



Master Services Agreement

QuikPlan Limited
59-60 High Street
Worcester
England
WR1 2QA
t. +44 (0)1905 424345
e. info@quikplan.co.uk
w. www.quikplan.co.uk

Summary of Master Services Agreement

Overview

- Full details of the Software we provide to you will be listed on your Order Form - [clause 1.1 – Software](#)

Licences, Software & Devices

- These terms apply to all your downloading and use of our Software. These terms also include a licence for your use on mobile devices ("Mobile Application User Licence") [clause 3](#)
- If we make updates to the Software available, you will need to apply these updates to continue to legally use our Software – [clause 3.3](#)
- If we provide you with any hardware devices – you are responsible for keeping them in good working order – [clause 3.6](#)

Users of the Software – What you need to do

- You must ensure that anyone who uses the Software ("Authorised Users") knows about and complies with these terms – [clause 4.6](#)

Your Obligations

- As the Customer under [clause 10](#) you need to :
 - Ensure that any users are properly and fully trained in the use of the Software – [10\(c\)](#); and
 - Ensure that any users use the Software in accordance with these terms because you are fully responsible for everything they do – [10\(d\)](#).
- We strongly recommend you read the [Customer Obligations](#) section before entering into this agreement.

Payment

- You agree to pay the fees monthly in advance by direct debit. Specific terms of payment (including the price) will be detailed on an Order Form – [clause 11.1](#)
- QuikPlan can increase the Fees twice per calendar year on 30 days notice to you – [clause 11.5](#)

Liability and Exclusions

- You will cover any damages QuikPlan suffer for any loss which is as a result of any of your user's misuse or use of Devices, Software, or any part of our Services – [clause 14.1](#)
- Liability is capped at 6 months of Fees paid prior to any claim date – [clause 15.4](#)
- You are advised to read the [Indemnity](#) and [Limitation of Liability](#) clauses with care and in full

Suspension of Services

- QuikPlan can suspend Services if you breach the agreement or if we are required to by law – [clause 16.1](#)

Ending the Agreement

- You can terminate the agreement on giving us at least 30 days notice. Payment will be due to the end of the billing period on which the notice expires - [clause 17.1a](#)
- QuikPlan can terminate this agreement if you breach it and you fail to remedy it within 30 days - [clause 17.2](#)

After the end of the Agreement

- All rights and licences for you to use the Software cease on termination – [clause 17.4\(a\)](#)
- You must immediately return all equipment given to you – [clause 17.4\(b\)](#)
- QuikPlan will delete any of your data we hold unless you tell us otherwise - [clause 17.4\(c\)](#)

Giving notice under this Agreement

- All correspondence and any notice given under this Agreement must be in writing and sent by either fax, post (first class or recorded delivery), or delivered by hand - [clause 25.1](#)

This summary is in **no way intended** to replace or supplement the Master Services Agreement. Customers are advised to read the Master Services Agreement **in full** before entering into this Agreement.

In the event of a conflict between this Summary and the Master Services Agreement, the **Master Services Agreement will prevail.**

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Additional Services: those additional services provided to the Customer in accordance with Clause 6 including any Support Services required by the Customer.

Authorised Users: those employees of the Customer who are authorised to use the Software, Services and the Instruction Documents, in accordance with this Agreement. Unless otherwise agreed, Authorised Users shall be all employees of the Customer.

Business Day: any day which is not a Saturday, Sunday or public holiday in the UK.

Commencement Date: the date of signature of the Order Form.

Customer Data: the data inputted by the Customer, Authorised Users or QuikPlan on the Customer's behalf for the purpose of using the Software and/or Services or facilitating the Customer's use of the Software and/or Services.

Customer Operating Environment: means the information technology infrastructure pertinent to the supply and operation of the Devices, Software and/or Services.

Device(s): a mobile computing device used by the Customer to access the Software and/or the Services including the Recommended Device.

Fees: the fees payable by the Customer to QuikPlan for the Software and Services or any Additional Services, as set out in the Order Form.

Instruction Documents: the documents made available to the Customer by QuikPlan from time to time which sets out the user instructions for the Software and/or the Services to be provided as detailed in the Order Form.

Mobile Application Licence: means the licence agreement for the QuikPlan Mobile Application described in clause 3 of this Agreement.

