



Master Services Agreement

QuikPlan Limited
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MASTER TERMS AND CONDITIONS

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 training services and text services, as further detailed in the Order Form but excluding Support Services.

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

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

Business Hours: 9.00 am to 5.00 pm GMT, each Business Day or as otherwise detailed in the Order Form.

Carrier: the relevant third party network service provider who supplies Mobile Telephony Services.

Carrier Mobile Contract: the contract between the Carrier and the Customer applicable to the supply of Mobile Telephony Services.

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

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

Customer System: means the Customer's information technology infrastructure, networks and systems pertinent to the use and operation of the Devices, Software and/or Subscription Services.

Data Protection Legislation: means (i) the Data Protection Act 1998 (DPA) as amended or updated from time to time unless and until repealed, and (ii) with effect from 25th May 2018 (or such other date as the GDPR becomes effective in the UK) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and then (iii) any successor legislation to the GDPR or DPA.

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

Device Contract: the agreement between the Device Supplier and the Customer for the supply of Devices.

Device Supplier: the supplier of Devices to the Customer including a Mobile Partner or other third party but excluding QuikPlan.

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

Initial Subscription Term: the initial term of this Agreement 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 Subscription Services.

Mobile Application: the off-line QuikPlan mobile application software (installed and operated on Devices) provided by QuikPlan as part of the Subscription Services under this Agreement and further detailed in the Order Form.

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

Mobile Partner: QuikPlan's approved mobile partner for the provision of Devices and introduction of Carriers to provide Mobile Telephony Services as notified to the Customer from time to time.

On-line Application: the QuikPlan on-line application software provided by QuikPlan as part of the Subscription Services under this Agreement and further 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 South Wing Guildhall, High Street, Worcester, England, WR1 2EY

QuikTrack: the QuikPlan Quiktrack application which may be provided by QuikPlan for use with the Mobile Application under this Agreement.

Recommended Device: the device recommended by QuikPlan for use in connection with the Mobile Application.

Renewal Period: the renewal period of this Agreement as set out in the Order Form.

Returns Policy: means QuikPlan's returns policy in respect of Devices which can be found at <https://quikplan.co.uk/returns> or such other URL notified to the Customer from time to time as may be updated from time to time by QuikPlan.

Service Level: the level of Support Services requested by the Customer and specified in the Order Form.

Services: the Subscription Services, the Support Services and/or the Additional Services.

SLA: the support and services level agreement which can be found at <https://quikplan.co.uk/unlimited-support-contract> or such other URL notified to the Customer from time to time, as may be updated from time to time by QuikPlan.

Software: the online and off-line software applications, including the On-line Application and

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Mobile Application provided by QuikPlan under this Agreement as further detailed in the Order Form.

Subscription Term: the Initial Subscription Term together with any subsequent Renewal Periods.

Subscription Services: the subscription services in connection with the provision of and access to the Software to be provided by QuikPlan to the Customer under this Agreement, as further detailed in the Order Form.

Support Services: the support services requested by the Customer to be provided or performed by QuikPlan with respect to the Software and the Subscription Services under this Agreement and as further detailed in clause 5.

Term: the duration of this Agreement.

Third Party Provider: a third party service provider used or engaged by QuikPlan from time to time to provide Services on behalf of QuikPlan, including such third party service provider identified in the Order Form.

Viruses: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices

User Subscriptions: the user subscriptions purchased by the Customer pursuant to this Agreement which entitle Authorised Users to access and use the Software, Subscriptions Services and the Instruction Documents in accordance with this Agreement.

Warranty Period: the period of 30 days from date of installation of the Mobile Application.

2. THE SUBSCRIPTION SERVICES

2.1 Subject to the purchase of User Subscriptions, payment of the Fees by the Customer, the restrictions set out in clause 3 and clause 4 and the Customer complying with its obligations under this Agreement, QuikPlan shall in accordance with the provisions of this Agreement grant the Customer a non-exclusive and non-transferable licence to allow its Authorised Users to (a) access and use the Subscription Services (including the Software which may be accessed via the Subscription Services) and (b) use the Instruction Documents in connection with the Subscription Services, for the duration of the Term and solely for the Customer's internal business purposes.

