

## TERMS AND CONDITIONS FOR GOODS AND/OR SERVICES

### CARETOWER LTD

These Terms set out the master terms and conditions which will govern the supply of Goods and/or Services to the Customer and in addition the relevant terms in the Services Addendum and the GDPR Addendum will apply (all as defined below).

#### 1. Definitions

In these Terms the following definitions apply:

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

**Caretower:** means Caretower Ltd, a company incorporated in England (company number 03538529) whose registered office is at Unit 3, Gateway Mews Bounds Green, Ringway, London N11 2UT and whose trading address is Unit 4, Horizon Trade Park, Ring Way, Bounds Green, London N11 2NW.

**Caretower Partner:** means a distributor or reseller appointed by Caretower for the sale of the Managed Services.

**Caretower Partner Invoice:** means an invoice issued by a Caretower Partner.

**Caretower Materials:** means any materials, equipment, documents and other property of Caretower.

**Caretower's System:** the information and communications technology system to be used by Caretower in performing the Managed Services, including the Managed Services Hardware, the Managed Services Software, the Customer-side Equipment and communications links between the Managed Services Hardware and the Customer-side Equipment and the Customer's Operating Environment.

**Certificate of Authorisation:** means the certificate as signed by the Customer.

**Change Control Procedure:** the procedures set out in clause 16.

**Confidential Information:** means all proprietary information disclosed by one party to the other party including (without limitation) (i) proprietary product-related technology, ideas, rule bases and algorithms; (ii) trade secrets; (iii) either party's technical, business or financial information and plans; (iv) the terms of the Contract; and (v) any item marked as confidential by the disclosing party. Confidential Information shall not include information that the receiving party can show (a) is or becomes generally known or publicly available through no fault of the receiving party; (b) is known by or in the possession of the receiving party prior to its disclosure, as evidenced by business records, and is not subject to restriction; or (c) is lawfully obtained from a third party who has the right to make such disclosure

**Consultancy Services:** the consultancy services (including the DP Consultancy Services but for the avoidance of doubt excluding DPO as a Service) which may be performed by Caretower at the Customer's request and as set out in an Order.

**Contract:** the contract between the Customer and Caretower for the supply of Goods and / or Services in accordance with these Terms. The Contract will include these Terms, the Service Levels, the relevant Services Addendum, the GDPR Addendum and the Order, as applicable.

**Customer:** the person, firm or company who purchases Goods and / or Services from Caretower.

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

**Customer Hardware:** in respect of the Managed Services, means any computing hardware owned or leased by the Customer at the Customer Site.

**Customer-side Equipment:** any equipment located or to be located on a Customer Site but controlled or to be controlled exclusively by Caretower as part of the Managed Services.

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

**Customer Reports:** means all reports and documents authored, produced, created or generated by Caretower or the Caretower Software in connection with the provision of the Managed Services to the Customer in accordance with the Contract for Managed Services.

**Customer Site(s):** means the Customer site(s) specified in the Contract or as notified to Caretower from time to time.

**Customer's System:** in respect of the Testing Services, means the part of the Customer's IT system which is being tested, as more particularly defined in an Order.

**Data Protection Legislation:** the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK together with any successor legislation to the Data Protection Act 1998.

**DP Consultancy Services:** consultancy Services relating to the General Data Protection Regulation (GDPR) and related aspects of ePrivacy and data protection advice including data protection audits, assessments, analysis, reports and other data-protection and related IT security assessments and services (and including all related deliverables) (but excluding any Services provided as part of DPO as a Service).

**DPO as a Service:** the provision of a data protection officer ("DPO") as a service by Caretower to assist the Customer's compliance with the GDPR, as more particularly described in the relevant Order

**GDPR:** The General Data Protection Regulation (Regulation (EU) 2016/679)

**GDPR Addendum:** Schedule B to these Terms.

**Good Industry Practice:** the standards that fall within the upper quartile of a skilled and experienced provider of business-critical managed services similar or identical to the Managed Services, having regard to factors such as the nature and size of the parties, the Service Levels, the term, the pricing structure and any other relevant factors.

**Goods:** the goods (or any part of them) sold or licensed by Caretower to the Customer and as set out in the Order consisting of third party licensed software and/or third party hardware products.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Maintenance:** any error corrections, updates and upgrades that Caretower may provide or perform with respect to the Managed Services, as well as any support or training Managed Services provided to the Customer under the Contract for Managed Services.

**Managed Services:** the managed services described in the Order to be performed by Caretower in accordance with these Terms and the Order.

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

**Managed Services Software:** any software used by Caretower to provide the Managed Services to the Customer whether owned by a third party (**Third Party Software**), by the Customer (**Customer Software**) or by Caretower (including Caretower's CTMSSA appliance) (**Caretower Software**).

**Normal Business Hours:** 09:00 to 18:00 local UK time on Business Days.

**Order:** the Customer's order for the Goods and/or Services either issued by the Customer to Caretower or by Caretower to the Customer, and signed by the Customer which sets out the Goods and / or Services required together with other details specific to the Customer including support as required.

**Security Report:** the report produced by Caretower for the Customer on completion of the Testing Services.

**Services:** mean any services provided by Caretower to the Customer as set out in an Order including, without limitation: Managed Services, Consultancy Services, Testing Services, Support Services and DPO as a Service.

**Services Addendum:** contains additional specific terms and conditions which will govern the supply of the type of Services specified in the Order. The Services Addendum for each type of Services is set out in Schedule A and forms part of this Contract as more particularly described in Schedule A.

**Service Level:** the standards, supplied to the Customer in an Order, which are to be achieved by Caretower in performing the Services.

**Support Services:** the support services which are more particularly described in an Order which are to be provided by Caretower to the Customer.

**Terms:** these terms and conditions as amended from time to time in accordance with clause 18.9.

**Testing Services:** the computer security testing services (including the provision of the Security Reports) supplied by Caretower to the Customer in respect of the Customer's System, as further detailed in the Contract.

**VAT:** means Value Added Tax.

**Web Portal:** is defined in the Order.

## **2. General**

- 2.1. These Terms govern the provision of Goods and / or Services as detailed in an Order and shall apply notwithstanding any conflicting, contrary or additional terms and conditions in any Order or other document of communication from the Customer or which are implied by trade, custom, practice or course of dealing.
- 2.2. If the Order includes an order for the supply of Services, the terms of the Contract shall be supplemented and amended by the relevant Services Addendum.
- 2.3. These Terms shall supersede any earlier terms and conditions of Caretower.
- 2.4. The signing of an Order by the Customer, is proof of the Customer's acceptance of these Terms and at which point the Contract will come into existence.
- 2.5. In the event of an inconsistency between these Terms and any other document in respect of the provision of the Goods and / or the Services, these Terms will prevail.
- 2.6. All drawings, descriptive weights, dimensions and the descriptions and illustrations contained in the Order, any sales literature, price lists, estimates of performance or other specifications provided by Caretower are approximate only and shall not form part of the Contract.

## **3. Supply of Services**

- 3.1. Caretower shall provide to the Customer the Services specified in an Order in accordance with the Contract.
- 3.2. Caretower shall use all reasonable endeavours to meet any agreed performance dates for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 3.3. Caretower shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Caretower shall notify the Customer in any such event.
- 3.4. Any Services which are outside the scope of the Order may be provided by Caretower at Caretower's standard rates from time to time in accordance with clause 16.

