

TERMS AND CONDITIONS



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These terms and conditions ("Terms") apply to the sale, licence, maintenance and services (as applicable) provided by TSG of any computer hardware or software or other similar or associated items or materials. These Terms are divided into four parts; Sales, SystemCare, Services and General. The General Terms apply to all contracts of TSG. The remaining terms apply depending upon the service to be provided by TSG.

PART 1 – SALE OF GOODS

The following terms and conditions in this Part 1 apply to the sale of Goods by TSG

1.1 Formation of Contract

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

1.2 Accuracy of Order

- 1.2.1 The Customer is responsible for ensuring the accuracy of the terms of any order (including any applicable specification) 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 TSG 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 TSG then subject to clause 1.3.2 above, TSG 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 TSG 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 TSG for the Customer, the Customer acknowledges that such software may only be compatible with the current versions of other software and/or hardware and TSG provides no guarantee that it will be compatible with

later versions of other software and/or hardware. For the avoidance of doubt, unless otherwise agreed between the parties in writing, TSG 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 TSG 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 unless otherwise agreed in writing, delivery times are not of the essence of the contract. TSG will not be liable for any loss or damage (howsoever arising) to the Customer should TSG be unable to deliver the Goods within the quoted period.
- 1.4.3 TSG 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 TSG 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 TSG 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 TSG to the Customer for which payment is then due.
- 1.5.2 Until title in the Goods has passed to the Customer, TSG will be entitled at any time to require the Customer to deliver up the Goods to TSG and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

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- 1.5.3 Until title in the Goods has passed to the Customer, the Customer will hold the Goods as TSG'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 TSG's property.
- 1.6 Installation
- 1.6.1 Where TSG's written quotation for the sale of the Goods or the Customer's written order for the Goods (if accepted by TSG) specifies installation of the Goods or TSG 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 TSG is prevented or delayed from carrying out the installation through no fault of TSG then TSG is entitled to charge the Customer at TSG's then current prices for any additional works carried out by or on behalf of TSG to enable it to complete the installation and/or for compensation for any losses or costs incurred by TSG by reason of such delay.
- 1.7 Warranty
- 1.7.1 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 TSG. The Customer must within the said period of 90 days notify TSG in writing of any such defects and permit TSG to inspect the Goods as required by TSG. If the Customer does not so notify then the Customer will not be entitled to reject the Goods and TSG will have no liability for such defect.
- 1.7.2 The above warranty only applies where the Goods have been properly used in accordance with the relevant manufacturer's specifications and any instructions by TSG and does not apply to any Goods that have been repaired or modified by anybody other than TSG.
- 1.7.3 If a valid claim is notified under clause 1.7.1 above then TSG 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 TSG will have no further liability to the Customer.
- 1.8 Charges and Payment
- 1.8.1 In respect of the sale of Goods:
- 1.8.1.1 Payment will be made by the Customer on the date(s) agreed in writing between the Customer and TSG at the point of order for the Goods.
- 1.8.1.2 Invoices for Goods will ordinarily be issued on delivery of the Goods. If the Goods are specific to the Customer or if the Customer fails to take delivery when required TSG may invoice the Customer at any time after the Goods become available.

1.8.1.3 TSG may require the Customer at any time prior to delivery to pay a deposit to secure any order or part thereof.

1.8.1.4 Any quantity discount given by TSG at the point of order may be removed if the order quantity is subsequently reduced.

PART 2 – PROVISION OF SYSTEMCARE

The following terms and conditions apply to the service described in the Scope of Service ("SystemCare")

2.1 TSG Responsibilities

- 2.1.1 TSG will, subject to these Terms, provide SystemCare in accordance with the terms of the Scope of Service and Definition of Service.
- 2.1.2 TSG will use its reasonable endeavours to respond to a valid Call within the response time set out in the Definition of Service.
- 2.1.3 TSG 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 Definition of Service.
- 2.1.4 If a defect or malfunction in the Equipment cannot be resolved on the telephone or by remote access, TSG will use its reasonable endeavours to visit the Installation Address within the response times set out in the Definition of Service.
- 2.1.5 When carrying out work in accordance with these Terms, TSG will use its reasonable endeavours to return the Equipment to service and, subject to these Terms, reinstate the Customer's applications.
- 2.1.6 TSG may at its discretion provide a permanent replacement part for the Equipment, either new or refurbished, and on exchange that part becomes the property of the Customer, and the faulty part replaced becomes the property of TSG.
- 2.1.7 TSG may repair the Equipment away from the Installation Address when it considers it necessary to do so.
- 2.1.8 TSG may at its discretion, lend the Customer temporary replacement equipment (as compatible as may be available) while repairs are carried out. Equipment loaned to the Customer remains TSG's property and will be returned to TSG on demand. The Customer is entirely responsible for such equipment and will indemnify TSG in respect of any loss or damage to that equipment.
- 2.1.9 TSG 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.

