

# General Terms And Conditions Of PCM Systems Limited (Trading As PCM)

## 1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions.

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

**Charges:** all sums payable by the Customer to the Supplier for the supply of any of the Services and/or Hardware as set out in the Order.

**Commencement Date:** the date identified within condition 3.2.

**Contract:** the Customer's purchase order and the Supplier's acceptance of it under condition 3.

**Customer:** the person, firm or company who purchases, leases or licences (where applicable) Services and/or Hardware from the Supplier.

**Disaster Recovery Services:** the server disaster recovery services to be provided by the Supplier pursuant to this Contract.

**Hardware:** any Hardware agreed in the Contract to be purchased, leased or licenced (where applicable) by the Customer from the Supplier (including without limitation any part or parts of it).

**Initial Period:** the period outlined on the Contract document or as otherwise stated.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation 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.

**IT Support:** unlimited telephone and online support.

**Location(s):** the location(s) of the Maintained Hardware at the Customer's premises or such other location(s) as specified in the Order, or any other location as may be agreed by the parties in writing from time to time.

**Maintained Hardware:** the Hardware specified in the Order (but with the exclusion of all computer monitors and laptop Hardware) as may be amended from time to time by agreement between the parties.

**Maintenance Services:** Preventative Maintenance, Corrective Maintenance and Emergency Maintenance of the Maintained Hardware.

**Normal Business Hours:** 9.00 am to 5.00 pm GMT on a Business Day.

**Order:** means the Customer's order for the supply of Services and/or Hardware, as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's quotation.

**Remote Data Backup Services:** means the services offered by the Supplier for data storage.

**Renewal Period:** each successive 12-month period after the Initial Period for which this Contract is renewed.

**Services:** any of Maintenance Services, Support Services, Disaster Recovery Services or Remote Data Backup Services to be provided by the Supplier under the Contract.

**Software:** means any operating system installed on the Hardware or any software to be provided by the Supplier in conjunction with the Services.

**Standard Maintenance Fees:** the fees payable by the Customer for the provision of Corrective Maintenance and Preventative Maintenance, as set out in the order, as these fees are varied from time to time in accordance with the terms of this Contract.

**Supplier:** means PCM Systems Ltd (company registration number 2452375) trading as PCM of Tower Court, Armley Road, Leeds, LS12 2LY or such other associated company specified in the Order.

**Support Services:** IT Support or such other support service as set out within the Order.

**Term:** the Initial Period together with all Renewal Periods.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Condition headings shall not affect the interpretation of this Contract.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 A reference to **writing** or **written** includes faxes and e-mail.
- 1.7 References to conditions are to the conditions of this Contract.
- 1.8 In the event of conflict between the Order and these conditions, the Order shall take precedence.

## 2. Application Of Conditions

- 2.1 These conditions shall apply to and be incorporated in the Contract and prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.
- 2.3 Nothing in these conditions shall prejudice any condition or warranty, expressed or implied, or any legal remedy to which the Supplier may be entitled in relation to the Services and/or Hardware, by virtue of any statute, law or regulation.
- 2.4 All of these conditions (with the exclusion of the any of the supplementary conditions) shall apply to the supply of both Hardware and Services except where application to one or the other is specified. The supplementary conditions shall only apply to the supply of the Hardware and/or those specified Services specifically identified.

### 3. Basis Of Sale

- 3.1 Any quotation is valid for a period of 30 days only, and the Supplier may withdraw it at any time by notice to the Customer.
- 3.2 The Customer's purchase order constitutes an offer by the Customer to purchase, lease or licence (where applicable) the Services and/or Hardware specified in it on these conditions; accordingly, the execution and return of the acknowledgement copy of the purchase order form by the Supplier, or the Supplier's commencement or execution of work pursuant to the purchase order, shall establish a contract for the supply and purchase, lease or licence (where applicable) of those Services and/or Hardware on these conditions. The Customer shall be deemed to have accepted these conditions by placing an Order with the Supplier. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in; the purchase order shall not govern the Contract.
- 3.3 No Order which has been acknowledged by the Supplier may be cancelled by the Customer, except with the agreement in writing of the Supplier and provided that the Customer indemnifies the Supplier in full against all loss (including without limitation loss of profit), costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.