## **4. Supply of Goods**

- 4.1. *Processing Orders for Goods*
  - 4.1.1. Online orders paid by credit card online, enjoy the same delivery times of between 7 to 30 days from the date of the Order in the majority of cases. Goods requiring longer delivery times will be as to the standard procedures of delivery times for such Goods. Licence certificates which are issued direct from vendors may take longer.
  - 4.1.2. Orders are accepted by Caretower in writing in original documents, fax, internet email, or any other means bearing proof of sender and originator. The Customer agrees to send to Caretower a written Order in confirmation of any orders placed by telephone, duly marked with any confirmation reference provided to properly identify the Customer and the Goods ordered, otherwise Caretower reserves the right not to process the Order. To avoid doubt, Orders placed by e-mail or fax shall in any event be treated as confirmed written Orders from the Customer (pending receipt of any original documents), as long as they are received by Caretower.
  - 4.1.3. All Orders are subject to availability and to credit approval by Caretower, which may, in its sole discretion at any time, change the terms of Customer's credit and require payment in cash, bank wire transfer or by official bank cheque. If Caretower believes that the Customer's ability to make payments may be impaired, Caretower may suspend delivery even after the Order has been accepted.
- 4.2. *Delivery of Goods*

42.1. The Customer acknowledges that delivery dates of the Goods provided by Caretower are estimates only and that Caretower is not liable for failure to deliver on such dates.

42.2. *Software:*

422.1. If the Goods consist of third party licensed software, the Customer acknowledges that Caretower will not be responsible for the delivery of such software. Upon receipt of full payment, Caretower will provide the Customer with a letter containing a grant number. The Customer is responsible for using the grant number to download the software (and any updates or modifications) from the manufacturer's website.

42.3. *Hardware:*

423.1. Delivery of the Goods to the carrier shall constitute delivery to the Customer and risk in the Goods shall pass to the Customer on delivery.

423.2. Title to the hardware passes on full payment (in cash or cleared funds) of the hardware and any other goods or Services that Caretower has supplied to the Customer in respect of which payment has become due, and until then the Customer must insure and store the hardware separately from other goods so that they remain readily identifiable as Caretower's property and may not modify, pledge or sell them. Caretower and/or Caretower's agents, may enter the storage premises to repossess the hardware. In the event that the Customer sells the hardware before title passes, the Customer will become Caretower's agent and the proceeds of that sale shall be held on behalf of Caretower, separately from the Customer's general funds. Caretower may sue for the price before title passes.

423.3. Caretower may deliver the hardware by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4.3. Caretower reserves the right to modify the specification of its Goods from time to time.

**5. Price and Payment**

5.1. In consideration of Caretower supplying Goods and / or Services, Customer will pay the charges in accordance with the Contract.

5.2. Unless otherwise agreed by Caretower in writing, Caretower shall request payment of the charges, in full and cleared funds, in advance by submitting an invoice to the Customer prior to the commencement of the Services or delivery of the Goods and thereafter in accordance with the relevant Services Addendum, if applicable.

5.3. All invoices issued by Caretower are payable within 30 days of the date of the invoice and without set-off or deduction.

5.4. Interest shall accrue on any overdue amounts due and payable by the Customer to Caretower at the rate of 4% over the base lending rate of Caretower's bank in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after the judgment.

5.5. Caretower may increase any charges under a Contract as from each anniversary of the commencement date of the relevant Services, as set out in the Order, after the first such anniversary.

5.6. Without prejudice to Caretower's right to terminate the Contract, if the Customer fails to make payment in accordance with the Contract, Caretower may immediately suspend the Services or delivery of Goods without notice until payment is received.

5.7. Unless otherwise stated any prices quoted in respect of the Goods or Services are exclusive of VAT and any other taxes.

5.8. *Supply of Goods.* The following terms shall apply to the extent that Caretower supplies Goods to the Customer:

5.8.1. Unless otherwise stated any prices quoted in respect of the Goods by Caretower are:

5.8.1.1. exclusive of carriage, packing and insurance costs;

5.8.1.2. exclusive of any release certificates;

and Caretower shall have the right to charge the Customer extra in respect of the above.

5.8.2. Prices shall be as specified by Caretower and shall be applicable for the period specified in Caretower's quote. If no period is specified, prices shall be applicable for thirty (30) days. Notwithstanding the foregoing, prices shall be subject to increase in the event of an increase in Caretower's costs or other circumstances beyond Caretower's reasonable control.

- 5.8.3. Where the Customer does not adhere to agreed scheduled orders, Caretower reserves the right to amend at its sole discretion, the price structure in accordance with the quantities delivered.
- 5.9. Caretower reserves the right to suspend deliveries and/or the provision of any Services where payment is not received in accordance with this clause 5 or in accordance with any alternative terms of payment agreed in writing.
6. **Customer Obligations**
- 6.1. *Supply of Goods.* The following terms shall apply to the extent that Caretower supplies Goods to the Customer:
- 6.1.1. The Customer is responsible for its own choice of Goods and its suitability for the Customer's purposes.
- 6.2. *Supply of Services:*
- 6.2.1. The Customer shall, throughout the provision of Services by Caretower:
- 6.2.1.1 provide Caretower and Caretower's employees and/or agents with all reasonable courtesy, information, cooperation, facilities and access to enable Caretower to perform the Services, failing which Caretower shall not be obliged to perform the Service or provide any assistance;
- 6.2.1.2 provide such personnel assistance, including the Customer Account Team and other Customer personnel, as may be reasonably requested by Caretower from time to time;
- 6.2.1.3 be responsible for the removal of any non-Caretower supplied products, the back up and confidentiality of all data, and all of its legal and regulatory requirements.
- 6.2.1.4 comply with all applicable laws and regulations with respect to its activities under the Contract; and
- 6.2.1.5 carry out all other Customer responsibilities set out in this Contract, the Order or in any of the sections 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, Caretower may adjust any timetable or delivery schedule set out in the Order as reasonably necessary.

7. **Warranties**

- 7.1. *Supply of Goods*
- 7.1.1. Caretower warrants to the Customer that upon delivery to the Customer the Goods shall substantially conform to the applicable manufacturer's specifications for such goods. To the fullest extent permitted by applicable law Caretower makes no other warranty, express or implied, with respect to the Goods. In particular, Caretower makes no warranty in respect of the quality of the Goods or their suitability or fitness for any particular purpose or use or in respect of infringement.
- 7.1.2. If, on examination by the Customer, it is found that the Goods do not substantially meet the manufacturer's specifications, Caretower's liability will be limited to and Caretower can elect to (i) refund the Customer's purchase price for the Goods (without interest), (ii) repair the Goods, or (iii) replace the Goods; provided, however, that the Goods are returned to Caretower, along with acceptable evidence of purchase, within fifteen (15) days from date of delivery, transportation charges prepaid, with a valid RMA (Returns Material Authorisation) number issued by Caretower and sent to the Customer by a provable method in original form or an electronic form, via fax, or email.
- 7.1.3. Caretower shall use its reasonable endeavours to transfer to the Customer whatever transferable warranties and indemnities Caretower receives from the manufacturer of the Goods, including any transferable warranties and indemnities in respect of patent or Intellectual Property Right infringement.
- 7.1.4. To the fullest extent permitted by law, neither Caretower nor its manufacturers shall have any liability to the Customer for any damage to or defects in the Goods caused by fair wear and tear, improper use, maintenance or repair, negligent handling, failure to observe the instructions accompanying the Goods or any alterations thereto
- 7.1.5. For the avoidance of doubt, Goods sold by Caretower are not designed, intended or authorised for use in life support, life sustaining, nuclear, or other applications in which the failure of such goods could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. If the Customer uses or sells the Goods for use in any such applications: (i) the Customer acknowledges that such use or sale is at the Customer's sole risk; (ii) the Customer agrees that Caretower and the manufacturer of the Goods are not liable, in whole or in part, for any claim or damage arising from such use; and (iii) the Customer agrees to

indemnify, defend and hold Caretower and the manufacturer of the Goods harmless from and against any and all claims, damages, losses, costs, expenses and liabilities arising out of or in connection with such use or sale.

