



# THE PC SUPPORT GROUP STANDARD TERMS for the Provision of Equipment, VoIP Services, Conference Calling Services, Consultancy Services, Fixed Network Services, Hosting Services, Maintenance Services, and/or WiFi Services

February 2024

## 1. DEFINITIONS

1.1 In these Terms the following expressions shall have the following meanings:

**"Abusive"** means causing, aiding, encouraging or facilitation a domain or URL hosted by PCSG for Client or Client Representative to point or otherwise direct traffic to any material that violates any applicable law or legislation or using or facilitating the use of any services to create, transmit, distribute or store materials that include tools designed for compromising security, data protection or anti-terrorism laws, impair the privacy of communication or knowingly contain viruses and **"Abuse"** shall be construed accordingly;

**"Additional Charges"** means Charges which may be made (in addition to the Support Charge) for additional services supplied pursuant to condition 6.3;

**"Support Charge"** means the support charge for the Maintenance Services as set out on the Purchase Order Form;

**"Anti-Bribery Laws"** means any and all statutes, statutory instruments, bye-laws, orders, directives, treaties, decrees and laws which relate to anti-bribery and/or anti-corruption, including the Bribery Act;

**"Attack"** means an attack on a computer system or network which causes a loss of service to users, typically the loss of network connectivity and services consuming the bandwidth of the victim network or overloading the computational resources of the victim system. Attacks for these purposes are volumetric and may include but are not limited to DNS UDP floods, DNS query floods, SSL floods, SSL re negotiation, Syn floods, UDP floods, Push and ACK floods, Ping floods, Smurf attacks, ICMP floods;

**"Black Hole"** means discarding all data destined for a particular IP Address to prevent the disruption, and or flow of, data destined for other IP Addresses;

**"Bribery Act"** means the Bribery Act 2010;

**"Business Day"** means any and all days from Monday to Friday (inclusive) in any week but excluding English bank holidays or public holidays;

**"Call Commissions"** means such sums payable by PCSG to the Client in accordance with condition 10.2.7;

**"Carrier"** means the relevant third party public telecommunications operator or third party network service provider;

**"Charges"** means the charges payable by the Client to PCSG for Services performed;

**"CLI"** means the telephone number of the originating user (i.e. the calling party) or the default number of the Client (as applicable);

**"CLI Presentation"** allows Clients to authorise PCSG to carry voice traffic with a geographic or non-geographic presentation number. This presentation number may be different from the Client's underlying CLI;

**"Code"** means any code of practice for Premium Rate Services published by Phone-paid Services Authority (or equivalent) from time to time;

**"Commencement Date"** means the commencement date of the applicable Services (excluding Fixed Network Services) as specified on the Purchase Order Form and/or Quote;

**"Company Number"** means as defined within the definition of **"Number"** below;

**"Conference Calling Services"** means the conference calling services more particularly detailed on the Purchase Order Form (as modified or substituted by PCSG from time to time), which for the purposes of interpreting the applicable Contract shall be deemed to be Fixed Network Services;

**"Connection Date"** means the date when the Carrier, having received the relevant information from PCSG, is in a position to and has agreed to commence provision of the Fixed Network Services to the Client;

**"Consultancy Services"** means the consultancy services more particularly detailed on the Purchase Order Form (as modified or substituted by PCSG from time to time) to be provided hereunder by PCSG to the Client;

**"Contract"** means the agreement between the Client and PCSG for the provision of the Equipment and/or Services (or any of them) incorporating these Terms, the Purchase Order Form and the PCSG as a Supplier Data Processing Addendum and any other Service Specific Terms and/or Promotional Terms incorporated into the Contract in accordance with condition 2.1;

**"Contract Year"** means a period of twelve months commencing from either (i) the Effective Date of the Contract; or (ii) any subsequent annual anniversary of the Effective Date;

**"Contractor"** means any person who, on or prior to the Effective Date of the Contract (and/or prior to the date of the transfer of such services to PCSG), supplied services to the Client which were the same as or similar to those provided or to be provided by PCSG to the Client under the Contract;

**"Client"** means the person, firm or company specified on the Purchase Order Form and any other person appearing to act within that person's, firm's or company's authority and includes where relevant the Client's permitted assigns;

**"CPE"** means Client Premise Equipment used in connection with the Service;

**"PCSG as a Supplier Data Processing Addendum"** means the data processing addendum, the current version of which is set out at [insert relevant URL](#) (or at such other URL as is

notified to the Client by PCSG from time to time);

**"DDoS"** means Distributed Denial of Service;

**"Delivery"** means the point at which the Equipment arrives at the Site immediately prior to the unloading of such Equipment from the delivery vehicle and **"Delivered"** shall be construed accordingly;

**"Effective Date"** shall mean the earlier of the date on which PCSG signs the relevant Purchase Order Form or commences performance of a Contract;

**"Emergency"** means a state of emergency that demands immediate action resulting from a danger or threat of danger to the United Kingdom from foreign or domestic sources and declared to be in existence by governmental authority;

**"Emergency Call"** means a call to 999 or 112 or any other number associated with UK emergency services;

**"Employee"** means any employee, former employee, consultant, former consultant, contractor, former contractor, agent or former agent of the Client or any Contractor or Subcontractor;

**"Employment Regulations"** means any laws in any country in the world implementing the provisions of EC Directives No. 77/187 dated 14 February 1977, 2001/23 dated 12 March 2001 or equivalent or similar regulations that protect the rights of employees on a transfer of a business or undertaking or any laws providing for the automatic transfer of employees on transfer of the whole or part of an undertaking, business or service provision change, including in the United Kingdom the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time;

**"End User"** means any end user of the Services and/or WIFI Software;

**"End User Service"** means such entertainment, live or recorded information or other service (including, but not limited to, Premium Rate Services) made available by the Client from time to time for itself or any Information Provider;

**"Equipment"** means the equipment and/or Software related products to be supplied under a Contract as set out in a Purchase Order Form (and also has extended meaning under condition 5.4.2 in the case of and for the purpose of that condition only);

**"Facility"** means the location in which the Hosting Services are performed;

**"Fixed Network Services"** means the network services (including where applicable Conference Calling Services) more particularly detailed on the Purchase Order Form (as modified or substituted by PCSG from time to time) to be provided hereunder by PCSG to the Client;

**"General Conditions"** means the general conditions of entitlement set by OFCOM, in accordance with section 45 of the Communications Act 2003, as may be amended, modified or replaced from time to time and which may not necessarily apply to all Services described as Fixed Network Services;

**"Group"** means together a party, its Parent Undertakings, its Subsidiary Undertakings and the Subsidiary Undertakings of any of its Parent Undertakings from time to time;

**"Hosted Data"** means the data which is hosted pursuant to the Hosting Services;

**"Hosting Services"** means the hosting services more particularly detailed in a Purchase Order Form (as modified or substituted from time to time) to be provided hereunder by PCSG to the Client;

**"Information"** means information or other content which is made available to callers and which represents the subject matter of a Premium Rate Service in whole or in part;

**"IP"** means Internet Protocol;

**"IP Access Circuit"** means an IP circuit used to carry IP traffic;

**"Information Provider"** means any organisation or person providing Information or with whom the Client contracts in respect of the provision of Premium Rate Services;

**"Installation"** means the physical installation of Equipment at the Site;

**"Installation Services"** means services for the Installation of Equipment as more particularly described in the Purchase Order Form;

**"Intellectual Property Rights"** means all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition, copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;

**"Licence"** means the licence granted by PCSG to the Client to use the WIFI Software or the services provided in accordance with the terms of this Contract;

**"Maintenance Services"** means the maintenance services in respect of the Supported Equipment more particularly detailed in a Purchase Order Form (as modified or substituted from time to time) to be provided hereunder by PCSG to the Client;

**"Minimum Term"** means the minimum contract period for the applicable Services which is for a roll over monthly contract one month and for a fixed term contract the period set out in the Purchase Order Form and/or Quote and which either shall commence on the Commencement Date for all Services except Fixed Network Services which shall commence on the Connection Date.

**"Monthly Minimum Call Spend"** means the any minimum monthly sum of money as set out in a Purchase Order Form that will be spent by the Client on call charges commencing on the



Connection Date;

**"Non-Geographic Service"** means any service comprising a non-geographic Number and/or PCSG Number and inbound calls to the relevant number;

**"Normal Working Hours"** means 9.00am to 5.30pm on any Business Day;

**"Nuisance Call"** means an unwanted call (meaning a signal, message or communication which can be silent, visual or spoken) that causes annoyance to the receiver of the call and/or is a hoax call, and/or is of an offensive, spiteful, abusive, indecent, defamatory, obscene or menacing nature including unauthorised or 'spam' calls and 'silent' calls as defined by OFCOM in its 'Revised statement of policy on the persistent misuse of an electronic communications service 2010', and any applicable subsequent update;

**"Number"** means either (i) a telephone number from within a national number group range (used by the Client in connection with an End User Service) as may be allocated by PCSG to the Client from time to time ("PCSG Number") or (ii) a telephone number not being a PCSG Number and which may be programmed by the PCSG for the purposes of making available a Fixed Network Service in respect of such telephone number;

**"OFCOM"** means the Office of Communications and/or any successor body;

**"Parent Undertaking"** has the meaning given to it in section 1162 of the Companies Act 2006;

**"PCSG"** means PC Support Group Limited a company registered in England and Wales with company registration number 02198426 whose registered office is at Seymour Chambers, 92 London Road, Liverpool, Merseyside, L3 5NW and includes its successors and Assignees

**"Phone-paid Services Authority"** means the regulatory agency for Premium Rate Services or any similar body which may be appointed in addition to or in substitution of Phone-paid Services Authority by any competent authority;

**"Premium Rate Service"** means any service comprising live or recorded telephone information and/or entertainment and/or similar services which are charged at a premium and which are defined as such in the Code;

**"Price"** means the price payable by the Client for the Equipment and Installation Services (where applicable);

**"Promotional Terms"** means any additional terms which apply to the Price and/or Charges and which may be specified in a Purchase Order Form and/or notified by PCSG in writing to the Client in relation to the Equipment and/or Services, at the time the relevant Purchase Order Form was submitted;

**"Purchase Order Form"** means the purchase order form or other document to which either these Terms are attached or which is expressed to incorporate or be subject to these Terms which sets out (amongst other things) the Client's details and the Equipment and/or Services to be supplied pursuant to a Contract, together with any Service Specific Terms or Promotional Terms (if applicable) and the PCSG as a Supplier Data Processing Addendum;

**"PSTN"** means a public switched telephone network;

**"Quotation"** means any further quotation or document that is expressed to incorporate or be subject to these Terms which sets out (amongst other things) the Client's details, and in further detail the Equipment and/or Services together with any Service Specific Terms or Promotional Terms (if applicable) to be supplied pursuant to the Agreement;

**"Rate of RPI"** means the retail price index percentage change over 12 months announced by the Office for National Statistics (or successor body) in the month preceding an increase in the Charge pursuant to condition 10.3, 10.4.3, 10.5.4 or 10.9.4;

**"Relevant Laws"** means any statute, regulation, bylaw, ordinance or subordinate legislation which is in force for the time being to which a party is subject; the common law as applicable to the parties (or any one of them); any binding court order, judgment or decree applicable to the parties (or any one of them); and any applicable industry code, policy, guidance, standard or accreditation terms (i) enforceable by law which is in force for the time being, and/or (ii) stipulated by any regulatory authority to which a party is subject, in each case, for the time being;

**"Service(s)"** means any of the services supplied by PCSG and as set out further in a Purchase Order Form including, without limitation, the Installation Services, the Conference Calling Services, the Fixed Network Services, the Maintenance Services, the Hosting Services and/or the Consultancy Services (as applicable);

**"Service Feature"** means a distinguishable software function included in the Fixed Network Services;

**"Service Specific Terms"** means any additional terms and Terms which are to apply to a Contract as specified in a Purchase Order Form or these Terms in respect of specific Services, (but excluding Promotional Terms);

**"Site"** means a place of business of the Client or a nominated third party at which the Services and/or Equipment are to be provided as specified in an Purchase Order Form;

**"Small Business Client"** means a Client who has been identified on the Purchase Order Form as being a Client who: (i) is not a communications provider; and (ii) has 10 or fewer workers (whether as employees or volunteers or otherwise);

**"Software"** has the meaning given to it in condition 16.1;

**"Special Entry"** means any additional entry to the appropriate phone book requested by the Client in addition to the regular information published about the Client in any phone book issued

by or on behalf of British Telecommunications plc;

**"Subcontractor"** means any subcontractor of a Contractor;

**"Subsidiary Undertaking"** has the meaning given to it in section 1162 of the Companies Act 2006;

**"Supported Equipment"** means the items of equipment (which may include the Equipment) to be subject to the maintenance Services as set out in an Purchase Order Form;

**"Tariff"** means PCSG's tariff for calculating Charges for each of the Services as applicable to the Client by the PCSG from time to time;

**"Terms"** means these terms and conditions as amended by PCSG at their sole exclusive discretion from time to time;

**"User Instructions"** has the meaning given to it in condition 6.5.2;

**"WIFI Service"** means the WIFI Software and connected services other than the WIFI connectivity to be provided to the Client by PCSG subject to the terms of this Contract; and

**"WIFI Software"** means the software provided to the Client by PCSG in connection with the WIFI Service which is owned by or licensed to PCSG and purchased by the Client in the volumes set out in the Purchase Order Form.