### 4. Supplier's Obligations

- 4.1 In consideration of the payment of the Charges by the Customer, the Supplier shall with effect from the Commencement Date provide the Services expressly identified in the Order, or otherwise agreed under these Conditions.
- 4.2 The Supplier undertakes:
- (a) to perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the IT services sector; and
  - (b) subject to condition 5, to use all reasonable endeavours to maintain the functionality of the Services and to fulfil its obligations under the Contract.
- 4.3 The Supplier shall use reasonable endeavours to meet the performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence of the Contract.
- 4.4 Except as expressly stated in this Contract, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including fitness for purpose and suitability) are hereby excluded to the extent permitted by law.
- 4.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

### 5. Customer's Obligations

- 5.1 The Customer shall:
- (a) co-operate with the Supplier in all matters relating to the Services;
  - (b) provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by the Supplier;

- (c) make available to the Supplier, its employees, contractors and agents any items of consumable material that may be reasonably requested in order to perform diagnostic tests;
- (d) ensure that an adequate data backup regime is operational (if the Customer does not use the Data Backup Services);
- (e) undertake not to relocate or reposition the central processing Hardware without prior notice to the Supplier. If requested, the Supplier will undertake to carry out such work or to supervise the work. A charge will apply to any such work carried out by the Supplier. The Services will be deemed to be suspended during such activity unless the Supplier has undertaken the performance of such work;
- (f) provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects;
- (g) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services; and
- (h) at all reasonable times permit full and free access to the Location(s) and any required Hardware to the Supplier, its employees, contractors and agents, and provide them with adequate and safe working space, and any telecommunications facilities as are reasonably required to enable the Supplier to perform the Services while at the Location(s).

5.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall in all circumstances be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

5.3 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of six months after the termination or expiry of the Contract, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier.

5.4 Any consent given by the Supplier in accordance with condition 5.3 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to such employee or sub-contractor.

## 6. Services, Hardware And Delivery

6.1 The Services and/or Hardware are as described in the Order. Any variation to the Services and/or Hardware must be agreed by the Supplier in writing.

6.2 Any drawings, descriptions or specifications contained in advertising material, brochures or catalogues issued by the Supplier are for the sole purpose of giving an approximate idea of the Services and/or Hardware and will not form part of any Contract unless otherwise agreed in writing by the Supplier.

6.3 The Services and/or Hardware will be delivered between Normal Business Hours.

6.4 Dates given for delivery of Services and/or Hardware are estimates only and are not guaranteed. Time for delivery shall not be of the essence of the Contract and the Supplier shall not be held liable for any loss, costs damages, charges or expenses caused directly or indirectly by any delay in the delivery.

## 7. Charges And Payment

- 7.1 All amounts due under this Contract shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 7.2 The Customer shall pay each invoice submitted to it by the Supplier in full, and in cleared funds, within the time periods specified on the invoice. All Charges are exclusive of VAT or any other applicable sales tax, which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.
- 7.3 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date the Supplier may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;
  - (b) suspend all Services until payment has been made in full;
  - (c) suspend all further delivery, installation or warranty service until payment has been made in full; and
  - (d) stop any Hardware in transit.
- 7.4 Time for payment shall be of the essence of the Contract.
- 7.5 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 7.6 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.
- 7.7 The Supplier may, at any time after the first anniversary of the Commencement Date, increase the Charges for any of the Services by giving to the Customer not less than 90 days written notice, provided that the increases shall be no more frequent than once in any 12 month period.