7.2. *The Services.*

721. Caretower warrants that the Services will be performed using reasonable skill and care in accordance with the Contract (including these Terms). This warranty shall not apply to the extent of any non-conformance that is caused by (a) use of the Services contrary to Caretower's instructions or (b) reasons beyond Caretower's reasonable control.

7.3. The Customer warrants to Caretower:

731. that it has not been induced to enter into the Contract by any prior representations whether oral or in writing, except as specifically contained in the Contract, and the Customer hereby waives any claim for breach of any such representations which are not specifically so mentioned; and

732. that it has considered the limits of liability contained in clause 11 and determined the same to be reasonable having regard to the subject matter, value and all other aspects of the Contract.

**8. Returned Goods and Cancellations**

8.1. The following terms will apply to the extent that Caretower is supplying Goods to the Customer:

8.1.1. *Software.*

8.1.1.1. Caretower, as a reseller, places orders from distributors and/ or product manufacturers on the back of an Order placed by the Customer in accordance with these Terms. Software Orders placed with Caretower cannot be cancelled or returned after receipt of the Order. In exceptional cases where the distributors and/ or product manufacturers fail to deliver the Goods ordered, for a prolonged period of time of at least four weeks, and subject to the Customer notifying Caretower in writing of non delivery, Caretower upon confirmation of non delivery of the Goods to the Customer by the distributor or product manufacturer, may apply to the distributor and/ or product manufacturer for cancellation of the Order. Only when Caretower is successful in obtaining a written confirmation of cancellation of the Order from the distributor and/ or product manufacturer, and a full credit is issued by the distributor, then Caretower at its sole discretion may be able to accept a Customer's request for cancellation. In such cases where Caretower accepts in writing the Customer's request and grants a cancellation of a software order for that Customer then a handling and administration charge of a minimum of 25% of the value of the Order will be charged by Caretower.

8.1.2. *Hardware.*

8.1.2.1. No return of hardware Goods shall be accepted by Caretower without a Return Material Authorisation ("RMA") Number, which may be issued by Caretower at its sole discretion. A request to return hardware Goods must be made in writing within seven (7) days of the date of receiving hardware goods and must state all faults. Returned hardware Goods must be in the original manufacturer's shipping cartons complete with all packing materials. All hardware Goods for return shall be returned freight prepaid in the manner specified in the fully completed RMA. The RMA must be issued and authorised by a director of Caretower. If returned hardware Goods are claimed to be defective, a complete description of the nature of the defect must be included with the returned goods. Caretower will endeavour to replace all returned defective hardware Goods within the manufacturer's normal production periods. If Caretower cannot replace such Goods within the manufacturer's normal production time then Caretower will issue an order cancellation to the Customer and all necessary accounting documents.

8.1.2.2. Notwithstanding any provision of these Terms to the contrary, orders for special, custom, value-added and other non-standard goods, including Goods to be assembled in kit form, Goods which have been tested, assembled or integrated for the Customer, work-in-process and Goods otherwise identified by Caretower as non-cancellable and non-returnable shall be non-cancellable and non-returnable. Goods not eligible for return shall be returned to the Customer, freight collect.

8.1.2.3. All Goods returned in accordance with this clause 8.1.2 carry a minimum cancellation charge of 25% of purchase price.

8.1.2.4. Acceptance of delivery of unauthorised returned Goods by an unauthorised employee of Caretower, does not constitute acceptance of returns, nor a

cancellation of the Order by Caretower. Any such returned Goods, shall be returned to the Customer, freight collect.

## **9. Intellectual Property Rights**

- 9.1. The Customer acknowledges that rights in respect of all Intellectual Property Rights connected with the Goods do not pass to the Customer, unless otherwise specifically authorised in writing by Caretower.
- 9.2. If an Order for Goods includes software or other Intellectual Property Rights, such software or other Intellectual Property Rights are provided by Caretower to the Customer subject to the copyright and user license, the terms of which are set forth in the license agreement accompanying such software or intellectual property or supplied in connection with it. Nothing in these Terms shall be construed to grant any rights or license to use any software in any manner or for any purpose not expressly permitted by such license agreement. Unless otherwise provided for in writing by an authorised signatory of Caretower, Caretower is not the licensor and the Customer acquires the license directly from the manufacturer or the manufacturer's licensor. Caretower sells such software as a reseller on behalf of the relevant manufacturer.
- 9.3. The Customer agrees to indemnify Caretower against all claims, damages, costs (including legal costs calculated on an indemnity basis) made by any person or company which Caretower may incur, either as a result of work done in accordance with the Customer's specifications or for the infringement of any Intellectual Property Rights resulting from such customisation.
- 9.4. All Intellectual Property Rights in or arising out of or in connection with the Services and the Security Reports shall be owned by Caretower and the Customer shall have the right to use such Intellectual Property Rights for its own business purposes.
- 9.5. Caretower agrees that it will not disclose the Customer's confidential information to any third party and will at all times comply with clause 15 below (Confidentiality).

## **10. Data Protection**

- 10.1. In addition to this clause 10, please see Caretower's full Privacy Policy, as published on its website, which forms part of these Terms and sets out the basis on which Caretower will use the Customer's personal data. Provided that in the event of any conflict or inconsistency between the Privacy Policy and these Terms (including Schedule B) these Terms shall apply.
- 10.2. The parties acknowledge that (except in the limited circumstances set out in 10.3 below) for the purposes of the Data Protection Legislation, the Customer is the controller and Caretower is the processor in relation to the data processed to provide Services to the Customer. Each party undertakes to comply with the provisions of the Data Protection Legislation applicable to it (whether as controller or processor as the case may be). The Customer as controller hereby warrants that it has obtained all permissions required to provide Caretower as processor with such personal data of its employees and other third parties as Caretower reasonably requires to provide the Services. In processing the personal data Caretower agrees to comply with the GDPR Addendum, provided that, for the avoidance of doubt, the GDPR Addendum does not apply to personal data for which Caretower is the data controller e.g. contact names and details at the Customer which Caretower uses for marketing and relationship purposes and to the extent set out in clause 10.3. Caretower's privacy policy is available on its website.
- 10.3. Where Caretower are providing DPO as a Service whilst the parties intend to the fullest extent possible that the Customer is the controller and Caretower is the processor, it is possible that in certain circumstances Caretower (as a DPO) may be considered to be a controller of personal data provided to it by the Customer (**Customer Personal Data**). In such circumstances the Customer will ensure it is lawfully able to provide the Customer Personal Data to Caretower and agrees that any transparency obligations (including the provision of privacy notices under Articles 12, 13 and 14 of the GDPR) that Caretower may have in relation to this personal data are the responsibility of the Customer and the Customer will ensure Caretower's compliance with the GDPR in this regard. The Customer will also fully assist and cooperate with Caretower (at the Customer's cost and expense) to enable Caretower to comply with Caretower's other obligations under Chapter III of the GDPR (Rights of the Data Subject) in relation to the Customer Personal Data.