## 2. CONTRACT FORMATION

2.1 A Purchase Order Form and/or Quotation constitutes the Client's offer to PCSG to purchase the relevant Equipment and/or Services. PCSG is under no obligation to accept any Purchase Order Form and/or Quotation and may, in its absolute discretion, reject or amend any proposed Purchase Order Form and/or Quotation

2.2 A Contract shall only come into force and bind both parties once:

2.2.1 the Client's offer is accepted by an authorised representative of PCSG signing the Purchase Order Form and/or Quotation or PCSG commencing the performance of the Services or provision of the Equipment;

2.2.2 the credit status of the Client being to the satisfaction of PCSG (in PCSG's sole and absolute discretion); and

2.2.3 in respect of a Contract which provides for the supply of:

2.2.3.1 Equipment and/or Installation Services, (without limitation) the conditions in term 4.1.1 being met;

2.2.3.2 Fixed Network Services, (without limitation) the conditions in condition 5.2.1 being met;

2.2.3.3 Maintenance Services, (without limitation) the condition in term 6.1.1 being met;

2.2.3.4 Consultancy Services, (without limitation) the condition in term 7.1.1 being met; and/or

2.2.3.5 Hosting Services, (without limitation) the condition in term 7.3.1 being met.

2.3 All purchase orders, quotations, estimates and tenders are given and contracts are made by PCSG subject to and only upon the terms of a Contract which cannot be varied unless agreed in writing by PCSG in accordance with condition 19. These Terms are the only terms and Terms on which PCSG will supply any Equipment and/or Services to the Client under a Purchase Order Form and will apply to the exclusion of all other terms and conditions including any terms and conditions which the Client purports to apply under any purchase order, confirmation, of order or similar document, (whether or not such document is referred to in a Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing. Unless expressly set out in a Contract, all other terms, Terms and warranties which are implied by law are excluded to the fullest extent permitted by law.

2.4 In the event of a conflict or inconsistency between any of the documents which constitute the Contract, the following descending order of precedence shall apply:

- (a) Any written notice or communication regarding a change in rates or price list or tariff or services issued by PCSG;
- (b) the Quotation;
- (c) the Purchase Order Form;
- (d) any applicable Service Specific Terms;
- (e) any applicable Promotional Terms;
- (f) the Terms;
- (g) any other documents referred to on the Purchase Order Form and/or Quotation or in these Terms.

2.5 For the avoidance of any doubt, the fact that the Promotional Terms or Service Specific Terms are silent on a particular matter whereas any of these Terms, the Purchase Order Form, Quotation and/or the Service Specific Terms make provision for the same, shall not be deemed to give rise to a conflict or inconsistency.

2.6 Any illustrations, samples or descriptive material provided by PCSG, including drawings, specifications of weight, capacity or dimensions and particulars of shade shall not form part of the Contract but shall be treated as approximate only unless specifically stated otherwise. Any savings quoted are estimates and illustrative only. All documents containing such illustrative or descriptive material (as well as the copyright therein) shall remain the exclusive property of PCSG and must not be copied or loaned or transferred by the Client. The Client acknowledges



and agrees that in entering into the Contract, it has not relied on any such illustrations, samples or descriptive material.

2.7 Each order for Equipment and/or Services (except in the case of Installation Services which will form part of the Contract for the supply of Equipment) shall (for the purposes of this condition 2.7) be deemed (subject to condition 2.1) a separate Contract (whether or not included on the same Purchase Order Form) to the effect that any delay or failure to supply Equipment and/or Services shall not entitle the Client (to the extent that any such entitlement exists) to terminate a Contract for other Equipment and/or Services or any other contract entered into under these Terms.

2.8 Any undertaking by the Client not to do any act or thing shall be deemed to include an undertaking that the Client shall procure that any user of the Services and/or Equipment including (without limitation) any of the Client's employees, agents or contractor, shall not do such act or thing. The Client warrants and undertakes to PCSG that it is entering into a Contract for the purposes of its trade, business and/or profession, and is not acting as a consumer.

2.9 To the extent a Purchase Order Form specifies any Conference Call Services, such services shall be deemed to be Fixed Network Services for the purposes of determining PCSG's and the Client's rights and obligations pursuant to the relevant Contract.

### **3 CUSTOMER'S ORDER AND SPECIFICATIONS**

3.1 The Client shall be responsible for providing PCSG with all information relevant to the supply of the Equipment and the provision of Services (as the case may be) within reasonable time to enable PCSG to perform its obligations under a Contract.

3.2 Without limitation to the generality of condition 3.1, the Client shall ensure that the details set out in a Purchase Order Form and any drawings, sketches, specifications (including without limitation in respect of the type and capacity of any available or installed connectivity), descriptions or instructions supplied by the Client or any agent or representative of the Client in connection with the supply of any Equipment or Services (as the case may be) by PCSG ("Client Information") are accurate and fully describe the Client's requirements and the Client shall be liable for and shall indemnify PCSG in respect of each liability, loss, injury, damage, demand, claim, cost, charge or expense which may be incurred by or awarded against PCSG by reason of or arising directly or indirectly out of or in connection with any inaccuracy in respect of the Client Information, or where the compliance with, or use of any Client Information by PCSG constitutes the infringement of the Intellectual Property Rights or other rights of a third party.

### **4 SUPPLY OF EQUIPMENT AND INSTALLATION SERVICES**

In the event that Equipment is mentioned and included on the relevant Purchase Order Form or in the event that PCSG otherwise does provide any Equipment and/or Installation Services to the Client this condition 4 shall apply to the relevant Contract.

#### **4.1 DELIVERY**

4.1.1 The conditions referred to in condition 2.1.3.1 that PCSG confirms to the Client that the Equipment referred to in a Purchase Order Form is available and can be supplied in the stated timescales.

4.1.2 In consideration of the Client's payment of the Price pursuant to condition 11.1 PCSG will take reasonable steps to deliver the Equipment and, where expressly stated by PCSG, supply the Installation Services, using reasonable skill and care, within an estimated period of time. Such period shall commence from the date of receipt by PCSG of all instructions and information required for Delivery. Time for Delivery or Installation of the Equipment will not be (nor be deemed) of the essence of a Contract and any stated times for Delivery or Installation in a Purchase Order Form are estimates only and shall not be binding on PCSG.

4.1.3 Without prejudice to the generality of condition 3, the Client shall be responsible for providing PCSG with any necessary instructions for Delivery of the Equipment within a reasonable period prior to the estimated date of Delivery advised by PCSG to the Client.

4.1.4 If the Client fails to take Delivery of the Equipment or if by reason of instructions or lack of instructions from the Client the Delivery of any Equipment in accordance with a Contract is delayed for more than twenty-eight days after PCSG has given notice in writing to the Client that the Equipment is ready for Delivery, the Equipment shall be deemed to have been Delivered by PCSG. The Client shall pay to PCSG the reasonable costs of storing, protecting and preserving such Equipment after the expiry of such period of twenty-eight days.

4.1.5 If a Contract provides for Delivery by instalments, any delay in the Delivery of any instalment shall not entitle the Client to treat the relevant Contract as at an end or to reject any other instalment.

4.1.6 If by reason of refusal or delay of Delivery or Installation the Equipment shall be deemed to have been Delivered in accordance with condition 4.1.4 then payment shall be made

by the Client to PCSG of the balance of the Price within seven days of such deemed Delivery date.

#### **4.2 CONNECTION**

4.2.1 The responsibility for the cost of connection to the public switch telecommunications network and/or the provision of additional lines to the public telephone system lies with the Client.

4.2.2 The Client shall prepare the Site(s) (at its own cost) in accordance with PCSG's instructions so that Installation of any necessary Equipment can take place.

4.2.3 The Client shall be responsible for the cost to supply, install, maintain and operate any and all infrastructure required to accommodate the power and environmental specifications as specified by the Equipment manufacturer (as published and as amended from time to time) to comply with all local electrical code requirements including the Institution of Engineering and Technology's IEE Wiring Regulations in force at the date of Delivery.

4.2.4 Where the Client requires the relevant equipment to operate in the event of a power disruption it shall (at its cost) install an uninterruptible power supply at the Site providing not less than 60 minutes of standby power at the Site for the Equipment.

4.2.5 The Client shall only connect and use equipment (whether supplied by PCSG pursuant to the terms of a Contract or not) connected (directly or indirectly) to use the Fixed Network Services in accordance with any published instructions, safety and security procedures applicable to the use of that equipment.

4.2.6 The Client shall ensure that steps have been taken to configure any equipment (whether supplied by PCSG pursuant to the terms of a Contract or not) so as to prevent such equipment being used in the commission of criminal offences including the making of fraudulent, unauthorised or bad faith calls.

4.2.7 If PCSG becomes aware that any unsupported equipment is connected to the Fixed Network Services, PCSG may serve notice on the Client requesting that the Client removes such equipment. The Client will on receipt of such notice, remove such unsupported equipment.

#### **4.3 PROPERTY AND RISK**

4.3.1 The risk of loss or damage to the Equipment shall rest with the Client from the moment of Delivery or deemed Delivery (as described in condition 4.1.4) irrespective of whether title to the Equipment has passed or payment or part payment made. From the moment of Delivery or deemed Delivery (as described in condition 4.1.4), the Client shall be responsible for insuring the Equipment.

4.3.2 Notwithstanding Delivery and the passing of risk, the legal and beneficial interest in the Equipment supplied under a Contract shall not pass to the Client until PCSG has received in cleared funds payment in full of all sums due for the Equipment and Installation Services (where applicable) and to the extent the Equipment constitutes Software in whole or in part, this condition 4.3 shall not prejudice any proprietary rights of PCSG or any of its licensors or any other entity with any rights in respect of such Software.

4.3.3 Until such time as the legal and beneficial interest in the Equipment has passed to the Client, the Client shall hold such Equipment as PCSG's fiduciary agent and bailee, and keep such Equipment properly stored, protected and kept free from any loss, damage, and/or deterioration and insured against all risks for its full reinstatement value and identified as being PCSG's property until title passes.

4.3.4 Until such time as the legal and beneficial interest in the Equipment passes to the Client, PCSG shall be entitled at any time to require the Client (at the Client's cost) to deliver up the Equipment to PCSG at its nominated location and, if the Client fails to do so within a reasonable time, to enter upon any premises of the Client or any third party where the Equipment is stored and remove and repossess such Equipment at the Client's expense.

4.3.5 The Client shall not, without the prior written consent of PCSG, pledge or in any way charge by way of security for any indebtedness, or alter or modify, any Equipment which remains the property of PCSG, but if the Client does so all monies owing by the Client to PCSG shall (without prejudice to any right or remedy of PCSG) forthwith become due and payable.

#### **4.4 LIABILITY FOR REPLACEMENT OR REPAIR**

4.4.1 Subject to the following sub-conditions of this term 4.4, at PCSG's option, for a period of twelve months from the date of Delivery, without cost to the Client, PCSG will (at its sole and absolute discretion) either repair or replace any defective Equipment or make good any defect which shall be proved to the satisfaction of PCSG to be the result of faulty design, materials or manufacture or re-perform any Installation Services (only where PCSG has supplied Installation Services under a Contract) provided that, subject to condition 4.4.3, PCSG shall have no liability for any such defects unless the Client notifies PCSG, within five Business Days from Delivery or the completion of the Installation Services (where applicable) whichever is the later event, of any defect arising prior to and/or after Delivery or Installation (as the case may be) and (subject to condition 4.4.2) within twenty four hours of any latent defect arising within such twelve month period.

4.4.2 If the Client enters into an agreement for maintenance of the Equipment with a third party, PCSG's liability for defects in the Equipment shall cease, save for PCSG's liability for defects arising on or before Delivery of the Equipment, in accordance with condition 4.4.1.



4.4.3 Where PCSG is to supply Maintenance Services in respect of the relevant Equipment under a Contract, condition 6 shall apply and in the event of any conflict between this condition 4.4 and condition 6, the provisions in condition 6 shall prevail.

4.4.4 The liability of PCSG shall apply only to defects that appear under proper use and under conditions of operation not more onerous than those declared to PCSG by the Client prior to entering into a Contract, and in particular shall not apply to defects which arise from neglect, misuse, or faulty maintenance of the Equipment by the Client or any of its other contractors, or from alterations carried out without the prior written consent of PCSG or from repairs carried out improperly by the Client or its servants or agents or arising from normal wear and tear.

4.4.5 Any repaired or new parts provided by PCSG under this condition 4 will be delivered by PCSG to the Client free of charge. Any Equipment (or part) which has been returned to PCSG and replaced by PCSG shall become the property of PCSG upon collection by or delivery to PCSG.

4.4.6 PCSG reserves the right to charge on a quantum meruit basis for the costs of repairs and/or call-outs if PCSG considers that the damage has resulted from misuse or unauthorised repair or alteration of the Equipment by the Client or any third party, or from normal wear and tear.

4.4.7 Neither acknowledgement of receipt, nor investigation, by PCSG of any claim or consent given hereunder shall constitute or imply admission by PCSG of any liability in respect of such claim.

