

## TERMS AND CONDITIONS

### 1. Set-up Services

- 1.1 In Consideration of the Setup Service Fee Techcare shall perform the Set-up Services specified in the Contract Details.
- 1.2 The Setup Services will be undertaken remotely where practicable and when necessary (in Techcare's sole opinion) will be undertaken at the Customer Locations.
- 1.3 The Customer shall ensure that it communicates its full service requirements and provide all necessary information and assistance to Techcare required for the purpose of creating the Managed Service Proposal, the Implementation Plan and the Managed Services Specification.
- 1.4 Techcare shall submit the Managed Service Proposal, the Implementation Plan and the Managed Services Specification to the Customer for approval. Within five Business Days of such notification the Customer shall review the Managed Service Proposal, the Implementation Plan and the Managed Services Specification and confirm if they are approved or rejected.
- 1.5 If the Customer does not confirm if the Managed Service Proposal, the Implementation Plan and the Managed Services Specification are approved or rejected within ten (10) Business Days (or such other longer period specified by Techcare) from the date they are sent to the Customer, they shall be deemed to have been approved.
- 1.6 Techcare shall not proceed further with the Managed Services unless and until the Managed Service Proposal, the Implementation Plan and the Managed Services Specification has been or have been deemed approved (**Approval Date**).
- 1.7 If the Managed Service Proposal, the Implementation Plan and the Managed Services Specification are rejected, Techcare may work with the Customer to revise the Managed Service Proposal, the Implementation Plan and the Managed Services Specification and resubmit them for approval or at its sole option may terminated this agreement with immediate effect by giving written notice.
- 1.8 The Implementation Plan and the Managed Services Specification shall apply with effect from the Approval Date.
- 1.9 The Customer shall cooperate and provide any necessary facilities and assistance required for the Implementation Plan and implementation of the Managed Services.
- 1.10 Techcare shall use reasonable endeavours to meet any performance dates set out in the Contact Details, the Managed Services Proposal, the Implementation Plan and or the Managed Services Specification, but any such dates shall be estimates only, and time shall not be of the essence in this agreement.
- 1.11 Unless otherwise stated in the Managed Services Proposal the Customer shall be responsible for securing all licences and consents necessary to enable Techcare to undertake the Implementation Plan and supply the Services.
- 1.12 If Techcare's performance of any of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, Techcare shall:
- 1.12.1 not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
- 1.12.2 be entitled to payment of the Managed Service Fee despite any such prevention or delay; and
- 1.12.3 be entitled to recover any additional costs, charges or losses Techcare sustains or incurs that arise directly or indirectly from such prevention or delay.
- 1.13 When Techcare considers that the Managed Services are ready for activation it shall notify the Customer. Within five Business Days of such notification the Customer shall review the operation of the Managed Services to confirm that they function in material conformance with the Managed Services Specification. If the Managed Services fail in any material respect to conform with the Managed Services Specification, the Customer shall give Techcare a detailed description of any such non-conformance (**Error**) in writing, within the five Business Day review period.
- 1.14 Techcare shall use reasonable endeavours to correct any Error within a reasonable time and, on completion, re-submit the Managed Services to the Customer. The provisions of clause 1.13 and this clause 1.14 shall then apply again, up to three additional times. If Techcare is unable to correct the Error after three attempts, either party may terminate this agreement with immediate effect by giving written notice to the other party, without further liability to the other in respect of the Error or failure to provide the Managed Services in accordance with this agreement.
- 1.15 If the Managed Services are found to conform with the Managed Services Specification or if the Customer does not provide any written comments within the five Business Day review period described in clause 1.13, the Managed Services shall be deemed accepted as from the date of the notification or expiry of the five Business Day review period (in each case the **Acceptance Date**).
- 1.16 If during the Setup Services or at any time during the Term any IT Risk is identified by Techcare and notified to the Customer, the Customer shall immediately implement any required actions to address the IT Risk. If the Customer fails to adequately address the IT Risk in the sole opinion of Techcare, Techcare may suspend all or any part of the

Services until the IT Risk has been addressed or Techcare may terminate the Contract with immediate effect by giving written notice to the Customer.