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

3. LICENCE TERMS AND OTHER TERMS OF USE

General Restrictions

3.1 The Customer shall not: (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties (but only to the extent permitted by such applicable law 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, Subscription 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 Subscription Services; (b) access all or any part of the Software or the Subscription Services and the Instruction Documents in order to build a product or service which competes with the Software and/or the Subscription Services; (c) use the Software, Subscription Services and/or Instruction Documents to provide services to third parties; (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software, Subscription Services and/or 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, Subscription Services and/or the Instruction Documents, other than as expressly provided under this Agreement.

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

3.3 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software, Subscription Services and/or the Instruction Documents and, in the event of any such

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unauthorised access or use, promptly notify QuikPlan.

Additional Mobile Application Terms

- 3.4 The Customer acknowledges and agrees that by downloading, installing or otherwise accessing the Mobile Application it agrees to be bound by the additional terms and conditions set out in this section.
- 3.5 In consideration of the Customer paying the Fees in respect of the provision of the Mobile Application, QuikPlan grant the Customer a non-exclusive, non-transferable licence to: (a) install and use the Mobile Application for its internal business purposes only on a Device; (b) make a single copy of the Mobile Application for back-up, archival or security purposes, provided that this copy is used only when the original is not in use; and (c) transfer the Mobile Application from one Device to another, provided that it is used on only one Device at any one time.
- 3.6 The Customer may use the Mobile Application for the number of Authorised Users and on the number of Devices for which the Customer has purchased Subscription Services from time to time.
- 3.7 **WARNING The operating of the Mobile Application 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 Mobile Application is legal, safe, or in any manner intended for use while driving or otherwise operating a motor vehicle.**
- 3.8 In order to access the entire functionality of the Mobile Application, 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 Carrier Mobile Contract. 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 Subscription Services
- 3.9 To use the Mobile application, the Customer will need: (a) to purchase Devices on which the Mobile Application will be installed and operate; and (b) enter into or have a subsisting Carrier Mobile Contract. QuikPlan do not provide Mobile Telephony Services but may from time to time, at the Customer's request, facilitate the placing of orders for a Carrier Mobile Contract with a Carrier. QuikPlan accepts no responsibility or liability in respect of the Carrier Mobile Contract or the Mobile Telephony Services. In particular, QuikPlan accepts no responsibility or liability in connection with: (a) any failure of the Carrier to provide network connection or capacity in connection with the Mobile Telephony Services (or any element thereof); (b) any failure of the Carrier to provide the Mobile Telephony Services (or any element thereof); or (c)

any breach of the Carrier Mobile Contract by the Carrier.

- 3.10 For the avoidance of doubt, the Carrier Mobile Contract governs the supply of Mobile Telephony Services to the Customer and is between the Customer and the relevant Carrier. The Carrier Mobile Contract does not govern the supply of Software and Subscription Services by QuikPlan to the Customer and is not coterminous with this Agreement. Notwithstanding that Mobile Telephony Services may be used by the Customer to facilitate use of the Software and Subscription Services QuikPlan supply to the Customer, termination or expiry of this Agreement shall not terminate the Carrier Mobile Contract and termination or expiry of the Carrier Mobile Contract shall not terminate this Agreement.

Additional QuikTrack Terms – aGPS/GPS location based service

- 3.11 If the Customer has registered Devices for QuikTrack, the Customer agrees to be bound by the additional terms and conditions set out in this section. Any Devices on which QuikTrack is installed are tracked using GPS / a GPS tracking technology to facilitate and improve carer task planning.
- 3.12 Local environmental and geographical conditions, tall buildings, the quality of the connection between 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.
- 3.13 The Customer acknowledges and accepts 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 its obligations to the Customer for any interruptions to QuikTrack as a result of any circumstances outside of QuikPlan's control; and (c) the Customer's use of the location tracking feature and any information displayed as part of the QuikTrack service is solely at the Customer's own risk and QuikPlan accepts no responsibility or liability whatsoever in connection with any such use of, and/or reliance on, such location tracking information by the Customer.
- 3.14 The use of data and any actions taken by the Customer as a result of information gathered by QuikTrack is governed under legislation in the UK including Data Protection and Employment Rights Legislation. QuikPlan recommends that the Customer seek legal guidance to ensure compliance with all applicable law relating to the Customer's collection and use of data from QuikTrack.