4.4.8 Save where the Client has purchased Maintenance Services in respect of the relevant Equipment (in which case condition 6 shall apply) and subject to condition 12.5, the rights and remedies provided to the Client under this condition 4.4, in connection with any defect in the Equipment resulting from faulty design, materials or manufacture or Installation or defect in the Installation shall be the Client's exclusive remedies in respect of the same.

#### 4.5 TRADE MARKS AND BRANDING

4.5.1 PCSG shall be entitled to fix legends bearing PCSG's and/or its third party supplier's name and/or trade marks or other marks to any Equipment. The Client shall ensure that no such marks are removed or defaced at any time.

### 5. FIXED NETWORK SERVICES

In the event that Fixed Network Services is mentioned and included in a Purchase Order Form or in the event that PCSG otherwise does provide any Fixed Network Services to the Client, this condition 5 shall, to the extent applicable to those Fixed Network Services, apply to the relevant Contract.

#### 5.1 DURATION OF FIXED NETWORK SERVICES.

5.1.1 Subject to earlier termination under condition 15 or as otherwise stated in this condition 5, in a roll over monthly Contract, the Contract will automatically renew for the Minimum Term unless either Party gives notice to terminate the Contract or any part thereof for any reason whatsoever by giving one month's written notice to the other Party. In the circumstances where a fixed term has been agreed between the parties and provided so in the Quote and /or Purchase Order, the Agreement will remain in force for the Minimum Term and will automatically renew for the same Minimum Term unless a party gives a notice to the other for the period specified in the Quote and/or Purchase Order or ninety days (90) whichever is the shortest.

5.1.2 Order Form for Fixed Network Services do not contain any errors or omissions.

5.1.2 PCSG will use reasonable endeavors to provide the Fixed Network Services from the Connection Date subject to these Terms. Any Fixed Network Services so provided shall be provided with reasonable skill and care. The Fixed Network Services may not be fault free and use of the Fixed Network Services may not be uninterrupted.

5.2 Subject to the continuing supply of the service by the relevant Carrier, in the event of a fault occurring in the Fixed Network Services PCSG will use reasonable endeavours to rectify the fault as soon as practicable however PCSG shall have no liability to the Client for any fault occurring, or any interruption to the Fixed Network Services whether in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise, howsoever caused (including but not limited to atmospheric conditions; any congestion, fault, interruption or interference with the network; any fault, interruption or interference with the power supply to the network; any act or omission by the relevant carrier, or any known or unknown viruses which cause interruption or interference with the network).

5.2.1 PCSG may for operational reasons; introduce Service Features, introduce process changes to improve the quality of the Fixed Network Services or upgrade the Fixed Network Services, provided always that such changes do not have a materially detrimental effect on the performance or provision of the Fixed Network Services.

5.2.2 PCSG may, at any time, withdraw Service Features providing that PCSG shall provide a materially equivalent or better Service Feature.

5.2.3 Except where stated on the Purchase Order Form, the communication line (if any) of any Fixed Network Services does not include the provision of any modems or other equipment.

5.2.4 The Client acknowledges that the speed of any broadband element (if any) of the Fixed Network Services depends on a number of factors including, but not limited to, distance from the exchange, local availability and line capability. PCSG shall have no liability to the Client whether in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise if the Client's line does not produce the maximum speed advertised.

#### 5.3 SUPPLY OF TELEPHONE NUMBERS AND CLI PRESENTATION

5.3.1 OFCOM and/or the relevant Carrier each have the power to withdraw an allocation of telephone numbers and therefore any telephone numbers offered to the Client under the relevant Contract, cannot be guaranteed as being available. PCSG shall not be liable for any costs incurred by the Client in relation to any such telephone number (including, without limitation, in the advertising of such telephone number) which is withdrawn by OFCOM and/or the relevant Carrier (save where and to the extent that such withdrawal is due to the direct negligence of PCSG).

5.3.2 Without prejudice to any rights the Client may have to port a number allocated to it, the Client acknowledges it does not own or have any right to sell any number provided to it by PCSG. Where the Client has a number from a national numbering plan, the charges and process for porting such number shall be as set out in the Tariff.

5.3.3 The Client, in using the CLI Presentation service, hereby consents to allow PCSG or any third party supplier of PCSG to present out a number that is different to that of the Client's underlying CLI.

5.3.4 The Client hereby consents to allow PCSG to change the presentation number as and when required.

5.3.5 The Client acknowledges and agrees that the presentation number is owned by the Client and neither PCSG nor any third party suppliers need any other permissions to present that presentation number and where the presentation number is owned elsewhere, the Client warrants, represents and undertakes that it has permission to use this number.

#### 5.4. USE OF THE FIXED NETWORK SERVICES

5.4.1 The Client shall be responsible for the safe custody and safe use by it of the Fixed Network Services and without prejudice to the generality of the foregoing the Client agrees and undertakes:

- (a) to use the Fixed Network Services in accordance with such additional Terms as may be notified to it in accordance with condition 19 from time to time;
- (b) not to cause any attachments, other than those that meet requirements under the General Conditions and all other Relevant Laws, to be connected to the Fixed Network Services and PCSG shall not be under any obligation to connect or keep connected any Client apparatus if it does not so conform or if in the reasonable opinion of PCSG it is liable to cause death, personal injury or damage or to impair the quality of the Fixed Network Service;
- (c) not to contravene the General Conditions or any other relevant regulations or licences granted thereunder and otherwise not to contravene, and not by any act or omission, cause PCSG to contravene, any Relevant Laws or General Conditions;
- (d) not to use (and procure that no End User shall use) the Fixed Network Service as a means of communication for a purpose other than that for which the Fixed Network Service is provided and as may be set out in any relevant literature supplied by PCSG from time to time;
- (e) not to use (and procure that no End User shall use) the Fixed Network Service to make, provide, communicate, publish, deliver, knowingly receive, upload, download, use or re-use any material or information which is intended to be a hoax call to emergency services, Nuisance Call or is of a defamatory, offensive, abusive, indecent, obscene or menacing character, or which does or is intended to cause annoyance, nuisance inconvenience or worry to any person or which in PCSG's opinion brings PCSG's name (or any of its third party suppliers' name) into disrepute or which in any way causes damage to or disruption to the Fixed Network Services;
- (f) not to use the Fixed Network Service in a manner which constitutes a violation or infringement of the rights (including, without limitation, any Intellectual Property Rights) of any other person;
- (g) to maintain its telecommunications apparatus at all times during the period of the Contract in good working order and in conformity with any relevant regulatory standards or approvals and Relevant Laws for the item as from time to time applicable;
- (h) to provide PCSG with all such information as it reasonably requests relating to the Client's telecommunications apparatus;
- (i) to implement adequate control and security over the use of the Fixed Network Services provided to the Client including but not limited to the prevention of viruses, worms, logic bombs, Trojan horses and any other type of disruptive, destructive or nuisance programs and/or any calls generated by rogue diallers or hackers;
- (j) not to use the Fixed Network Services in a way that breaches any Relevant Laws, the Code or any guidelines, regulations or instructions of the Phone-paid Services Authority or any licence applicable to the Client or that is in any way unlawful or fraudulent;
- (k) not to send or procure the sending of any unsolicited advertising or promotional material; and
- (l) not to use the Fixed Network Services in a manner that is in any way unlawful, fraudulent or in bad faith or which has any unlawful, fraudulent or bad faith purpose or effect.

5.4.2 Any equipment installed or provided by or on behalf of PCSG for the purposes of providing



the Fixed Network Services (excluding any Equipment purchased under a Contract by the Client to which condition 4 applies) shall at all times remain the property of PCSG and shall be returned to PCSG forthwith upon request. Condition 4.3 shall apply to such equipment and for the purposes of this condition 5.4.2 only such equipment shall be deemed Equipment under those terms. The Client shall be liable to PCSG for all losses, costs and expenses incurred by PCSG for the recovery, replacement or repair of such equipment (save to the extent that the same is caused by the negligence of PCSG).

5.4.3 Unless stated otherwise in a Purchase Order Form, if the Client takes a line rental from PCSG, the Client is also committed to using PCSG for calls over that line. Should the Client (during the applicable Minimum Term) use an alternative carrier for calls once the Contract for the provision of the telephone line has commenced, or prevent PCSG from carrying calls in any monthly period so that PCSG considers that the call charges are significantly reduced in comparison to the Client's previous average invoicing profile, the Client agrees that PCSG may charge the Client the difference between the average monthly spend on calls prior to such commencement or prevention and the subsequent monthly spend on calls (if any).

5.4.4 The Fixed Network Services are provided solely for the Client's use and the Client may not resell or attempt to resell the Fixed Network Services (or any part of them) to any third party. In addition, if the Client has a mail server, the Client must not allow relay emails from outside its domain from the Client's mail server.

5.4.5 The Client warrants, represents and undertakes that any information the Client makes available on its website provided or hosted by PCSG, including the Client's information and that of a third party ("**Third Party Content**") is and will remain wholly accurate and will not include any information or material, any part of which, or the accessing of which or use of which, would be a criminal offence or is otherwise unlawful.

5.4.6 The Client also warrants, represents and undertakes that it will comply with all consumer and other legislation, instructions or guidelines issued by regulatory authorities and relevant licences which relate to the provision of the information on the Client's website including those notified by PCSG to the Client.

5.4.7 Both parties agree to fully co-operate with the Police and any other relevant authorities (including but not limited to the Inland Revenue, Trading Standards, the Information Commissioner and/or OFCOM and their successors from time to time) in connection with any misuse or suspected misuse of the Fixed Network Services, and the Client consents to PCSG co-operating with any such authority and with any other telecommunications operators in connection with any misuse or suspected misuse or suspected fraudulent activity related to or connected with the Fixed Network Services and agrees, without prejudice to the generality of the foregoing, that PCSG will be entitled to divulge any information which PCSG holds which may be relevant to any investigation, including the name, address and account information relating to the Client to such third parties.

5.4.8 The Client acknowledges that the communication lines element (if any) of the Fixed Network Services is provided from infrastructure which is or may be shared by other users and PCSG owes a duty to these users as a whole to preserve its network integrity and avoid network degradation. If, in PCSG's reasonable opinion, PCSG believes that the Client's use of the Services has or may adversely affect such network integrity or may cause network degradation, PCSG may change the Client's chosen access rate or manage the Client's Services as PCSG sees fit in the circumstances.

5.4.9 To prevent spam from entering and affecting the operation of PCSG's systems and the Fixed Network Services, PCSG may take any reasonable measures or actions necessary to block access to, or delivery of, any e-mail which appears to be of an unsolicited nature and / or part of a bulk e-mail transmission. PCSG may also, but is not obliged to, use virus screening technology that may result in the deletion or alteration of e-mail and or e-mail attachments. PCSG shall have no liability whether in contract, tort (including without limitation negligence and breach of statutory duty) or otherwise if the virus screening technology is not completely effective in any way, including (without limitation) against unsolicited emails or against any viruses, worms, Trojan horses or other programmes or devices that are apparently intended to access and modify, delete or damage data file(s) or computer programme(s).

5.4.10 The Client acknowledges that, in order to use the broadband element (if any) of the Fixed Network Services, the Client needs an existing telephone line (if not provided under the Contract) and a personal computer ("**PC**") of a minimum specification suitable for the application. The Client is responsible for ensuring that compatible cables and extension leads are used to and from their telephone socket, modem and PC in order to use the Service.

5.4.11 In circumstances where the Client receives only the broadband element of the Fixed Network Services from PCSG, the Client remains responsible for making payment to the Client's fixed line telephony services provider for all rental charges relating to the Client's relevant telephone line (together with any repair and maintenance charges) and all call charges from the Client's fixed line telephony service provider.

5.4.12 The Client agrees that the Phone-paid Services Authority may monitor any End User Service at any time.

5.4.13 In respect of each End User Service which requires the approval of the Phone-paid Services Authority pursuant to any regulation or code of practice, the Client shall, before such End User Service (or any change thereto) is made available to callers, submit to PCSG written evidence of such approval.

5.4.14 The Client shall use all reasonable endeavours to ensure that the number of telephone calls made to the Number(s) do not significantly exceed the Client's capacity to answer such calls or cause congestion (the existence of congestion to be reasonably determined by PCSG taking into account normal levels of traffic on the network). Where PCSG notifies the Client of the occurrence of any such congestion or misuse, then the Client shall immediately take all reasonable steps (which shall include, but not be limited to, arranging additional network capacity, adjusting the Client's promotional activities or using call bureau, for the relevant period) to prevent such congestion and/or misuse continuing.

5.4.15 The Client acknowledges that the Fixed Network Services are not designed to be a carrier interconnect and that the Fixed Network Services will not support diallers of any description.

5.4.16 Use of any call recording feature and/or storage use or access of any data regarding or taping any use of the Services by or on behalf of Client or its Clients or End Users may be subject to laws or regulations and Client is solely responsible for and obligated to determine the lawful basis for such activity and provide any required notification to participants or users prior to commencement of said recording, storage, use or access. Client acknowledges and agrees that PCSG has not and is not required to provide the Client with any analysis, interpretation or advice regarding such data or applicable laws or regulations and nor does PCSG guarantee the accuracy, integrity, security or quality of the Client's content.