Mobile Application Users: means Authorised Users of the QuikPlan Mobile Application.

Normal Business Hours: ~~9.00-30~~ a9.00 am to 5.00 pm GMT, each Business Day or as otherwise detailed in the Order Form.

Order Form: the order form that lists the Software, Services, Authorised Users and the related fees, incorporating this Agreement.

QuikPlan: means QuikPlan Limited, a company registered in England and Wales with company number 05307104, whose registered office is at 59 – 60 High Street, Worcester, England WR1 2QA

QuikPlan Mobile Application: the QuikPlan mobile application software provided by QuikPlan under this Agreement and further detailed in the Order Form.

Recommended Device: the device recommended by QuikPlan and issued by our Telecommunications Business Partner to you.

Services: the Services to be provided by QuikPlan to the Customer and its Authorised Users under this Agreement including the provision of access to the Software and any Support Services to be provided or any Additional Services as further described in the Order Form

Software: the online and off-line software applications, including the QuikPlan Mobile Application provided by QuikPlan as part of the Software and the Services and as further detailed in the Order Form.

Specification: any specification for the Services as set out in the Order Form.

Support Services: support services or other support or training services requested by the Customer to be provided or performed by QuikPlan with respect to the Software and the Services under this Agreement and as further detailed in Clause 7.

Telecommunications Business Partner (TBP): QuikPlan's third party approved provider of Devices as notified to the Customer from time to time in an Order Form.

Term: the duration of this Agreement.

2. BASIS OF USING THE SERVICES

2.1 QuikPlan shall provide the Software and the Services to the Customer and its Authorised Users in accordance with the terms and conditions of this Agreement.

2.2 The Customer acknowledges and agrees that any part of Software or the Services may be amended from time to time during the term of this Agreement, provided that where any such changes substantially adversely affect the Customer's use of the Software or the Services, QuikPlan will endeavour to give the Customer reasonable notice of such change.

2.3 The Customer may use the Software for the number of Authorised Users and on the number of mobile computing devices ("Devices") for which the Customer has purchased a Mobile Application User Licence (and as amended from time to time on agreement between the parties).

3. MOBILE APPLICATION LICENCE AND QUIKTRACK TERMS OF USE

The Customer acknowledges and agrees that by downloading, installing or otherwise accessing the Software it agrees to be bound by the terms and conditions of the Mobile Application User Licence.

In consideration of the Customer paying for a Mobile Application User Licence, QuikPlan grant the Customer a non-exclusive, non-transferable licence to: (a) install and use the Software for its internal business purposes only on a Device; (b) make a single copy of the Software for back-up, archival or security purposes, provided that this copy is used only when the original is not in use; (c) transfer the Software from one Device to another, provided that it is used on only one Device at any one time.

QuikTrack – aGPS/GPS location based services

If you have registered Devices for our QuikTrack product this clause applies to you. Any Devices on which QuikTrack is installed are tracked using GPS / aGPS tracking technology to facilitate and improve carer task planning.

Local environmental and geographical conditions, tall buildings, the quality of the connection between

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the Device and the GPS satellites, bad Internet access and the connection with the mobile phone network can, amongst other things, limit coverage, affect the accuracy of location information shown in QuikTrack and lead to information being delayed, corrupted or lost.

You acknowledge and accept that: **(a)** The location information provided by QuikTrack is a guide as to the location of the Device at the point of the last (genuine) update received from it, is not error-free, may not be available at all times, and may not be accurate; **(b)** QuikPlan shall not be liable or in breach of our obligations to you for any interruptions to QuikTrack as a result of any circumstances outside of our control; **(c)** your use of the location tracking feature and any information displayed as part of the QuikTrack service is solely at your own risk and we accept no responsibility or liability whatsoever in connection with any such use of, and/or reliance on, such location tracking information by you.

N.B The use of data and any actions taken by you as a result of information gathered by QuikTrack is governed under legislation in the UK including Data Protection and Employment Rights Legislation. We recommend that you seek legal guidance to ensure compliance with the law relating to your collection and use of data from QuikTrack.