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2.1.10 Where TSG is required to carry out or does carry out work that is subsequently found to be outside SystemCare, TSG will be entitled to charge for that work at TSG's then current rates.

2.2 Term

2.2.1 SystemCare will commence on the date set out in the Scope of Service and, subject to these Terms, continue unless and until either party serves at least one month's prior written notice of termination on the other expiring on the date of expiry of the Initial Term or expiry of any Renewal Period (as the case may be).

2.3 Period of Availability

2.3.1 TSG will only provide SystemCare during the Scheduled Service Hours. If the Customer requests TSG to carry out any SystemCare outside the Scheduled Service Hours then, TSG will use its reasonable endeavours to comply with this request but will charge the Customer for such services at TSG's then current rates.

2.3.2 The time taken by TSG 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 TSG from time to time.

2.4.3 The Customer will ensure that only personnel authorised by TSG adjust, or the Customer's in house IT support personnel, 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 TSG with such information and assistance concerning the Equipment, its application, use, location and environment as TSG may reasonably require to enable it to carry out SystemCare.

2.4.5 The Customer will immediately notify TSG if there is any failure of the Equipment and will allow TSG full and free access to the Equipment and all documentation, software, materials and services necessary for the provision of the SystemCare Maintenance.

2.4.6 The Customer will ensure that relevant trained and experienced staff are available when required by TSG to provide TSG with information required by TSG to diagnose and/or repair the Equipment.

2.4.7 Where TSG 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 TSG. The Customer hereby agrees that TSG shall have the right at any time to access the Customer's Equipment remotely for the purpose of providing SystemCare. 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 TSG 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 must tell TSG in writing immediately that the Equipment or any part of it is changed.

2.4.9 The Customer will notify TSG of change in the location of any part of the Equipment. Whilst any Equipment is being moved, all TSG's obligations to provide SystemCare will be suspended. SystemCare will be reinstated following re-installation of the Equipment provided that the Equipment has not been damaged or affected during the move. If the Equipment has been damaged or affected during the move TSG shall have the option to inspect such Equipment at TSG'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 TSG advise are required.

2.4.11 It is the Customer's sole responsibility, in a manner acceptable to TSG, 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 TSG 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. TSG 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, TSG 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.

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2.4.14 The Customer is solely responsible for any connection charges, line rental charges and call charges in relation to any Equipment.

2.5 Proactive Support Visits

2.5.1 During the Initial Term and any Renewal Period, TSG will provide to the Customer the number of support 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 SystemCare. 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 TSG will, as often as TSG thinks necessary and (save in the event of an emergency) upon reasonable notice carry out a System Audit within TSG's Normal Working Hours to confirm that, in TSG's opinion, the Equipment is in reasonable operating condition.

2.6.2 If work is required to put the Equipment in such full working order TSG will notify the Customer accordingly. If the Customer declines to have such work carried out at its expense within thirty days of such notification, TSG may on written notice exclude such equipment from SystemCare and will refund to the Customer by way of credit note a fair proportion of any 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 SystemCare 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;
- 2.7.1.2 any Equipment which was, in TSG's reasonable opinion, operating in an unstable or unsuitable manner prior to the commencement of SystemCare;
- 2.7.1.3 any work arising as a result of any breach by the Customer of any of its obligations under these Terms;
- 2.7.1.4 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 TSG;
- 2.7.1.5 any failure or defect caused by hardware or software not covered by these Terms;

2.7.1.6 failures or defects due to manufacture or design defects over which TSG has no control;

2.7.1.7 refurbishment or repair of casings or outer surfaces;

2.7.1.8 any work to accessories, alterations, attachments or any other equipment that is external to the Equipment not identified within the Scope of Service;

2.7.1.9 reinstatement of customised versions of the standard desktop/operating system;

2.7.1.10 reinstatement of the Customer's software and data not identified within the Scope of Service;

2.7.1.11 any consultancy, training or software or hardware TSG may provide;

2.7.1.12 integration of the Equipment or any part thereof with other systems;

2.7.1.13 cleansing of viruses and spyware, or resolving the consequences of security breaches and incompatibilities in hardware and/or software.