## 5.5 TRANSFER FROM THIRD PARTY SUPPLIERS

5.5.1 Where the transfer of lines and services from third party suppliers is specified by the Client, then the provision of any and all relevant existing services supplied to the Client by such third party supplier will be automatically transferred to PCSG and charged for in PCSG's invoices in accordance with the Tariff.

5.5.2 The Client and not PCSG shall be liable for any charges (including without limitation any early termination charges) made by third party suppliers for any transfer of lines and services or otherwise, unless it is clearly identified and agreed in writing on the Purchase Order Form at the time of PCSG formally accepting such Purchase Order Form that PCSG will pay for specified charges.

## 5.6 VOICE OVER INTERNET PROTOCOL ("**VOIP**") FIXED NETWORK SERVICES

5.6.1 Whilst PCSG will use its reasonable endeavours to provide any VOIP Fixed Network Services, PCSG shall have no liability for the standard of quality or performance of the VOIP Fixed Network Services and PCSG draws the following features of the VOIP Fixed Network Services to the Client's attention:

- (a) the VOIP service may not offer all the features, quality or resilience the Client may expect from a conventional phone line;
- (b) the VOIP service may sometimes be limited, unavailable or disrupted due to events beyond PCSG's control e.g. power disruptions, failures or the quality of any connection;
- (c) wherever possible, alternative arrangements should be made by the Client and a traditional PSTN telephone line maintained at each Site;
- (d) the quality of a call made via VOIP might be more akin to that experienced when making a call from a mobile network service to another mobile network service and this means that it could be less than the quality experienced on a traditional land line;
- (e) if the Client uses the VOIP service to make Emergency Calls, the location information received by the emergency services will be limited to the installation address of the Site, which may not be the location from which the call originated, and as such the Client may be required to provide information about the Client's location to the emergency services to allow them to respond;
- (f) Emergency Calls made using the VOIP service may fail if there is a power failure or connection failure;
- (g) the ability for the Client to make Emergency Calls cannot be guaranteed;
- (h) a VOIP originated Emergency Call will not receive the same network priority at all points on the network as that which an Emergency Call made on a mobile network or on a circuit-switched fixed line will receive; and
- (i) the Client's equipment used to access the VOIP Fixed Network Services requires mains power to make Emergency Calls.

5.6.2 The Client shall not use the bandwidth allocated to the VOIP service for any other purpose other than making and receiving VOIP calls. Should this prohibition not be complied with it is likely that the quality and availability of the VOIP services shall be materially reduced.

5.6.3 The Client acknowledges and agrees that the following items may be required at the Client's Site before the VOIP Fixed Network Services can be commissioned:-

- a) IP phones or soft phones; and/or
- b) IP Access Circuit and any corresponding data hardware including but not limited to



routers and port switches.

5.6.4 The Client shall provide to PCSG (and update PCSG in the event of any change in such details), the following records:-

- a) a telephone number that may be used to call the Client;
- b) the Client's Site address including post code; and
- c) where the Client has nomadic applications that use more than one network termination point or equivalent, the address where the number is normally used.

## **6. MAINTENANCE SERVICES**

In the event that the provision of Maintenance Services is included a Purchase Order Form or in the event that PCSG otherwise does provide any Maintenance Services to the Client, this condition 6 shall apply to the relevant Contract.

### **6.1 DURATION OF MAINTENANCE SERVICES**

6.1.1 In consideration of (and subject to) the payment of the Support Charge by the Client, PCSG will use its reasonable endeavors to supply to the Client the Maintenance Services in accordance with the relevant Contract.

6.1.2 Subject to earlier termination under condition 15 or as otherwise stated in this condition 6, in roll over monthly Contract, the Contract will automatically renew for the Minimum Term unless either Party gives notice to terminate the Contract or any part thereof for any reason whatsoever by giving one month's written notice to the other Party. In the circumstances where a fixed term has been agreed between the parties and provided so in the Quote and /or Purchase Order, the Agreement will remain in force for the Minimum Term and will automatically renew for the same Minimum Term unless a party gives a notice to the other for the period specified in the Quote and /or Purchase Order or ninety days (90) whichever is the shortest.

### **6.2 PROVISION OF MAINTENANCE SERVICES**

6.2.1 The Maintenance Services shall apply only in respect of the Supported Equipment expressly stated on the Purchase Order Form to be subject to the Maintenance Services

6.2.2 PCSG shall have no obligation to provide any Maintenance Services unless all necessary testing has been completed by or on behalf of PCSG to ensure that it is possible for PCSG to provide such Maintenance Services. If the PCSG becomes aware of any such limitations that may impact the provision of Maintenance Services or if the Maintenance Services cannot be provided, PCSG will contact the Client within five Business Days of such testing and cancel the affected Maintenance Services without charge.

6.2.3 Unless it is otherwise stated in a Purchase Order Form that a different level of Service (in terms of response times and hours of attendance) will apply, the PCSG will use its reasonable endeavors to, within two Business Days of receipt of notification from the Client of a request for the provision of Maintenance Services and the Supported Equipment being made available, commence during Normal Working Hours the Maintenance Services. Any time period stated in respect of PCSG's obligations under a Contract is not guaranteed nor deemed to be of the essence of the Contract.

6.2.4 Where PCSG replaces defective Supported Equipment or part thereof, it shall be entitled to supply serviceable reconditioned items in substitution thereof. These Terms shall continue to apply to the Supported Equipment embodying such substituted items.

6.2.5 PCSG does not warrant that the provision of Maintenance Services (or any additional services supplied pursuant to Terms 6.3.1 and 6.3.2) will ensure that the Supported Equipment operates without interruption or error.

6.2.6 The Client shall take adequate copies of data, operating and application software such that the system and files may be restored in the event of corruption or other similar loss howsoever occasioned.

6.2.7 The Client agrees that it is the responsibility of the Client to restore data, operating and application software in the event of loss due to system failure or disk exchange. Restoration of system and data from the Client's last good backup copies may be undertaken by PCSG at the request of the Client and may be chargeable in accordance with condition 6.3.2.

6.2.8 Subject to condition 6.3.1, Maintenance Services shall not include the following (the "Excepted Services"):

- (a) the repair of damage to the Supported Equipment resulting from accident, neglect or causes other than ordinary use (including, but not limited to, failure to observe any instructions supplied by PCSG or the original Supported Equipment manufacturer or supplier) regarding the operation of the Supported Equipment;
- (b) labour or materials required to repair Supported Equipment as a result of theft, vandalism, fire, lightning, water damage, fluctuations in electrical power supply, unsatisfactory environmental conditions, telephone line conditions, the connection or installation of unapproved accessories, attachments, software or other devices or as a result of a breach by the Client of condition 6.5;
- (c) the alteration, modification or maintenance of the Supported Equipment by any person other than PCSG without PCSG's prior written consent;

- (d) the transportation or relocation of the Supported Equipment save where the same has been performed by PCSG at the request of the Client;
- (e) the maintenance or repair of any extension wiring (, any Supported Equipment not at the Site, or of anything other than the Supported Equipment;
- (f) any defect or error in any software (including as a consequence of modifications and customisation) used upon or in association with the Supported Equipment;
- (g) the supply of replacement cassettes, aerials, aerial systems and batteries;
- (h) the reprogramming of the Supported Equipment to provide improved or modified service or facilities;
- (i) Supported Equipment faults caused by telephone area code changes or changes in Carriers;
- (j) maintenance or replacement of ancillary items including but not limited to answer phones, analogue or digital phones or devices, call loggers, payphones, computers, servers, uninterruptible power supplies, batteries, fax machines, public address systems, printers, cabinets, external music on hold sources, and any cables or consumables unless otherwise agreed in writing;
- (k) maintenance arising from loss of equipment as the Maintenance Services are limited to repair or replacement of faulty equipment on a like-for-like exchange basis;
- (l) any defect in design, manufacture, installation or performance of the Supported Equipment (unless otherwise stated in a Contract);
- (m) the restoration, uploading or reconstitution of any data relating to the Supported Equipment;
- (n) the provision of any Maintenance Services for any items that either do not appear in the relevant Purchase Order Form or which appears in the relevant Purchase Order Form with an inaccurate or misleading description;
- (o) where the Supported Equipment includes software, the Client's failure to install any enhancements which have been made available to the Client or any fault in the Supported Equipment for which a patch, fix or update has not been made available by the applicable Supported Equipment supplier; and/or
- (p) moves and changes.

### **6.3 ADDITIONAL CHARGES**

6.3.1 PCSG may, in its sole and absolute discretion, upon request by the Client use its reasonable endeavors to provide all or any of the Excepted Services (as referred to in condition 6.2.9 above) but shall be entitled to charge for the same by levying Additional Charges in the manner described in condition 6.3.3 below. For the avoidance of doubt, should PCSG elect to carry out any of the Excepted Services, the time spent carrying out such services shall not be included for the purposes of calculating the time period referred to in condition 6.2.3.

6.3.2 Without prejudice to condition 6.3.1 above PCSG shall be entitled to levy (and receive from the Client) Additional Charges in the manner described in condition 6.3.3 below if:

- (a) Maintenance Services are provided in circumstances where any person who is reasonably skilled and competent in the field of maintaining telecommunications equipment would have judged the Client's request to have been unnecessary; and/or
- (b) the Client reports an apparent fault of the Supported Equipment to PCSG and upon investigation by PCSG the Supported Equipment and/or its Installation is found not to be defective. Such Additional Charges may include (without limitation) a charge for the investigation and/or for any call-out and for any Supported Equipment changed in a postal exchange (in respect of which PCSG reserves the right to make a charge up to the replacement value of the Supported Equipment in question);
- (c) where PCSG determines that a fault that has been reported to PCSG is a fault of the Carrier. Such Additional Charges may include (without limitation) a charge for the call-out in accordance with PCSG's then current Tariff); and/or
- (d) the Client requests the restoration of data as described in condition 6.2.8.

6.3.3 Additional Charges shall be levied by PCSG as follows:

- (a) following completion of the additional services supplied under condition 6.3.1 and 6.3.2(a) and 6.3.2(d); or
- (b) following completion of the investigation and/or call out in respect of condition 6.3.2(b) and 6.3.2(c).

6.3.4 Such Additional Charges (calculated in accordance with the Tariff prevailing at the time) shall be payable by the Client within ten days of the date of an invoice.

### **6.4 DISCONTINUED SERVICES**

6.4.1 Without prejudice to condition 15 or any other right of suspension or termination of Services under these Terms, PCSG shall have the right to discontinue the Maintenance Services in respect of any Supported Equipment (without liability to the Client) in the event that PCSG's supplier and/or the manufacturer of the Supported Equipment has ceased to supply or manufacture such Supported Equipment provided that PCSG will notify the Client as soon as reasonably practical after it is aware of any cessation in supply or manufacture of the Supported Equipment and shall either (upon agreement with the Client) (i) terminate the relevant



Contract or (ii) replace or upgrade the affected Supported Equipment at the Client's expense.

6.4.2 Without prejudice to condition 15 or any other right to terminate any Services under these Terms, PCSG shall have the right to terminate forthwith the supply of the Maintenance Services (without liability to the Client) in the event that any necessary approvals required by PCSG to maintain any of the Supported Equipment are not granted or revoked by any government or regulatory agencies or any third party.

6.5 The Client shall:

6.5.1 ensure that the Supported Equipment is used in a normal and proper manner;

6.5.2 take all steps, measures and meet all requirements (including the environmental Terms) contained in the Client operating instructions and manufacturer's written recommendations supplied with the Supported Equipment ("User Instructions");

6.5.3 carry out minor maintenance adjustments suggested by PCSG which includes minor programming changes with telephone support and replacement of handsets and cords which are relayed by courier or post;

6.5.4 not carry out or permit alteration to call routing apparatus or extension wiring (except by PCSG, or by PCSG's authorised agents), save that in relation to the connection of other apparatus to the Supported Equipment, such connection may be performed by another person at the Client's expense if either;

(a) PCSG so agrees in writing, or

(b) PCSG fails to carry out the connection itself within twenty-eight days after receiving written notice from the Client stating that the Client wishes specified apparatus to be so connected and naming that other person by whom the Client wishes the connection to be performed.

6.5.5 appoint at least one member of its staff as a "Principal Operator", who will be trained in the use of the Supported Equipment. The Client will ensure that such Principal Operator is available to carry out the instructions in the User Instructions and to liaise on Maintenance Services matters with PCSG;

6.5.6 not employ or permit a third party to make any alterations to the programming or physical structure of the Supported Equipment;

6.6 If the Supported Equipment is not (immediately prior to the Commencement Date) either already maintained by PCSG or within the scope of an express warranty given by the supplier thereof, then PCSG may at its discretion inspect the Supported Equipment and undertake such repair work as may be necessary to put the Supported Equipment in good working order. The Client shall pay for such inspection and repair at PCSG's then current charge rates applying at that time, and such payment shall be in addition to Support Charge.

## 6.7 CHANGE OF LOCATION

6.7.1 The Client will not move any of the Supported Equipment other than handsets or portable equipment, nor remove the Supported Equipment other than handsets or portable equipment from its location as at the Commencement Date without the prior written consent of PCSG, such consent not to be unreasonably withheld. Where PCSG consents to such relocation, PCSG will provide a relocation and installation service, the cost of which shall be paid by the Client in accordance with PCSG's then current Tariff, and such payment shall be in addition to the Support Charge.