### 2. Service provision

- 2.1 In consideration of the Managed Services Fee, Techcare shall provide the Managed Services from the Acceptance Date until expiry or termination of this agreement for any reason.
- 2.2 The Customer shall not store, distribute or transmit through the Managed Services any material that:
- 2.2.1 is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
- 2.2.2 facilitates illegal activity;
- 2.2.3 depicts sexually explicit images; and/or
- 2.2.4 promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion, belief or gender reassignment, or any other illegal activity.
- 2.3 The Customer shall remain responsible for the use of the Managed Services under its control, including any use by third parties (whether fraudulent or invited by the Customer).
- 2.4 The Customer must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Customer by Techcare in writing. This includes informing Techcare promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, Techcare shall work with the Customer to alleviate the situation as quickly as possible. The parties shall discuss and agree appropriate action (including suspending the Managed Services).
- 2.5 The Customer shall not provide the Managed Services directly or indirectly to third parties.
- 2.6 Techcare reserves the right to:
- 2.6.1 modify Techcare's System, its network, system configurations or routing configuration; or
- 2.6.2 modify or replace any Hardware or Software in its network or in equipment used to deliver any Service over its network,
- provided that this has no adverse effect on Techcare's obligations under this agreement and its provision of the Services. If such changes will have an adverse effect, Techcare shall notify the Customer and the parties shall follow the Change Control Procedure.
- 2.7 If required by Techcare the Customer shall allow Techcare to install monitoring software on the Customer Equipment, Hardware and/or in the Customer's Operating Environment to enable Techcare to conduct remote monitoring and diagnostics and shall ensure that such software remains installed throughout the Term. Additionally, Techcare reserves the right to:
- 2.7.1 modify the Techcare System, the Hardware or the Customer's operating Environment, system configurations or routing configuration; or
- 2.7.2 modify or replace any Hardware or Software or in equipment used to deliver any Services.
- 2.8 Techcare shall provide such Maintenance as set out in the Managed Services Specification.
- 2.9 The Customer will fully co-operate with Techcare in diagnosing and correcting any fault in the Managed Services and will ensure that all Customer Equipment and all equipment within the Customer's Operating Environment is at all times connected to such telecommunications facilities and a suitable internet access or other interface to enable Techcare to access the equipment to provide remote diagnostics testing and/or solutions for any fault or error reported by the Customer and to undertake inspections and preventative maintenance where Techcare reasonably deems this to be required or appropriate. All Maintenance shall be performed remotely unless in Techcare's sole opinion on-site attendance at a Customer Location is required.
- 2.10 All on-site attendances shall incur a fee as an Additional Service unless covered by any express provision within the Managed Service Proposal. The Customer will allow Techcare, its employees, agents and /or sub-contractors full, safe and uninterrupted access to all Customer Locations and/or the Customer's Operating Environment at times to be agreed between the Parties to perform its obligations under this Agreement.
- 2.11 The Customer and Techcare agree that when Techcare's personnel including its agents and sub-contractors, are present on the Customer's premises they shall be fully appraised by the Customer of all rules, regulations and policies relating to such premises including health and safety of personnel. Techcare shall observe all reasonable health and safety rules and regulations and security requirements that apply at any of the Customer Locations Premises that have been communicated to Techcare, provided that Techcare shall not be liable under the agreement if, as a result of such observation, it is in breach of any of its obligations under the agreement.