Software Upgrades and Updates

- 3.1 QuikPlan may develop or issue upgraded versions of the Software from time to time. At its sole option, and for a fee to be determined, QuikPlan may make such upgrades available to the Customer.
- 3.2 The Customer undertakes to replace the current version of the Software with any updated or upgraded version or new release provided by QuikPlan under the terms of this Agreement immediately on receipt of such version or release.
- 3.3 Software upgrades and updates are installed entirely at the Customer's own risk and, subject to the terms and conditions of this Agreement, QuikPlan does not assume any responsibility for them, their performance, features, failures or the Customer's use of them.

Hardware Devices provided by TBP

- 3.4 QuikPlan may from time to time, at the Customer's request, facilitate the placing of orders for Devices between the Customer and a third party supplier and/or manufacturer. The Customer's use of any Devices is governed by the terms of their agreement with the provider of those Devices, and its warranties. Use of Devices is entirely at the Customer's sole risk. The Customer acknowledges that QuikPlan gives no warranty and has no liability in respect of the Devices, their performance, features or failures and QuikPlan hereby disclaims all such liability to the maximum extent allowed by law.

- 3.5 In respect to its use of Devices, the Customer agrees to: (a) at its own expense and at all times keep Devices in good repair, condition and working order, properly serviced and maintained, and make no alternation or remove any existing components of the Device; and, (b) use Devices in a skilful and proper manner and in accordance with any operating instructions and/or guidelines issued for them by QuikPlan and or the manufacturer and to ensure that the Devices are only used by properly skilled and trained personnel.

- 3.6 QuikPlan does not offer maintenance or support services for Devices. QuikPlan will provide a single point of contact between the Customer, TBP and any third party manufacturer where Devices are provided to you by QuikPlan or TBP. Support and maintenance services provided by TBP and any third party manufacturer will be governed by the terms of your agreement with that third party for maintenance and support services. QuikPlan shall not be responsible in any way for any acts or omissions of such third parties, disclaims all liability for, and makes no representation or warranty that any service requests or any Support Services dependent on a response from a third party shall be fixed or responded to within a specified period of time.

- 3.7 In order to ensure maximum functionality of the QuikPlan Mobile Application, QuikPlan recommends that Customers use the Recommended Device. QuikPlan makes no guarantees that the Software will be operable with any Devices not approved by QuikPlan. For the avoidance of doubt, the act of facilitating the placing of orders for Devices by the Customer with third party providers does not, constitute approval by QuikPlan of any such Devices ordered by the Customer. All Devices whether provided by QuikPlan, TBP or by the Customer must be registered with QuikPlan before use.

- 3.8 **WARNING The operating of the Software requires user attention. Diverting attention away from the road when driving can cause an accident. QuikPlan make no representations, warranties or other determinations that ANY use of the Software is legal, safe, or in any manner intended for use while driving or otherwise operating a motor vehicle.**

Internet Access on Devices

- 3.9 In order to access the entire functionality of the Software, the Customer must ensure it has full internet access through a GPRS, 3G or WiFi connected Device. All traffic charges or access charges occurring due to the use of the Software are subject to the normal terms of the Customer's mobile network operator. QuikPlan is in no way responsible for the operation or failure of operation or availability of or access to any internet services resulting in the Customer being unable to use the Devices, Software and/or Services.

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Third Party Software

3.10 QuikPlan may from time to time supply the Customer with third party products and software. Where licences for third party products are required for the Customer's use of the Software the Customer will be responsible for entering into and complying with the terms of those licences. QuikPlan makes no representation or warranty whatsoever regarding such products and/or services. The Customer's use of any third party products and/or services is governed by the terms of the agreement with the provider of those products and/or services, and its warranties. Use of third party equipment or software is at the Customer's sole risk. Unless otherwise provided for by written agreement between the parties, QuikPlan is not responsible in any way for any third party equipment, services or product's performance, features or failures.

Warranty for Mobile Application

3.11 Subject to the limitations and exclusions of liability below, QuikPlan warrants; that the Software will, during the Warranty Period (30 days), when properly used on the recommended hardware configuration, perform substantially in accordance with the functions described in the Instruction Documents provided with it. Unless otherwise detailed on the Order Form QuikPlan does not provide any warranty in respect to the operability of the Software on Customer owned Devices not recommended by or provided by QuikPlan.