## 7. CONSULTANCY SERVICES AND/OR HOSTING SERVICES

In the event that the section relating to Consultancy Services is completed on the relevant Purchase Order Form or in the event that PCSG otherwise does provide any Consultancy Services to the Client, Terms 7.1 and 7.2 shall apply to the relevant Contract.

### 7.1 DURATION OF CONSULTANCY SERVICES

7.1.1 Subject to this condition 7.1.1 and in consideration of (and subject to) the payment of the Consultancy Charges by the Client, PCSG shall supply to the Client the Consultancy Services in accordance with the relevant Contract.

7.1.2 Subject to earlier termination under condition 15 or as otherwise stated in this condition 7, in roll over monthly Contract, the Contract will automatically renew for the Minimum Term unless either Party gives notice to terminate the Contract or any part thereof for any reason whatsoever by giving one month's written notice to the other Party. In the circumstances where a fixed term has been agreed between the parties and provided so in the Quote and /or Purchase Order, the Agreement will remain in force for the Minimum Term and will automatically renew for the same Minimum Term unless a party gives a notice to the other for the period specified in the Quote and /or Purchase Order or ninety days (90) whichever is the shortest.

### 7.2 PROVISION OF CONSULTANCY SERVICES

7.2.1 PCSG undertakes to use reasonable endeavors to provide the Consultancy Services to the Client subject to these Terms.

7.2.2 The Client undertakes to co-operate with PCSG in all matters relating to the

Consultancy Services and undertakes to comply with the reasonable requirements or instructions of PCSG and promptly give PCSG all such information as it may reasonably require in connection with the provision of Consultancy Services to the Client.

In the event that Hosting Services are offered and written on the relevant Purchase Order Form or in the event that PCSG is providing Hosting Services to the Client, Terms 7.3-7.12 (inclusive) shall apply to the Contract.

### 7.3 DURATION OF HOSTING SERVICES

7.3.1 The condition referred to in condition 2.1.3.5 is that PCSG provides confirmation by email to the Client that the terms stated on the Purchase Order Form of the applicable Contract for Hosting Services do not contain any errors or omissions.

7.3.2 Subject to earlier termination under condition 15 or as otherwise stated in this condition 7, in roll over monthly Contract, the Contract will automatically renew for the Minimum Term unless either Party gives notice to terminate the Contract or any part thereof for any reason whatsoever by giving one month's written notice to the other Party. In the circumstances where a fixed term has been agreed between the parties and provided so in the Quote and /or Purchase Order, the Agreement will remain in force for the Minimum Term and will automatically renew for the same Minimum Term unless a party gives a notice to the other for the period specified in the Quote and /or Purchase Order or ninety days (90) whichever is the shortest.

### 7.4 PROVISION OF HOSTING SERVICES

7.4.1 In consideration of (and subject to) the payment of the Hosting Charge by the Client, PCSG shall use reasonable endeavors to provide the Hosting Services from the Commencement Date subject to these Terms. The Hosting Services may not be fault free and may not be uninterrupted.

7.4.2 PCSG will use reasonable endeavors to rectify any fault in the Hosting Services as soon as practicable however PCSG shall have no liability to the Client for any fault occurring, or any interruption to the Hosting Services whether in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise, howsoever caused including but not limited to atmospheric conditions; any congestion, fault, interruption or interference with the network; any fault, interruption or interference with the power supply to the network, any act or omission by a Carrier or other service provider, or any known or unknown viruses which cause interruption or interference.

7.4.3 The Client shall:

7.4.3.1 not use the Hosting Services to make, provide, communicate, deliver, knowingly receive, upload, download, publish, use or re-use any material or information which is intended to be a hoax or is of a defamatory, offensive, abusive, indecent, obscene or menacing character, or which does or is intended to cause annoyance, nuisance inconvenience or worry to any person or which in PCSG's opinion brings PCSG's name into disrepute or which in any way causes damage to or disruption to the Hosting Services;

7.4.3.2 not use the Hosting Services in a manner which constitutes a violation or infringement of the rights of any other person;

7.4.3.3 implement adequate control and security over the use of the Hosting Services provided to the Client including but not limited to the prevention of viruses, worms, Trojan horses and/ or any access to the Hosting Services by hackers;

7.4.3.4 not use the Hosting Services in a way that breaches any Relevant Laws, any guidelines, regulations or instructions of any regulator or any licence applicable to the Client or that is in any way unlawful or fraudulent;

7.4.3.5 not conduct any unauthorised monitoring of, or access to, or use of data, networks or systems, including any attempt to probe, scan or test the vulnerability of a network and/ or system or to breach security or authentication measures without proper authorisation;

7.4.3.6 not interfere with, disrupt or disable any service to any user, host or network via means including but not limited to overloading, flooding, mail-bombing, denial of service attacks or crashing; not use manual or electronic means to avoid any use limitations placed on a system, such as access or storage restrictions; and

7.4.3.7 not attempt to circumvent or alter any method of measuring or billing for the Hosting Services.

7.5 The Hosting Services are provided solely for the Client's use and the Client may not resell or attempt to resell the Hosting Services (or any part of them) to any third party.

7.6 PCSG shall not be liable to the Client for any interruption or other failure in the Hosting Services to the extent that such interruption or failure arises directly or indirectly from:

7.6.1 the IT Equipment, the Client's network or system or any part thereof;

7.6.2 any act or omission of the Client, its agents, representatives or users;

7.6.3 the Client's breach of the Contract;

7.6.4 the Client's failure or delay in complying with PCSG's reasonable instructions and/ or failure or delay in providing any information requested by PCSG;

7.6.5 anything beyond the reasonable control of PCSG as defined more particularly in condition 13.4;

7.6.6 planned outages, server relocation, or maintenance advised to the Client by PCSG;

7.6.7 server maintenance or application maintenance carried out by the Client or by PCSG



on the Client's instructions; and/or

7.6.8 suspension of the Hosting Services in accordance with the Contract.

7.7 PCSG may at any time change the location of the Facility in which Hosting Services are performed.

7.8 In the event of termination or expiry of a Contract for Hosting Services, PCSG shall (at the PCSG's option) return or delete all data which is held by PCSG in connection with the Hosting Services, except data which PCSG is entitled to retain in accordance with a Contract. Save in the event of expiry, or termination by PCSG without cause, the Client shall be liable for all costs which PCSG incurs in returning or deleting the Hosted Data.

7.9 Unless the Client purchases back-up services from PCSG, PCSG shall not be obliged to perform a back-up or otherwise replicate any of the content which the Client provides to PCSG as part of the Hosting Services.

7.10 Notwithstanding any other provision of this Contract, the Client's sole and exclusive remedy for any breach of this condition 7 by PCSG and/or for any negligence, default or breach of duty by PCSG which leads to loss or corruption of Hosted Data shall be for PCSG to use its reasonable endeavours to restore the Hosted Data to the most recent unimpaired and uncorrupted generation of Hosted Data (where available) created prior to such breach, negligence or default.

7.11 Notwithstanding anything to the contrary in the Contract, PCSG shall be entitled to make changes to the Hosting Services (or any part thereof) which do not have a materially detrimental effect on the Hosting Services and shall where PCSG deems it practical to do so.

7.12 The Client warrants, represents and undertakes that it is the owner of, or that it is authorised by the owner of, (and has the right to use) any trade mark or name that the Client wishes to use as or in its registered domain name (or any of them) ("**Domain Names**") and/or as part of the Client's uniform resource locator ("**URL**").

If PCSG undertakes Domain Names and/or URL registration on behalf of the Client, the Client will reimburse PCSG for any registration fees paid by PCSG to the relevant internet registration authorities. PCSG does not guarantee that any Domain Names or URL requested by the Client will be available. The Client acknowledges and agrees that the registration of the requested domain name and its ongoing use by the Client shall be subject to the relevant naming authority's terms and conditions of use that the Client will obtain directly from each entity or authority as relevant and the Client hereby undertakes and warrants to comply with such terms and conditions. PCSG shall not be responsible for investigating whether or not the requested Domain Name and/or URL will infringe any third party Intellectual Property Rights and PCSG accepts no responsibility whatsoever in respect of the use of the Client's requested domain name by the Client or any other person. Any dispute between the Client and any third party (including without limitation any naming authority) regarding a domain name must be resolved between such parties and the Client shall fully indemnify PCSG against any such action. PCSG will take no part in any such dispute unless required to do so by law. On becoming aware of such a dispute concerning a domain name PCSG hereby reserves the right at its sole discretion without notice to suspend or cancel the relevant Services associated with the domain name dispute.

7.13 PCSG may require the Client to select replacement Domain Names or URL and may either refuse to provide or may suspend the Services if PCSG reasonably believes that the Domain Names or URL is, or is likely to be, offensive, abusive, defamatory or obscene or infringe the rights of a third party.

## **8. WIFI SERVICES**

8.1 Unless otherwise set out on the Purchase Order Form, the WIFI Service shall not include the Supply of Equipment or Installation Services; Fixed Network Services; Maintenance Services; Consultancy Services or Hosting Services. In the event that the section relating to WIFI Services is completed on the relevant Purchase Order Form or in the event that PCSG otherwise does provide any WIFI Services to the Client, Terms 8.1 to 8.6 (inclusive) shall apply to the relevant Contract.

8.2 PCSG shall provide the WIFI Service and the WIFI Software in accordance with this condition 8.

8.3 The WIFI Service and the WIFI Software shall only be deployed on a server platform provided or approved by tPCSG.

8.4 PCSG shall, subject to the terms of this condition 8, supply Client with the Software which shall only be licensed to the Client for use with no more than the number of access points set out in the Purchase Order Form which are installed at the Site.

### **8.5 WIFI SERVICES - ASSUMPTIONS, EXCLUSIONS AND DEPENDENCIES**

8.5.1 The Client acknowledges and agrees that the WIFI Services shall have certain exclusions set out below:

8.5.1 PCSG shall not provide any network capacity or connectivity to the Site from the public or carrier network;

8.5.3 Unless otherwise expressly agreed in writing, PCSG shall not operate the Client's WIFI

network;

8.5.3 PCSG shall not provide the hosting of the WIFI Services, Software, Software documentation or related database;

8.5.4 PCSG shall not prepare analysis of the data provided by the WIFI Services or the Software nor shall PCSG run reports of the data;

8.5.5 PCSG shall not remotely monitor the WIFI Services, Software or WIFI network;

8.5.6 PCSG shall not provide advice in respect of End User terms for use of the WIFI network or capture and use of the data from End Users; and

8.5.7 PCSG shall not be obliged to perform a back-up or otherwise replicate any of the content created by the Client or any End User using the WIFI Services or Software.

## **8.6 SOFTWARE LICENCE TERMS**

8.6.1 PCSG grants to the Client a non-exclusive, non-transferable, revocable licence for the Client and the End Users to use the Software and the Software documentation at the Site for the Client's internal business purposes only. Such use is limited to the number of access points set out on the Purchase Order Form and the Client agrees that any attempt to use the Software or the Software documentation by more than the specified number of uses shall constitute a material breach of this Contract.

8.6.2 Save as set out in condition 8.6.1, the licence is personal to the Client and the Client is only licensed to use the Software and Software documentation for the benefit of the Client in accordance with the express terms of this Contract and not further or otherwise.

8.6.3 The licence shall terminate automatically upon the termination or expiry of this Contract.

8.6.4 The Client shall not translate, adapt, disassemble, decompile, reverse engineer, or modify the Software (or any part of it) or Software documentation (or any part of the same) without the express consent of PCSG. Further, the Client shall not translate, modify, create derivative works from, duplicate the functionality of, adapt, enhance or extend the Software or any of the Software documentation. This section 8.6.4 shall survive termination of the licence or this Contract. The Client shall not combine, merge or otherwise permit the Software (or any part of it) to become incorporated in any other program, nor arrange or create derivative works based on the Software.

8.6.5 The Client shall not, distribute, license, sell or otherwise deal in or encumber the Software or Software documentation.

8.6.6 The Client shall not, copy the Software and Software documentation (or any part of it), except for such one back-up, provided that the Client keeps accurate and up-to-date records of such copying containing such information as PCSG reasonably requests.

8.6.7 The Client shall not, use the Software and/or Software documentation on behalf of or make it available to any third party (save for the Client) or allow or permit a third party to do so.

8.6.8 If required by PCSG, the Client shall sign such end user licence agreement as may be required by PCSG or any other third party owner of the copyright in the Software to protect the owner's interest in the Software and for the Client to be able to use the Software.

8.6.9 The Client shall, and shall procure that any End Users shall, comply with all Software licence terms and conditions which are embedded in the Software in a click through form or otherwise.

8.6.10 The Software and the Software documentation and any Intellectual Property Rights of whatever nature therein shall remain the property of PCSG or its licensors. The Client shall notify PCSG immediately if the Client becomes aware of any unauthorised use of the whole or any part of the Software or Software documentation.

8.6.11 The Client shall effect and maintains adequate security measures to safeguard the Software and Software documentation from theft or unauthorised use. This section shall survive termination of the licence or this Contract.

8.6.12 The Client shall not use the Software contrary to any restriction set out in this Contract or otherwise in a way that is not expressly permitted by this Contract. The Client's right to use the Software and any Software documentation shall not include the rights of any third party to use or have access to the Software and any Software documentation and in any event, the Client shall ensure that all such use does not exceed the Client's permitted use.