2.12	Maintenance and or any Managed Services shall not include the diagnosis and rectification of any fault resulting from any of the following which shall be charged as an Additional Service:	3.4	Notwithstanding the foregoing, Techcare does not warrant that the Customer's use of the Managed Services shall be uninterrupted or error-free.
2.12.1	the improper use, improper operation or neglect of the Customer's Operating Environment or any Customer Equipment Software, equipment via which the Services are accessed or used or faults to any of them caused by a third party or variations in electrical power, lightning, flood, fire, radiation, radio interference or accidental damage;	3.5	This agreement shall not prevent Techcare from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services that are similar to those provided under this agreement.
2.12.2	unauthorised merger of any Software (in whole or in part) with any other software;	<b>4.</b>	<b>Customer's obligations</b>
2.12.3	the use of the Managed Services via or on equipment other than the Hardware or Customer Equipment;	4.1	The Customer shall provide Techcare with:
2.12.4	the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by Techcare;	4.1.1	all necessary co-operation in relation to this agreement; and
2.12.5	any repair, adjustment, alteration or modification of the Managed Services by any person other than Techcare without Techcare's prior written consent;	4.1.2	all necessary access to such information as may be reasonably required by Techcare,
2.12.6	any breach by the Customer of any of its obligations under any maintenance agreement in respect of the equipment from or via which the Managed Services are accessed or used;		in order to provide the Services, including Customer Data, security access information, and (subject to providing any confidentiality undertakings reasonably required by the Customer) software interfaces to the Customer's other business applications.
2.12.7	non-compliance with the Customer's obligations under this Agreement;	4.2	The Customer shall:
2.12.8	causes beyond the control of Techcare;	4.2.1	provide such personnel assistance, including the Customer Account Team and other Customer personnel, as may be reasonably requested by Techcare from time to time.
2.12.9	any fault arising from failure to operate proper and efficient back up and data recovery procedures in relation to the Customer Data other than where and to the extent that the fault arises from any back-ups performed by Techcare as part of any Maintenance supplied by Techcare expressly provided for under this agreement;	4.2.2	appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on all matters relating to this agreement. The Customer shall use reasonable endeavours to ensure continuity of the Customer's Project Manager, but has the right to replace them from time to time where reasonably necessary in the interests of the Customer's business;
2.12.10	any equipment or software not supplied by Techcare to the Customer and/or any services other than the Managed Services.	4.2.3	comply with all applicable laws and regulations with respect to its activities under this agreement; and
2.13	Any maintenance provided by Techcare as a result of any fault specified in Clause 2.12 above, shall be chargeable to the Customer as an Additional Service.	4.2.4	carry out all other Customer responsibilities set out in this agreement or in any of the Schedules in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Techcare may adjust any timetable or delivery schedule set out in this agreement as reasonably necessary.
2.14	The Customer shall not:	4.3	The Customer shall be responsible at its cost for preparing and maintaining the Customer Locations to enable use of the Services and shall ensure that all Customer Equipment is in good working order and suitable for use of the Services and conform to all applicable legislative and regulatory standards and requirements.
2.14.1	modify, translate, create or attempt to create derivative copies of or copy the systems or any Techcare Software or Third Party Software used to provide the Services in whole or in part;	4.4	The Customer shall ensure that all Customer Equipment and all Hardware supplied to it by Techcare is covered by a warranty from the relevant Third Party Provider. The Customer shall identify to Techcare all third party suppliers of software, hardware, utilities and other facilities comprising the Customer's Operating Environment and shall notify Techcare as soon as practicable of any additional hardware or software that it intends to introduce into the Customer's Operating Environment and any other planned changes to the Customer's Operating Environment and/or the Customer Equipment and/or the Customer Locations including planned outages, Customer Location moves and changes in Third Party Providers. If as a result of any failure to notify Techcare pursuant to this Clause Techcare has to carry out any work, such work shall be paid for by the Customer as an Additional Service.
2.14.2	reverse engineer, decompile, disassemble or otherwise reduce the object code of such systems or software to source code form unless permitted by law; or	4.5	The Customer is and shall remain responsible for the Customer's Operating Environment, the Customer Equipment and all Hardware and shall insure the same with a reputable insurance company for its replacement value and shall remain liable for the same in the event of loss or damage, including for any recurring charges payable for the same under the terms of this Agreement.
2.14.3	distribute, sub-licence, assign, share, timeshare, sale, rent, lease, transmit, grant a security in trustee or otherwise transfer such systems or software.	4.6	The Customer shall implement any required recommendations made by Techcare necessary for the Services to be provided in a timely and efficient manner. If the Customer fails to implement recommendations necessary for the Service delivery within 14 days of a notice to do so or other timeframe agreed between the parties, Techcare may terminate the Contract with immediate effect by giving written notice to the Customer.
2.15	Techcare shall wherever reasonably practicable give the Customer at least 24 hours' prior written notice of all scheduled interruptions to the Managed Services.	4.7	If the Services includes asset register software the Customer's shall notify Techcare as soon as practicable via a self-service portal of any changes to the asset register made by the Customer including and changes in the location of the asset, person responsible for the asset or any assets added or removed from the register. If as a result of any failure to notify Techcare pursuant to this Clause Techcare has to carry out any work, such work shall be paid for by the Customer as an Additional Service.
2.16	Techcare shall coordinate and manage the Third Party Providers but shall not be responsible or liable for any maintenance and support of software, hardware, utilities and/or facilities provided and maintained by Third Party Providers unless specified in the Managed Service Proposal or Managed Service Specification. Techcare shall use reasonable endeavours to cooperate with any person who provides software or hardware, utilities or facilities to the Customer provided that Techcare shall have no obligations or liabilities in connection with the use, capability, availability or operation of such software, hardware, utilities or facilities responsibility for which shall remain with the supplier of the same. All Third Party Services are provided subject to the relevant Third Party Provider's terms and conditions, including fees, as notified to the Customer prior to commencement of such Third Party Services and may be varied, suspended and/or terminated by such Third Party Providers.	<b>5.</b>	<b>Warranties</b>
<b>3.</b>	<b>Techcare's obligations</b>	5.1	The Customer warrants, represents and undertakes that:
3.1	Techcare undertakes that the Services will be performed with all reasonable skill and care and the provisions of this agreement and that the Managed Services will be provided substantially in accordance with the Managed Services Specification.	5.1.1	it has the full capacity and authority to enter into and perform this agreement and that this agreement is executed by a duly authorised representative of the Customer;
3.2	The undertaking in clause 3.1 shall not apply to the extent of any non-conformance that is caused by use of the Managed Services contrary to Techcare's instructions.		
3.3	If the Services do not conform with the undertaking in clause 3.1, Techcare shall, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking in clause 3.1.		

