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# SOFTWARE AND/OR WEBSITE DEVELOPMENT TERMS AND CONDITIONS OF PCM SYSTEMS LTD

## 1. Interpretation

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

**Acceptance:** the acceptance or deemed acceptance of the Website by the Customer pursuant to condition 7.

**Acceptance Tests:** the tests to be carried out on the Website by the Supplier and the Customer as set out in condition 7 and as described in the Specification.

**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 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 Services from the Supplier.

**Hosting Services:** the website hosting services and software hosting services to be provided by the Supplier pursuant to this Contract as set out in these Conditions.

**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.

**Materials:** the content provided to the Supplier by the Customer from time to time for incorporation in the Website and/or Software.

**Non-Supplier Defects:** those defects described in condition 7.4.

**Normal Business Hours:** 9.00 am to 5.30 pm on a Business Day.

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

**Project:** the provision by the Supplier of the Services.

**Project Plan:** the timetable within which the Supplier will implement the Project as set out in the Specification.

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

**Services:** any of Website Services, Hosting Services or Software Services to be provided by the Supplier under the Contract.

**Website:** the Customer's website which may or may not be hosted by the Supplier pursuant to these Conditions.

**Website Software:** the software for the Website commissioned by the Customer as specified in the Specification.

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**Software:** means those software programs developed by the Supplier specifically for the Customer in accordance with the Specification.

**Software Services:** the software design and development services to be provided by the Supplier pursuant to this Contract as set out in these Conditions.

**Specification:** the functionality and performance specification for the Website or Software as set out in the Order or Specification.

**Supplier:** means PCM Systems Ltd (company registration number 2452375) of 1 Antler Complex, Bruntcliffe Way, Morley, LS27 0JG or such other associated company specified in 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.

**Website Services:** the website design and development services or such other website services to be provided by the Supplier pursuant to this Contract as set out in these Conditions.

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, by virtue of any statute, law or regulation.

## 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.

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3.2 The Customer's purchase order constitutes an offer by the Customer to purchase the Services 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 of those Services 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 Services are as described in the Specification.  Any variation to the Specification must be agreed by the Supplier in writing.

4.3 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.

4.4 The Supplier shall use reasonable endeavours to meet the performance dates specified in the Project Plan, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

4.5 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.

4.6 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.

4.7 The Supplier shall provide (if applicable) any other software programs proprietary to the Supplier and/or third parties, without modification to the Customer under the standard licence terms provided by the Supplier and/or relevant third parties, copies of which shall be provided to the Customer, and the Customer agrees to be bound by such licence terms.  The Customer has no rights of ownership over such software proprietary to the Supplier and/or third parties.

# 5. Customer's Obligations

5.1 The Customer shall:

(a) co-operate with the Supplier in all matters relating to the Services;

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(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) provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects;

(e) be responsible (at its own cost) for preparing the relevant premises and any computer hardware for the supply and/or installation of the Services; and

(f) at all reasonable times permit full and free access to the relevant premises and any required equipment 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.

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. Installation Of Software

6.1 The Supplier shall supply to the Customer, within a reasonable time before any Software module installation date, such information and assistance as may be necessary to enable the Customer to prepare for the installation of the relevant Software module.

6.2 The Customer shall, at its own expense, prepare itself in accordance with the information provided by the Supplier in advance of each installation date. On completion of such preparation, the Supplier shall inspect the Customer's site and specify, within a reasonable time before the installation date, any corrections or modifications required. If the Supplier fails to inspect the Customer's site before the installation date, the Supplier shall in no circumstances be liable for remedying any deficiency in the Customer's site preparation that is discovered after that date.

6.3 The Supplier shall deliver and complete installation of each Software module to the Customer's site.

# 7. Development And Acceptance Of Software And/Or Website

7.1 Once the Supplier has completed the design and development of the Software and/or Website in accordance with the Project Plan (and the installation of any Software module, if applicable) the Supplier shall run the initial Acceptance Tests. The procedure set out in this condition 7 shall be repeated in respect of any further development works agreed by the parties from time to time.

