

HOME PC PLUS SUPPORT PACKAGE

TERMS AND CONDITIONS - IMPORTANT

These terms and conditions ("the **conditions**") apply to the services that you receive from **TOTAL CARE**, whether as part of a **Support Package** or in respect of 'one-off' services we agree to provide **you** with. These **conditions** are important so please take the time to read this document carefully.

These **conditions** do not affect your statutory rights.

RIGHT TO CANCEL – DISTANCE SELLING REGULATIONS

Under the Consumer Protection (Distance Selling) Regulations 2000 where a contract is concluded by distance means (for example over the phone or via the Internet) you have the statutory right to cancel your contract with us for a maximum period of seven working days beginning on the day on which the contract is concluded (see condition 1 below). However, your statutory cancellation rights will be lost if we provide services to you at your request under this contract (e.g you request and we provide technical telephone support or if you use our online services) before the end of the seven working day period.

FOR CONSUMER ADVICE PLEASE CONTACT YOUR LOCAL TRADING STANDARDS DEPARTMENT OR CITIZENS' ADVICE BUREAU. A COPY OF THESE TERMS AND CONDITIONS IN LARGER PRINT IS AVAILABLE UPON REQUEST.

Certain words used in these **conditions** have specific meanings. Where they do they appear in bold text. A list of the majority of these words is set out in the definitions section at the end of these **conditions**. Others appear in the text of these **conditions**

1. Conditions and Contract Formation

- 1.1 These **conditions** apply to all goods and/or services we provide to **you** (whether as part of a Support Package or on a one-off basis as well as to all statements made by **us** over the telephone, via our website or in brochures, promotional material and sales literature.
- 1.2 A contract between **you** and **TOTAL CARE** is formed on these **conditions** and becomes legally binding when **your** order is accepted by **us** (whether verbally over the telephone in the case of telephone order or by an order confirmation if **your** order is placed via our website.
- 1.3 If **you** place an order through **our** website a copy of these **conditions** will be provided to **you** in a durable format (either via e-mail and/or by making them available for downloading in PDF format during the sign up process). If **you** place an order over the telephone a hard copy of these conditions will be sent to **you** (via e-mail or post) with written confirmation of **our** acceptance of **your** order.

2. Home PC Support Services

- 2.1 The following remote support services are available from **TOTAL CARE**:

"Hotline Hardware Technical Support" - **hardware** technical telephone advice, assistance and problem solving in relation **supported products** available between the hours of 8am and 10pm, 7 days a week;

"Hotline Software Technical Support" - unlimited technical telephone assistance (excluding tuition) during normal working hours of 8am to 10pm, 7 days a week, (excluding Christmas Day) in relation to the **operating system** of **your computer** and any **software** installed thereon.

"Remote Computer Repair" means a service whereby with **your** permission and using remote access technology one of **our** technicians accesses and takes control of **your computer** remotely via the Internet using **your** broadband connection to perform appropriate diagnostics and where possible to rectify problems with **your computer**.

"Anti-virus/Internet Security Suite" - anti-virus and Internet security software (for PC and laptop computers only) together with periodic updates for the duration of this **agreement. THIS SERVICE IS AN OPTIONAL EXTRA AND IS SUBJECT TO AN ADDITIONAL MONTHLY CHARGE;**

- 2.2 Telephone calls to the Hotlines (Hardware and Software) from a BT landline or equivalent will not be charged. Calls made from other networks, mobiles or calls made from outside the UK will be charged. Charges may vary and you should consult your telephone provider for details. CALLS MAY BE MONITORED AND/OR RECORDED FOR QUALITY AND/OR TRAINING PURPOSES.
- 2.3 Our services are only available to consumers who require support and services for home-related use. We shall not supply services to businesses or for business related purposes.
- 2.4 **Hotline Hardware Technical Support, Hotline Software Technical Support and Remote Computer Repair** our subject to a fair use policy. In the event that **your** use of these services exceed 360 minutes in any one year period ("**the Fair Use Limit**") **we** reserve the right to refuse to provide these services until such time as your use falls below the **Fair Use Limit**.
- 2.5 We will not provide services in relation to any of the following:
Problem solving for business software, accounting packages, repair of servers or of networks or general training and tuition in relation to hardware or software

3 **Our responsibilities and obligations**

- 3.1 **We** will perform or procure the performance of the **support services** with reasonable skill and care within a reasonable time. However, **we** may not be able to resolve each and every technical issue. In circumstances where **we** are unable to resolve an issue that in our reasonable opinion is capable of resolution **we** shall refund a reasonable proportion of the charges **you** have paid depending upon the individual circumstances.
- 3.2 We shall not be responsible to you for:

- 3.2.1 Any corruption of or inherent faults or failures in or of **software** or **operating systems**
- 3.2.2 The repair or replacement of any hardware or software that is faulty or defective (as reasonably diagnosed by **us** during the provision of **support services** to you.
- 3.2.3 Any failure by **you** to follow our reasonable advice, recommendations or instructions
- 3.2.4 Any damage to your **supported products**
- 3.2.5 Any damage or loss of **data** that may occur during the performance of any diagnostic process
- 3.3 **Our** obligation to provide **support services** is dependant upon **you** complying with **your** obligations and responsibilities under these **conditions** as well as making the required payments.
- 3.4 **We** shall not be in breach of our obligations under these **conditions** if **we** are prevented providing **support services** by reason of any matter that is beyond our reasonable control including but not limited to your failure to maintain a telephone line, an Internet connection or by any hardware installed on or connected to your **supported product**, or by any third party software.
- 3.5 **We** reserve the right to change the hours during which **we** provide telephone assistance via the Hotlines but will not materially alter the hours during which such support is available. Any changes will be notified via email, post or through posts on our **website**.
- 3.6 In exceptional circumstances, including but not limited to exceptional staff absences, system breakdown or interruption, the **support services** may be temporarily unavailable.
- 3.7 **We** may sub-contract the provision of the **services** and in the event that **we** do it will not affect **our** obligations to **you** under these **conditions**.
- 3.8 In the event that your **supported product** requires a repair **we** will at **our** discretion and at **your** cost repair or procure the repair of your **supported product** (where possible and subject to prevailing work loads the availability of spare parts). Any such repairs will be charged at **our** then prevailing rates which will be advised to **you** prior commencing any work.
- 4 **Price and payment**
- 4.1 Current prices and payment terms are available on **our website** or by contacting **our sales department**.
- 4.2 All prices quoted are inclusive of VAT.
- 4.3 For 'on-off' services you agree to pay the applicable charges by debit or credit card prior to the provision of the services.
- 4.4 **We** reserve the right to use a third party collection agent for the purpose of collecting your direct debit payments.
- 5 **Minimum requirements**

To utilise the **remote computer repair** service **you** must have an active broadband Internet connection and a Windows XP ® or Vista ® operating system installed on **your computer**.

6 **Your Obligations**

- 6.1 **You** will comply with all reasonable instructions and requests and co-operate fully with our staff to enable the **support services** to be provided as efficiently and as cost-effectively as possible.
- 6.2 **You** will carry out routine day-to-day maintenance as may be recommended in the instructions provided with your **supported product**.
- 6.3 **You** will appropriately back up all **software** and **data** stored on your **supported product** prior to embarking on any diagnostic process.
- 6.4 **You** will promptly advise **TOTAL CARE** of any change of **postal address** or a change in your contact details.
- 6.5 **You** shall be responsible for obtaining and maintaining any licence and/or consents required for the operation of any **software** installed on your **supported product**.
- 6.6 **You** will comply with the terms of any licence agreements governing the use the **anti-virus/internet Security Suite**.
- 6.7 Any **content** on your **supported product** is your sole responsibility and under no circumstances whatsoever will **we** be liable in any way for any such **content**. **You** acknowledge that **we** may take action with respect of any **content** (including steps to preserve it, monitor and disclose to third parties) if required by law or in good faith **we** believe such preservation, monitoring or disclosure is reasonably necessary.
- 6.8 It is **your** sole responsibility to ensure that **you** have an operating a system that can support the **anti-virus/internet Security Suite**
- 6.9 It is **your** sole responsibility to ensure that **you** meet and continue to meet the minimum requirements set out in **condition 5**.
- 6.10 **You** shall be solely responsible for all costs and charges associated with **your** broadband Internet connection

7 **Privacy and Data Protection – information about you**

- 7.1 The information provided by **you** in connection with **your support package** and as part of **support services** will be handled in accordance with all applicable laws and regulations.
- 7.2 **We** may pass **your** details to an external debt collection agency for the purposes of recovering any sums that **you** may owe **us** under these **conditions**.
- 7.3 **We** will use the information that you supply to **us** to allow personalised access to the **support services** and for the performance of **our** obligations under these **conditions**.

We may also use **your** information to determine the demographics and statistics of **our** customers, the objective being to provide a better and more targeted service. This information will be used for **our** own internal business purposes and will not be passed to anyone else except for the purposes of performing **our** obligations under these **Conditions**. From time to time **we** may locate **our** call centre operations outside the United Kingdom or use third party call centres located outside the United Kingdom and **you** agree to **us** passing **your** information outside of the UK for this purpose.