Software Upgrades and Updates

- 3.15 QuikPlan may develop or issue upgraded versions of the Mobile Application from time to time. At its

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sole option, and for a fee to be determined, QuikPlan may make such upgrades available to the Customer.

- 3.16 Where QuikPlan issues an updated version or new release of the Mobile Application as part of the Support Services, the Customer undertakes to replace the current version of the Mobile Application with the updated version or new release provided by QuikPlan under the terms of this Agreement immediately on receipt of such version or release.
- 3.17 Third Party 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 such Third Party Software upgrades and updates, their performance, features, failures or the Customer's use of them.

Third Party Software

- 3.18 QuikPlan may from time to time supply the Customer with third party products and software for use in connection with the Software or Subscription Services. Where licences for third party products or software 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 software. The Customer's use of any third party products and/or software is governed by the terms of the agreement with the provider of those products and/or software, and its warranties. Use of third party products 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 products or software or the third party product's or software's performance, features or failures.

Warranty for Mobile Application

- 3.19 Subject to the limitations and exclusions of liability below, QuikPlan warrants; that the Mobile Application will, during the Warranty Period, when properly used on the recommended hardware configuration, perform substantially in accordance with the functions described in the Instruction Documents when used on Recommended Devices or hardware provided by QuikPlan. Unless otherwise detailed on the Order Form, QuikPlan does not provide any warranty in respect to the operability of the Mobile Application on Customer owned Devices not recommended by or provided by QuikPlan.
- 3.20 The warranty above is void if the failure of the Mobile Application is the result of: (a) any modification, variation, or addition (not performed by QuikPlan); (b) caused by accident, abuse, corruption or incorrect use of the Mobile Application or any Device, including use of the Mobile Application in contravention of the terms of this Agreement or any Device or equipment in contravention with the terms of any manufacturer's guidelines; (c) use of the Mobile Application with

equipment or other software which is not supplied or supported by QuikPlan; or (d) improper, inadequate or unauthorised installation, maintenance or storage.

- 3.21 If the Mobile Application does not perform according to the above warranty, the Customer's sole and exclusive remedy will be for QuikPlan to either, at its sole option, replace the Mobile Application or refund the Mobile Application Licence Fee paid for the Mobile Application by the Customer.
- 3.22 QuikPlan makes no representation or warranty with respect to the compatibility of the Mobile Application 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 Customer's System.

4. USER SUBSCRIPTIONS AND AUTHORISED USERS

- 4.1 The initial User Subscriptions purchased by the Customer will be specified in the Order Form.
- 4.2 Subject to clause 4.3 and clause 4.4, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the original Order Form and QuikPlan shall grant access to the Subscription Services to such additional Authorised Users in accordance with the provisions of this Agreement.
- 4.3 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify QuikPlan in writing. QuikPlan shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld). Where QuikPlan approves the request, QuikPlan shall use reasonable endeavours to activate the additional User Subscriptions within 5 Business Days of its approval of the Customer's request.
- 4.4 If QuikPlan approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of the QuikPlan's invoice, pay to QuikPlan the relevant fees for such additional User Subscriptions and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by QuikPlan for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).
- 4.5 The Customer may not reduce the number of User Subscriptions purchased unless otherwise agreed by QuikPlan, and such agreement may be subject to such terms as QuikPlan may require.
- 4.6 In relation to the Authorised Users, the Customer undertakes: (a) the maximum number of Authorised Users that it authorises to access and use the

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Subscription Services shall not exceed the number of User Subscriptions it has purchased from time to time; (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Subscription Services; (c) it will not allow or suffer any User Subscriptions to be used by any person other than an Authorised User; (d) each Authorised User shall keep a secure password for their use of the Subscription Services and Instruction Documents, and that each Authorised User shall keep their password confidential; (e) it shall maintain a written, up to date list of current Authorised Users assigned a User Subscription and provide such list to the QuikPlan within 5 Business Days of the QuikPlan's written request at any time or times; and (f) it shall permit the QuikPlan to audit the Subscription Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business.