## 8. Confidentiality And Supplier's Property

- 8.1 The Supplier and Customer shall each 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 it by the other party or its agents, and any other confidential information concerning the other party's business or its products which the other party may obtain. The Supplier and Customer shall each restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging its obligations under the Contract, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind it.
- 8.2 All materials, Hardware and tools, drawings, specifications and data supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

8.3 This condition 8 shall survive termination of the Contract, however arising.

## 9. Limitation Of Liability

9.1 The following provisions set out the entire financial liability of the Supplier (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of the Contract howsoever arising;
- (b) any use made by the Customer of the Services, the Hardware, or any part of them; and
- (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

9.3 Nothing in these conditions excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence;
- (b) for fraud or fraudulent misrepresentation; or
- (c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

9.4 Subject to condition 9.2 and condition 9.3:

- (a) the Supplier shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
  - (i) loss of profits; or
  - (ii) loss of business; or
  - (iii) depletion of goodwill or similar losses; or
  - (iv) loss of contract; or
  - (v) loss or corruption of data or information; or
  - (vi) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) the Supplier's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to 150% of the total Charges paid by the Customer to the Supplier during the 12 month period immediately preceding the date on which the cause of action first arose.

## 10. Term And Termination

10.1 Unless otherwise specified within the Order, this Contract shall commence on the date identified within condition 3.2. Unless terminated earlier in accordance with this condition 10, this Contract (provided it relates to Services) shall continue for the Initial Period and shall automatically extend for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period. Either party may give written notice to the other party, not later than 30 days before the end of the Initial Period or the relevant

Renewal Period, to terminate this Contract at the end of the Initial Period or the relevant Renewal Period, as the case may be.

- 10.2 Without prejudice to any other right or remedy available to the Supplier, the Supplier may terminate the Contract or suspend any further deliveries under the Contract (if applicable) without liability to the Customer and, if any Hardware (if applicable) has been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous Contract or arrangement to the contrary if:
- (a) the Customer fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - (b) the Customer enters into liquidation (other than for the purposes of a bona fide solvent amalgamation or reconstruction) whether compulsory or voluntarily or compounds with its creditors generally or has an administrator, administrative receiver or receiver appointed over all or a substantial part of its undertaking or assets; or
  - (c) the Customer ceases or threatens to cease to carry on its business or substantially the whole of its business; or
  - (d) the Customer is declared insolvent, or convenes a meeting of or makes or proposed to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar office is appointed over any of its assets.
- 10.3 Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Contract shall remain in full force and effect.
- 10.4 On termination of this Contract for any reason:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and/or Hardware supplied but for which no invoice has yet been submitted;
  - (b) the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - (c) all licences granted shall immediately terminate;
  - (c) the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of 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.

## 11. Force Majeure

The Supplier shall not in any circumstances have any liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier 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 or default of suppliers or sub-contractors.

## 12. Non-Solicitation

The Customer undertakes that it shall not, without the prior written consent of the Supplier, directly or indirectly solicit or entice away or attempt to solicit or entice away from the employment of the Supplier or employ or attempt to employ any person who is, or has been, engaged or employed by the Supplier at any time during the Term or for a further period of six months after completion of the Services, whichever is the later.

## 13. Data

13.1 It is the parties' intention that the Customer shall, in using the Services and in relation to any personal data, operate as both data controller and data processor and that the Supplier shall not be acting as data controller or data processor in relation to any such data. The Customer shall be responsible for ensuring that the processing of the personal data complies with the General Data Protection Regulation.

13.2 If, however, the Supplier for whatever reason is processing personal data on the Customer's behalf in the course of providing the Services, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:

- (a) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully process the personal data in accordance with this Contract on the Customer's behalf;
- (b) the Supplier shall process the personal data only in accordance with the terms of this Contract and any lawful instructions reasonably given by the Customer from time to time; and
- (c) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

## 14. Severance

14.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition shall not affect the validity and enforceability of the rest of this Contract.

14.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.



## 15. Entire Agreement

This Contract constitutes the entire Contract between the parties and supersedes and extinguishes all previous Contracts, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The Customer acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.

## 16. Notices

- 16.1 Any notice or other communication to be given by either party to the other may be served by personal service, first-class post to the address of the other party given in the order or such other address as such party may from time to time have communicated to the other in writing or by electronic mail provided that electronic mail notifications are confirmed within 24 hours by first-class mailed confirmation of a copy. Notices given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered on the second day after posting and correctly directed electronic mail shall be deemed to have been received instantaneously on transmission provided that it is confirmed as set out above.
- 16.2 This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 17. General

- 17.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 17.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 17.3 Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 17.4 No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 17.5 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.6 Except as expressly provided in this Contract, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 17.7 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales and the parties shall submit to the exclusive jurisdiction of the English Courts.