- 5.1.2 it has the authority to grant any rights to be granted to Techcare under this agreement, including the right to provide the Software and Hardware to Techcare as indicated in this agreement and for the same to be used in the provision of the Services and otherwise in connection with this agreement;
- 5.1.3 it shall comply with and use the Services in accordance with the terms of this agreement and all applicable laws, and shall not do any act that shall infringe the rights of any third party including the publishing or transmission of any materials contrary to relevant laws;
- 5.1.4 it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to license to Techcare, any materials reasonably necessary for the fulfilment of all its obligations under this agreement, including any third-party licences and consents in respect of any Customer Software; and
- 5.1.5 Techcare's possession and use in accordance with this agreement of any materials (including third-party materials supplied by the Customer to Techcare) shall not cause Techcare to infringe the rights, including any Intellectual Property Rights, of any third party.
- 5.2 Techcare warrants, represents and undertakes that:
- 5.2.1 it has the full capacity and authority to enter into and perform this agreement and that this agreement is executed by a duly authorised representative of Techcare;
- 5.2.2 it shall comply with all applicable laws and regulations in performing its obligations under this agreement;
- 5.2.3 all personnel and sub-contractors used by Techcare in the performance of this agreement are adequately skilled and experienced for the activities they are required to perform.
- 6. Charges and payment**
- 6.1 The Customer shall pay the Setup Service Fee set out in the Contract Details on receipt of Techcare's invoice.
- 6.2 The Customer shall pay the Managed Services Fees from the Acceptance Date. Techcare shall invoice the Customer monthly for the Managed Services unless stated otherwise in the Managed Services Proposal.
- 6.3 The Customer shall pay all Fees for Additional Services provided by Techcare. All Additional Services shall be charged on a time and materials basis calculated in accordance with the rates set out in the Managed Services Proposal (if applicable) or Techcare's current rates in force at the time the Additional Services are provided. Invoices for Additional Services may be submitted in advance or after completion of the Additional Services.
- 6.4 All Third Party Services shall be subject to variation when varied by the relevant Third Party Provider. All calls, usage and / or volume related charges shall be charged to and paid by the Customer at the rates and tariffs charged by and on the data logged or recorded by Techcare or the relevant Third Party Provider.
- 6.5 The Customer shall reimburse Techcare for all actual, reasonable travel costs and expenses including airfares, hotels and meals incurred by Techcare in performance of the Services.
- 6.6 All amounts and Fees stated or referred to in this agreement are exclusive of value added tax, which shall be added to Techcare's invoice(s) at the appropriate rate.
- 6.7 The Customer shall pay each invoice due and submitted to it by Techcare, within 14 days of receipt (Due Date), to a bank account nominated in writing by Techcare.
- 6.8 If the Customer fails to make any payment due to Techcare under the agreement by the Due Date for payment, then, without limiting any of Techcare's other rights or remedies:
- 6.8.1 the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount;
- 6.8.2 the Customer shall pay the Late Payment Recovery Charge;
- 6.8.3 the Customer shall pay all reasonable costs (including any administrative, debt recovery or legal costs) incurred by the Company in recovering the outstanding amount from the Customer;
- 6.8.4 Techcare may suspend all or any part of the Services until payment has been made in full; and or
- 6.8.5 Techcare may terminate the Contract with immediate effect by giving written notice to the Customer.
- 6.9 All amounts due under the Contract from the Customer to Techcare shall be paid by the Customer in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 6.10 Any queries on an invoice must be raised in writing by the Customer within 7 days of the invoice date, otherwise the invoiced amount shall be deemed to be accepted by the Customer.
- 6.11 The Managed Services Fee is based on an assumed rate of use of the Managed Services. Techcare will assess the Customer's use of the Managed Services throughout the Term and may make such recommendations as it deems reasonable in relation to any sustained increased use of the same including the purchase by the Customer of new Hardware, the provision of training of the Customer's personnel as an Additional Service and/or increasing the Managed Services Fee and Techcare may increase the Managed Services Fee on giving the Customer one month's prior written notice at any time.
- 6.12 Techcare may adjust the Fees with effect from the anniversary of each year of the agreement to reflect increases or decreases in the cost of the Service by the percentage increase or decrease in costs or inflation. Techcare shall give the Customer not less than one month's prior notice in writing of proposed changes. Any annual increase in Fees under this clause 6.12 shall not exceed 2%.
- 7. Change control**
- 7.1 If either party wishes to change the scope of the Services (including Customer requests for additional services), it shall submit details of the requested change to the other in writing.
- 7.2 If either party requests a change to the scope or execution of the Services, Techcare shall, within a reasonable time, provide a written estimate to the Customer of:
- 7.2.1 the likely time required to implement the change;
- 7.2.2 any variations to the Fees arising from the change;
- 7.2.3 the likely effect of the change on the Services; and
- 7.2.4 any other impact of the change on the terms of this agreement.
- 7.3 If the impact of any change requested by the Customer is likely to take Techcare more than 5 hours to assess, Techcare may charge for its reasonable time spent in assessing the request for the change as an Additional Service.
- 7.4 If Techcare requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 7.5 If either party wishes the other party to proceed with the relevant change referred to in clause 7.1, Techcare has no obligation to do so unless and until the parties have agreed in writing any necessary variations to the Fees, the Managed Services Specification and any other relevant terms of this agreement to take account of the change.
- 7.6 Techcare may without notice or consent change the Services if necessary to comply with any applicable safety or legislative requirements provided that such changes do not materially affect the nature, scope of, or the costs, for the Services.
- 8. Proprietary rights**
- 8.1 Nothing in this agreement affects either party's rights in pre-existing Intellectual Property Rights (including pre-existing Intellectual Property Rights of either party contained in or relating to Confidential Information) (Pre-Existing IPR).
- 8.2 Techcare grants to the Customer for the term of this agreement, a non-transferable, non-exclusive, royalty-free, worldwide licence to use, Techcare's Intellectual Property Rights as incorporated by Techcare into the Managed Services solely in connection with the Customer's (and its permitted sub-licensees') use of the Managed Services in accordance with this agreement.
- 8.3 The Customer grants to Techcare a revocable, sub-licensable, non-transferable, non-exclusive, royalty-free, worldwide limited licence for the term of this agreement to use, exploit, copy, reproduce, manufacture, sub-license, modify, improve, enhance and make derivative works of the Customer's Intellectual Property Rights solely to the extent necessary to enable Techcare to comply with its obligations under this agreement.
- 8.4 Each party reserves all rights not expressly granted or transferred in or pursuant to this agreement.
- 9. Customer Data and Data Protection**
- 9.1 Where any Maintenance requirements or the Managed Services Specification includes any obligation for Techcare to undertake back-ups of Customer Data, Techcare shall promptly notify the Customer of any loss or damage to the Customer Data. In the event of any loss or damage to Customer Data due to Techcare's act, omissions or negligence the Customer's sole and exclusive remedy shall be for Techcare to use reasonable commercial endeavours to restore the lost or damaged Customer Data from and to the latest back up of such Customer Data maintained by Techcare. Techcare shall not be responsible for any loss, destruction, alteration or unauthorised disclosure of Customer Data caused by any third party except any third