- 4.7 The Customer is solely responsible and liable for the use of the Software and Subscription Services by its Authorised Users. 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 Subscription Services, whether with or without the Customer's knowledge.
- 4.8 The Customer shall ensure that any Authorised Users to whom it makes the Software and/or the Subscription Services available are aware of and comply with the terms and conditions of this Agreement including the specific licence terms that are applicable to the Mobile Application before using the Software or the Subscription Services.

5. PROVISION OF THE SUBSCRIPTION AND SUPPORT SERVICES

- 5.1 QuikPlan shall, during the Term, provide the Subscription Services and make available the Instruction Documents 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 provide access to the on-line Subscription Services available 24 hours a day, seven days a week, except for scheduled maintenance and any unscheduled urgent 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 on-line Subscription Services.

- 5.3 QuikPlan will, as part of the Subscription Services and in consideration of the support Fees set out in the SLA, provide the Customer with the Support Services in accordance with the Service Level selected by the Customer as specified in the Order Form and in accordance with and subject to the terms of the SLA. QuikPlan may amend the SLA in its sole and absolute discretion from time to time. The Customer may purchase an enhanced Service Level on request and subject to paying the additional support fees.
- 5.4 Support Services are only provided in respect of the Software and Subscription Services. Support Services are not provided in connection with Devices, whether supplied by QuikPlan, a Mobile Partner or other person.
- 5.5 Support Services will be on the Basic Service Level unless otherwise specified in the Order Form.

6. ADDITIONAL SERVICES

Subject to the payment of the applicable Fees and the terms and conditions 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. DEVICES

- 7.1 QuikPlan may from time to time, at the Customer's request: (a) facilitate the placing of orders for Devices between the Customer and Mobile Partner; and/or (b) subject to payment of applicable Fees, supply Devices to the Customer subject to the terms and conditions of this Agreement.
- 7.2 If the Customer purchases Devices from a Device Supplier, the Customer's purchase and use of such Devices is governed by the terms of the relevant Device Contract and will have the benefit of the warranties contained in the relevant Device Contract. Use of such Devices is entirely at the Customer's sole risk. The Customer acknowledges that QuikPlan gives no warranty and has no responsibility or liability in respect of the Device Contract, such Devices or their performance, features or failures and QuikPlan hereby disclaims all such liability to the maximum extent permitted by law.
- 7.3 Where QuikPlan supply Devices, clauses 7.4 to clause 7.14 shall apply.
- 7.4 The Customer shall inspect the Devices as soon as reasonably possible on delivery. The Customer shall give notice in writing to QuikPlan within one Business Day of the date of delivery if it is alleged that there is any visible damage to the Device, or indication that the Device has otherwise been tampered with. If the Customer does not give such notice, the Devices shall be deemed in all respects to be in accordance with this Agreement and the Customer shall be deemed to have irrevocably and unconditionally accepted the Devices on delivery