3.12 The warranty above is void if the failure of the Software is the result of: any modification, variation, or addition (not performed by QuikPlan); (ii) or caused by accident, abuse, corruption or incorrect use of the Software or any Device, including use of the Software in contravention of the terms of this Licence or any Device or equipment in contravention with the terms of any manufacturer's guidelines. (iii) use of the Software with equipment or other Software which is not supplied or supported by QuikPlan (iv) improper, inadequate or unauthorised installation, maintenance or storage.

3.13 If the Software does not perform according to the above warranty, the Customer's sole exclusive remedy will be for QuikPlan to either, at its sole option, replace the Software or refund the Mobile Application Licence Fee paid for the Software by the Customer.

3.14 QuikPlan makes no representation or warranty with respect to the compatibility of the Software with any Device or any other existing Customer software or Customer data of any kind and QuikPlan will not be responsible in any way for any loss, corruption, modification or inaccessibility of any Customer data, applications or other software resulting from the installation or use of the Software on any Device or the Customers Operating Environment.

4. AUTHORISED USERS

4.1 Subject to the Customer paying the appropriate Fees for Authorised Users to QuikPlan, the restrictions set out in this Clause 4 and the other terms and conditions of this Agreement, QuikPlan hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Software, Services and the Instruction Documents during the Term solely for the Customer's internal business operations.

4.2 In relation to the Authorised Users, there shall be no maximum number of Authorised Users authorised to access and use the Software and/or Services and the Instruction Documents, however Authorised Users must be employees and/or agents acting on behalf of the Customer and in no circumstances should the Customer permit access to the Software and/or the Services to any third party not providing services to the Customer or working on its behalf. Each Authorised User shall keep a secure password for their use of the Services and Instruction Documents, and that each Authorised User shall keep their password confidential.

4.3 The Customer shall not access, store, distribute or transmit any viruses or any material during the course of its use of the Software or the Services that: (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (b) facilitates illegal activity; (c) depicts sexually explicit images; (d) promotes unlawful violence; (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or (f) causes damage or injury to any person or property; and QuikPlan reserves the right, without liability to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

4.4 The Customer shall not: (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement, attempt to: (i) use, copy, modify, duplicate, adapt, vary or create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software, Services and/or the Instruction Documents (as applicable) in any form or media or by any means; or (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software or the Services; or (b) access all or any part of the Software or the Services and the Instruction Documents in order to build a product or service which competes with the Software and/or the Services; or (c) use the Software, Services and/or Instruction Documents to provide services to third parties who are not Authorised Users; or (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software, Services and/or

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the Instruction Documents available to any third party except the Authorised Users, or (e) attempt to obtain, or assist third parties in obtaining, access to the Software, Services and/or the Instruction Documents, other than as provided under this Clause 4.

- 4.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software, Services and/or the Instruction Documents and, in the event of any such unauthorised access or use, promptly notify QuikPlan. The Customer is solely responsible and liable for the use of the Services by its Authorised Users. Subject to clause 15.3 and to the extent permissible by law, QuikPlan will not be liable for any loss that the Customer, an Authorised User or any third party may incur as a result of any use or misuse of any username or password or of any part of the Software or Services, whether with or without the Customer's knowledge.
- 4.6 The Customer shall ensure that any Authorised Users to whom it makes the Software and/or the Services available are aware of and comply with the terms and conditions of this Agreement and ensure that any Authorised Users who access the Software and the Services are aware of and accept the terms and conditions of the Mobile Application User Licence before using the Software or the Services.

5. PROVISION OF THE SERVICES

- 5.1 QuikPlan shall, during the Term, provide the Services and make available the Instruction Documents and Technical Support to the Customer as detailed on the Order Form on and subject to the terms of this Agreement.
- 5.2 QuikPlan shall use commercially reasonable endeavours to make access to the hosted services available 24 hours a day, seven days a week, except for scheduled maintenance, provided that QuikPlan will give the Customer reasonable advance notice and use all reasonable endeavours to minimise any disruption to the Customer's use of the Services.
- 5.3 If requested by the Customer, and subject to the Customer's agreement to pay the appropriate additional Fees as set out in QuikPlan's then current price list, QuikPlan will provide the Support Services to the Customer during Normal Business Hours.