2.7.1.14 upgrading the Operating Platform to be able to operate the Customer's selected software applications;

2.7.1.15 consumable supplies or accessories such as magnetic media, batteries, print heads, toner cartridges, ink, paper, and any other items identified as consumable by the Equipment manufacturer, unless listed in the Scope of Service;

2.7.1.16 any Equipment in respect of which a notice has been served by TSG under clauses 2.8 or 2.9;

2.7.1.17 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 TSG;

2.7.1.18 in respect of 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;

2.7.1.19 any services which are specifically excluded in the Definition of Service.

2.8 Beyond Economic Repair

2.8.1 TSG will give the Customer written notice 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 TSG to provide SystemCare in

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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, TSG 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 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 TSG, is no longer economically viable to maintain or requires upgrading or updating.

2.9 Take on Visit

- 2.9.1 Prior to commencement of SystemCare, TSG may during Normal Working Hours inspect the Equipment, or any part of it, at the Installation Address to confirm that it is, in TSG'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 TSG will notify the Customer accordingly. If the Customer declines to have such work carried out at its expense within thirty days of such notification, TSG may on written notice exclude such equipment from SystemCare and will refund to the Customer by way of credit note a fair proportion of any Charges which have been paid by the Customer in respect of such equipment from the end of the notice period.

2.10 Charges and Payment

- 2.10.1 The Charges quoted in the Scope of Service for SystemCare are for the Initial Term only. The Customer will be notified of the Charges applicable to any Renewal Period within 45 days before the end of the Initial Term and 45 days before the end of any subsequent Renewal Period (as applicable).
- 2.10.2 In respect of SystemCare for the Initial Term the Customer will pay the Charges to TSG on the Agreement Start Date, or within 30 days of the date of TSG's invoice, whichever is earlier, and thereafter in respect of any Renewal Period the Customer will pay the Charges to TSG within 15 days prior to the commencement of any subsequent Renewal Period.

PART 3 - SERVICES

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

3.1 Formation of Contract

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

3.2 TSG's obligations

- 3.2.1 TSG shall use reasonable endeavours to provide the Services and to deliver the System to the Customer, in accordance in all material respects with the Functional Specification (if any), Proposal (if any) and/or Project Plan (if any).
- 3.2.2 TSG may at its discretion appoint a project manager to liaise with the Customer on all matters relating to the Services. TSG shall use reasonable endeavours to ensure that the same person acts as project manager throughout the provision of the Services, but may replace him from time to time where reasonably necessary in the interests of TSG's business.
- 3.2.3 TSG shall use reasonable endeavours to meet any performance dates or Project Milestones specified in the Project Plan, but any such dates shall be estimates only and time shall not 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 TSG 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 TSG;
- 3.3.1.3 provide in a timely manner such information and documentation as TSG 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 TSG'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 TSG'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,

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the Customer shall be liable to pay to TSG 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 TSG confirming such costs, charges and losses to the Customer in writing.

3.4 Change control

- 3.4.1 The project managers shall meet on a regular basis to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
- 3.4.2 If either party requests a change to the scope or execution of the Services, TSG shall, within a reasonable time, provide a written estimate to the Customer of:
- 3.4.2.1 the likely time required to implement the change;
 - 3.4.2.2 any variations to TSG's charges arising from the change;
 - 3.4.2.3 the likely effect of the change on the Proposal and/or Project Plan; and
 - 3.4.2.4 any other impact of the change on the terms of the Contract.
- 3.4.3 If the Customer wishes TSG to proceed with the change, TSG has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Services, the relevant Proposal, Project Plan and any other relevant terms of the Contract to take account of the change. This will be set out in an addendum to the Functional Specification.
- 3.4.4 Notwithstanding clause 3.4.3 TSG may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.
- 3.4.5 TSG may charge for the time it spends assessing a request for change from the Customer on a time and materials basis in accordance with Clause 3.5.2.

3.5 Charges and payment

- 3.5.1 Clause 3.5.2 shall apply if the Services are to be provided on a time-and-materials basis. clause 3.5.3 shall apply if the Services are to be provided for a fixed price.
- 3.5.2 Where the Services are provided on a time-and-materials basis:
- 3.5.2.1 the charges payable for the Services shall be calculated in accordance with TSG's standard daily fee rates as amended from time to time;

3.5.2.2 TSG's standard daily fee rates are calculated on the basis of a 7.5 hour day worked between 9.00 am and 5.30 pm on weekdays (excluding weekends and public holidays) either spent at the Customer's premises or at TSG's premises;

3.5.2.3 TSG 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 3.5.2.2;

3.5.2.4 TSG shall invoice the Customer for its charges for time, expenses and materials (and VAT, where appropriate) either at the start of a project or monthly in advance for the month concerned.