	parties contracted directly by Techcare to perform services related to the Customer Data backup.		
9.2	Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.	9.5.6	at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and
9.3	The parties acknowledge that:	9.5.7	maintain complete and accurate records and information to demonstrate its compliance with this clause 9 and immediately inform the Customer if, in the opinion of Techcare, an instruction infringes the Data Protection Legislation.
	9.3.1 if Techcare processes any personal data on the Customer's behalf when performing its obligations under this agreement, the Customer is the controller and Techcare is the processor for the purposes of the Data Protection Legislation.	9.5.8	The Customer consents to Techcare appointing a third-party processor of personal data under this agreement. Techcare confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 9 and in either case which Techcare confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and Techcare, Techcare shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 9.
	9.3.2 Techcare is reliant on the Customer for direction as to the extent to which Techcare is entitled to use and process the Customer Personal Data. Consequently, Techcare shall not be liable for any claim brought by any Data Subject arising from any action or omission by Techcare, to the extent that such action or omission resulted directly from the Customer's instructions.	9.5.9	Either party may, at any time on not less than 30 days' notice, revise this clause 9 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
	9.3.3 the personal data may be transferred or stored outside the EEA or the country where the Customer is located in order to carry out the Services and Techcare's other obligations under this agreement		
9.4	Without prejudice to the generality of clause 9.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Techcare for the duration and purposes of this agreement so that Techcare may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf.	<b>10. Confidentiality</b>	
9.5	Without prejudice to the generality of clause 9.2, Techcare shall, in relation to any personal data processed in connection with the performance by Techcare of its obligations under this agreement:	10.1	The provisions of this clause 10 shall not apply to any Confidential Information that:
	9.5.1 process that personal data only on the documented written instructions of the Customer unless Techcare is required by the laws of any member of the European Union or by the laws of the European Union applicable to Techcare and/or Domestic UK Law (where Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (Applicable Laws). Where Techcare is relying on Applicable Laws as the basis for processing personal data, Techcare shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Techcare from so notifying the Customer;	10.1.1	is or becomes generally freely available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause 10);
	9.5.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by Techcare, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).	10.1.2	was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
	9.5.3 not transfer any personal data outside of the EEA unless the following conditions are fulfilled:	10.1.3	was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
	(a) the Customer or Techcare has provided appropriate safeguards in relation to the transfer;	10.1.4	was known to the receiving party before the information was disclosed to it by the disclosing party;
	(b) the data subject has enforceable rights and effective legal remedies;	10.1.5	the parties agree in writing is not confidential or may be disclosed ; or
	(c) Techcare complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and	10.1.6	the receiving party proves to the reasonable satisfaction of the disclosing party was developed by or for the receiving party independently of the information disclosed by the disclosing party.
	(d) Techcare complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;	10.2	Each party shall keep the other party's Confidential Information confidential and shall not:
9.5.4	assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;	10.2.1	use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this agreement ( <b>Permitted Purpose</b> ); or
9.5.5	notify the Customer without undue delay on becoming aware of a personal data breach;	10.2.2	disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 10.
		10.3	Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its Representatives in violation of the terms of this agreement.
		10.4	The Customer:
		10.4.1	acknowledges and agrees that Techcare's Confidential Information includes any designs, plans, software or other materials created by Techcare in connection with the Services; and
		10.4.2	agrees not to make use of any such designs, plans, software or other materials for any purpose other than receipt of the Services.
		10.5	Techcare acknowledges and agrees that the Customer Data is the Confidential Information of the Customer.
		10.6	A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
		10.6.1	it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
		10.6.2	at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause 10.