- 7.4 Statistics compiled using information **you** have provided may be shared with others but these statistics will not identify individuals.
- 7.5 Otherwise than in accordance with these **Conditions your** e-mail address will not be released sold or distributed to any third party other than **our** associated companies.
- 7.6 From time to time **we** may contact **you** (by 'phone, post, e-mail or text message) in connection with **your support package** or to advertise any new products, services or special offers **we** think may be of interest to **you**. **You** will be given the opportunity to "opt out" if **you** do not wish to receive any further marketing communications from **us**.
- 7.7 **We** may record or monitor telephone calls with **you** for quality and training purposes.

10. **Term and Termination – your rights to cancel or terminate this Agreement**

- 10.1 Subject to the termination and cancellation rights set out below, your **support package agreement** will be for a minimum period of three (3) months from the date of order confirmation letter ("the **Minimum Term**"). Thereafter this **agreement** shall automatically continue for successive one-month periods unless terminated by either or us in accordance with condition 10.3.
- 10.2 Provided **you** have not used or received the **support services** within the first seven (7) days from the date the contract is formed in accordance with **condition 1.2 you** may cancel this **agreement** by giving **us** notice and **you** will receive a full refund.
- 10.3 Following the expiry of the **minimum term you** may cancel this **agreement** by giving **us** not 30 days notice, such notice to expire at the end of the **minimum term** or any subsequent extensions thereof.
- 10.4 **You** may terminate this **agreement** if **we** are in breach of this **agreement** and **we** have failed to remedy the breach within 30 days of being advised thereof.
- 10.5 **We** may terminate this **agreement** at any time by giving **you** not less than 30 days prior written notice.

11. **Consequences of Cancellation/Termination**

On cancellation or early termination of this **agreement**, other than by reason of **our** breach, **our** obligation to provide any further **support services** will immediately cease.

Your licence to use the **anti-virus/internet security suite** will immediately expire and **you** will no longer be entitled to receive updates in relation to the **anti-virus/internet security suite**.

12. **Suspension of Services**

Without affecting **our** right to terminate this **agreement** pursuant to **condition 10** above, if **you** are in breach of any of the terms of this **agreement** (including but not limited to **you** being more than a month behind with your monthly payments) **we** may elect to suspend the provision of the **support services** until **you** have remedied your breach (if capable of remedy). **We** will give **you** notice if **we** do this. In the event **we** suspend the provision of the **support services** your obligation to pay the charges will continue.

13. **Limitation of Liability**

- 13.1 Nothing in this **agreement** shall operate so as to exclude **our** liability for death or personal injury caused by negligence or for any other matter for which liability may not be excluded by law.
- 13.2 **We** accept no liability for any failures in the capacity and performance of the **services software** supplied except where caused by **our** negligence.
- 13.3 **We** do not accept liability for any loss of or damage to any data stored on your **supported product** during the diagnostic/repair process howsoever caused
- 13.4 **We** will not be liable to **you** for any loss or damage caused in circumstances where:
- 13.4.1 **we** do not owe **you** a legal duty of care;
 - 13.4.2 such loss or damage is not a reasonably foreseeable result of such breach;
 - 13.4.3 any increase in loss or damage resulting from your breach of any term of this **agreement**.
- 13.5 Subject to the limitations in conditions 13.7 and 13.8 below, **we** will be liable to **you** for any loss or damage **you** suffer as a result of **our** breach of these **conditions** and/or **our** negligence but only for losses which are a reasonably foreseeable consequence of **our** breach of these **conditions** and/or negligence. Losses are foreseeable where **you** and **we** could contemplate them when we entered into this **agreement**. **We** are not responsible for indirect losses which happen as a side effect of the main loss or damage and which are not foreseeable by **you** and **us** (such as loss of profit or loss of opportunity).
- 13.6 **Our** liability shall not in any event include losses related to any business of yours or business use of your **supported product** such as lost data, lost profits or business interruption.
- 13.7 Except for liability for death and personal injury caused by negligence, fraudulent misrepresentation (see above) and damage to property (see below) **our** liability in respect of direct loss suffered by **you** shall be limited to the value of your **supported product** to which **your** claim relates or the sum of £1,000, whichever is the lower, in respect of any one event or series of related events.
- 13.8 **We** will be liable to **you** for any direct physical damage to **your** property to the extent that it results from **our** negligence up to a maximum amount of £250,000 in respect of one or a series of related events and up to £500,000 in respect of any series of unrelated events which take place within a single calendar year.

14. Software and Software Licence Agreement

Use of the **Anti-virus/Internet Security Suite** will be subject the terms of a third-party licence agreement.