- 3.5.3 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 TSG in instalments as set out in the Proposal on its achieving the corresponding Project Milestone. On achieving a Project Milestone, TSG shall invoice the Customer for the charges that are then payable, together with expenses and materials (and VAT, where appropriate) in accordance with clauses 3.7.1 and 3.7.2.

3.6 Intellectual Property Rights

- 3.6.1 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 TSG and the Customer shall have no right title or interest therein except as expressly set out in this Contract.
- 3.6.2 So long as the Customer shall have made all payments due under this Contract in accordance with its terms and subject to the terms of clause 1.3, TSG 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 TSG terminates the Contract, this licence will automatically terminate.

3.7 Acceptance

- 3.7.1 The Customer shall carry out the Acceptance Tests in accordance with the Project Plan and if the relevant Project Milestone passes the Acceptance Tests the Customer's project manager shall within 2 days from completion of the Acceptance Tests sign a User Acceptance Sign Off and send a copy to the TSG project manager confirming that the relevant Project Milestone has passed the Acceptance Tests. Once the TSG project manager has accepted the User Acceptance Sign Off, TSG shall invoice the Customer and commence to the next Project Milestone.
- 3.7.2 If TSG does not receive a User Acceptance Sign Off within 14 days of the date set out in the Project Plan for carrying out the Acceptance Tests, acceptance of the relevant Project

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Milestone will be deemed to have occurred and TSG will raise an invoice for the relevant Project Milestone.

- 3.7.3 Acceptance of the System shall be deemed to have occurred on whichever is the earliest of:
- 3.7.3.1 the signing by the Customer of a User Acceptance Sign Off for the final Project Milestone to pass the Acceptance Tests; or
 - 3.7.3.2 the use of the System by the Customer in the course of its business.

PART 4 – GENERAL PROVISIONS

The following terms and conditions apply to all Equipment sold or to be sold, Software licensed or to be licensed, Services provided or to be provided and/or SystemCare provided or to be provided to the Customer.

4.1 General

- 4.1.1 These Terms may only be amended, or varied with TSG'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 either party 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 TSG 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 TSG may be corrected by TSG without any liability on the part of TSG.
- 4.2.2 TSG reserve the right to supply Goods which differ from the specifications agreed between the parties and/or to modify any specifications in respect of SystemCare provided that this does not materially affect the performance of the Goods or SystemCare.

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 TSG (which includes any time which has been allocated to a Customer by TSG 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 TSG, of dates of scheduled service visits or otherwise) will be payable by the Customer to TSG at TSG's then current rates.
- 4.3.3 The Customer shall pay any chargeable expenses and disbursements which are incurred by TSG personnel on behalf of the Customer including but not limited to hotels, subsistence, travelling, mileage at 40p per mile, supplies, telephone charges, copying charges and the cost of any materials or services reasonably and properly provided by third parties required by TSG 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 TSG'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 as TSG may agree, at the intervals agreed in writing with TSG.
- 4.4.3 If the Customer fails to make any payment due to TSG (whether under these Terms or otherwise) on its due date then TSG may (without prejudice to any other remedy) cancel the Contract or suspend any further performance of any obligations by TSG to the Customer or appropriate any money received from the Customer against such sums as TSG may determine (notwithstanding any instructions from the Customer). For the avoidance of doubt, TSG will be entitled to suspend the performance of SystemCare 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 TSG to the Customer.
- 4.4.4 All payments due to TSG 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 TSG reserves the right to charge interest on the amount of any delayed payment at the rate of 4% over the base rate of Lloyds TSB Bank Plc from time to time per calendar month or part thereof on the outstanding amount until payment has been made in full.

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4.5 Lease

- 4.5.1 If any payments due to TSG 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 TSG for the Goods and/or services in accordance with these Terms.