# Supplemental Conditions - Applicable To Supply (And Installation) Of IT Hardware Only

These supplemental conditions are to be read in conjunction with the General Terms and Conditions. All definitions contained within these supplemental conditions have the same meaning as those set out in the General Terms and Conditions.

## 1. Delivery Of Hardware And Acceptance

- 1.1 The Customer shall be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the Hardware and for the provision of all necessary access and facilities reasonably required to deliver and install the Hardware. If the Supplier is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, the Supplier may levy additional charges to recover its loss arising from this event.
- 1.2 The Customer shall be deemed to have accepted the Hardware when the Customer has had 3 Business Days to inspect it after delivery and has not exercised in writing its right of rejection.
- 1.3 The Supplier shall be responsible for any damage, shortage or loss in transit, provided that the Customer notifies it to the Supplier (or its carrier, if applicable) within three days of delivery of the Hardware and that the Hardware has been handled in accordance with the Supplier's stipulations. Any remedy under this supplemental condition 1.3 shall be limited, at the option of the Supplier, to the replacement or repair of any Hardware which is proven to the Supplier's satisfaction to have been lost or damaged in transit.

## 2. Risk And Property

- 2.1 The Hardware shall be at the risk of the Supplier until delivery to the Customer at the place of delivery specified in the Supplier's acknowledgement of order.
- 2.2 Ownership of the Hardware (unless it is being leased or licenced) shall pass to the Customer when the Supplier has received in full in cleared funds all sums due to it in respect of the Hardware.
- 2.3 Until ownership of the Hardware has passed to the Customer under supplemental condition 2.2, the Customer shall:
  - (a) hold the Hardware on a fiduciary basis as the Supplier's bailee;
  - (b) store the Hardware (at no cost to the Supplier) in satisfactory conditions and separately from all the Customer's other Hardware or that of a third party, so that it remains readily identifiable as the Supplier's property;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Hardware; and
  - (d) keep the Hardware insured on the Supplier's behalf for its full price against all risks with a reputable insurer to the reasonable satisfaction of the Supplier, ensure that the Supplier's interest in the Hardware is noted on the policy, and hold the proceeds of such insurance on trust for the Supplier and not mix them with any other money.
- 2.4 The Customer's right to possession of the Hardware before ownership has passed to it shall terminate immediately if any of the circumstances set out in condition 10 arise or if the Customer encumbers or

in any way charges the Hardware, or if the Customer fails to make any payment to the Supplier on the due date.

- 2.5 The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Hardware is or may be stored in order to inspect it, or where the Customer's right to possession has terminated, to remove it. All costs incurred by the Supplier in repossessing the Hardware shall be borne by the Customer.
- 2.6 On termination of the Contract for any reason, the Supplier's (but not the Customer's) rights in this supplemental condition 2 shall remain in effect.

### 3. Inspection And Testing Of Hardware

The Supplier shall:

- (a) test and inspect the Hardware on delivery to ensure that it complies with the requirements of the Contract; and
- (b) if so requested by the Customer, give the Customer reasonable advance notice of such tests (which the Customer shall be entitled to attend).

### 4. Software Licence

- 4.1 If the Supplier refers to a software licence in the acknowledgment of order, the price of the Hardware includes the licence fee for the Customer's right to use the Software.
- 4.2 If the Customer is provided with any operating system software licence in respect of the Software, the Customer shall sign and return it to the Supplier within seven days of installation of the software, unless the licence has been supplied on a "shrink-wrap" or "click-wrap" basis.
- 4.3 If no software licence has been provided to the Customer, the Customer hereby accepts a non-exclusive, non-transferable licence to use the Software on the following conditions:
- (a) the Customer shall not copy (except to the extent permissible under applicable law which is not capable of exclusion by Contract or for normal operation of the Hardware), reproduce, translate, adapt, vary or modify the software, nor communicate it to any third party, without Supplier's prior written consent;
  - (b) the Customer shall not use the Software on any Hardware other than the Hardware, and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software on the medium on which it resides;
  - (c) such licence shall be terminable by either party on 28 days' written notice, provided that the Supplier terminates only if the continued use or possession of the Software by the Customer infringes the developer's or a third party's rights, or the Supplier is compelled to do so by law, or if the Customer has failed to comply with any term of the Contract; and
  - (d) on or before the expiry of this licence, the Customer shall return to the Supplier all copies of the Software in its possession.