## **9. FINANCE AND CREDIT**

9.1 The Client shall procure that its owners, directors, officers and assigns are made aware of PCSG carrying out searches with credit reference agencies relating to the creditworthiness of the Client and/or its owners, directors, officers and assigns and the Client shall, upon PCSG's request, promptly supply or procure the supply of all information requested for a credit search with a credit reference agency.

9.2 It is agreed that where PCSG puts in touch a Client with a finance provider or lease provider for the Client to arrange finance for the purchase or leasing of Equipment then PCSG will not act as an agent either for the Client or for the finance provider or lease provider.

9.3 The Client undertakes to supply all information requested by the selected finance provider(s) directly to the finance provider who will register searches with one or more credit





agencies, which will be seen by other organisations that make searches.

9.4 If indemnities are required by a relevant finance provider, failure of the client to provide such indemnities shall constitute a breach of these Terms by the Client and shall entitle PCSG to terminate this Contract and retain any deposit paid by the Client.

9.5 After Delivery and Installation (where applicable) of the Equipment is completed, any failure by the Client to complete any relevant finance agreement documentation shall render the Client liable to pay to PCSG the whole of the Price as defined in condition 10.1.1 within seven days of the date of PCSG's invoice.

## **10. PRICE AND CHARGES**

### **10.1 EQUIPMENT**

10.1.1 Save where, and to the extent that, any Promotional Terms apply, the Price is as stated in a Purchase Order Form. Any invoices issued by PCSG in respect of the Price shall, save in the case of manifest error, be final, conclusive and binding on the Client.

10.1.2 Unless otherwise specified the Price is based on the assumption that the Delivery of the Equipment and (where applicable) Installation Services will be completed in one visit to the Site and accordingly PCSG may at its discretion at any time increase the Price to take account of any additional costs to PCSG (including but not limited to storage and delivery costs) by reason of Delivery and/or the Installation Services taking more than one visit.

### **10.2 FIXED NETWORK SERVICES**

10.2.1 Save where, and to the extent that, any Promotional Terms apply, the Charges will be as detailed in the Tariff or unless stated otherwise in a Purchase Order Form.

10.2.2 PCSG reserves the right to increase the rates each year by the increase (if any) in the Rate of RPI notified in writing by PCSG to the Client.

10.2.3 PCSG shall have the right at its sole discretion by giving not less than thirty (30) days' notice to the client to alter the Charges for the Fixed Network Services from time to time provided to the Client if a change arises due to:

(a) a change in the costs to PCSG due to a requirement or direction of OFCOM or any laws or statutory requirement; and/or

(b) a change in the costs charged to PCSG by its suppliers. For the avoidance of doubt, the publishing by the Company of any change in accordance with condition 10.2.2 shall not constitute either acceptance of or an admission by the Company that any proposed change is of material detriment to the Client, nor shall the service of notice by the Client under this condition constitute or be deemed to constitute evidence that the relevant change is of material detriment to the Client.

10.2.4 Usage charges payable shall be calculated by reference to data recorded or logged by PCSG and not by reference to any data recorded or logged by the Client. Any invoices issued by PCSG in respect of the Charges for Fixed Network Services shall, save in the case of manifest error, be final, conclusive and binding on the Client. Line rental is payable from the Connection Date.

10.2.6 If the Client has agreed to a Monthly Minimum Call Spend and at the end of any month, the Client has not incurred the Monthly Minimum Call Spend, or if the Client terminates the Contract in any way other than pursuant to condition 15, the Client will be liable to pay to PCSG, the difference between the Charges incurred during that month for actual calls made and the Monthly Minimum Call Spend.

10.2.7 PCSG reserves the right to apply a monthly minimum threshold on call spend of at least £10.00 per Client account (or such other sum as notified to the Client by PCSG in writing from time to time), to keep the account operating at a viable level. This charge shall only apply to the telephone services element of Fixed Network Services.

#### **10.2.8 Call Commissions**

(a) Subject to paragraphs (d) and (e) below, PCSG will pay Call Commissions to the Client in respect of calls to each applicable Premium Rate Service and/or other End User Service and/or Non Geographic Service delivered to and received by a Number at the rate and in the amount set out on the Purchase Order Form or in the Tariff.

(b) Where a Client will receive be entitled to a Call Commission for inbound premium rate calls, PCSG shall calculate the value of such Call Commission and insert it as credit amount on the client's usual monthly invoice. The Client undertakes to inform PCSG promptly in writing in the event of any change, reissue or cancellation of its VAT number or a transfer of any part of the Client's business as a going concern.

(c) PCSG shall not pay Call Commissions in respect of any call which it reasonably believes may have originated outside the United Kingdom.

(d) The Client's Call Commission is a function of the number and duration of inbound calls to the relevant telephone number which will vary from day to day. Any predicted amount of Call Commission by PCSG shall be an estimate only and the Client acknowledges it has placed no reliance upon such estimate.

10.3 Without prejudice to condition 10.2.2, PCSG reserves the right to increase the Charges

for the Fixed Network Services in the April immediately following the Effective Date by the increase (if any) in the Rate of RPI announced in February and notified in writing by PCSG to the Client.

### **10.4 MAINTENANCE SERVICES**

10.4.1 Any invoices issued by PCSG in respect of the Charges for Maintenance Services (**Support Charge**) shall, save in the case of manifest error, be final, conclusive and binding on the Client.

10.4.2 PCSG shall have the right to alter the Support Charge from time to time by giving the Client not less than fourteen days' notice.

### **10.5 CONSULTANCY SERVICES**

10.5.1 Save where, and to the extent that, any Promotional Terms apply, the Charges for Consultancy Services will be as stated on the Purchase Order Form and are exclusive of VAT or any other tax or duty payable.

10.5.2 The Client shall pay to PCSG the Charges for Consultancy Services in accordance with condition 11.4. Any invoices issued by PCSG in respect of the Charges for Consultancy Services shall, save in the case of manifest error, be final, conclusive and binding on the Client.

10.5.3 PCSG shall have the right to alter the Charges for Consultancy Services from time to time by giving the Client not less than 30 (thirty) days' notice.

10.5.4 Without prejudice to condition 10.4.3, PCSG may increase the Charges for Consultancy Services in April of each year following the Commencement Date by the increase (if any) in the Rate of RPI.

### **10.6 VALUE ADDED TAX**

All sums referred to under these Terms, the Purchase Order Form, any Promotional Terms and any Service Specific Terms are (unless otherwise stated) exclusive of Value Added Tax (VAT) and any taxes of a similar nature which may from time to time be introduced, which will be payable by the party paying the relevant sum at the rates in force at the date of the relevant invoice.

### **10.7 TEMPORARY SERVICES**

If the Client orders a temporary Service, PCSG may charge the Client for any supplementary charges incurred, plus the line rental (if any) in advance for the whole period of the temporary Service. Other Charges as detailed in the Contract still apply as appropriate.

### **10.8 WIFI SERVICES**

10.8.1 Save where, and to the extent that, any Promotional Terms apply, the Charges for the WIFI Services will be as stated on the Purchase Order Form and are exclusive of VAT or any other tax or duty payable.

10.8.2 The Client shall pay to PCSG the Charges for WIFI Services in accordance with condition 11.4. Any invoices issued by PCSG in respect of the Charges for the WIFI Services shall, save in the case of manifest error, be final, conclusive and binding on the Client.

10.8.3 PCSG shall have the right to alter the Charges for the WIFI Services from time to time by giving the Client not less than 30 (thirty) days' notice.

10.8.4 Without prejudice to condition 10.9.3, PCSG may increase the Charges in April of each year following the Commencement Date by the increase (if any) in the Rate of RPI announced in February and notified in writing by PCSG to the Client.

## **11 INVOICING AND PAYMENT**

### **11.1 EQUIPMENT**

11.1.1 PCSG reserves the right to charge the Client a deposit equal to at least one half of the Price is payable by the Client on the date of signature of the relevant Contract and the balance of the Price as defined in condition 10.1.1 is payable immediately upon Delivery (subject to condition 4.1.6). Any delay by PCSG in invoicing the Price shall not relieve the Client of its liability to pay for the same.

### **11.2 FIXED NETWORK SERVICES**

11.2.1 Subject to condition 11.2.2, the Client shall be invoiced monthly in arrears by PCSG and shall pay the Charges by direct debit within ten days of the date of the invoice (unless otherwise expressly agreed with PCSG and set out in a Purchase Order Form).

11.2.2 Line rental is payable monthly in advance, unless expressly agreed in writing by PCSG and set out on the Purchase Order Form.

11.2.3 Where PCSG is notified by Phone-paid Services Authority that:

(a) any sums payable by the Client to Phone-paid Services Authority or to any compensation fund or bond established by Phone-paid Services Authority have not been paid; and/or

(b) the Client or any Information Provider is in breach of the Code;

PCSG may withhold all sums due to the Client until PCSG has been notified by Phone-paid Services Authority that all such sums, fines, administrative charges or other sums payable to Phone-paid Services Authority under the Code have been paid in full or any breach has been remedied, and if requested by Phone-paid Services Authority PCSG may pay such sums to Phone-paid Services Authority in settlement of amounts owed to Phone-paid Services Authority. In the



event that amounts are paid by PCSG to Phone-paid Services Authority to settle amounts owed by the Client then such amounts shall be deducted from any amounts owed by PCSG to the Client.

11.2.4 Any omission or delay by PCSG in invoicing the Charges for Fixed Network Services shall not prohibit PCSG from raising an invoice at a later date in respect of the same nor shall it relieve the Client of liability to pay the same.

### 11.3 MAINTENANCE SERVICES

11.3.1 Unless otherwise stated in an Purchase Order Form, the Client will pay the Support Charge to PCSG by direct debit (to such account as PCSG may designate for that purpose) in advance of the relevant period as set out on the Purchase Order Form and shall pay any Additional Charges in accordance with condition 6.3.4.

11.3.2 Where PCSG has agreed to raise an invoice for the Support Charge, the Client will pay such charge in advance of the Commencement Date monthly thereafter upon each anniversary of that date. Any delay by PCSG in invoicing the Support Charge and/or Additional Charges shall not relieve the Client of liability to pay for the same.

### 11.4 CONSULTANCY SERVICES

11.4.1 Unless otherwise stated in an Purchase Order Form, the Client will pay the Charges for Consultancy Services to PCSG by direct debit (to such account as PCSG may designate for that purpose) in advance of the relevant period as set out on the Purchase Order Form.

11.4.2 Where PCSG has agreed to raise Charges for Consultancy Services, the Client will pay the charge in advance of the Effective Date and monthly thereafter. Any delay by PCSG in invoicing the Charges for Consultancy Services shall not prohibit PCSG from raising an invoice at a later date in respect of the same nor shall it relieve the Client of liability to pay for the same.

### 11.5 HOSTING SERVICES

11.5.1 Unless otherwise stated in an Purchase Order Form, the Client will pay the Charges to PCSG by Direct Debit (to such account as PCSG may designate for that purpose) in advance of the relevant period as set out on the Purchase Order Form.

11.5.2 Where PCSG has agreed to raise the Charges, the Client will pay the charge in advance of the Commencement Date and monthly thereafter. Any delay by PCSG in invoicing the Charges and/or Additional Charges shall not relieve the Client of its liability to pay for the same.

### 11.6 WIFI SERVICES

11.6.1 Unless otherwise stated on the Purchase Order Form, the Client will pay the Charges for WIFI Services to PCSG by direct debit (to such account as PCSG may designate for that purpose) in advance of the relevant period as set out on the Purchase Order Form.

11.6.2 Where PCSG has agreed to raise Charges for WIFI Services, the Client will pay the charge in advance of the Effective Date and monthly thereafter. Any delay by PCSG in invoicing the Charges for WIFI Services shall not prohibit PCSG from raising an invoice at a later date in respect of the same nor shall it relieve the Client of liability to pay for the same.

11.7 If payment of any sum payable to PCSG is not made on or before the due date, PCSG shall be entitled to charge interest thereafter on such sum at either the rate of four per cent per annum above the current base rate of The Royal Bank of Scotland plc from time to time or, if higher, such rate as PCSG would be entitled to claim under the Late Payment of Commercial Debts (Interest) Act 1998 (such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month) from the due date until the date of payment whether before or after judgment.

11.8 Unless e-billing is not expressly excluded in an Purchase Order Form, invoices will be made available for download by the Client.

11.9 If PCSG is unable, for whatever reason, to recover any sum due under the Client's account within four days following the due date for payment, the PCSG reserves the right to forthwith suspend all or any of the Services.

11.10 If the Client's account remains unpaid (in any part) PCSG may require a security deposit of three times the average monthly invoice or payment in full for the next twelve months before PCSG will reinstate the Service.

11.11 If the Client's account remains unpaid (in any part) for a period of thirty days after the original due date for payment, the Services may then be terminated by the PCSG.

11.12 Without prejudice to PCSG's other remedies, if the Client's account remains outstanding for any reason after the original due date for payment, then:

11.12.1 The Client may be charged an administration fee for each piece of correspondence in connection with the recovery of the overdue amount. PCSG may also charge the Client a fee where it suspends a Service for non-payment; and

11.12.2 PCSG reserves the right to refer the outstanding account to a debt collection agency. If PCSG instructs a debt collection agency to collect payment (including interest and late payment charges) on its behalf the Client must pay PCSG's costs payable to the agency, who will add the sum to the Client's outstanding debt.