## **11. Limitation of Liability**

- 11.1. Caretower shall not be liable for the loss of or damage to software programs during repair or upgrade of any Goods whether or not the same are under warranty.
- 11.2. Subject to this clause 11, Caretower's entire liability in respect of any breach of its contractual obligations or any representations statement or tortious act or omission including negligence or arising under or in connection with the Contract shall be limited in respect of each event or series of connected

events to:

- 1121. in respect of the Services, 100% of the total charges paid or payable by the Customer to Caretower under the relevant Contract in respect of the Services actually provided as at the date the loss arises; and
  - 1122. in respect of the Goods, the purchase price paid by the Customer for the Goods.
- 11.3. In no event shall Caretower have any liability for any direct losses including any loss of profit, goodwill, business, contracts, anticipated savings, loss of use or loss of or corruption of data or information or any type of special, indirect or consequential loss (including loss or damages suffered by the Customer as a result of an action brought by a third party) or for any loss, damage, expenses, costs or other claims for compensation arising from any;
- 1131. information or instructions supplied by the Customer which are faulty, damaged, incomplete, incorrect, inaccurate, illegible, out of sequence, or in the wrong form, or arising from their late arrival or non arrival;
  - 1132. virus or other malicious software code entering or leaving the Customer's System (other than in breach of Caretower's obligation in clause 7.2.1);
  - 1133. loss of or corruption to data on programs held or used by or on behalf of the Customer (other than in breach of Caretower's obligation in clause 7.2.1);
  - 1134. failure of Caretower to meet the Service Levels (apart from the rebates payable by Caretower referred to in the Order, if any);
  - 1135. infringement of any Intellectual Property Rights of any third party in material transmitted in the provision of the Managed Services;

unless the Customer shall have served notice in writing of any facts which may give rise to a claim against Caretower hereunder within one week of the date it either became aware of the circumstances giving rise to a claim or the date when it ought reasonably to have become so aware.

- 11.4. Except as expressly provided in these Terms, all warranties (express or implied statutory or otherwise) including, without limitation, any implied warranty of satisfactory quality are hereby excluded to the fullest extent permitted by law.
- 11.5. Nothing in these Terms shall limit or exclude Caretower's liability for any fraud or fraudulent misrepresentation or death or personal injury resulting from negligence.
- 11.6. This clause 11 shall survive termination of the Contract.

## **12. Indemnities**

- 12.1. The Customer will indemnify Caretower against all liabilities, costs, expenses, damages and losses (including any direct (including any loss of profit, loss of reputation, loss of corruption of data or information), indirect or consequential losses, loss and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Caretower in carrying out the provision of the Services and arising out of or in connection with:
  - 12.1.1. the Theft Act 1968, the Computer Misuse Act 1990, the Regulation of Investigatory Powers Act 2000, the Data Protection Act 1998, the Data Protection Legislation or otherwise as arising as a result of a failure by the Customer to comply with its obligations under the Contract; and
  - 12.1.2. any third party claims arising out of or in connection with the provision of the Goods and/or Services to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of its obligations under the Contract by the Customer, its employees, agents or subcontractors.
- 12.2. The Customer indemnifies Caretower in respect of any loss, liability, damages, costs and expenses which Caretower may suffer as a result of the failure of the Customer to comply with its obligation set out in clause 6.

## **13. Termination**

- 13.1. *Services*
  - 13.1.1. The Contract in respect of any Services provided to the Customer shall commence on the date stated in the Order and shall continue until terminated in accordance with the Order or this clause 13.
  - 13.1.2. Without limiting its other rights or remedies each party may terminate the Contract with immediate effect by giving written notice to the other party if:



- 13.12.1. the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
  - 13.12.2. if any distress or execution is levied on the other party's property or if the other party has a receiver, administrator, administrative receiver or manager appointed over the whole or any part of its assets, becomes insolvent, compounds or makes any arrangement with its creditors, is the subject of a bankruptcy petition or order, or a petition is filed, a notice is given, a resolution is passed or an order is made for or in connection with the winding up of the other party or goes into liquidation, or if the other party suffers any analogous proceeding under foreign law; or
  - 13.12.3. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 13.13. In respect of the provision of the Services and without limiting its other rights or remedies, Caretower may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract to Caretower or to a Caretower Partner on the due date for payment or for any reason and at any time by giving the Customer 1 month's written notice.
- 13.2. Termination or cancellation shall be without prejudice to any rights or liabilities of the parties accrued at the date of termination.

#### **14. Consequences of Termination**

- 14.1. On termination of the Contract for any reason:
  - 14.1.1. the Customer shall immediately pay to Caretower, where applicable, all of Caretower's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Caretower shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 14.1.2. the Customer shall return all of the Caretower Materials. If the Customer fails to do so, then Caretower may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;
  - 14.1.3. the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry;
  - 14.1.4. clauses which expressly or by implication have effect after termination shall continue in full force and effect; and
  - 14.1.5. the Customer shall promptly remove, dismantle or uninstall all Caretower Software, Managed Services Hardware or other proprietary material of Caretower from the Customer Operating Environment and Customer Site and warrant to Caretower that it has done the same.
- 14.2. In addition, upon termination:
  - 14.2.1. Caretower shall cease to provide the Services to the Customer;
  - 14.2.2. the Customer shall be obliged to remove all Caretower proprietary software and any other software residing on the security service appliance and to certify that this has been done; and
  - 14.2.3. if terminated for convenience by the Customer, the Customer shall be liable for the contracted amount due for the entire Contract period.

#### **15. Confidentiality**

- 15.1. A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 15 shall survive termination of the Contract.
- 15.2. The Receiving Party may disclose confidential information:
  - 15.2.1. to the extent such confidential information is required to be disclosed by law, by any

governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the Disclosing Party as much notice of such disclosure as possible;

- 1522. to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out its obligations under the Contract. The Receiving Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the Disclosing Party's confidential information comply with this clause 15; and
- 1523. if such confidential information is now or hereafter comes into the public domain otherwise than as a result of a breach of this clause 15.

## **16. Changecontrol**

- 16.1. If either party wishes to change the scope of the Services (including Customer requests for additional Services), it shall submit details of the requested change to the other in writing via the Web Portal, as more particularly described in the Order.
- 16.2. If either party requests a change to the scope or execution of the Services, Caretower shall, within a reasonable time, provide a written estimate to the Customer of:
  - 1621. the likely time required to implement the change;
  - 1622. any variations to the charges arising from the change;
  - 1623. the likely effect of the change on the Services; and
  - 1624. any other impact of the change on the terms of the Contract.
- 16.3. If Caretower requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 16.4. If the Customer wishes Caretower to proceed with the change, Caretower has no obligation to do so. If Caretower does not proceed with the change it will document and communicate the reasons why it will not proceed and may provide counterproposals for the Customer's consideration.