### 5. Warranty

- 5.1 The Supplier warrants to the Customer that the Hardware is free from defects of workmanship and materials. The Supplier undertakes (subject to the remainder of this supplemental condition 5), at its option, to repair or replace Hardware (other than consumable items) which is found to be defective as a result of faulty materials or workmanship within six months of delivery and installation.

- 5.2 The Supplier shall not in any circumstances be liable for a breach of the warranty contained in supplemental condition 5.1 unless:
- (a) the Customer gives written notice of the defect to the Supplier within seven days of the time when the Customer discovers or ought to have discovered the defect; and
  - (b) after receiving the notice, the Supplier is given a reasonable opportunity of examining such Hardware and the Customer (if asked to do so by the Supplier) returns such Hardware to the Supplier's place of business at the Supplier's cost for the examination to take place there.
- 5.3 The Supplier shall not in any circumstances be liable for a breach of the warranty in supplemental condition 5.1 if:
- (a) the Customer makes any use of Hardware in respect of which it has given written notice under supplemental condition 5.2(a); or
  - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Hardware or (if there are none) good trade practice; or
  - (c) the Customer alters or repairs the relevant Hardware without the written consent of the Supplier.
- 5.4 Any repaired or replacement Hardware shall be under warranty for the unexpired portion of the six-month period.
- 5.5 The Supplier shall not in any circumstances be liable for any damage or defect to the Hardware caused by improper use of the Hardware or use outside its normal application.

# Supplemental Conditions - Additional Provisions Applicable To Maintenance Services Only

These supplemental conditions are to be read in conjunction with the General Terms and Conditions. Unless otherwise stated, all definitions contained within these supplemental conditions have the same meaning as those set out in the General Terms and Conditions.

## 1. Definitions

**Additional Services:** any Emergency Maintenance and/or any Excluded Maintenance performed by the Supplier under this Contract.

**Additional Services Fees:** the fees payable in consideration of the provision of any Additional Services, which shall be calculated at the Additional Services Rates.

**Additional Services Rates:** the rates set out in the Order, as those rates are amended from time to time in accordance with the terms of this Contract.

**Charges:** the Maintenance Fees and the Additional Services Fees together.

**Corrective Maintenance:** means:

- (a) making any adjustments to the Maintained Hardware; and
- (b) replacing any parts or components of the Maintained Hardware, required to restore the Maintained Hardware to Good Working Order,

in accordance with supplemental condition 2.4.

**Excluded Causes:** means:

- (a) a defect in the manufacturer's design of the Maintained Hardware;
- (a) faulty materials or workmanship in the manufacture of the Maintained Hardware;
- (b) use of the Maintained Hardware with computer Hardware or materials not supplied or approved in writing by the Supplier;
- (c) any maintenance, alteration, modification or adjustment performed by persons other than the Supplier or its employees or agents unless approved by the Supplier in accordance with supplemental condition 2.3(f);
- (d) the Customer or a third party moving the Maintained Hardware;
- (e) the use of the Maintained Hardware in breach of any of the provisions of the agreement under which the Maintained Hardware was supplied;
- (f) a failure, interruption or surge in the electrical power or its related infrastructure connected to the Maintained Hardware;
- (g) a failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the Maintained Hardware, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer; or
- (h) software or software related faults, including damage and/or malfunction caused by viruses or other malicious programmes
- (i) the neglect or misuse of the Maintained Hardware.

**Emergency Maintenance:** means:

- (a) making any adjustments to the Maintained Hardware; and
- (b) replacing any parts or components of the Maintained Hardware, required to restore the Maintained Hardware to Good Working Order

in accordance with supplemental condition 2.5 and supplemental condition 2.6.