11.13 The Client will ensure that the name of the account holder is the same as the name on the payment details provided.

11.14 If the Client cancels an active direct debit instruction following the Effective Date, an

additional administration fee of £20.00 (twenty pounds) (or such other amount as may be notified to the Client by PCSG from time to time) may be added to the monthly invoice until the direct debit instruction is reinstated. PCSG also reserves the right to charge the Client a direct debit cancellation fee at PCSG's then applicable rate.

PCSG may, without notice, withhold any payments due to the Client under a Contract or any other agreement between PCSG or any other member of its Group and the Client if:

11.14.1 PCSG has reason to believe the Client is in breach of the relevant Contract; and/or

11.14.2 the Client is (or PCSG reasonably believes that the Client is) conducting its business or using a Service illegally or unlawfully (including without limitation in breach of the Code or any OFCOM requirements) or for an illegal or unlawful purpose; and/or

11.14.3 PCSG has received notice from another network operator that payment will be withheld in respect of calls and PCSG has satisfied itself on reasonable grounds that such event has occurred. The Client will not be entitled to any payment of Call Commission in respect of such calls; and/or

11.14.4 the relevant Contract is terminated for any other reason; and/or

11.14.5 PCSG has reason to believe the Client is insolvent or is likely to become insolvent;

11.16 If any sum owed by the Client to PCSG under a Contract or any other contract with PCSG is not paid by the due date, the PCSG may deduct this sum from any payment or credit due to the Client under the relevant Contract or any other contract with PCSG.

11.17 Payment of all sums due to PCSG shall be made without any set-off whatsoever.

11.18 If the Client intends to dispute any Charges on an invoice, the Client must do so in writing to PCSG within fourteen days of the date of the invoice and provide PCSG with all relevant information in support of the disputed Charge. The Client must pay any remaining amount of a Charge in respect of an invoice that is not in dispute.

### 11.19 FAILED DIRECT DEBIT RETRY FEE

11.19.1 In the event of a failure of a Direct Debit payment due to insufficient funds or any other reason within the Client's control, PCSG reserves the right to charge a "Failed Direct Debit Retry Fee".

11.19.2 The "Failed Direct Debit Retry Fee" shall consist of 2.25% of the total amount due at the time of the failed payment, in addition to a £25 administrative fee.

11.19.3 The "Failed Direct Debit Retry Fee" is exclusive of VAT, which will be added to the fee at the prevailing rate.

11.19.4 For each event of a failed Direct Debit payment, this fee will be applied unless the Client can demonstrate that the failure was due to reasons beyond their control.

11.19.5 PCSG will notify the Client of the failed payment and the impending charge of the "Failed Direct Debit Retry Fee" prior to its application.

11.19.6 The Client is encouraged to ensure adequate funds are available in their account to meet Direct Debit payments to avoid incurring this fee.

## 12 SITES

12.1 To enable PCSG to fulfil its obligations under a Contract:

12.1.1 the Client shall permit or procure permission for PCSG, its agents, employees, representatives, sub-contractors and any other person(s) authorised by PCSG to have reasonable access to the Site, Equipment, Supported Equipment and any other relevant telephone system and other equipment and shall provide such reasonable assistance as PCSG requests. If PCSG is refused access or prevented from accessing the Site, for whatever reason, it will be relieved from all of its directly related performance obligations under a Contract and shall have no liability to the Client and the Client shall hold PCSG harmless in this regard. Further, the Client shall be charged an abortive visit charge.

12.1.2 PCSG will normally carry out work by appointment and during Normal Working Hours but may request the Client to (and the Client shall) provide access at other times. In the event that the Client cancels, reschedules or misses any pre-arranged appointment, it shall be liable to PCSG for any costs and expenses which PCSG incurs as a result of such cancellation, rescheduling and/or missed appointment.

12.2 At the Client's request, PCSG may agree (at its sole discretion) to work outside Normal Working Hours and the Client shall pay PCSG's reasonable charges for complying with such a request.

12.3 The Client warrants, represents and undertakes that there are adequate health and safety provisions in place at the Site, there is a suitable and safe working environment, and that the Client holds third party public liability insurance with a level of cover of at least the minimum required by Law.

12.4 The Client shall procure all consents, licences and permissions necessary from landlords or other third parties for the carrying out of preparation work, installation of Equipment and for the provision, use and operation of the Equipment, the Supported Equipment and/or Services at the Sites (save to the extent PCSG has agreed in writing to do it). The Client



shall provide copies of such consents, licences and permissions to PCSG upon request.

12.5 In the event that the Client is not able to procure the necessary consent to provide the Services within ninety days from the Effective Date PCSG will be able to terminate the relevant Contract forthwith by giving the Client written notice without any liability. If the Client has not managed to procure the necessary consents and PCSG has commenced work the Client shall, on request by PCSG, refund to PCSG the cost of all such work (including, without limitation, staff costs and equipment costs) at its then current rates.

12.6 If expressly requested by PCSG the Client shall provide PCSG with the site and building plans (to include full details of all internal cabling runs) of the Sites and provide PCSG with full details of all other services in the vicinity of the proposed works.

12.7 The Client is responsible for making the Site good after any work undertaken by PCSG at a Site, including without limitation replacing and re-siting items and for re-decorating.

12.8 If the Client is moving a Site, PCSG must be informed as soon as is reasonably practicable so that suitable arrangements can be made to transfer the Client's Services and Equipment. Unless otherwise requested, PCSG, in addition to moving the Service and Equipment, will also endeavour (but cannot guarantee that it will be able, for example where the Client moves to a different exchange) to retain the Client's relevant existing telephone number(s). If PCSG can transfer the Client's existing number to the new Site the relevant existing Contract will continue under the same terms and conditions. If PCSG cannot transfer the Client's existing relevant number to the new Site, installation of a new line will be required at the new Site, or if the Client requires any additional new lines, this will attract new line connection charges and a new Contract.

12.9 If the new installation or moving Site involves the visit of an engineer to facilitate the new installation, the Client will be responsible for the costs incurred by PCSG for the appointment of the engineer together with an administration fee in respect of any additional works required to be undertaken by PCSG to complete the transfer of the Services and Equipment.

12.10 If the Client moves Sites and leaves the Equipment and/or the Supported Equipment for the new owner/tenant, the Client is required to inform them that the relevant Service will be discontinued if PCSG is not contacted by the new owner/tenant within seventy-two hours for the purpose of entering into a new contract with the PCSG for such services and subject in any event to the agreement of such a contract.

12.11 If the Client receives services from an alternative supplier at a new Site the Client remains responsible for any contractual agreement the Client has with such alternative supplier and for any liabilities the Client may incur for terminating such agreement.

12.12 The Client must identify asbestos contaminated areas at the Site prior to implementation and commencement of the works. In the event that PCSG discovers asbestos contaminated areas at the Site then it will cease work until the asbestos is removed or the area is made safe for the works to resume. PCSG shall have no liability for any delay which is as a result of asbestos contamination and the Client shall hold PCSG harmless in this regard. The Client shall be responsible for the removal of all asbestos at the Site including the co-ordination of and all costs incurred in connection with the engagement by the Client of PCSG which specialises in the installation of cables in asbestos contaminated areas.

### **13 LIMITATION OF LIABILITY**

13.1 Save as expressly set out in these Terms or a Contract, PCSG makes no warranty in respect of the supply of Equipment and/or Services and all other terms, conditions and warranties which may otherwise be implied into a Contract by law or course of dealings between the parties are hereby excluded to the fullest extent legally possible.

13.2 Subject to condition 13.3 and 13.5, in no circumstances shall PCSG's liability to the Client arising under or in connection with a Contract (whether in contract, tort (including without limitation negligence) misrepresentation, breach of statutory duty or otherwise), including any liability arising from a breach of, or a failure to perform or defect or delay in performance of any of PCSG's obligations under a Contract in any Contract Year exceed 100% of the Price and/or Charges paid in in respect of such Contract in the 12 months preceding that Contract Year and in respect of liabilities arising in the first Contract Year, PCSG's liability shall be limited to £10,000.

13.3 Subject to condition 13.5, under no circumstances shall PCSG be liable in any event under or in connection with a Contract and whether in contract, tort (including without limitation negligence) misrepresentation, breach of statutory duty or otherwise for any:

13.3.1 loss of revenue (whether direct, indirect or consequential);

13.3.2 loss of business (whether direct, indirect or consequential);

13.3.3 loss of contracts (whether direct, indirect or consequential);

13.3.4 loss of, damage to, or corruption of data or software, loss caused by a cyber-attack, or ransomware event (whether direct, indirect or consequential);

13.3.5 loss of anticipated savings (whether direct, indirect or consequential);

13.3.6 loss of profits (whether direct, indirect or consequential);

13.3.7 liability of the Client to third parties (whether direct, indirect or consequential); or

13.3.8 indirect, consequential or special losses; whether or not PCSG knew or ought to have known that such losses or damages might be incurred.

13.4 Neither party shall be liable to the other party for any breach of contract, tort (including but not limited to negligence) misrepresentation, breach of statutory duty or otherwise caused by any reason outside the reasonable control or responsibility of that party including, without limitation, in respect of Fixed Network Services supplied by PCSG, the failure of any Carrier to provide network capacity and/or connectivity (or any element thereof) to PCSG on which it was reliant for the purposes of a Contract, any act of God, endemic, pandemic, terrorist attacks, inclement weather, accidental damage, vandalism, failure or shortage of power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, any act or omission of Government, highways authorities, or other competent authorities.

13.5 Nothing in these Terms excludes or restricts either party's liability for:

13.5.1 death or personal injury resulting from that party's negligence or its employees' negligence (while acting in the course of their employment);

13.5.2 any fraud, fraudulent misrepresentation or fraudulent misstatement;

13.5.3 any indemnity under these Terms; and/or

13.5.4 anything for which the parties cannot at law limit or exclude their liability.

13.6 Subject to condition 13.5, the Client agrees that any cause of action that it may have against PCSG and/or any of its Group members (including, its (or their) affiliates, directors, officers, agents, consultants and employees) must commence within twelve (12) months after the cause of action arose, otherwise, the Client's cause of action is permanently barred.

13.7 Notwithstanding the above, PCSG shall not be liable, either in contract, tort, or otherwise, for any loss, damage, costs, or expenses incurred by the Client resulting from the absence of services or solutions which were not directly and expressly ordered by the Client from PCSG, regardless of whether such services or solutions were offered by PCSG or not. The Client acknowledges and agrees that it is their sole responsibility to request and order any and all services or solutions that they deem necessary for the effective operation and protection of their Services and/or Equipment. The Client hereby agrees to indemnify, keep indemnified and hold harmless PCSG against all costs (including without limitation legal costs and the costs of enforcement (on a full indemnity basis)) liabilities, claims, damages, direct, indirect and consequential losses (including without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill an like loss whether such losses are direct, indirect, or consequential losses), expenses and/or judgments whatsoever, which it may suffer or incur, and arising from any or resulting directly or indirectly from the absence of services or solutions which were not directly and expressly ordered by the Client from PCSG, regardless of whether such services or solutions were offered by PCSG or not.

### **14 CLIENT'S INDEMNITY**

14.1 Without prejudice to any other rights of PCSG, the Client shall indemnify, keep indemnified and hold harmless PCSG against all costs (including without limitation legal costs and the cost of enforcement (on a full indemnity basis)) liabilities, claims, damages, direct, indirect or consequential losses (including without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss whether such losses are direct, indirect or consequential losses), expenses and/or judgments whatsoever, which it may suffer or incur, and arising from any:

a) breach by the Client of any warranties, undertakings and/or representations given under these Terms and/or any failure to comply with any obligations, responsibilities and/or liabilities of the Client as set out in a Contract; and/or

b) injury and/or damage suffered or incurred by or to any of PCSG's (or any of PCSG's contractor's) employees and/or equipment whilst on the Site; and/or

c) infringement by the Client (including, its affiliates, directors, officers, agents, consultants and employees) of any third party's Intellectual Property Rights.

### **15 SUSPENSION, TERMINATION AND CONSEQUENCES**

#### **15.1 SUSPENSION OF SERVICES**

15.1.1 Without prejudice to any other right of PCSG to suspend or terminate any or all of the Services under these Terms, PCSG may at its sole discretion elect to suspend forthwith provision of any Services until further notice without liability to the Client having given the Client reasonable notice either orally (confirming such notification in writing) or in writing in the event that:

(a) the Client is in breach of a material term of these Terms and/or the Contract and/or any other contract between the parties from time to time including but not limited to the Client's failure to pay the Price and/or the Charges (or any of them) to PCSG on the due date or to comply with the Broadband Acceptable Use Policy;



(b) an Emergency occurs and/or PCSG is obliged to comply with an order, instruction or request of the Government, an emergency services organisation or other competent administrative or regulatory authority (including without limit, OFCOM or Phone-paid Services Authority);

(c) PCSG has reasonable grounds to believe that any of the Services are being used fraudulently, unlawfully or by an unauthorised third party;

(d) any licence under which the Client has the right to run its telecommunications system and/or connect to the Services or use any of the Services is revoked, amended or otherwise ceases to be valid;

(e) PCSG or any member of its Group is entitled to suspend and/or terminate provision of any other telecommunications service under the terms of any other agreement with the Client; or

(f) any maintenance or repair is necessary (for the purposes of new provision, updating facilities, general maintenance or otherwise) or required to the relevant network or related systems or equipment (for the avoidance of doubt, in the event of emergency maintenance or repair, PCSG shall not be required to give any advance notice).