## **17. Service review and governance**

Where the Services require the appointment of project managers, the Customer project manager(s) and Caretower project manager(s) shall have regular online review meetings (**Review Meetings**) to monitor and review the performance of the Contract, to discuss any changes proposed in accordance with clause 16 and to discuss the Service Levels. Caretower recommends that such Review Meetings are held once a quarter. The parties agree that the minimum number of Review Meetings is once every 12 months. The Review Meetings may be minuted by Caretower project manager(s) and copies of those minutes may be circulated to, and approved by, both parties.

## **18. General**

- 18.1. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Caretower which is not set out in the Contract.
- 18.2. Force majeure:
  - 1821. For the purposes of these Terms, **Force Majeure Event** means an event beyond the reasonable control of Caretower including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Caretower or any other party), failure of a utility service or transport 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, a total failure of the internet or telecommunication services or default of suppliers or subcontractors.
  - 1822. Caretower shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.
  - 1823. If the Force Majeure Event prevents Caretower from providing any of the Goods and/or Services for more than 8 weeks, Caretower shall, without limiting its other rights or remedies, have the right to terminate the Contract (or cancel any Order) immediately by giving written notice to the Customer.
  - 1824. If an Order is cancelled or the Contract is terminated, in whole or in part, due to a Force Majeure Event, the Customer will be liable to pay to Caretower for any Goods delivered or Services rendered on a pro-rata basis with a minimum charge of 20% of the price paid for the Goods or Services.

18.3. *Assignment and subcontracting:*

1831. Caretower may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

1832. The Customer shall not, without the prior written consent of Caretower, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

18.4. *Notices:*

1841. Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

1842. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

1843. This clause 18.4 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under the Contract shall not be validly served if sent by e-mail.

18.5. *Waiver:*

1851. A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

1852. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

18.6. *Severance:*

1861. If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

1862. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

18.7. *Nopartnership*

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

18.8. *Third parties*

A person who is not a party to the Contract shall not have any rights under or in connection with it.

18.9. *Variation*

Except as set out in these Terms, any variation, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Caretower.

18.10. *Governing law and jurisdiction*

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

18.11. *Construction and Use*

Caretower shall not be responsible for adapting or modifying any Goods to conform to statutory

requirements not current at the time of the acceptance or order.

18.12. *Third Party Claims*

The Contract or Contracts to which these Terms apply is between the Customer and Caretower only. No third party shall acquire any rights against Caretower and Caretower shall have no liability to any third party arising out of or in connection with any Contract. All rights under The Contracts (Rights of Third Parties) Act 1999 are expressly excluded except in respect of any manufacturer under clause 7.1.3 (who shall have the benefit of clause 7.1.3 notwithstanding the foregoing but whose consent is not required to vary these Terms). Furthermore the Customer shall indemnify Caretower against all actions, claims or demands by third parties in tort or otherwise arising directly or indirectly in connection with faults or defects in the Goods (or the use of the Goods) or the Services provided.

18.13. *Non Reliance*

The Customer agrees that Caretower will have no liability for any statement or representation made by Caretower (whether innocently or negligently) upon which the Customer relied upon when agreeing to these Terms, unless such statement or representation was made fraudulently.

18.14. *Information*

The Customer undertakes to provide Caretower promptly with any information which Caretower may reasonably require from time to time to enable Caretower to proceed uninterruptedly with the performance of the Contract.

## SCHEDULE A

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The following Services Addendum forms part of the Terms and Conditions for the provision of Goods and/or Services by Caretower Ltd and each section applies to the extent that the Contract includes that type of service.

### MANAGED SERVICES: SERVICES ADDENDUM

Clause	Addition/amendment
3 (Supply of Services)	<p data-bbox="418 625 829 653">Addition to clause 3 (Supply of Services):</p> <ol style="list-style-type: none"><li data-bbox="464 716 1367 968">1.1. Caretower shall, for the duration of the supply of the Managed Services to the Customer, be responsible for specifying to the Customer all information reasonably required by Caretower for the purposes of recommending, advising, establishing, setting-up and providing the Managed Services and Caretower shall do so in sufficient detail to enable the Customer to supply all such information to Caretower, so far as it is available to the Customer. Caretower shall review all such information supplied by the Customer to Caretower promptly on receipt and shall promptly following receipt notify the Customer of any further information reasonably required by Caretower.</li><li data-bbox="464 989 1367 1066">1.2. Caretower shall appoint a project manager, who shall have the authority to contractually bind Caretower on all matters relating to the provision of the Managed Services.</li><li data-bbox="464 1087 1367 1165">1.3. Caretower shall perform the set-up of the Managed Services in accordance with any timetable agreed between the parties or set out in the Order, but any such dates shall be estimates only, and time shall not be of the essence in this respect.</li><li data-bbox="464 1186 1367 1360">1.4. When Caretower considers that the Managed Services are ready for activation it shall so notify the Customer. Within five days of such notification, the Customer shall review the operation of the Managed Services to confirm that they materially conform to the Order. If the Managed Services fail in any material respect to conform with the Order, the Customer shall give Caretower a detailed description of any such non-conformance (<b>Error</b>) in writing, within the five-day review period.</li><li data-bbox="464 1381 1367 1514">1.5. Caretower shall use reasonable endeavours to correct any Error within a reasonable time and, on completion, re-submit the Managed Services to the Customer. The provisions of clause 1.4 and this clause shall then apply again, up to three additional times. If Caretower is unable to correct the Error after three attempts, either party may terminate the relevant Contract without further liability to the other.</li><li data-bbox="464 1535 1367 1646">1.6. If the Customer does not provide any written comments in the five-day period described above, or if the Managed Services are found to conform with the Order, then the Managed Services shall be deemed accepted as from the date of Caretower's initial notification (<b>Acceptance Date</b>).</li><li data-bbox="464 1667 1367 1715">1.7. Caretower will provide the Managed Services for the term specified in the Order unless the Contract is terminated earlier in accordance with these Terms.</li><li data-bbox="464 1736 1367 1785">1.8. The Service Level shall apply with effect from the start of the first complete month occurring at least 30 days after the Acceptance Date.</li><li data-bbox="464 1806 1367 1883">1.9. The Customer shall remain responsible for the use of the Managed Services under its control, including any use by third parties (whether fraudulent or invited by the Customer).</li><li data-bbox="464 1904 1367 1932">1.10. Caretower shall not be responsible for the fitness or ability of the Customer's</li></ol>