**Excluded Maintenance:** any maintenance services required to restore any malfunctioning or failed Maintained Hardware to Good Working Order where the malfunction or failure results from or is caused by any of the Excluded Causes.

**Fix Time:** the applicable fix times as set out in the Order.

**Good Industry Practice:** in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgement and the making of any expenditure that would reasonably be expected from a skilled person engaged in the same type of undertaking under the same or similar circumstances.

**Good Working Order:** the Maintained Hardware operates in accordance with the Operating Manuals.

**Operating Manuals:** all operating manuals, specifications and other manufacturer documentation relating to the Maintained Hardware.

**Preventative Maintenance:** means:

- (a) testing that the Maintained Hardware is functional; and
- (b) making any adjustments as may be required to ensure the Maintained Hardware remains in Good Working Order, in accordance with supplemental condition 2.2.

**Response Time:** the applicable response times as set out in the Order.

## 2. Maintenance Services

- 2.1 During the Term, the Supplier shall provide the Customer with the Maintenance Services for the Maintained Hardware at the Location(s).
- 2.2 The Supplier shall attend at the Location(s) during Normal Business Hours at a frequency as is reasonably determined by the Supplier to perform Preventative Maintenance of the Maintained Hardware.
- 2.3 The Customer shall:
- (a) ensure that the Maintained Hardware is installed and kept in suitable premises and under suitable conditions, as specified in the Operating Manuals, permit only trained and competent personnel to use it and follow any operating instructions as the Supplier may give from time to time;
  - (b) notify the Supplier promptly if the Maintained Hardware is discovered to be operating incorrectly;
  - (c) not allow any person other than the Supplier to maintain, alter, modify or adjust the Maintained Hardware without the prior written approval of the Supplier;
  - (d) not move the Maintained Hardware from the Location(s) without the prior written approval of the Supplier (approval not to be unreasonably withheld or delayed);
  - (e) store any reserve Hardware only in conditions approved by the Supplier, and make this Hardware available for periodic maintenance, as with all other Maintained Hardware; and
  - (f) only use supplies or materials supplied or approved by the Supplier (approval not to be unreasonably withheld or delayed).
- 2.4 On the Customer informing the Supplier that the Maintained Hardware is malfunctioning or has failed or is otherwise not in Good Working Order, the Supplier shall:
- (a) use all reasonable endeavours to attend at the Location(s) during Normal Business Hours within the relevant Response Time; and
  - (b) use all reasonable endeavours to perform Corrective Maintenance of the Maintained Hardware within the relevant Fix Time.
- 2.5 On the Customer informing the Supplier outside of Normal Business Hours that the Maintained Hardware is malfunctioning, has failed or is not in Good Working Order, the Supplier shall:
- (a) use all reasonable endeavours to attend at the Location(s) within the relevant Response Time; and
  - (b) use all reasonable endeavours to perform Emergency Maintenance of the Maintained Hardware within the relevant Fix Time.

- 2.6 Emergency Maintenance shall be charged at the Additional Services Rates for each of the Supplier's personnel reasonably required to attend the Location(s). Any additional charges shall be calculated from when the personnel arrive at the Location(s) until they leave the Location(s).
- 2.7 In performing the Maintenance Services, the Supplier shall use all reasonable endeavours to restore any malfunctioning or failed Maintained Hardware to Good Working Order while in attendance at the Location(s). Where this is not reasonably practicable, or not reasonably practicable within Normal Business Hours (in the case of Preventative Maintenance and Corrective Maintenance), the Supplier shall either arrange for a further visit to the Location(s) within Normal Business Hours to complete the repair, or remove the Maintained Hardware or part of the Maintained Hardware for repair off-site.
- 2.8 The Supplier shall procure that its personnel shall, while on site at the Location(s), comply with the Customer's reasonable health and safety and security policies provided that these policies have been brought to the attention of its personnel.

### 3. Replacements And Spare Parts

In performing the Preventative Maintenance, Corrective Maintenance and the Additional Services, the Supplier shall use all reasonable endeavours to source spare parts required to restore the Maintained Hardware to Good Working Order. The Supplier shall have the right to charge the Customer for the spare parts.