10.7	A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority (including any relevant securities exchange) or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.7, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.	11.6.4	the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by Techcare;
10.8	Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party or to be implied from this agreement.	11.6.5	the failure by the Customer to implement recommendations in respect of data security and the prevention of the unauthorised or unlawful processing or accidental loss destruction or damage to data previously advised by Techcare;
10.9	The provisions of this clause 10 shall continue to apply after expiry or termination of this agreement for any reason.	11.6.6	any repair, adjustment, alteration or modification of the Managed Services by any person other than Techcare without Techcare's prior written consent;
10.10	No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.	11.6.7	any breach by the Customer of any of its obligations under any maintenance agreement in respect of the equipment from or via which the Managed Services are accessed or used;
<b>11. Limitation of liability</b>		11.6.8	non-compliance with the Customer's obligations under this Agreement;
11.1	This clause 11 sets out the entire financial liability of Techcare (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:	11.6.9	causes beyond the control of Techcare;
11.1.1	any breach of this agreement;	11.6.10	any fault, problem, claim or issue resulting from a failure to operate proper and efficient back up and data recovery procedures in relation to the Customer Data other than where and to the extent that the fault, problem, claim or issue arises from any back-ups performed by Techcare as part of any Maintenance supplied by Techcare pursuant to this Agreement;
11.1.2	any use made by the Customer of the Services; and	11.6.11	maintenance of any services other than the Managed Services; or
11.1.3	any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this agreement.	11.6.12	toll fraud.
11.2	Except as expressly provided in this agreement:	11.7	Subject to Clause 11.3 Techcare shall have no liability for Third Party Services or any unauthorised use of Third Party Services.
11.2.1	the Customer assumes sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use. Techcare shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Techcare by the Customer in connection with the Services, or any actions taken by Techcare at the Customer's direction; and	11.8	Subject to Clause 11.3 Techcare shall have no liability for any acts or omissions by Third Party Providers.
11.2.2	all warranties, conditions and other terms implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from this agreement.	11.9	Except in the case of Liability arising under Clause 11.3 above Techcare shall have no liability to the Customer unless the Customer shall have served notice of the same upon Techcare within 6 months of the date it became aware of the circumstances giving rise to the liability or the date when it ought reasonably to have become so aware.
11.3	Nothing in this agreement excludes or limits the liability of Techcare for:	11.10	Except as expressly stated in this Contract all conditions, warranties, terms and undertakings express or implied, statutory or otherwise, in respect of the provision of the Services are hereby excluded to the extent permitted by law.
11.3.1	death or personal injury caused by Techcare's negligence;	<b>12. Term and termination</b>	
11.3.2	fraud or fraudulent misrepresentation; or	12.1	This agreement shall commence on the Commencement Date. Unless terminated earlier in accordance with this clause 12, this agreement shall continue in force for the Initial Term and shall automatically extend for successive 12 month periods ( <b>Extended Term</b> ) at the end of the Initial Term and at the end of each Extended Term. A party may give written notice to the other party, not later than 90 days before the end of the Initial Term or the relevant Extended Term, to terminate this agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.
11.3.3	any other liability which cannot lawfully be excluded or limited.	12.2	Without prejudice to any other right or remedy available to it either party may terminate this agreement with immediate effect by giving written notice to the other party if:
11.4	Subject to clause 11.3:	12.2.1	the other party has committed a material breach of any of its obligations under this Agreement and does not remedy such breach (if the same is capable of remedy) within 30 days after being required by written notice so to do; or
11.4.1	Techcare shall not be liable whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, business interruption, loss of data, corrupt data, depletion of goodwill or similar losses, or for any indirect or consequential loss, costs, damages, charges or expenses however arising; and	12.2.2	an administrator or receiver is appointed over the whole or a substantial part of the other party's assets and the receiver or administrator causes that party to cease to perform its obligations under this Agreement.
11.4.2	Techcare's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the price paid for the Services during the 12 months immediately preceding the date on which the claim arose or £10,000 whichever is the greatest.	12.3	The party not affected by a continuing Force Majeure Event may terminate this agreement in accordance with clause 13.1.
11.5	The Customer shall afford a reasonable opportunity to Techcare (following notification of any default) in which to remedy any default.	12.4	Either party may terminate this agreement in accordance with clause 11.14. Techcare may terminate this agreement in accordance with clause 1.16, 4.6 or 6.8.3.
11.6	Subject to Clause 11.3 Techcare shall have no Liability for any loss or damage caused by or resulting from:	12.5	Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after expiry or termination of this agreement shall remain in full force and effect.
11.6.1	the unauthorised or improper use, operation or neglect of the Customer's Operating Environment, any Customer Equipment, Software, or equipment via which the Services or any Third Party Services are accessed or used;	12.6	Expiry or termination of this agreement for any reason shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at expiry or termination.
11.6.2	unauthorised merger of any Software (in whole or in part) with any other software;	12.7	On expiry or termination of this agreement for any reason:
11.6.3	the use of the Managed Services via or on equipment other than the Hardware or Customer Equipment;	12.7.1	Techcare shall immediately cease provision of the Set-Up Services, Managed Services and Maintenance Services but may at its sole

option provide transition services for a further agreed period and chargeable as an Additional Service;