	<p>Operating Environment (including any Customer Software or Customer Hardware) to receive the Managed Services. In addition, Caretower will not be responsible for failures or degradation beyond Caretower's reasonable control, including but not limited to the Customer's Operating Environment, customer infrastructure, cabling, telecoms service/equipment, power provision, utility suppliers, and ISP.</p> <p>1.11. Caretower reserves the right to modify Caretower's System, its network, system configurations or routing configuration, or modify or replace any Hardware or Software in its network or in equipment used to deliver any Managed Service over its network, provided that this has no adverse effect on Caretower's obligations under this Contract and its provision of the Managed Services or the Service Levels. If such changes will have an adverse effect, Caretower shall notify the Customer and the parties shall follow the Change Control Procedure.</p> <p>1.12. Caretower may carry out Maintenance that may require interruption of the Managed Services. Caretower may interrupt the Managed Services outside Normal Business Hours for Maintenance provided that it has given the Customer reasonable notice.</p>
6 (Customer's Obligations)	<p>Addition to clause 6 (Customer's Obligations):</p> <p>1.1. The Customer shall appoint the Customer's project manager, who shall have the authority to contractually bind the Customer on all matters relating to the Contract.</p> <p>1.2. The Customer shall not store, distribute or transmit any material through the Managed Services that facilitates illegal activity or is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive.</p> <p>1.3. The Customer must take reasonable measures to ensure it does not jeopardise Managed Services supplied to third parties on the same shared access infrastructure. This includes informing Caretower promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, Caretower will work with the Customer to alleviate the situation as quickly as possible. The parties shall discuss and agree appropriate action (including suspending the Managed Services).</p> <p>1.4. Where the Customer requires support in respect of the Managed Services or an Error the Customer or Customer Account Team must:</p> <p>1.4.1. contact Caretower Account Team via the contact numbers, Web Portal and/or email addresses notified to them by Caretower during the agreed hours of support; and</p> <p>1.4.2. attempt to answer all the support questions posed to them by Caretower Account Team to the best of their knowledge and promptly carry out any actions advised by Caretower Account Team.</p> <p>1.5. Where the Customer requires support from Caretower in respect of the Managed Services or an Error at the Customer Site the Customer shall provide all necessary personnel, support, permissions and facilities to the attending Caretower Account Team to ensure safe and efficient resolution of the support issue or Error.</p> <p>1.6. Notwithstanding clause 6.2 the Customer shall promptly notify Caretower of:</p> <p>1.6.1. any new members of the Customer Account Team or other relevant Customer personnel who will use the Managed Services or have access to Caretower's System;</p> <p>1.6.2. any material change to any Customer Software;</p> <p>1.6.3. any material change to the Customer Operating Environment; or</p> <p>1.6.4. the Customer's establishment of new remote sites or the decommissioning of existing remote sites.</p>

	<p>1.7. The Customer acknowledges that:</p> <p>1.7.1. when devices not regularly connected to the network are connected, the Customer must act reasonably and assist with updating/installing an agent if requested to do so by Caretower;</p> <p>1.7.2. devices not connected at the time of a new installation must have an agent installed when they are connected and the Customer must act reasonably and assist Caretower with this; and</p> <p>1.7.3. devices not connected to the network or powered off will not be included in the relevant service level calculation of up-to-date devices.</p> <p>1.8. The Customer warrants that the Customer Operating Environment meets the minimum scoping requirements set out in the Scoping Summary in the Order.</p> <p>1.9. The Customer warrants and represents that:</p> <p>1.9.1. it has the full capacity and authority to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Customer;</p> <p>1.9.2. it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to licence to Caretower, any materials reasonably necessary for the fulfilment of all its obligations under this Contract, including any third-party licences and consents in respect of any Customer Software; and</p> <p>1.9.3. Caretower's use in the provision of the Managed Services or otherwise in connection with this Contract of any third-party materials, including any hardware or software supplied by the Customer to Caretower for use in the provision of the Managed Services or otherwise in connection with this Contract, shall not cause Caretower to infringe the rights, including any Intellectual Property Rights, of any third party.</p>
7 (Warranties)	<p>Addition to clause 7 (Warranties):</p> <p>1.1. Notwithstanding clause 7.2.1 of the Terms, Caretower does not warrant that the Customer's use of the Managed Services will be uninterrupted or error-free.</p>
9 (Intellectual Property Rights)	<p>Addition to clause 9 (Intellectual Property Rights):</p> <p>1.1. Nothing in this Contract affects either party's rights in pre-existing Intellectual Property Rights (including pre-existing Intellectual Property Rights of either party contained in or relating to Confidential Information) (<b>Pre-Existing IPR</b>). Nor does anything in this Contract have the effect of assigning or transferring any Intellectual Property Rights in and to the Caretower Software (including the CTMSSA application that forms part of the Managed Services) or the Third Party Software to the Customer.</p> <p>1.2. The Customer shall own and retain all rights, title and interest in and to the Customer Data and Caretower shall have no rights to access, use or modify the Customer Data unless it has the prior written consent of the Customer.</p> <p>1.3. The Customer shall own and retain all rights, title and interest in and to the Customer Reports including any and all copyright therein. Caretower hereby waives any and all moral rights (including any rights of attribution) in and to the Customer Reports. To the extent that any copyright in the Customer Reports does not automatically vest in the Customer, Caretower hereby assigns absolutely to the Customer all copyright that Caretower may have in all Customer Reports.</p> <p>1.4. At the Customer's cost and expense, Caretower shall execute all documents and take all actions necessary or reasonably requested by the Customer to document, obtain,</p>

	<p>maintain, perfect or assign its copyright in the Customer Reports.</p> <p>15. Caretower hereby grants to the Customer a perpetual, irrevocable, sub-licensable, non-exclusive, royalty-free, worldwide license to use, exploit, sell, copy, reproduce, sub-license, modify, improve, enhance and make derivative works of all of Caretower's Intellectual Property Rights as incorporated by Caretower into the Customer Reports solely in connection with the Customer's use of the Customer Report.</p> <p>16. The Customer hereby grants to Caretower a perpetual (during the term of this Contract), revocable, non-transferrable, non-exclusive, royalty-free, limited license to use, copy, modify, improve, enhance and make derivative works of the Customer's Intellectual Property Rights and the Customer Report solely to the extent necessary to comply with its obligations under this Contract.</p> <p>1.6.1. In the event that the number of managed devices being managed by Caretower exceeds the number of managed services licenses purchased, Caretower will invoice the customer for all additional managed service users / licenses being managed and the customer has the obligation to pay all such invoices.</p> <p>17. Caretower will not use any equipment, supplies, facilities, computer code, work product, inventions or materials of any other third party (Third-Party Materials) in any Customer Report or in Caretower's performance under this Contract unless:</p> <p>1.7.1. Caretower has the full right and authority to do so without violating any rights of any third party; and</p> <p>1.7.2. Caretower has obtained all necessary rights to enable it to perform its obligations under this Contract and grant the rights granted herein and to permit the Customer to utilise the Third-Party Materials as contemplated under this Contract at no additional cost or expense to the Customer.</p> <p>18. Caretower hereby grants to the Customer a perpetual, irrevocable, sub-licensable, non-exclusive, royalty-free, worldwide license to use, exploit, sell, copy, reproduce, manufacture, distribute, export, publicly display, publicly perform, sub-license, modify, improve, enhance and make derivative works of such Third-Party Materials as are incorporated in the Customer Reports solely in connection with the Customer's use of the Customer Reports.</p>
<p>11 (Limitation of liability)</p>	<p>Addition to clause 11 (Limitation of liability):</p> <p>1.1. In respect of the Managed Services, the Customer assumes sole responsibility for results obtained from the use of the Managed Services, and for conclusions drawn from such use. Caretower shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Caretower by the Customer in connection with the Managed Services, or any actions taken by Caretower at the Customer's direction.</p>



16 (Change Control)	<p>Addition to clause 16 (Change Control):</p> <p>1.1. For the avoidance of doubt, the procedure set out in clause 16 also applies to changes to the configuration of devices delivering the Managed Services. Standard configuration changes will be implemented up to a week (being 5 Business Days) after submission, and need to go through the change control procedure described above. Complex changes must be submitted 2 weeks in advance of implementation and emergency changes will be implemented within 24 hours.</p> <p>1.2. <i>Continuous improvement</i></p> <p>Caretower may, at its own cost and expense, submit a report to the Customer within 20 Business Days of each anniversary of the Acceptance Date identifying the emergence of new and evolving relevant technologies or process changes in the IT, telecommunications or data centre field relevant to the Managed Services. Such report shall be provided in sufficient detail to enable the Customer to evaluate properly the benefits of the new technology or process. If the Customer wishes to incorporate any improvement identified by Caretower under this clause, the Customer shall send Caretower a change request for consideration in accordance with clause 16 of the Terms.</p>
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**TESTING SERVICES:SERVICESADDENDUM**