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- and, save in respect of faulty Devices which shall be dealt with in accordance with clause 7.10 of this Agreement, the Customer shall not be entitled to raise any subsequent claim in relation thereto.
- 7.5 QuikPlan will at its sole discretion either replace free of charge or provide a credit note in respect of any Device proved to QuikPlan's satisfaction to have been damaged prior to delivery provided the Customer has given written notice to QuikPlan as provided above.
- 7.6 QuikPlan shall use all reasonable endeavours to deliver Devices in accordance with the specification supplied to the Customer by QuikPlan. However, QuikPlan's suppliers' policies are one of continuous development and consequently the specification of Devices may vary from time to time.
- 7.7 QuikPlan reserve the right in consultation with the Customer to supply different Devices from those ordered provided such replacement Devices are substantially similar in all material respects to those ordered.
- 7.8 QuikPlan shall use reasonable endeavours to ensure that all technical information and particulars of Devices and performance specifications and performance descriptions of Devices supplied by QuikPlan are as accurate as possible, but are not to be treated as binding or as forming part of this Agreement or part of any other agreement between the parties.
- 7.9 QuikPlan purchases Devices from manufacturers and/or Carriers with industry standard warranties. Unless otherwise agreed or specified in the Order Form, QuikPlan shall have no liability to the Customer for the quality or performance of the Devices and the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer or supplier to QuikPlan to the extent that such warranty or guarantee is assignable or the benefit of which is capable of being transferred or extended to the Customer.
- 7.10 Notwithstanding clause 7.9, QuikPlan will arrange the repair or replacement of Devices in accordance with the Returns Policy and the applicable manufacturer's warranty.
- 7.11 QuikPlan accept no responsibility or liability for loss or damage to Devices caused by the Customer or the Customer's representatives' acts or omissions, including any misuse, neglect, negligence or the acts or omission of a third party including any repair by a third party.
- 7.12 Risk in Devices QuikPlan supplies to the Customer will pass on delivery. Title in such Devices will pass once the Fees applicable to the Devices have been paid in full.
- 7.13 Until title passes to the Customer, the Customer shall: (a) hold the Devices separately from the Customer's own goods and hardware (including the Customer's System and those of any third party); (b) keep the Devices in good condition and working order (fair wear and tear excepted); and (c) keep the Devices properly stored, protected, insured and identified as the QuikPlan's property.
- 7.14 Until title passes to the Customer, the Customer's right to possess or use the Devices shall immediately cease if the Customer is subject to any of the events specified in clause 17.2(b) whereupon the Customer shall immediately deliver up the Devices, at its cost and expense, to QuikPlan. If the Customer fails to pay the Fees as indicated on the Order Form by the due date, QuikPlan reserves the right to repossess the Devices and the Customer shall deliver the Devices at its cost and expense, to QuikPlan or permit QuikPlan to collect the Devices as requested by QuikPlan on notice. If applicable the Customer hereby consents and grant QuikPlan an irrevocable licence to enter the Customer's premises during Business Hours to collect the Devices.
- 7.15 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, the Device Provider and/or the manufacturer and to ensure that the Devices are only used by properly skilled and trained personnel.
- 7.16 QuikPlan does not offer maintenance or support services for Devices (**Device Support Services**). Device Support Services may be available from a Device Supplier or the relevant third party manufacturer (**Device Support Provider**). If applicable, any Device Support Services will be governed by the terms of the Customer's agreement with that Device Support Provider for Device Support Services (**Device Support Contract**). QuikPlan accepts no responsibility or liability in respect of the Device Support Contract or the Device Support Services and shall not be responsible in any way for any acts or omissions of the Device Support Provider and disclaims all liability for Device Support Services and makes no representation or warranty that any service requests for any Support Services dependent on a response from a Device Support Provider shall be fixed or responded to within a specified period of time.
- 7.17 In order to ensure maximum functionality of the Mobile Application, QuikPlan recommends that Customers use a Recommended Device. QuikPlan makes no guarantees that the Mobile Application 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 Mobile Partner or other third party providers does not constitute approval by QuikPlan of any such Devices ordered by the Customer. All Devices whether provided by QuikPlan, a Mobile Partner, the Customer or other third party provider must be registered with QuikPlan before use in connection with the Software.

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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 Customer Data to QuikPlan when using the Software and the Subscription Services, the Customer grants to QuikPlan an irrevocable, royalty free, worldwide, non-exclusive perpetual licence to use such Customer Data in connection with the provision of the Services to the Customer, including the right to transfer data to other software applications integrated with the Software or Services.
- 8.3 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 subcontracted by QuikPlan to perform services related to Customer Data maintenance and back-up).
- 8.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 8.5 The parties acknowledge that: (a) if QuikPlan processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Customer is the data controller and QuikPlan is the data processor for the purposes of the Data Protection Legislation (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation); (b) the document at <https://quikplan.co.uk/dataprocess> (or such other URL notified to the Customer from time to time as may be updated from time to time by QuikPlan) sets out the scope, nature and purpose of processing by QuikPlan, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, **Personal Data**) and categories of data subject (as defined in the Data Protection Legislation, **Data Subject**); and (c) 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 and QuikPlan's other obligations under this Agreement.
- 8.6 Without prejudice to the generality of clause 8.4, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to QuikPlan for the duration and purposes of this Agreement so that QuikPlan may lawfully use, process and transfer the

Personal Data in accordance with this Agreement on the Customer's behalf.