12.7.2 All fees, charges and expenses due to Techcare shall immediately become due and payable by the Customer;

12.7.3 (subject to clause 12.8) each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party; and

12.7.4 if Techcare receives, no later than ten days after the effective date of the expiry or termination of this agreement for any reason, a written request for the delivery to the Customer of the most recent backup of the Customer Data and such request is, where relevant, in accordance with clause 9.5.6, Techcare shall use reasonable commercial endeavours to deliver the backup to the Customer within 30 days of its receipt of such a written request in the format stored or in a format as otherwise reasonably requested by the Customer, provided that the Customer has at that time paid all fees and charges outstanding at (and including any resulting from) expiry or termination (whether or not due at the date of expiry or termination). Once such ten-day period has expired or Techcare has, at the Customer's request, delivered to the Customer the most recent backup of the Customer Data (as applicable), Techcare shall (subject to clause 12.8) promptly expunge from Techcare's System and otherwise destroy or dispose of all of the Customer Data in its possession or control. The Customer shall pay all reasonable costs and expenses incurred by Techcare in returning and disposing of Customer Data and expunging it from Techcare's System.

12.8 If a party is required by any law, regulation, or government or regulatory body (**Regulatory Requirement**) to retain any documents or materials which it would otherwise be obliged to return or destroy under clause 12.7.4, it shall notify the other party in writing of such retention, giving details of the documents or materials that it must retain. Clause 10 shall continue to apply to any such retained documents and materials for as long as any such requirement continues in force, subject to any disclosure mandated by any Regulatory Requirement.

12.9 Techcare shall be considered to have satisfied its obligation to "expunge" or "destroy" or "dispose" of any electronic data, for the purposes of clause 9.5.6 and clause 12.7.4, where it puts such electronic data beyond use.

**13. Force majeure**

13.1 Neither party shall have any liability to the other under this agreement if it is prevented from, or delayed in, performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (including any industrial disputes involving the workforce of Techcare), act of God, war, riot, civil commotion, epidemic, pandemic, compliance with any law or regulation, fire, adverse weather conditions including floods or storms (each a **Force Majeure Event**), provided that:

13.1.1 the other party is notified of such an event and its expected duration; and

13.1.2 it uses all reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event concerned,

and that if the period of delay or non-performance continues for six months or more, the party not affected may terminate this agreement by giving not less than 1 months written notice to the other party.

**14. Compliance with Laws**

14.1 Neither Party shall take any action, directly or indirectly, whether on their own account or through any intermediary that would constitute an offence under or breach of:

14.1.1 the Bribery Act 2010 as amended from time to time; or

14.1.2 any other applicable anti-bribery laws or regulations anywhere in the world;

and each Party shall procure that none of its officers, employees, agents, representatives, contractors, or other persons acting with the authority of that party or otherwise performing services for on behalf of that Party shall take any such action.

14.2 It is noted and agreed that any breach of Clause 14.1 shall be a material breach which is incapable of remedy thereby entitling the party not in breach to terminate this Agreement immediately.

14.3 During this Agreement and following any termination of this Agreement, at its own cost, each Party shall cooperate fully with the other in any investigation of any conduct prohibited under Clause 14 and this Clause shall survive termination of this Agreement.

**15. Waiver**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**16. Severance**

16.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

16.2 If any provision or part-provision of this agreement is deemed deleted under clause 16.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**17. Entire agreement and variation**

17.1 This agreement constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

17.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

17.3 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**18. Assignment**

18.1 Techcare may at any time assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under this agreement without the consent of the Customer.

18.2 The Customer shall not, without the prior written consent of Techcare, assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any of its rights or obligations under this agreement.

**19. No partnership or agency**

19.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, or constitute any party the agent of another party nor authorise any party to make or enter into any commitments for or on behalf of any other party.

19.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**20. Third party rights**

Except as expressly provided elsewhere in this agreement, no one other than a party to this agreement, its successors and permitted assignees, shall have any right to enforce any of its terms.

**21. Rights and remedies**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**22. Notices**

22.1 Any notice or other communication required to be given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first class post or other next Business Day delivery service at its registered office.

22.2 Any notice or communication shall be deemed to have been received:

22.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or

22.2.2 if sent by pre-paid first class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

22.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause 22, "writing" shall include e-mail but not fax.

## 23. Governing law and jurisdiction

23.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

23.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

## 24. Definitions and Interpretation

The definitions and rules of interpretation in this clause 24 apply in this agreement.

**Additional Services:** any services requested by the Customer or any services otherwise required to be provided by Techcare under the terms of this agreement outside of the Set-up Services, and the Managed Services

**Acceptance Date:** has the meaning given in clause 1.15.

**Business Day:** a day, other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Change Control Procedure:** the procedures set out in clause 7.

**Commencement Date:** the date specified in the Contract Details or if none the date the Techcare starts providing the Services..

**Confidential Information:** all confidential information (however recorded or preserved) disclosed by a party or its employees, consultants, officers, representatives, advisers, agents or sub-contractors involved in the provision or receipt of the Services (together, its **Representatives**) to the other party or that party's Representatives in connection with this agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

**Customer Account Team:** the individuals appointed by the Customer from time to time who shall serve as Techcare's primary contacts for Techcare's activities under this agreement.