6. ADDITIONAL SERVICES

- 6.1 Subject to the payment of the appropriate Fees and the terms of this Agreement, QuikPlan shall provide Additional Services in accordance with any request made by the Customer from time to time and agreed in a separate Order Form.

7. UNLIMITED SUPPORT CONTRACT

- 7.1 QuikPlan undertakes to provide remote interactive support and training to Customers, subject to the Customer's payment of additional Fees as displayed on the QuikPlan website from time to time

("Technical Support") and as otherwise agreed in a support schedule where attached to this Agreement or detailed in the Order Form. Where Customer owned Devices are used, unless otherwise detailed in the Order Form, no remote support for such Devices will be provided.

- 7.2 QuikPlan shall provide Technical Support between the hours of 9:00 am and 5:00 pm on Business Days. Out of hours support shall be provided between 5:00 pm and 9:00 pm for emergencies only. On any other day other than a Business Day, except bank holidays, Technical Support shall be provided between the hours of 10.00 am and 5.00 pm. QuikPlan shall operate a telephone answering service for Customers to submit support requests outside of the hours stipulated in this clause 7.2. QuikPlan shall be under no obligation to respond to support requests submitted by leaving such request on the telephone answering service until Normal Business Hours resume. Further information about our support can be found at <http://www.quikplan.co.uk/unlimited-support-contract>. Onsite training is provided by our TBP, for more information, please contact us at support@quikplan.co.uk

8. CUSTOMER DATA

- 8.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 8.2 By submitting any data or material to the Services, the Customer agrees to grant QuikPlan an irrevocable, royalty free, worldwide, non-exclusive perpetual licence to use such material or data in the provision of the Services to the Customer and/or in relation to the provision of the Services generally to QuikPlan's customers or any associated third party.
- 8.3 QuikPlan shall follow its archiving procedures for Customer Data as set out in the Order Form. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for QuikPlan to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by QuikPlan. QuikPlan shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by QuikPlan to perform services related to Customer Data maintenance and back-up).
- 8.4 If QuikPlan processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the data controller and QuikPlan shall be a data processor and in any such case: (a) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services

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and QuikPlan's other obligations under this Agreement; (b) the Customer shall ensure that they are entitled to transfer the relevant personal data to QuikPlan so that QuikPlan may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf; (c) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer (including transfer outside of the EEA) as required by all applicable data protection legislation; (d) QuikPlan shall process the personal data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time; and (e) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

9. QUIKPLAN'S OBLIGATIONS

- 9.1 QuikPlan undertakes that the Services will be performed substantially in accordance with the Instruction Documents and with reasonable skill and care and that the Software will conform substantially in accordance with the Specification where used on Recommended Devices or hardware provided by QuikPlan. Please refer to our unlimited support contract as detailed in clause 7 for further details. Where Software and Devices, support and training is provided by TBP, QuikPlan's only obligation and sole warranty to the Customer is to use commercially reasonable endeavours to make access to the hosted services available.
- 9.2 The undertaking at Clause 9.1 shall not apply to the extent of any non-conformance which is caused by use of the Services or Software contrary to QuikPlan's instructions, or modification or alteration of the Software or Services by any party other than QuikPlan or QuikPlan's duly authorised contractors or agents. If the Software or Services do not conform with the foregoing undertaking, QuikPlan will, at its expense, endeavour to correct any such non-conformance 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 set out in Clause 9.1. Notwithstanding the foregoing, QuikPlan:
- (a) does not warrant that the Customer's use of the Software or Services will be uninterrupted, error-free or completely secure; nor that the Software, Services, the Instruction Documents and/or the information or data obtained by the Customer through the Software or Services will meet the Customer's requirements;
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet and any Devices,

and the Customer acknowledges that the Software, Devices, Services and the Instruction Documents may be subject to limitations, delays and other problems inherent in the use of such communications facilities;

- (c) is not responsible for unauthorised access to Customer Data or the unauthorised use of the Devices, Software or Services unless the unauthorised access or use results from QuikPlan's failure to meet its security obligations stated in this Agreement or otherwise stated in the Order Form. The Customer is responsible for the use of the Devices, Software or Services by any employee, Authorised User, or any person to whom the Customer has given access to the Devices, Software or Services, and any person who gains access to Customer Data or the Devices, Software or Services as a result of the Customer's failure to use reasonable security precautions, even if such use was not authorised by the Customer.

10. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) provide QuikPlan and TBP with: (i) all necessary co-operation in relation to this Agreement; and (ii) all necessary access to such information as may be required by QuikPlan or TBP; in order to render the Services and provide the Software, including but not limited to Customer Data, security access information and configuration services;
- (b) comply with all applicable laws and regulations with respect to its activities under this Agreement;
- (c) ensure that the Authorised Users use the Software and Services and the Instruction Documents in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- (d) ensure that Authorised Users are properly and fully trained in the use and operation of the Software, Services and any Devices before using the Devices and/or Software and/or Services. Additional training required can be provided by Quikplan.
- (e) only allow Authorised Users who have been issued with a username and password to access the Services and undertakes to take all necessary steps to prevent access to the Devices, Services or Software by any person except Authorised Users unless otherwise permitted by this Agreement.
- (f) To keep all copies of the Software secure and to maintain accurate and up to date records of the number and locations of all copies of the Software.
- (g) obtain and shall maintain all necessary licences, consents, and permissions necessary for QuikPlan, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
- (h) ensure that its Customer Operating Environment and any Devices comply with the relevant specifications provided by QuikPlan from time to time;

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- (i) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems and Devices to QuikPlan's data centres and Services, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Devices, network connections or telecommunications links or caused by the internet; and
- (j) Use reasonable security precautions in connection with its use of the Services. The Customer is responsible for taking all reasonable steps to mitigate the risks inherent in the provision of the Services, including data loss.

11. CHARGES AND PAYMENT

- 11.1 The Customer shall pay the Fees to QuikPlan for the Software and the Services in accordance with this Clause 11 and subject to any other payment terms detailed in any Order Form or as otherwise agreed between the parties. Fees will be due and payable monthly in advance by direct debit. Subsequent monthly payments shall be taken by direct debit each month, on or around the date that the first payment for Fees is taken by QuikPlan (the "**Direct Debit Date**").
- 11.2 QuikPlan will send the Customer an invoice for any Additional Services received by the Customer either as soon as they have been provided or at the end of the month in which they were provided.
- 11.3 If QuikPlan has not received payment within 7 days after the due date for any Fees due, and without prejudice to any other rights and remedies of QuikPlan: (a) QuikPlan may, without liability to the Customer, on at least 4 days notice, disable the Customer's or any Authorised Users' password, account and access to all or part of the Services or the Software and QuikPlan shall be under no obligation to provide any or all of the Services or Software while the invoice(s) concerned, any interest, administrative and legal costs of collecting payment, and any further sums payable, remain unpaid; and (b) interest shall accrue on such due amounts at an annual rate equal to 2% over the then current base lending rate of QuikPlan's bankers in the UK at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 11.4 All amounts and fees stated or referred to in this Agreement: (a) shall be payable in the currency in the Order Form; (b) are non-cancellable and non-refundable; (c) are exclusive of value added tax, or any other relevant local taxes or tariffs which, where applicable, will be charged and added to QuikPlan's invoice(s) at the appropriate rate.
- 11.5 QuikPlan shall be entitled to increase the Fees twice per calendar year upon 30 days' prior notice to the Customer.

12. PROPRIETARY RIGHTS

- 12.1 The Customer acknowledges and agrees that QuikPlan and/or its licensors own all intellectual property rights in the Software, Services and the Instruction Documents. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, Services or the Instruction Documents.
- 12.2 QuikPlan confirms that it has all the rights in relation to the Software, Services and the Instruction Documents that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

13. CONFIDENTIALITY

- 13.1 Each party may be given access to confidential information from the other party in order to perform its obligations under this Agreement ("Confidential Information"). A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 13.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 13.3 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 employees or agents in breach of the terms of this Agreement.
- 13.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 13.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute QuikPlan's Confidential Information. QuikPlan acknowledges that the Customer Data is the Confidential Information of the Customer.
- 13.6 This Clause 13 shall survive termination of this Agreement, however arising, and for three years thereafter.