### 4. Excluded Maintenance

- 4.1 The Supplier is not obliged to perform any Excluded Maintenance.
- 4.2 Where the Supplier is performing or has performed the Maintenance Services in circumstances where it is established that the Maintained Hardware was not in Good Working Order due to any of the Excluded Causes, the Supplier may charge, and the Customer shall pay, the Additional Services Fees in respect of that work.

### 5. Charges

- 5.1 For the performance of Corrective Maintenance and Preventative Maintenance, the Customer shall pay to the Supplier the Standard Maintenance Fees.
- 5.2 For the performance of any Additional Services, the Customer shall pay to the Supplier the Additional Services Fees.
- 5.3 The Standard Maintenance Fees and the Additional Services Fees shall be inclusive of all expenses, other than those recoverable in accordance with this supplemental condition 5, and the Supplier shall be responsible for all costs and expenses incurred in providing the Maintenance Services (other than those recoverable in accordance with this supplemental condition 5).
- 5.4 The Standard Maintenance Fees shall be due and payable in full to the Supplier monthly in advance, or as otherwise agreed and prior to the commencement of any Initial Period relating to Maintenance Services. Any Additional Services Fees shall be due and payable monthly, within 30 days of receipt of a valid invoice from the Supplier. Any charges for spare parts recoverable in accordance with this supplemental condition 5 shall be due within 30 days of receipt of a valid invoice from the Supplier.



- 5.5 Any charges for additional Maintained Hardware requested to be added by the Customer during the Term will be (subject to prior approval of such Hardware) subject to a pro rata increase for the remainder of the Term.

# Supplemental Conditions - Applicable To Server And/Or Hardware Support Services Only

These supplemental conditions are to be read in conjunction with the General Terms and Conditions. All definitions contained within these supplemental conditions have the same meaning as those set out in the General Terms and Conditions.

## 1. IT Support Service

- 1.1 The Supplier shall provide unlimited telephone and online support during the Term to the Customer.
- 1.2 The IT Support Service shall be limited to (unless additional services are specified within the Order):
  - (a) Identifying the source of network problems and issues;
  - (b) Identifying the source of internet access and shared file access problems;
  - (c) Correcting technical faults for workstations (including servers if applicable);
  - (d) A weekly server check to highlight any potential issues (if applicable);
  - (e) Answering general IT queries and offering assistance on the best solutions;
  - (f) Advising on technical developments and future trending e.g. alerting the Customer to more suitable anti-virus protection, email providers, business IT methodologies.
  - (g) A quarterly review to assess the IT network for any updates and potential problems
- 1.3 Any problems that are raised by the Customer during Normal Business Hours shall be responded to by the Supplier within 4 hours (during Business Hours only) of being notified. For problems that are not able to be resolved remotely, on-site support may be arranged at the Supplier's prevailing hourly rate.

## 2. Excluded Maintenance

- 3.1 The Supplier is not obliged to perform any Excluded Maintenance.
- 3.2 Where the Supplier is performing or has performed Maintenance Services in circumstances where it is established that the Maintained Hardware was not in Good Working Order due to any of the Excluded Causes, the Supplier may charge, and the Customer shall pay, the Additional Services Fees in respect of that work.

## 3. Charges

The charges for additional users and/or servers added by the Customer during the Term will be subject to a pro rata increase in the Charges for the remainder of the Term.

## 4. Exclusions

The following are not covered within the IT Support Services packages:

- 5.1 Faults as a direct result of customer neglect e.g. accidental damage, failure of air conditioning, failure of electrical supply, employee sabotage, etc.
- 5.2 Faults due to damage caused by acts of God, such as lightning strike, fire, flood, etc.
- 5.3 Corrective maintenance repairs as a consequence of unauthorised attempts by persons other than PCM personnel, to repair, maintain, modify or remove the Hardware.
- 5.4 Faults due to operator misuse, virus/spyware.
- 5.5 Data loss due to the above, or due to lack of adequate backups.
- 5.6 Technical help on application software.
- 5.7 Issues outside the network involving third parties, e.g. Internet Service Providers faults.
- 5.8 Repair/replacement of hardware components not covered by the Contract (e.g. printers/routers).