15. Relaxing the Terms of this Agreement

No waiver, relaxation or indulgence that **we** may extend to **you** shall affect **our** rights under this **agreement**. Any waiver, relaxation or indulgence must be in writing and specify the right waived. **Our** rights and remedies under this **agreement** are cumulative and in addition to any rights and remedies conferred by law.

16. Notices

All notices which **you** are required to be give (including notices of cancellation or termination) shall be in writing by Email or letter (unless provided otherwise) and sent to us at the address set out above or such other address as **we** may advise **you** from time to time.

17. Severability

If any part of these **conditions** proves to be illegal or unenforceable the other provisions of these **conditions** and the remainder of the provision(s) in question shall "survive" and remain in full force and effect.

18. Assignment

You agree that by giving **you** written notice **we** can assign this **agreement** (both the benefit and the burden) either in whole or in part to a third party.

19. Survival of Terms

All terms which are expressly or by implication intended to survive termination of this **agreement**, shall survive beyond the termination of this **agreement**.

20. Trademarks

All trademarks are acknowledged.

21. Business Use

The **support services** are designed for domestic/consumer use, and are not designed for business purposes. If **you** use the **services** for business purposes **you** agree that **you** do so without any conditions, guarantees, warranties, whether express or implied including but not limited to any warranties or conditions as to satisfactory quality or fitness for a particular purpose, which are expressly excluded to the maximum extent permitted by law. If **you** are a business user, **we** will not liable to **you** for and hereby exclude all liability for consequential and indirect losses and any loss of profit, business opportunity, goodwill, reputation, revenue or anticipated savings, wasted expenditure or loss or corruption of data suffered by you in connection with the **services**, whether in

contract, tort (including negligence or otherwise) and whether or not such losses were foreseeable at the time **you** entered into this **agreement**.

22. **Law**

This **agreement** is governed by and shall be construed in accordance with English Law. We will try to resolve any disagreements or complaints quickly and efficiently. In the case of a dispute that **we** are unable to resolve the Courts of the United Kingdom shall have exclusive jurisdiction.

23. **Meanings**

Certain words used in these **conditions** have specific meanings. Where they do they appear in bold text. A list of the majority of these words is set out below. Others appear in the text of these **conditions**:

"**Agreement**" means these **conditions** and all documents referred to herein.

"**You**" and "**your**" means the purchaser of the **support package** who is a consumer and not a business;

"**Us/We/Our**" means Total Care is a trading name of Total Care and Support Limited (Company Number 4454150) whose registered office address is Time Technology Park, Blackburn Road, Burnley, Lancashire BB12 7TW ("**TOTAL CARE**");

"**Computer(s)**" means the PC or laptop computer (not an Apple Mac);

"**Content**" means any data, photographs, music, sounds, images, graphics, video, messages, programs or their materials which: infringe or may infringe any third-party intellectual property rights or other proprietary or publicity/privacy rights; violates or may violate any law or regulation; are or may be defamatory, obscene, offensive, and in particular contains references or links to child pornography or material that is potentially harmful to minors; or knowingly contains any mail bombs, viruses, Trojan horses, worms, time bombs, cancel bots or software that damages, interferes with or expropriates any system, data or personal information;

"**Data**" means any and all data and/or information that may be stored on your **supported product** including but not limited to photographs, music, sounds, images, graphics, video, messages, programs, files, documents and telephone numbers;

"**Gadgets**" means ink jet printers, digital cameras, ipods, web cams, MP3 players, wireless routers, scanners and modems or any additional items that **we** agree with **you** in writing to provide services in respect of under the terms of this **agreement**.

"**Operating system**" means Windows XP®, Windows Vista ® and Nero only or such other operating systems as we may agree to cover from time to time in writing;

"**Postal address**" means your permanent UK residential address as registered with **TOTAL CARE**

"**Price**" means the monthly price paid by direct debit by **you** to **us** for the **support services** supplied under this **agreement**;

"**Supported Product(s)**" means **computers** and **gadgets** owned by **you** and located at **your postal address**;

"**Support Services**" means the goods and/or services **we** shall provide to **you** as part of your **support package**;

"**Support Package**" means our Home PC support package comprising the services set out in condition ;

"**Software**" means MS Office, MS Publisher, Excel, MS Power Point, MS Access, Internet Explorer, Firefox and such other software programs and/or applications that we may agree to cover from time to time in writing;

"**Services Software**" means applications and computer programs provided or made available to **you** as part of the **support services** including the **Anti-virus/Internet Security Suite** software;

"**Website**" means www.eveshamsupport.com

© Total Care and Support Limited 2008. All rights reserved.