Clause	Addition/amendment
3 (Supply of Services)	<p>Addition to clause 3 (Supply of Services):</p> <p>1.1. Caretower shall supply the Testing Services to the Customer in accordance with these Terms and the Contract in all material respects and shall deliver the Security Report to the Customer on completion of the Testing Services.</p> <p>1.2. Caretower shall use reasonable endeavours to meet any performance dates agreed between the parties but any such dates shall be estimates only and time shall not be of the essence for performance of the Testing Services.</p> <p>1.3. Caretower shall have the right to make any changes to the Testing Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Testing Services, and Caretower shall notify the Customer in any such event.</p> <p>1.4. The Customer acknowledges and agrees that, except to the extent otherwise required by law, all Security Reports produced as a result of the Testing Services may be held by Caretower for a period of 6 years from the production of such report.</p> <p>1.5. The Customer warrants and represents that:</p> <p>1.5.1. the Customer's System is sufficiently robust to support and facilitate the provision of the Testing Services;</p> <p>1.5.2. it has taken all appropriate back-ups of all software and data which resides on or relates to the Customer's System necessary to restore the Customer's System to its original state on completion of the provision of the Testing Services; and</p> <p>1.5.3. it has taken appropriate steps to ensure the integrity of the Customer's System.</p> <p>1.6. The Customer acknowledges and agrees that the provision of the Testing Services may cause corruption or damages to the Customer's System and that Caretower will not be liable for any losses as a result of network or system failures or for corruption of software or data held on the Customer's System.</p>

<p>5 (Price and Payment)</p>	<p>Addition to clause 5 (Price and Payment):</p> <ol style="list-style-type: none"><li>1.1. The charges for the Testing Services shall be on a time and materials basis as follows:<ol style="list-style-type: none"><li>1.1.1. The charges shall be calculated in accordance with Caretower's standard daily fee rates from time to time;</li><li>1.1.2. Caretower's standard daily fee rates for each individual are calculated on the basis of an eight-hour day from 9.00 am to 5.30 pm or 10.00 am to 6.00 pm worked on Business Days;</li><li>1.1.3. Caretower shall be entitled to charge an overtime rate as at the then current prevailing overtime and emergency rates of Caretower, on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Testing Services outside the hours referred to in clause 1.1.2; and</li><li>1.1.4. Caretower shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Caretower engages in connection with the Testing Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Caretower for the performance of the Testing Services, and for the cost of any materials.</li></ol></li></ol>
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<p>6 (Customer's Obligations)</p>	<p>Addition to clause 6 (Customer's Obligations):</p> <ol style="list-style-type: none"> <li>1.1. The Customer shall: <ol style="list-style-type: none"> <li>1.1.1. co-operate with Caretower in all matters relating to the Testing Services;</li> <li>1.1.2. provide Caretower, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Caretower;</li> <li>1.1.3. provide Caretower with such information, materials and experienced personnel as Caretower may reasonably require in order to supply the Testing Services, and ensure that any information provided is accurate in all material respects;</li> <li>1.1.4. assist Caretower in the interpretation of the results arising from the performance of the Testing Services;</li> <li>1.1.5. prepare the Customer's Site(s) for the supply of the Testing Services in accordance with any instructions issued by Caretower from time to time;</li> <li>1.1.6. obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Testing Services are to start;</li> <li>1.1.7. where applicable, keep and maintain Caretower Materials at the Customer's premises in safe custody at its own risk, maintain the Caretower Materials in good condition until returned to Caretower, and not dispose of or use the Caretower Materials other than in accordance with Caretower's written instructions or authorisation; and</li> <li>1.1.8. ensure that any relevant third parties are advised of the provision of the Testing Services and the authority of Caretower to perform the Testing Services.</li> </ol> </li> <li>1.2. The Customer will ensure that the provision of the Testing Services to the Customer as contemplated by the Contract will not cause the Customer to commit an offence under the Computer Misuse Act 1990 nor the Regulation of Investigatory Powers Act 2000 and warrants that no data, programs or other articles provided by Caretower will be used in a manner which would constitute an offence under those Acts.</li> <li>1.3. If Caretower's performance of any of its obligations under the Contract (including these Terms) is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default): <ol style="list-style-type: none"> <li>1.3.1. Caretower shall without limiting its other rights or remedies have the right to suspend performance of the Testing Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Caretower's performance of any of its obligations;</li> <li>1.3.2. Caretower shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Caretower's failure or delay to perform any of its obligations as set out in this clause; and</li> <li>1.3.3. the Customer shall reimburse Caretower on written demand for any costs or losses sustained or incurred by Caretower arising directly or indirectly from the Customer Default.</li> </ol> </li> <li>1.4. The Customer agrees that it will only use the Security Reports for its own internal</li> </ol>
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	business purposes and not use the Security Report (or any interim report issued) or any part of it, for advertising or marketing purposes or disclose it to any third party without the prior written consent of Caretower.
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**SUPPORT SERVICES: SERVICES ADDENDUM**

<b>Clause</b>	<b>Addition/amendment</b>
3 (Supply of Services)	<p>Addition to clause 3 (Supply of Services):</p> <p>1.1. Caretower will appoint an account manager who shall be responsible for the co-ordination of all matters relating to the Support Services. All communications, documentation and materials relating to the Support Services shall be sent by the Customer to the account manager.</p>
11 (Limitation of liability)	<p>Addition to clause 11 (Limitation of liability):</p> <p>1.1. Technical Support: When the Customer buys Support Services from Caretower, deliverable by telephone or email, such Support Services do not include product installation guidance by telephone or email.</p>

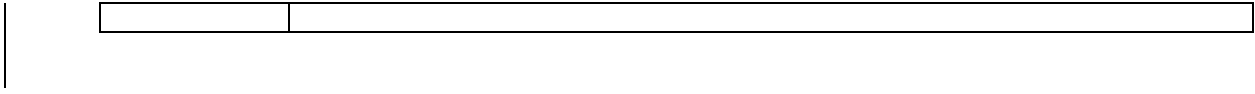
**CONSULTANCY SERVICES: SERVICES ADDENDUM**

<b>Clause</b>	<b>Addition/amendment</b>
3 (Supply of Services)	<p>Addition to clause 3 (Supply of Services):</p> <p>1.1. Caretower may, on request by the Customer, provide installation, configuration and training services in respect of the Goods. Such training shall be carried out at the Customer's Site and any necessary equipment necessary for the training shall be provided by the Customer, unless otherwise agreed between the parties.</p>
6 (Customer's Obligations)	<p>Addition to clause 6 (Customer's Obligations):</p> <p>1.1. The Customer is responsible for all telephone and postal and any other charges in contacting Caretower. The Customer is further responsible for all outgoing telephone calls charges required to be made by Caretower's employees and/or agents during a consultancy visit to the Customer's Site(s).</p> <p>1.2. The Customer will ensure that any information it provides to Caretower is complete and accurate.</p> <p>1.3. If the Customer requests Consultancy Services, for installation, configuration and training of software and/or hardware, the Customer is responsible for all necessary preparations of all relevant software and hardware requirements to render compatible with the execution of the Consultancy Services. If Caretower's employees and/or agents are prevented from carrying out their duties, by the Customer's failure to make its environment compatible, or by the Customer's failure to provide the necessary access and facilities to Caretower's employees and/or agents, which could result in Caretower's employees and/or agents abandoning the consultancy service, the Customer remains fully responsible for all charges in relation to the Consultancy Services.</p>
7.2 (Warranties)	<p>Addition to clause 7.2 (Warranties):</p>

