and / or its supplier(s) shall be entitled to use and store information including origin, destination, duration, route and time of data transmitted over its network services, exclusively for the purposes of:
- a) Collating statistics for network planning purposes; and
  - b) Providing such information to government security agencies in response to specific requests.
- 4.13.7.3 Not to retain any copy (save as required for the provision of specific services under the terms of this Agreement, including backup and disaster recovery), abstract, summary or précis of the whole or any part of the Customer Data (save as set out

in sub-clause 6.6.2); permit its employees to do the same and shall procure similar written, binding undertakings from its subcontractors and suppliers, who may be acting in the capacity of Sub-Processor;

- 4.13.7.4 Not to modify any part of Customer Data or permit its employees to do the same and shall procure similar written, binding undertakings from its subcontractors and suppliers, who may be acting in the capacity of Sub-Processor;
- 4.13.7.5 Ensure that access to Customer Data or Customer Information is limited to those employees, subcontractors or suppliers who need access to such to meet ECOM' obligations under this Agreement and that all employees, subcontractors and suppliers shall be placed under the same written, binding obligation of confidence;
- 4.13.7.6 Not to disclose to any person Customer Information other than to an Associated Company, its suppliers, subcontractors or employees who shall be placed under the same written, binding obligation of confidence and who need access to such Customer Information to facilitate proper performance of their contractual obligations (in relation to this Agreement), to ECOM;
- 4.13.7.7 Not to transfer Customer Information or Customer Data outside of the European Economic Area without complying with the provisions of the Data Protection Legislation regarding inter alia the adequate level of protection of any Personal Data that may be contained therein;
- 4.13.7.8 To promptly notify the Customer if it becomes aware of any accidental destruction, disclosure or illegal Processing of Customer Information or Customer Data;
- 4.13.7.9 If, under applicable regulations and / or legislation ECOM is required to disclose Customer Information or Customer Data, including communications content, to an appropriate judicial, law enforcement or government agency, ECOM shall prior to disclosure use reasonable endeavours to promptly notify the Customer of the disclosure, PROVIDED THAT it is not prohibited from doing so by the requesting agency.
- 4.13.7.10 To undertake to implement appropriate processes and technology to ensure that:
- a)** The Processing of Customer Information and / or Customer Data which may contain Personal Data meets the requirements of the Data Protection Legislation;
  - b)** Customer Data is protected (to a level that is appropriate to the risks associated with Processing) against accidental destruction, damage, loss or disclosure;
  - c)** ECOM' employees as fully as it is reasonable to expect, understand their obligations under the Data Protection Legislation;
- 4.13.7.11 To undertake to assist the Customer with the Customer's own obligations under the Data Protection Legislation by:
- a)** Communicating to the Customer within five Working Days, any Subject Access Requests that relate to the Customer Information or Customer Data;
  - b)** In response to written instructions, assisting the Customer in providing Subject Access by providing components of the Customer Data, such to be provided at the highest level of granularity (for example image, database, mailbox or file) that ECOM is able to provide under the terms of and subject to the terms of the applicable Service Supplement;
  - c)** Providing responses to reasonable requests for technical and organisational information in relation to the Processing of the Customer Information and Customer Data;
  - d)** In the event of a security breach, providing details of the Customer Data that is involved in the breach;
  - e)** On request making available to the Customer any of ECOM' relevant documentation that demonstrates its compliance with its obligations under the Data Protection Legislation.
- 4.13.7.12 To undertake to, on termination of this Agreement:
- a)** On request, return to the Customer copies of all Customer Data;
  - b)** Delete all Customer Data that is held within in ECOM's infrastructure (unless such is prohibited by law);
  - c)** Retain Customer Information in line with its published privacy policy.
- 4.13.8 The Customer agrees that in the event of novation of this Agreement or part thereof by ECOM' supplier, Customer Data and Customer Information, which may contain Personal Data, will be transferred to the supplier or its assignee.
- 4.13.9 ECOM will indemnify the Customer against any and all claims and proceedings made or brought against the Customer in respect of any alleged breach of this clause 8 provided that such breach was due to the act or omission of ECOM, its employees, subcontractors or suppliers.
- 4.13.10 ECOM will on demand, deliver to the Customer all documents that may be in its possession or in the possession of its agents, subcontractors, suppliers or employees (including documents prepared by the Customer) which may include Personal Data.
- 4.13.11 ECOM shall be entitled to use Customer Information and data pertaining to the Customer's use of the Services to advise the Customer about additional products, services and offers.
- 4.13.12 If the Customer does not consent to the provisions of sub-clause 4.13.11, it shall be entitled to notify ECOM and forthwith upon receipt of such notice ECOM shall cease to advise the Customer about additional products, services and offers.
- 4.13.13 The Customer acknowledges and agrees that ECOM may record any inbound or outbound telephone calls.



4.13.14 The provisions of this clause 15 shall survive in perpetuity the termination of this Agreement, howsoever occasioned.

#### **4.14 Non Solicitation**

4.14.1 The Customer acknowledges the investment made by ECOM in the training of ECOM's Personnel and the commercial interest which ECOM has in retaining their services.

4.14.2 The Customer agrees that if any of the ECOM Personnel who have provided all or any part of any services for or on behalf of ECOM to the Customer within 6 months of leaving the employment or engagement of ECOM accepts an Engagement with the Customer then the Customer will pay to ECOM such sum as represents 30% of the anticipated annual salary or other sums to be paid by the Customer to such person(s) within the first year of such Engagement.

#### **4.15 Notices**

4.15.1 All notices under these Terms must be in writing and will be effective only if given by either party to the other party at their last known principal place of business or such other address as that party has nominated, in writing, for that purpose.

#### **4.16 Law and Jurisdiction**

4.16.1 These Terms will be governed by and construed in accordance with English Law and the English Courts will have non-exclusive jurisdiction to hear all disputes arising in connection with these Terms.

4.16.2 The invalidity or unenforceability for whatever reason will not prejudice the continuation in force of the remainder of these Terms and if any part of these Terms is held by a Court or other competent authority to be illegal or ineffective it or they will be replaced with such legal and effective terms that most closely approach the ineffective terms.

#### **4.17 Entire Agreement**

4.17.1 These Terms, Contract, the Proposal, Project Plan, and Scope of Service contains the entire agreement between the parties with respect to their subject matter and supersede all previous written and oral agreements and understandings between the parties. The Customer acknowledges that in entering into the Contract it does not rely on any representation, warranty, agreement or other provision except as expressly set out in these Terms and that all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in these Terms will affect the liability of ECOM for any fraudulent misrepresentation.

#### **4.18 Miscellaneous**

4.18.1 Any reference to person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); and

4.18.2 Any reference to company includes any company, corporation or other body corporate, wherever and however incorporated or established.

4.18.3 The parties hereby agree that a person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 (as amended, modified or supplemented from time to time) to enforce any of these Terms.