- 8.7 Without prejudice to the generality of clause 8.4, QuikPlan shall, in relation to any Personal Data processed in connection with the performance by QuikPlan of its obligations under this Agreement: (a) process that Personal Data only on the written instructions of the Customer unless QuikPlan is required by the laws of any member of the European Union or by the laws of the European Union applicable to QuikPlan to process Personal Data (**Applicable Laws**). Where QuikPlan is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, QuikPlan shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit QuikPlan from so notifying the Customer; (b) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; (c) not transfer any Personal Data outside of the EEA unless the following conditions are fulfilled: (i) the Customer or QuikPlan has provided appropriate safeguards in relation to the transfer; (ii) the data subject has enforceable rights and effective legal remedies; (iii) QuikPlan complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and (iv) QuikPlan complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data; (c) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; (d) notify the Customer without undue delay on becoming aware of a Personal Data breach; (e) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of this Agreement unless required by Applicable Law to store the Personal Data; and (f) maintain complete and accurate records and information to demonstrate its compliance with this clause 8.
- 8.8 Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality,

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integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

8.9 The Customer consents to QuikPlan appointing its nominated subcontractor as a third-party processor of Personal Data under this Agreement, if QuikPlan requires to appoint such third-party processor to assist with its obligations under this Agreement. QuikPlan confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business or incorporating terms which are substantially similar to those set out in this clause 8. As between the Customer and QuikPlan, third-party processor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 8.9.

8.10 The parties acting reasonably and in good faith may revise this clause 8 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

8.11 **Texting Services.** Where the Customer uses individual texting services ("**Texting Services**") under this Agreement, the Customer shall be the Data Controller (as defined in the applicable Data Protection Legislation) in respect of all data, texts and communications that the Customer or its users upload, input, store, create, receive, send and/or otherwise use in or through the texting service ("**Texting Services Data**"). The Customer undertakes that it shall at all times have all required consents and licences from the other individuals in respect of such use of the Texting Services Data. The Customer shall comply with all applicable Data Protection Legislation and communications laws in respect of the Texting Services Data, and shall ensure its legality, reliability, integrity, accuracy and quality. To the extent that QuikPlan processes such Texting Services Data in QuikPlan the Software or as part of the Services, QuikPlan shall comply with its obligations set out in clauses 8.4 and 8.7. The Customer acknowledges that QuikPlan uses a third party texting services provider to provide the Texting Services. To the extent there is a failure or issue in, or caused by, the Texting Services and the Customer suffer any losses, QuikPlan shall use all reasonable endeavours to recover such losses from the third party Texting Services provider, and QuikPlan's liability for all such losses shall be limited to the amount it is able to recover from the third party Texting Services provider and then apportioned in respect of the Customer's losses.

9. QUIKPLAN'S OBLIGATIONS

9.1 QuikPlan undertakes that: (a) the Subscription Services will be performed substantially in accordance with the Instruction Documents and with reasonable skill and care; (b) QuikPlan will use commercially reasonable endeavours to provide access to and availability of the on-line Subscription Services in accordance with this Agreement and the Instruction Documents and (c) other Services will be performed with reasonable care and skill; and (d) QuikPlan has and will maintain all necessary licences, consents and permissions necessary for the performance of its obligations under this Agreement.