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14. INDEMNITY

14.1 The Customer shall defend, indemnify and hold harmless QuikPlan, its partners from time to time, its employees and agents from and against any claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's and or Authorised Users' use or misuse of the Devices, Software, Services and/or Instruction Documents, provided that:

- (a) the Customer is given prompt notice of any such claim;
- (b) QuikPlan provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (c) the Customer is given sole authority to defend or settle the claim.

14.2 QuikPlan shall, subject to Clause 14.5, defend the Customer, its officers, directors and employees against any claim that the Software, Services or the Instruction Documents infringe any United Kingdom patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, except where such claim relates in any way to the Devices or the Software's operation with the Devices and provided that:

- (a) QuikPlan is given prompt notice of any such claim;
- (b) the Customer provides reasonable co-operation to QuikPlan in the defence and settlement of such claim, at QuikPlan's expense; and
- (c) QuikPlan is given sole authority to defend or settle the claim.

14.3 In the defence or settlement of any claim, QuikPlan may procure the right for the Customer to continue using the Software or the Services, replace or modify the Software or the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

14.4 In no event shall QuikPlan, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- (a) a modification of the Software, Services or the Instruction Documents by anyone other than QuikPlan; or
- (b) the Customer's use of the Software, Services or the Instruction Documents in a manner contrary to the instructions given to the Customer by QuikPlan; or
- (c) the Customer's use of the Software, Services or the Instruction Documents after notice of the alleged or actual infringement from QuikPlan or any appropriate authority.

14.5 The foregoing states the Customer's sole and exclusive rights and remedies, and QuikPlan's

(including QuikPlan's employees, agents and sub-contractors) entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

15. LIMITATION OF LIABILITY

15.1 Subject to the provisions of Clause 14 but without prejudice to QuikPlan's right to Fees for the Services, including any early termination fee (if applicable), this Clause 15 sets out the entire financial liability of QuikPlan (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of this Agreement;
- (b) any use made by the Customer of the Devices, Software, Services and the Instruction Documents or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

15.2 Except as expressly and specifically provided in this Agreement:

- (a) the Customer assumes sole responsibility and risk for results obtained from the use of the Software, Services and the Instruction Documents by the Customer, their use on any Devices and for conclusions drawn from such use. QuikPlan shall have no liability for any damage caused by errors or omissions in any information, instructions, data or scripts provided to QuikPlan by the Customer in connection with the Devices, Software or Services, failure to access the Software or Services, or any actions taken by QuikPlan at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
- (c) the Software, Services and the Instruction Documents are provided to the Customer on an "as is" basis.

15.3 Nothing in this Agreement excludes the liability of QuikPlan:

- (a) for death or personal injury caused by QuikPlan's negligence; or
- (b) for fraud or fraudulent misrepresentation.

15.4 Subject to Clause 15.2 and Clause 15.3:

- (a) QuikPlan shall not be liable (whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any injury, death, damage, charges or expenses or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, wasted expenditure, loss of business opportunity, depletion of goodwill and/or similar losses or loss or corruption of data or information) arising under this Agreement (and QuikPlan hereby

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recommends that the Customer considers taking insurance to cover any such injury, death, damage or loss); and

- (b) QuikPlan's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Fees paid for the Software and the Services during the 6 months immediately preceding the date on which the claim arose.

15.5 QuikPlan agrees to have valid insurance in place for its own legal liability to the Customer under this Agreement up to the limits set out in this Clause 15. As the fees for the Services properly reflect the delineation of risk between the parties, each party agrees to ensure that it will be responsible for making its own arrangements for the insurance of any loss in excess of its accepted legal liability as necessary.

16. SUSPENSION OF SERVICES

16.1 QuikPlan may suspend Services without liability if:

- (a) QuikPlan reasonably believe that the Software and/or the Services are being used in breach of the Agreement and Customer does not remedy the failure within thirty (30) days of QuikPlan's written notice to the Customer describing the breach;
- (b) the Customer does not co-operate with QuikPlan's reasonable investigation of any suspected breach of the Agreement;
- (c) there is an attack on the Services or the Services are accessed by or manipulated by a third party without QuikPlan's consent;
- (d) QuikPlan is required by law to suspend the Services or the Customer's access to the Software or the Services;
- (e) there is another event for which QuikPlan reasonably believe that suspension of the Services is necessary to protect its network, system, the Services or other customers; or
- (f) the Customer's payment of any invoiced amount is overdue, and the Customer does not pay the overdue amount within 3 days of written notice from QuikPlan.