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7.2 The Acceptance Tests shall test compliance of the Software and/or Website with the Specification. The form and detail of such tests is set out in the Specification. If the Website or any Software module fails to pass the Acceptance Tests, the Supplier shall remedy the defects and/or deficiencies and the relevant test(s) shall be repeated within a reasonable time.

7.3 Once the Software and/or Website has passed the initial Acceptance Tests run by the Supplier, the Customer further Acceptance Tests.  If the Website or any Software module fails to pass the further Acceptance Tests run by the Customer, the Supplier shall remedy the defects and/or deficiencies and the relevant test(s) shall be repeated within a reasonable time.

7.4 Acceptance of the Software and/or Website shall occur when the Software and/or Website has passed the further Acceptance Tests.  The Customer shall notify the Supplier when the tests have been passed and provide the results of the Acceptance Tests to the Supplier in writing.

7.5 If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission of the Customer, or by one of the Customer's sub-contractors or agents for whom the Supplier has no responsibility (**Non-Supplier Defect**), the Software and/or Website shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Supplier Defect.  The Supplier shall provide assistance reasonably requested by the Customer in remedying any Non-Supplier Defect by supplying additional services or products. The Customer shall pay the Supplier in full for all such additional services and products at the Supplier's then current fees and prices.

7.6 Acceptance of the Software and/or Website shall be deemed to have taken place upon the occurrence of any of the following events:

   (a) the Customer uses any part of the Software and/or Website for any revenue-earning purposes or to provide any services to third parties other than for test purposes; or

   (b) the Customer unreasonably delays the start of the relevant Acceptance Tests or any retests for a period of seven working days from the date on which the Supplier is ready to commence running such Acceptance Tests or retests.

# 8. Charges And Payment

8.1 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).

8.2 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.

8.3 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; and

   (c) suspend all further delivery, installation or warranty service until payment has been made in full.

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8.4     Time for payment shall be of the essence of the Contract.

8.5     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.

8.6     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.

8.7     The Supplier may, at any time after the first anniversary of the Commencement Date, increase the Charges for the Hosting 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.

# 9.    Warranties

9.1     The Supplier warrants that the Software and/or Website will perform substantially in accordance with the Specification for a period of three months from Acceptance. If the Software and/or Website does not so perform, the Supplier shall, for no additional charge, carry out any work necessary in order to ensure that the Software and/or Website substantially complies with the Specification.

9.2     The warranty set out in condition 9.1 shall not apply to the extent that any failure of the Software and/or Website to perform substantially in accordance with the Specification is caused by any Materials.

9.3     Any unauthorised modifications, use or improper installation of the Software by, or on behalf of, the Customer shall render all the Supplier's warranties and obligations under this Contract null and void.

# 10.   Confidentiality, Supplier's Property And Data Protection

10.1    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.

10.2    All materials, equipment 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.

10.3    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.

10.4    In this condition 10, **Personal Data** has the meaning given in the General Data Protection Regulation.

10.5    This condition 10 shall survive termination of the Contract, however arising.

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10.6    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.

## 11.    Limitation Of Liability

11.1    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 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.

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

11.3    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.

11.4    Subject to condition 11.2 and condition 11.3:

(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 software; 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

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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.

## 12.  Term And Termination

12.1    This Contract shall commence on the date identified within condition 3.2. Unless terminated earlier in accordance with this condition 12, this Contract:

12.1.1   provided it relates to Website Services or Software Services shall terminate automatically on Acceptance of the Software and/or Website; or

12.1.2   provided it relates to Hosting 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.

12.2    Without prejudice to any other right or remedy available to the Supplier, the Supplier may terminate the Contract or suspend any further Services under the Contract (if applicable) without liability to the Customer 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.

12.3    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.

12.4    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 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;

(d)     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.

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## 13.  Intellectual Property Rights

13.1    All Intellectual Property Rights in the Website (including in the content of the Website and the Website Software) arising in connection with this Contract shall immediately upon full payment of the Charges (in cleared funds) become the property of the Supplier, and the Supplier hereby grants the Customer a non-exclusive licence of such Intellectual Property Rights for the purpose of operating the Website.

13.2    The Customer shall indemnify the Supplier against all damages, losses and expenses arising as a result of any action or claim that the Materials infringe the Intellectual Property Rights of a third party.