4.6 TSG Employees

- 4.6.1 The Customer will take all such steps as may be necessary to ensure the safety and welfare of any of TSG's representatives who visit any premises of or on behalf of the Customer.
- 4.6.2 The Customer will fully indemnify and hold harmless TSG 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 TSG 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 TSG will endeavour to use its expertise and experience to advise the Customer, TSG 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 TSG of its requirements, both present and anticipated, in respect of the Goods.
- 4.7.4 If TSG 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 TSG'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,

- 4.7.5 Except in the case of death or personal injury caused by TSG's negligence, or liability for defective products under the Consumer Protection Act 1987, TSG 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 TSG had been advised of the possibility of such potential loss.
- 4.7.6 Without prejudice to clause 4.7.8, if TSG fails to provide SystemCare in accordance with its obligations hereunder, the total Liability of TSG in any one year for any Loss suffered by the Customer as a result of such failure will not exceed the Charges paid by the Customer in such year for the SystemCare in question.
- 4.7.7 Without prejudice to clause 4.7.8, if TSG fails to provide the Services in accordance with its obligations hereunder, the total Liability of TSG for any Loss suffered by the Customer as a result of such failure will not exceed the charges paid by the Customer in respect of such Services.
- 4.7.8 Notwithstanding the express provisions of clauses 4.7.6 and 4.7.7, except in the case of death or personal injury caused by TSG's negligence, or liability for defective products under the Consumer Protection Act 1987, in no event shall TSG's Liability in respect of any Loss to the Customer exceed £50,000.
- 4.7.9 Except in the case of death or personal injury caused by TSG'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.
- 4.7.10 TSG will have no liability under these Terms or otherwise to the Customer arising out of:
- 4.7.10.1 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 system software, application software, data files and other documentation;
- 4.7.10.2 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 TSG in accordance with these Terms or any other reason;

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- 4.7.10.3 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);
- 4.7.10.4 and if any damage to any of the program or data files of the Customer occurs then TSG'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 TSG will charge the Customer for the cost of such assistance at TSG's then current rates.

4.7.11 The Customer warrants to TSG that none of its employees nor the employees of any other party will become employees of TSG by reason of the provision of the services by TSG under these Terms, the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("the Regulations") or otherwise. The Customer will repay to TSG any costs, expenses or other sums for which TSG is or may be liable by reason of the applicable or alleged application of the Regulations in relation to provision of such services by TSG including (without limitation) any compensation or damages which TSG pays to any such person.

4.8 Warranties

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

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

4.10 Performance

4.10.1 TSG 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 TSG in which event TSG 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 TSG may cancel this Contract (or any part thereof) without liability to the Customer.

4.11 Sub-Contracts

4.11.1 TSG may assign, sub-contract or otherwise transfer the benefit of, and/or its obligations under this Contract to any person at any time. TSG is a member of a group of companies and accordingly TSG may perform any of its obligations or exercise any of its rights under this Contract through any member of its group.

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 TSG and on such terms as TSG 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 TSG may without prejudice to any other remedy available to it at any time by giving written notice terminate or suspend this Contract or such part of it as TSG 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;

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- 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 TSG's Confidential Information and return to TSG all property of TSG under the Customer's possession or control and TSG will return or delete any of the Customer's Confidential Information and return to the Customer all property of the Customer under TSG's possession or control.
- 4.12.3 On termination of the Contract any licence to use software granted by TSG will immediately terminate and the Customer will return to TSG 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 TSG 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 TSG 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 TSG's written consent and on terms that the Customer will indemnify TSG in full against all loss (including loss of profit) costs, charges and expenses incurred by TSG as a result of such termination;
 - 4.12.4.2 in respect of SystemCare if the termination occurs prior to the end of the Initial Term or any Renewal Period, TSG 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 TSG has reasonably incurred in equipping itself to deliver SystemCare and which have not been fully recovered by TSG from the 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 TSG's charges set out in the Proposal as well as any and all charges, 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 Each party will ensure that in the performance of its obligations under these Terms it will at all times comply with the Data Protection Act 1998.

- 4.13.2 The Customer consents to the processing by TSG of all the Customer's personal data (as the term 'personal data' is defined in the Data Protection Act 1998) for all purposes connected with these Terms.
- 4.13.3 The Customer acknowledges that any data transmitted over the Internet or through any other form of transmission including by telephony or other electronic means cannot be guaranteed to be free from the risk of interception even if transmitted in encrypted form and that TSG has no liability for the loss, corruption or interception of any such data.
- 4.14 **Non Solicitation**
- 4.14.1 The Customer acknowledges the investment made by TSG in the training of TSG's Personnel and the commercial interest which TSG has in retaining their services.
- 4.14.2 The Customer agrees that if any of the TSG Personnel who have provided all or any part of any services for or on behalf of TSG to the Customer within 6 months of leaving the employment or engagement of TSG accepts an Engagement with the Customer then the Customer will pay to TSG 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, the Proposal, Project Plan, Scope of Service and Definition 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

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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 TSG 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.