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, the Instruction Documents 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 (i) that the Customer's use of the Software or Services will be uninterrupted, error-free or completely secure; or (ii) 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; and (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 obligations stated in this Agreement, Instruction Documents or otherwise stated in the Order Form. The Customer is responsible for the use of the Devices, Software and/or Services by any employee, Authorised User, or any person to whom the Customer has given access to the Devices, Software and/or Services, and any person who gains access to Customer Data or the Devices, Software and/or Services as a result of the Customer's failure to implement and use reasonable back up and security precautions and protections in accordance with good industry

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practice, even if such use was not known to or authorised by the Customer.

10. CUSTOMER'S OBLIGATIONS

The Customer shall:

- 10.1 provide QuikPlan with: (a) all necessary co-operation in relation to this Agreement; and (b) all necessary access to such information and assistance as may be required by QuikPlan; in either case in order to render the Services and provide the Software, including but not limited to Customer Data, security access information and configuration services;
- 10.2 comply with all applicable laws and regulations with respect to its activities under this Agreement;
- 10.3 ensure that the Authorised Users use the Software and Subscription 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;
- 10.4 ensure that Authorised Users are properly and fully trained in the use and operation of the Software, Subscription Services and any Devices before using the Software, Services and/or Devices. Additional training required can be provided by QuikPlan, subject to the Customer being liable for additional Fees;
- 10.5 only allow Authorised Users who have been issued with a username and password to access the Subscription Services and undertakes to take all necessary steps to prevent access to the Devices, Subscription Services and/or Software by any person except Authorised Users unless otherwise permitted by this Agreement;
- 10.6 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;
- 10.7 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;
- 10.8 ensure that its Customer System and any Devices comply with the relevant requirements and specifications provided by QuikPlan from time to time;
- 10.9 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems, Customer Systems, and Devices to QuikPlan's data centres and Subscription 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;
- 10.10 implement and use reasonable back up and security precautions and protections in accordance with good industry practice in connection with its use of the Subscription Services, Software and/or Devices. The Customer is responsible for taking all

reasonable steps to mitigate the risks inherent in the use of the Subscription Services, including data loss.

- 10.11 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, QuikPlan may adjust any agreed timetable or delivery schedule as reasonably necessary.

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. Unless otherwise specified in the Order Form, 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 invoice the Customer for any Additional Services provided by QuikPlan 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 Business Days' notice, disable the Customer's and/or any Authorised Users' password, account and access to all or part of the Subscription Services and/or the Software and QuikPlan shall be under no obligation to provide any or all of the Subscription Services or Software while the amounts due under the unpaid invoice(s) concerned, any interest, administrative and legal costs of collecting payment, and any further sums payable by the Customer, remain unpaid; and/or (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; and (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 unless the Customer's Initial Subscription Term is not less than 24 months in which case QuikPlan shall not be entitled to increase the fees pursuant to this clause during the Initial Subscription Term.

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11.6 Subject to clause 11.1, the Customer shall pay all invoices in full (without deduction or set off) within 30 days of the date of the invoice.

11.7 For the avoidance of doubt if the Customer elects to purchase additional User Subscriptions during the Subscription Term: (a) the Fees payable for such additional User Subscriptions will be based on QuikPlan's fees prevailing at the time of the new order; and (b) the additional User Subscriptions shall be added to the User Subscriptions subject to the Subscription Term.

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.

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 14.4, defend the Customer, its officers, directors and employees against any claim that the Software, Services and/or the Instruction Documents infringe any United Kingdom patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality ("**Claim**"), and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such Claim, provided that: (a) QuikPlan is given prompt notice of any such Claim; (b) the Customer does not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of QuikPlan; (c) the Customer does not prejudice QuikPlan's defence of the Claim; (d) the Customer takes such action as QuikPlan, may request to avoid, dispute, compromise or defend the Claim; (e) the Customer provides reasonable co-operation assistance and information to QuikPlan as QuikPlan may reasonably require or request in the investigation, defence and settlement of such claim, at QuikPlan's expense; (f) the Customer uses all reasonable endeavours and commercial efforts to mitigate its loss in connection with such Claim; and (g) QuikPlan is given complete control and sole authority to investigate, defend and/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

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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 Claim or alleged Claim is based on or relates to: (a) a modification of the Software, Services or the Instruction Documents by anyone other than QuikPlan; (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; (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; (d) the Devices or the Software's operation with the Devices; (e) the combination of the Software or Services with deliverables, software or hardware not supplied or specified by QuikPlan; or (f) any instruction, specification or information provided by the Customer.