**Customer Data:** any information that is provided by or on behalf of the Customer to Techcare as part of the Customer's use of the Services, including any information derived from such information.

**Customer Personal Data:** any personal data comprised in the Customer Data.

**Customer Equipment:** any equipment located or to be located at a Customer Location but controlled or to be controlled exclusively by Techcare as part of the Managed Services.

**Customer's Operating Environment:** the Customer's computing environment (consisting of hardware, software and telecommunications networks) that is to be used by the Customer in connection with its use of the Services and which interfaces with Techcare's System in order for the Customer to receive the Services, but excluding the Customer Equipment.

**Customer Location:** any premises occupied or controlled by the Customer at which it receives the Managed Services.

**Customer's Project Manager:** the member of the Customer Account Team appointed in accordance with clause 4.2.2.

**Customer Software:** has the meaning given to that term in the definition of Software.

**Data Protection Legislation:** the Data Protection Act 2018 and any other legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**Error:** has the meaning given in clause 1.13.

**Extended Term:** has the meaning given in clause 12.1.

**Fees:** the fees payable to Techcare under the terms of this agreement including but not limited to Setup Services Fee, the Managed Services Fee and any fees for any Additional Services.

**Force Majeure Event:** has the meaning given in clause 13.1.

**Hardware:** all physical telecommunications, networking and computer equipment (including switches, routers, cables, servers, racks, cabinets and peripheral accessories) provided and used by Techcare to deliver the Managed Services to the Customer.

**Implementation Plan:** the plan to be developed and agreed in accordance with clause 1.4.

**Incident:** any Vulnerability, Virus or security incident which:

- (a) may affect the Hardware or Software;
- (b) may affect Techcare's network and information systems such that it could potentially affect the Customer; or
- (c) is reported to Techcare by the Customer.

**Initial Term:** the period from the Commencement Date until the expiry of the period specified in the Contract Details or if no period is specified a period of 12 months from the Commencement Date.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all existing and future rights capable of present assignment, applications for and renewals or extensions of and rights to claim priority from such rights, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**IT Risk:** any risk identified by Techcare that could risk causing significant interruption, interference, harm or damage to the Customer's Operating Environment and or could prevent Techcare providing the Services.

**Late Payment Recovery Charge:** means for outstanding balances up to £999.99 a fixed amount of £40, for balances between £1,000 and £9,999.99 a fixed amount of £70 and for balances of or over £10,000 a fixed amount of £100.

**Managed Services:** the service described in the Managed Services Specification to be performed by Techcare in accordance with this agreement.

**Managed Service Proposal:** Techcare's proposals for the provision of Managed Services (including the Managed Services Fees) as agreed in accordance with clause 1.4 and or as described in Schedule 1 or a quote provided by Techcare to the Customer.

**Managed Services Fees:** the fees for the provision of the Managed Services as set out in the Managed Service Proposal or as otherwise notified to the Customer.

**Managed Services Specification:** the specification for the Managed Services as agreed in accordance with clause 1.4 and or as described in Schedule 3 or a quote provided by Techcare to the Customer.

**Permitted Purpose:** has the meaning given in clause 10.2.1.

**Regulatory Requirement:** has the meaning given in clause 12.8.

**Representatives:** has the meaning given to that term in the definition of Confidential Information.

**Services:** the Set-up Services, the Managed Services, any Maintenance specified in the Managed Services Specification and any Additional Services.

**Setup Services:** the due diligence, configuration and related work set out in the Contract Details or a quote provided by Techcare to the Customer to be performed by Techcare to setup the Managed Services.

**Setup Service Fee:** the fee for the Setup Services as set out in the Contract Details, or a quote provided by Techcare to the Customer.

**Software:** any software used by Techcare (or any of its sub-contractors) to provide the Managed Services to the Customer whether owned by a third party (**Third Party Software**), by the Customer (**Customer Software**) or by Techcare (**Techcare Software**).

**Techcare's System:** the information and communications technology system to be used by Techcare (or any of its sub-contractors) in performing the Services, including the Hardware, the Software, the Customer Equipment and communications links between the Hardware and the Customer Equipment and the Customer's Operating Environment.

**Third Party Services:** means any serviced provided by a third party to the Customer and any services which Techcare procures from a third party to provide any of the Services;

**Third Party Service Provider:** any provider of Third Party Services;

**Third Party Software:** has the meaning given to that term in the definition of Software.

**Virus:** includes any malicious code, Trojan, worm and virus, lock, authorisation key or similar device that impairs or could impair the operation of the Software or the Managed Services.

**Vulnerability:** a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative

impact to confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

- 24.1 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 24.2 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 24.3 Unless the context otherwise requires, words in the singular shall include the plural and words in the plural shall include the singular.
- 24.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 24.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 24.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 24.7 A reference to **writing** or **written** includes e-mail but not faxes.
- 24.8 Any phrase introduced by the words **including, includes, in particular** or **for example**, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.