For and on behalf of **Technology Services Group Limited**

Signed:

Name:

Position:

Date:

For and on behalf of [XXXXXX]

Signed:

Name:

Position:

Date:

DEFINITIONS

In these terms and conditions, unless the context otherwise requires, the following words have the following meanings:

Agreement Start Date	The date set out in the Scope of Service
Acceptance Tests	The tests undertaken by the Customer to confirm the System complies in all material respects with the Functional Specification.
Call	Communication (including an email) received by TSG from the Customer reporting a defect or malfunction in the Equipment.
Charges	The sums payable by the Customer to TSG for SystemCare, as set out in the Scope of Service.

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Confidential Information	Any trade secrets or confidential or proprietary information of either party, including these Terms, but excluding any information: (a) in the public domain otherwise than by a breach of the Contract; (b) which, prior to disclosure, was already known by the recipient; (c) that the other party develops independently of or to any information that is disclosed to it under the provisions of the Contract; or (d) which is subsequently disclosed to the recipient by a third party at liberty to disclose it.
Contract	The contract between the Customer and TSG for the sale of Goods, Services and/or SystemCare in accordance with these Terms.
Customer	The person who accepts TSG's written quotation for the sale of the Goods, Services and/or the supply of SystemCare or whose written order in respect thereof is accepted by TSG.
Definition of Service	The document provided to the Customer by TSG setting out response times and support in relation to SystemCare as amended by TSG from time to time (to include any upgrades) and available on request.
Engagement	The employment, hire or other use, directly or indirectly and whether as an employee or on a self employed basis.
Equipment	All or part of the network, hardware, software and Third Party Software as specified or identified in the Scope of Service.
Functional Specification	The functional specification document detailing the System that is to be delivered.
Goods	The computer hardware, software and related equipment which TSG is to supply in accordance with these Terms.
Initial Term	The fixed period for which SystemCare is to be provided as specified in the Scope of Service.
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 rights, 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 applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
Installation Address	The address specified in the Scope of Service at which the Equipment is located or such other address as may be agreed in writing by TSG.

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Liability	Any liability arising by reason of any representation (unless fraudulent), or any breach of any implied warranty, conditions or other term or any duty at common law, or under any statute, or under any express term of this Contract.
Loss	In relation to the Customer means loss of profit (or any other loss), damages, costs or other compensation and any legal or other expenses awarded against or incurred by or paid or agreed to be paid in settlement of any claim by the Customer, howsoever arising and whether by reason of negligence of TSG, its employees, its agents or otherwise.
Normal working hours	09:00 to 17:30 Monday to Friday but excluding bank or statutory holidays.
Operating Platform	The complete configuration of hardware, ancillaries/accessories and operating system for an item of Equipment.
Personnel	Any employee, agent, consultant and/or sub-contractor of the party concerned.
Project Plan	The plan describing the Services and setting out the estimated timetable and responsibilities for the provision of the Services by TSG.
Project Milestone	A date by which a part of the Services are estimated to be completed, as set out in the Project Plan.
Proposal	The proposal to the Customer setting out TSG's understanding of the Customer's requirements.
Renewal Period	The period commencing after the Initial Term, as set out in an addendum to the Scope of Service, during which TSG will continue to provide SystemCare in accordance with the Scope of Service.
Services	The services to be provided by TSG as set out in the Proposal and/or Project Plan, together with any other services including but not limited to training and consultancy which TSG provides or agrees to provide to the Customer.
Scheduled Service Hours	The times during which TSG will endeavour to provide SystemCare as specified on the Definition of Service.
Scope of Service	The Schedule signed by the Customer setting out details of the Equipment and other information in respect of SystemCare.
SystemCare	The provision of a maintenance service for the Equipment together with proactive support visits as set out in the Scope of Service.
System Audit	Means an inspection of the Equipment or part thereof but does not include repair or replacement.
System	The configured computer program(s), network, documentation, data, diagrams, reports and specifications (including drafts) delivered as a result of the Services provided by TSG.

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Third Party Software	Software developed and licensed by a third party, for which TSG have agreed to provide support, as detailed in the Scope of Service.
TSG	Technology Services Group Limited (CRN 4816673) or such other group company as may be notified to the Customer from time to time.
User Acceptance Sign Off	A customer sign off sheet to be completed and signed by the Customer and delivered to TSG pursuant to clause 3.7.1.

Q11

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