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 Without prejudice to QuikPlan's right to Fees for the Services and Software, 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; (b) for fraud or fraudulent misrepresentation; or (c) any other liability that cannot be excluded by law.

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 pure economic loss, loss of profits, loss of revenue, loss of contracts, loss of savings, loss of business, wasted expenditure, loss of business opportunity, depletion of goodwill or loss or corruption of data or information) and/or similar losses or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement (and QuikPlan hereby recommends that the Customer considers taking insurance to cover any such 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 Subscription Services during the 6 months immediately preceding the date on which the claim arose.

15.5 QuikPlan agrees to have valid professional indemnity, public liability and employer's liability insurance in place for its own legal liability to the Customer under this Agreement. 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 access to the Subscription Services and Software without liability if: (a) QuikPlan reasonably believe that the Software and/or the Subscription Services are being used in breach of the Agreement and Customer does not remedy the failure within seven (7) 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 Subscription Services or Software or the Subscription Services or Software are accessed by or manipulated by a third party without QuikPlan's consent; (d) QuikPlan is required by law to suspend the Subscription Services or the Customer's access to the Software or the Subscription Services; (e) there is another event for which QuikPlan reasonably believe that suspension of the Subscription Services is necessary to protect

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its network, system, the Services, the Software or other customers; or (f) clause 11.3(a) applies.

16.2 QuikPlan will use all reasonable endeavours to give the Customer advance notice of a suspension under this clause 16 of at least six (6) 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 Subscription Services and/or the Software.

17. TERM AND TERMINATION

17.1 This Agreement shall commence on the Commencement Date and shall continue for the Initial Subscription Term and thereafter shall be automatically renewed for successive Renewal Periods unless: (a) either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; (b) this Agreement otherwise terminates in accordance with the provisions of this Agreement; or (c) QuikPlan otherwise mutually agrees to an early termination of this Agreement subject to the payment of such early termination fee as QuikPlan may require in connection with such early termination.

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 give notice in writing to the Customer terminating this Agreement immediately 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; or (b) the Customer breaches any acceptable use policy applicable to the Services and

Software as notified to the Customer from time to time.

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 Subscription 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 QuikPlan 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 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 Fees and other reasonable expenses incurred by QuikPlan in returning or disposing of Customer Data; and (d) the accrued rights, remedies, obligations or liabilities 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 Subscription 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.

17.6 The Initial Subscription Term shall be 24 months unless otherwise specified in the Order Form.

18. THIRD PARTY PROVIDERS

18.1 The Customer acknowledges that the QuikPlan may engage Third Party Providers from time to time to provide any element of the Services on behalf of QuikPlan.

18.2 QuikPlan reserves the right to change, replace or substitute Third Party Providers from time to time provided QuikPlan shall remain responsible to the Customer for the supply of such Services in

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accordance with the terms of this Agreement notwithstanding any such change, replacement or substitution.

18.3 To the extent there is a failure or issue in, or caused by, the element of Services provided by a Third party Provider on behalf of QuikPlan and the Customer suffers any losses, QuikPlan shall use all reasonable endeavours to recover such losses from the Third Party Provider, and QuikPlan's liability for all such losses shall be limited to the amount it is able to recover from the Third Party Provider and then apportioned in respect of the Customer's losses.

19. 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 suppliers 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.

20. 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.

21. 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.

22. ENTIRE AGREEMENT

22.1 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, and has no remedy in respect of, 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. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

22.2 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of any other document or link referenced in this Agreement, the terms of this Agreement will prevail and take precedence unless the context otherwise permits.

23. 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.

24. 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).

25. 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.

26. VARIATION

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

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27. 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 email to the other party's email address as set out in the Order Form or otherwise notified by that party for such purposes.

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 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 email shall be deemed to have been received at the time of transmission.

28. 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).