in relation to the Services)	<p>1.1. The Customer acknowledges and agrees that it and not Caretower is responsible for the Customer's compliance with the GDPR and related or other applicable data protection laws, privacy regulations (including without limitation the Privacy and Electronic Communications Regulations) and statutes (<b>DP Law</b>). Accordingly the Customer will indemnify and hold harmless Caretower, its officers, agents, contractors and employees against all liabilities, claims, costs, expenses, damages and losses (including any direct, indirect or consequential losses, all interest, penalties, legal and other reasonable professional costs and expenses, and compensation, fines (including administrative fines) and monetary penalties) suffered or incurred by Caretower, its officers, agents, contractors and employees due to or arising out of or in connection with any breach of the DP Law by the Customer or breach of clause 10 of these Terms by the Customer.</p> <p>1.2. The Customer further acknowledges and agrees that the DP Consultancy Services are of a general nature based on current guidance from the ICO, and that these Services are not tailored to the Customer's specific requirements and are not necessarily comprehensive.</p> <p>1.3. The Customer acknowledges that Caretower are not providing legal services or legal advice and the Customer acknowledges that it is the Customer's responsibility to take legal advice where appropriate on its DP Law compliance.</p> <p>1.4. In light of the above the Customer acknowledges and agrees that Caretower neither provides nor makes any warranties, representations, assurances or guarantees in relation to the Customer's compliance with DP Law following the provision of the Consultancy Services by Caretower. Any liability which Caretower may incur in relation to the Consultancy Services (including any DP Consultancy Services) is limited as set out in Clause 11 (Limitation of Liability).</p>
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**DPO AS A SERVICE: SERVICES ADDENDUM**

Clause	Addition/amendment
6 (Customer Obligations)	<p>Addition to clause 6 (Customer Obligations):</p> <p>1.1. The Customer will provide in a timely manner all information, access to senior management and support which is required by Caretower for Caretower to provide DPO as a Service.</p> <p>1.2. The Customer undertakes to comply with its obligations as a controller or processor (as the case may be) under Article 38 of the GDPR (such Article is entitled "Position of the Data Protection Officer").</p>
7.2 (Warranties in relation to the Services)	<p>Addition to clause 7.2 (Warranties):</p> <p>1.1. The Customer acknowledges and agrees that it and not Caretower is responsible for the Customer's compliance with the GDPR and related or other applicable data protection laws, privacy regulations (including without limitation the Privacy and Electronic Communications Regulations) and statutes (<b>DP Law</b>). Accordingly the Customer will indemnify and hold harmless Caretower, its officers, agents, contractors and employees against all liabilities, claims, costs, expenses, damages and losses (including any direct, indirect or consequential losses, all interest, penalties, legal and other reasonable professional costs and expenses, and compensation, fines (including administrative fines) and monetary penalties) suffered or incurred by Caretower, its officers, agents, contractors and employees due to or arising out of or in connection with any breach of the DP Law by the Customer or breach of clause 10 of these Terms by the Customer.</p> <p>1.2. The Customer acknowledges that Caretower are not providing legal services or legal advice and the Customer acknowledges that it is the Customer's responsibility to take legal advice where appropriate on its DP Law compliance.</p> <p>1.3. In light of the above the Customer acknowledges and agrees that Caretower neither provides nor makes any warranties, representations, assurances or guarantees in relation to the Customer's compliance with DP Law following the provision of DPO as a Service by Caretower. Any liability which Caretower may incur in relation to DPO as a Service is limited as set out in Clause 11 (Limitation of Liability).</p>



## SCHEDULE B

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The following GDPR Addendum forms part of the Terms and Conditions for the provision of Goods and/or Services by Caretower Ltd and applies to the extent that the Contract involves Caretower processing personal data for the Customer (as more particularly described in the Annex below).

### GDPR ADDENDUM

In this Addendum **controller, processor, data subject, personal data, personal data breach, and processing** have the meanings in the Data Protection Legislation.

1. Without prejudice to the generality of the foregoing clause 10, Caretower shall:
  - 1.1. process the personal data only on the written instructions of the Customer (unless required by law to act without, or in contravention of, such instructions);
  - 1.2. ensure that its staff who process the personal data are subject to a duty of confidence;
  - 1.3. take appropriate measures to ensure the security of processing, including without limitation measures required to comply with Article 32 of GDPR;
  - 1.4. where it wishes to use a sub-contractor who will be processing personal data of the Customer, it is entitled to do so provided that it will ensure that there is a written contract between the Supplier and the sub-contractor which imposes upon the sub-contractor the obligations set out in the Contract as regards the GDPR;
  - 1.5. assist the Customer (at the cost of the Customer) in providing subject access and allowing data subjects to exercise their rights under GDPR;
  - 1.6. assist the Customer (at the cost of the Customer) in meeting the Customer's GDPR obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments insofar as it is possible for the Supplier to do so;
  - 1.7. delete or return all personal data to the Customer as requested upon expiry or earlier termination of the Contract; and
  - 1.8. submit to audits and inspections, provide the Customer with whatever information it needs to ensure that both parties are meeting their respective obligations pursuant to Article 28 of GDPR, and inform the Customer forthwith if it is asked to do something which it believes would infringe GDPR, provided that the Customer acknowledges that clauses 1.5 to 1.7 inclusive shall only apply to personal data within the possession of Caretower at the relevant time.

### ANNEX (PART OF SCHEDULE B)

#### DESCRIPTION OF PROCESSING, PERSONAL DATA AND DATA SUBJECTS UNDERTAKEN BY THE PROCESSOR (CARETOWER) FOR THE CONTROLLER (CUSTOMER)

##### 1 SUBJECT-MATTER AND NATURE OF THE PROCESSING

Personal data are processed to perform the contractual obligations as set out in the Contract, including the following services: penetration testing and IT security services; the provision of DPO as a Service (subject to clause 10.3)  
Nature of the processing: the use of personal data for the above purposes.

##### 2 PURPOSE(S) AND DURATION OF THE PROCESSING

Personal data are processed for the following purpose(s): See above  
Duration of the processing: for as long as Caretower is providing the relevant Services to the Customer.

##### 3 TYPE OF PERSONAL DATA

The personal data processed concern the following categories of personal data: email and contact details; other personal data provided to Caretower by the Customer in connection with the provision of DPO as a Service (subject to clause 10.3)

##### 4 CATEGORIES OF DATA SUBJECTS

The personal data processed concern the following categories of data subjects: employees and consultants at the Customer who may be subject to penetration testing or IT security testing carried out by Caretower or whose personal data is processed by Caretower in relation to the provision of DPO as a Service (subject to clause 10.3); other categories of data subjects in relation to DPO as a Service (including any customers, clients, service users or suppliers of the Customer) (subject to clause 10.3)..