## 14.  Website Content

14.1    The Supplier may update the Website with Materials provided from time to time by the Customer but subject to the payment by the Customer of additional Charges. The Customer shall ensure that the Materials do not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (**Inappropriate Content**).

14.2     The Supplier shall include only Materials on the Website. The Customer acknowledges that the Supplier has no control over any content placed on the Website by visitors and does not purport to monitor the content of the Website. The Supplier reserves the right to remove content from the Website where it reasonably suspects such content is Inappropriate Content.  The Supplier shall notify the Customer promptly if it becomes aware of any allegation that any content on the Website may be Inappropriate Content.

14.3    The Customer shall indemnify the Supplier against all damages, losses and expenses arising as a result of any action or claim that the Materials constitute Inappropriate Content.

14.4    The Supplier may include the statement "Designed by PCM" on the home page of the Website in a form to be agreed.

## 15.  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.

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## 16. 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.

## 17. Severance

17.1    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.

17.2    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.

## 18. 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.

## 19. Notices

19.1    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.

19.2    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.

## 20. General

20.1    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.

20.2    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.

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20.3    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).

20.4    No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

20.5    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.

20.6    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.

20.7    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.

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# SUPPLEMENTAL CONDITIONS - APPLICABLE TO HOSTING SERVICES ONLY

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

## SOFTWARE AND WEBSITE DEVELOPMENT SERVICES

## 1.    Hosting Set-Up

The set-up phase of the Hosting Services includes those services provided by the Supplier or its contracted third parties to design, install, configure and test the Hosting Services, as well as the hosting facility and internet connectivity.

## 2.    Installation And Configuration

The Supplier shall procure, install and configure the hosting equipment to provide access to the Software and/or Website. This includes the installation of system and database software components, configuration, installation of any software, and loading of initial Customer Data.

## 3.    Facility

The hosting equipment shall be installed inside a professional hosting facility designed for such use. The facility shall be equipped with access security, climate control, fire suppression, powered generator backup or such other backup service required in order to maintain system continuity.

## 4.    Internet Connectivity

4.1    The Supplier shall provide internet connectivity through an internet service provider at the hosting facility. The connectivity shall include multiple, diversely routed high-speed connections and a firewall for security. The Customer shall, and shall ensure that its Authorised Users shall, make their own arrangements for internet access in order to access the Software and/or Website.

4.2    The Supplier shall supply burstable bandwidth connectivity services. The connectivity shall include multiple connections and a network operations centre that monitors servers, the network platform and internet access.

## 5.    Continuing Hosting Services

The continuing Hosting Services provided by the Supplier or its contracted third parties, which allow for availability of the Software and/or Website, include internet connectivity (as detailed in supplemental condition 4 above,  monitoring, back-up, release management and change control, and administration services.

## 6.    Monitoring Services

6.1    The Supplier shall provide during Normal Business Hours monitoring of the computing, operating and networking infrastructure to detect and correct abnormalities. This includes environmental monitoring,

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network monitoring, load-balancing monitoring, web server and database monitoring, firewall monitoring, and intrusion detection.

6.2 For the avoidance of doubt, the Supplier shall only provide technical support to the Customer during Normal Business Hours. Any requirement for technical support outside Normal Business Hours shall be subject to the payment of additional Charges

## 7. Back-Up, Archiving And Recovery Services

The Supplier shall develop the back-up schedule, perform scheduled back-ups, provide routine and emergency data recovery, and manage the archiving process. The back-up schedule shall include daily full back-ups. In the event of data loss, the Supplier shall provide recovery services to try to restore the most recent back-up.

## 8. Release Management And Change Control

The Supplier shall provide release management and change control services to ensure that versions of servers, network devices, storage, operating system software and utility and application software are audited and logged, and that new releases, patch releases and other new versions are implemented as deemed necessary by the Supplier to maintain the Hosting Services.

## 9. File Storage

The Supplier will provide the Customer with an agreed quota of storage and monthly bandwidth usage.

## 10. Administration Services

These services include the installation and administration of additional hardware, operating system and other software, and other resources as necessary to maintain the Hosting Services.

# 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.

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