16.2 QuikPlan will give the Customer advance notice of a suspension under this Clause 16 of at least twelve (12) Business Hours, unless QuikPlan determine in its reasonable commercial judgement that a suspension on shorter or contemporaneous notice is necessary to protect QuikPlan or its customers from imminent and significant operational or security risk.

16.3 If the Customer's systems or services are compromised, the Customer must address the vulnerability and demonstrate to QuikPlan's satisfaction that it has appropriately addressed and/or fixed such vulnerability prior to QuikPlan

resuming the Customer's access to the Services and/or the Software.

17. TERM AND TERMINATION

17.1 This Agreement shall commence on the Commencement Date and shall continue thereafter unless:

- (a) the Customer terminates this Agreement on giving at least 30 days written notice to QuikPlan, such notice not to expire after the next Direct Debit Date (for the avoidance of doubt on cancellation of an account, payment is to be made up to the end of the billing period you are in after the 30 day notice period has expired, no refunds will be given); or
- (b) otherwise terminated in accordance with the provisions of this Agreement;

17.2 Without affecting any other rights that it may be entitled to, QuikPlan may give notice in writing to the Customer terminating this Agreement immediately if: (a) the Customer commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days of being notified in writing to do so; or (b) the Customer has a receiver or administrative receiver appointed over it or over any part of its business or assets or pass a resolution for winding up (except for the purposes of a genuine scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, or becomes subject to an administration order or enter into any voluntary arrangement with its creditors, or it ceases or threatens to cease to carry on business.

17.3 Without affecting any other rights that it may be entitled to, QuikPlan may terminate the Agreement for breach if: (a) Payment of any invoiced amount is overdue and the Customer does not pay the overdue amount within (4) business days of a written notice from QuikPlan; (b) The Customer breaches the acceptable use policy outlined at Clause 4.3.

17.4 On termination of this Agreement for any reason:

- (a) All rights and licences granted to the Customer under this Agreement including any in relation to the Software or the Services shall immediately terminate;
- (b) the Customer shall return and make no further use of any equipment, property, Instruction Documents and other items (and all copies of them) belonging to the other party or any third party;
- (c) QuikPlan may destroy or otherwise dispose of any of the Customer Data in its possession unless QuikPlan receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. QuikPlan shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written

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request, provided that the Customer has, at that time, paid all Fees and charges outstanding at and resulting from termination (whether or not due at the date of termination) including any Fees payable in connection with the supply of requested back-ups as further described in QuikPlan's then current price list. The Customer shall pay all reasonable expenses incurred by QuikPlan in returning or disposing of Customer Data; and

- (d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination shall not be affected or prejudiced.

17.5 On termination by either party other than under Clause 17.2 or 17.3, QuikPlan will continue to provide Services to the Customer at its request for up to 6 months until it has migrated the Customer Data to another supplier and QuikPlan will do what is reasonable to assist the Customer in such migration, provided that the Customer pays QuikPlan the Fees due for such Services monthly in advance in accordance with QuikPlan's charges then in force. The provisions of this Agreement will remain in effect until completion of the migration. QuikPlan will not be liable for any third party costs incurred by the Customer in connection with the migration.

18. FORCE MAJEURE

QuikPlan shall have no liability to the Customer 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, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of QuikPlan or any other party), failure of a utility service; transport; the Internet; power grid; or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of QuikPlan's or sub-contractors, or other events of a magnitude or type for which precautions are not generally taken in the industry, provided that the Customer is notified of such an event and its expected duration.

19. WAIVER

A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

20. SEVERANCE

If any provision (or part of a provision) of this Agreement is found by any court or administrative

body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

21. ENTIRE AGREEMENT

This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

22. ASSIGNMENT

The Customer shall not, without the prior written consent of QuikPlan, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. QuikPlan may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

23. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

24. THIRD PARTY RIGHTS

This agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

25. NOTICES

Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this Agreement.

A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day

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following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

26. GOVERNING LAW AND JURISDICTION

This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of England and Wales. The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).