# Supplemental Conditions - Applicable To Remote Data Backup Services Only

These supplemental conditions are to be read in conjunction with the General Terms and Conditions. All definitions contained within these supplemental conditions have the same meaning as those set out in the General Terms and Conditions.

## 1. Description

The Remote Data Backup Service provides the capability to store and retrieve Customer files and other data (**Data**) on the Supplier's system via the internet during the Term, subject to the amount of online backup space provided with the Remote Data Backup Service and/or which the Customer additionally purchases. The Remote Data Backup Service consists of Software installed on the Customer's computers that interacts with the Suppliers servers.

## 2. Software, Installation And Use

- 2.1 The Supplier grants the Customer a non-exclusive, non-transferable license to use the Software and access the Remote Data Backup Service solely in accordance with the terms and conditions of this Contract.
- 2.2 The Customer is only permitted to install the Software on the number of computers that are specified within the documentation of the Service or the applicable transaction documentation from the authorized distributor or reseller from which the Customer obtained the Service.
- 2.3 The Software and access to the Remote Data Backup Service is licensed, not sold. The Supplier shall retain all right, title and interest in the Software and Remote Data Backup Service, including without limitation all intellectual property rights embodied therein. The Customer does not acquire any rights, express or implied, in the Software and Remote Data Backup Service, other than those specified in this Contract.
- 2.4 To the extent permissible under applicable law, the Supplier may at any time without notice or liability, limit availability to the Remote Data Backup Service in order to perform maintenance activities.
- 2.5 The Customer undertakes that it will not, nor will permit any other person to:
  - (a) rent, lease, sub-licence, loan, copy (except as expressly provided in this Contract), modify, adapt, merge, translate, reverse engineer, decompile, disassemble or create derivative works based on the whole or any part of the Software;
  - (b) use the Software or the Remote Data Backup Service to upload, transmit, or transfer any data, information, materials, or content to the Supplier or any third party other than transmissions or transfers of information necessary for the intended use of the Software and Remote Data Backup Service. You also agree not to use the Software or Service for any unlawful or improper purpose;
  - (c) use the Software or the Remote Data Backup Service in a way that does not comply with the terms of any laws applicable or that is in any way unlawful or fraudulent or has any unlawful or fraudulent purpose or effect;
  - (d) use the Software or the Remote Data Backup Service to store, send, knowingly receive, upload, download, use or re-use any material which is abusive, indecent, defamatory, criminally obscene or menacing, or in breach of any copyright, confidence, privacy or any other rights

- (e) use the Software or the Remote Data Backup Service to store send or upload any material that contains viruses, trojan horses, worms, time bombs or any other harmful programs

## Supplemental Conditions - Applicable To Server Disaster Recovery Services Only

### 1. Disaster Recovery

- 1.1 The Supplier shall ensure that it is able to implement the provisions of a disaster recovery and business continuity plan (**Disaster Recovery and Business Continuity Plan**) as written by the Customer at any time in accordance with its terms.
- 1.2 The Supplier shall test the Disaster Recovery and Business Continuity Plan on a regular basis (and, in any event, not less than four times in every 12-month period). The Customer shall be entitled to participate in such tests as it may reasonably require.
- 1.3 Following each test, the Supplier shall send to the Customer a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Customer considers to be necessary as a result of those tests.
- 1.4 The Supplier shall implement the Disaster Recovery and Business Continuity Plan in the event that the Operational Services are not available for such times periods as are specified within the Order.

### 2. Content Of The Disaster Recovery And Business Continuity Plan

- 2.1 The Disaster Recovery and Business Continuity Plan may be reviewed (if applicable) by the Customer and the Supplier annually, or at such other times as may be specified within the Order.

## Privacy Notice

Here at PCM Systems Ltd we take your privacy seriously and will only use your personal information to administer your account and to provide the products and services you have requested from us.

From time to time we will also contact you via email with details of other IT and development services, offer and news we provide via email. We may contact all of the employees at the business who use the products/services we deliver for you. You can update your permissions at any time.

Our full privacy policy can be found at <https://pcmsystemsltd.co.uk/privacy-policy>