15.1.2 The Client shall reimburse to PCSG all reasonable costs and expenses incurred by the implementation of a suspension pursuant to condition 15.1.1, and the recommencement of the provision of the Services as appropriate, save in the case of a suspension pursuant to condition 15.1.1(b).

15.1.3 The Client shall not have access to any data stored through the Hosting Services during a suspension. The Client shall have the opportunity to create a snapshot backup of the data stored through the Hosting Services, and the Client shall pay PCSG the applicable charges for undertaking such a backup, in accordance with PCSG's then current charges.

15.1.4 PCSG may suspend and/or terminate such Services until further notice, without liability to the Client, in the event that PCSG is entitled to suspend and/or terminate the provision of the Fixed Network Services under the terms of a Contract.

15.1.5 Without prejudice to any other right of termination under these Terms, PCSG may terminate (in whole or in part) a Contract forthwith in the event that its right, or the right of the relevant Carrier, to provide any of the Services is withdrawn by any supplier to it or OFCOM pursuant to the General Conditions or otherwise.

## 15.2 TERMINATION OF SERVICES

15.2.1 Subject to Terms 15.2.4, 15.2.5, 15.2.6 and 15.2.7 below and without prejudice to any specific termination rights set out elsewhere in these Terms, the Client shall not be entitled (once a Purchase Order Form has been accepted by PCSG pursuant to condition 2.1) to change or cancel a Purchase Order Form.

15.2.2 Subject to condition 15.2.6 and 15.2.7, in the event of any termination by the Client of the Contract (in whole or in part), the Client shall indemnify PCSG in full against all loss (including, but not limited to, all losses incurred by PCSG as a result of the Client terminating the Contract before the end of the Minimum Term or where the Contract has continued beyond the Minimum Term before the end of the relevant notice period, which will include a minimum payment to PCSG of the amount of the outstanding line rental charges, any Monthly Minimum Call Spend, Support Charges, Additional Charges, contracted call bundles, subscriptions or otherwise that would have been paid by the Client had the Contract continued for the Minimum Term and/or the relevant notice period (as the case may be)), costs, damages, charges (including, but not limited to, any liability for Fixed Network Services transferred from third parties) and administration charges (of a minimum of £300) in respect of the termination of the supply of any or all of the Equipment and (if applicable) the Services which are the subject of the Contract) and expenses incurred by PCSG as a result of such termination.

15.2.3 Without prejudice to any other rights of PCSG under these Terms or otherwise, PCSG shall be entitled at any time and for any reason whatsoever without any liability to the Client to terminate a Contract on the giving of not less than thirty days' written notice to the Client. For the avoidance of doubt, in the event that PCSG terminates a Contract under this condition 15.2.3, the Client's liability to pay the Charges for Services shall end on the date of termination of the relevant Contract and the Client shall not be liable to pay for the Charges applicable for the remainder of any Minimum Term or extended rollover period in respect of that Contract.

15.2.4 A Contract may be terminated forthwith by either party by notice in writing if the other party materially breaches its obligations under a Contract (including without limitation non-payment of charges due) and in the case of breaches which are capable of remedy such party fails to remedy such breach within fourteen days of written notice by the other party, such notice shall contain details of what the breach is and requesting that the breach is remedied.

15.2.5 Notwithstanding anything to the contrary expressed or implied in these Terms, either party (without prejudice to its own rights) may terminate all Contracts forthwith in the event that a liquidator (other than for the purpose of solvent amalgamation or reconstruction) trustee in bankruptcy, administrator or receiver is appointed in respect of the whole or part of the assets and/or undertaking of the other party or the other party enters into an arrangement or composition with its creditors, or other circumstances arise which entitle a court or creditor to appoint a receiver or administrator or to make a winding up order (save as in respect of a solvent

reconstruction of such relevant party's group of companies).

15.2.6 Where the Client is a Small Business Client, the Client may cancel the element of the Fixed Network Services (excluding any DDoS Services) governed by OFCOM at any time prior to the commencement of the provision of those Fixed Network Services, without any form of charge or compensation being required to be paid to the PCSG.

15.2.7 The Client may cancel the affected part of the Fixed Network Services (excluding any DDoS Services) governed by the General Conditions and OFCOM, where the PCSG makes changes to the Terms and/or any service Specific Terms which are of material detriment to the Client and relate to the provision of the Fixed Network Services upon providing 30 (thirty) days written notice to the PCSG. Any such cancellation must be made within 30 (Thirty) days of the changes to the Terms being notified to the Client.

15.2.8 PCSG shall be entitled to terminate the Contract forthwith in circumstances where it also has a right to suspend the provision of the Services pursuant to condition 20.2.1.

15.2.9 The termination or expiry of the Contract shall be without prejudice to any rights or liabilities which have accrued prior to such expiry or termination. Any provision of these Terms which expressly or by implication is intended to survive, shall survive the termination or expiry of a Contract.

15.2.10 Any implied right to terminate for convenience that the Client may have under applicable law is hereby expressly excluded.

15.2.11 For the avoidance of doubt, in the event of termination of a Contract for any reason, the Client shall not be entitled to a refund of any pre-paid sums (including, without limit, subscription, rental and/or maintenance charges) whether such sums are attributable to the period before, including or after the date the relevant Contract terminates. 15.2.12 On termination of a Contract for any reason the Client shall have no further entitlement to receive any further Call Commissions and shall permit the disconnection of any Number from the Fixed Network Services.

## 16 SOFTWARE

16.1 Where PCSG provides software to the Client to enable the Client to use the Services under a Purchase Order Form ("Software"), PCSG will grant the Client a non-exclusive, non-transferable, royalty free, revocable licence to use the Software solely for the term and purposes of the relevant Contract. If required by PCSG, the Client shall sign such end user licence agreement as may be reasonably required by the licensor of the Software for the Client to be able to use the Software.

16.2 Except as permitted by applicable law or as expressly permitted under a Contract the Client shall not de-compile, reverse-engineer, or modify the Software, or copy the relevant manuals or documentation.

16.3 The Client shall, and shall procure that all End Users shall, comply with all Software licence terms and conditions which are embedded in the Software in a click through form or otherwise.

16.4 If the Services involve End Users accessing software and/or the Fixed Network Services then all End Users shall provide the Client with such necessary registration details as are to be agreed between PCSG and the Client and which will be a minimum of the End User's full name and email address and all End Users shall be obliged to agree to the Client's acceptable use terms and conditions as published by the Client from time to time. The Client acknowledges and accepts that if the End User does not provide this information and does not agree to the acceptable use terms and conditions then the End User may not be able to connect to the Software and/or the Services.

16.5 The Client acknowledges and accepts that PCSG shall have no liability to the Client in the event that the End User is unable to access the Software and/or the Services due to failure to provide the necessary information set out in condition 16.4 or the Client's failure to agree to the acceptable use terms and conditions.

## 17 CALL MONITORING

PCSG may monitor and record calls made to or by PCSG by or to the Client (and/or any of their employees or personnel), for training purposes, to improve the quality of its Client services and to assist with complaint handling. The Client undertakes to make its employees and personnel aware of the rights reserved by PCSG under this condition in accordance with the Data Protection Laws.

## 18 CONFIDENTIALITY AND DATA PROTECTION

18.1 PCSG and the Client will keep in confidence any information of the other; whether written or oral, of a confidential nature obtained under or in connection with a Contract except to the extent any disclosure is required by law. The Client and PCSG will not, without the consent of the other, disclose such information to any person other than:



18.1.1 their employees, contractors or professional advisers who shall require the information in order for the Client or PCSG to fulfil its obligations under the relevant Contract; or

18.1.2 in the case of the Client, its users to the extent that they are required to use or access the Service.

18.2 Information shall not be treated as confidential if it is:

18.2.1 lawfully in the public domain; or

18.2.2 lawfully in the possession of the Client or PCSG before disclosure from the other has taken place; or

18.2.3 obtained from a third person who is entitled to disclose it; or

18.2.4 replicated independently by someone without access or knowledge of the information.

18.3 If the Client receives a request under the Freedom of Information Act 2000 which encompasses any information provided to the Client by PCSG in connection with the Contract the Client will notify PCSG immediately of the request and give PCSG at least ten Business Days to make representations before releasing the requested information (save to extent otherwise required by law).

18.4 Both PCSG and the Client agree to comply with the Supplier Data Processing Addendum and that such agreement is incorporated into this Contract. For the purposes of interpreting the [PCSG as a Supplier Data Processing Addendum], "PCSG" shall mean PCSG and the "Principal Agreement" shall mean this Contract.

18.5 Subject to condition 18.6, where a party who has disclosed confidential information so requests and following termination of the relevant Contract for whatever reason, each party who has received any confidential information of the other party shall without delay:

18.5.1 return to the other party, in a form capable of delivery, anything containing or recording the confidential information, whether in the form of documents, computer records, audio tapes, video tapes, CD Roms or any other media; and

18.5.2 certify in writing that any such confidential information not returned has been destroyed or made permanently unusable;

18.6 PCSG shall not be required to return confidential information pursuant to condition 18.5 where continuing use or disclosure of such confidential information is necessary in order for PCSG or any member of the PCSG's Group to exercise its rights or perform Services under the Contract or where PCSG is required to maintain such confidential information pursuant to any Relevant Laws or for any other purpose specified in this Contract.

18.7 The Client acknowledges that whilst data belonging to Client and to its Clients, whose data is stored on PCSG's servers or system as a result of using any recording or storage function of the Services, the Client shall at all times remain the Data Controller for such data and PCSG shall at all times be a Data Processor only.

## **19 CHANGES TO THE TERMS, SERVICE SPECIFIC TERMS AND CONTRACT**

19.1 PCSG may change these Terms and/or Service Specific Terms at any time and will publish any change in line with condition 19.2.

19.2 PCSG will publish any changes to the Terms, Service Specific Terms online at <https://www.pcsupportgroup.com/terms> (or at such other URL as is notified to the Client by PCSG from time to time) as well as in invoices provided to the Client stating that the Terms, any Service Specific Terms and/or as a Supplier Data Processing Addendum] have changed and providing a link to the new Terms, any Service Specific Terms and/or as a Supplier Data Processing Addendum:

19.2.1 at least one month before the change is to take effect for changes that may be of material detriment to the Client; and

19.2.2 as soon as is reasonably practical in the circumstances prior to the changes taking effect, for all other changes.

19.3 To the extent the changes referred to in this condition 19 relate directly to Fixed Network Services the provisions of condition 10.2.2 and condition 15.2.7 shall apply.

19.4 Without liability to the Client, in order to reduce the risk of fraud or for any commercial purpose, the Client acknowledges that on capped price call tariffs (if any) PCSG may at its sole discretion on not less than seven days' notice:

19.4.1 limit call price caps to the first four hours of calls per day; and/or

19.4.2 remove the relevant call price caps from the Client's pricing and tariff should the Client's call profile deviate significantly from PCSG's standard call profiles and notify the Client of the new pricing to apply in respect of the relevant Fixed Network Services.

19.5 In order to reduce the risk of fraud or for any commercial purpose, the Client acknowledges that on bundled minute call packages (if any) PCSG may at its sole discretion on not less than seven days' notice remove the relevant bundled minute call package from the Client's pricing and tariff should the Client's call profile deviate significantly from PCSG's standard call profile and over seventy five per cent of the Client's bundled minutes be used in

any month.

19.6 PCSG may, if requested by the Client, provide additional services to be included within the Services under such additional terms and conditions as may be notified by the PCSG from time to time.

19.7 No variation of the terms of a Contract however notified (save with regard to the manuscript details on the Purchase Order Form including, where initialled by both parties, manuscript amendments to the type face, as such details may be inputted by authorised staff of PCSG) will be accepted by PCSG unless authorised by notice in writing by a Director of PCSG.

## **20 FRAUD AND SECURITY**

20.1 The Client shall ensure that user names and passwords used by it and/or its personnel and/or users in connection with the Services are kept secure and confidential at all times and are only used by authorised users. The Client shall inform PCSG immediately if the Client knows or suspects that a user name or password has been disclosed to an unauthorised user, or is being used in an unauthorised way, or if there is any illegal, fraudulent or unauthorised use of the Services or Equipment. The Client will not change or attempt to change a user name without PCSG's written consent.

20.2 PCSG reserves the right (at PCSG's sole discretion):

20.2.1 to suspend access to the Services by one or more user names if at any time PCSG thinks that there has been or is likely to be a breach of security (including a breach of the Client's obligations under this condition 20) or any illegal, fraudulent or unauthorised usage of the Services and/or Equipment; and

20.2.2 to ask the Client to (in which case, the Client shall) change any or all of the passwords the Client uses in connection with the Services.

20.3 The Client will inform PCSG immediately of any subsequent changes to the information the Client supplies to PCSG in connection with the Contract.

20.4 The Client accepts and acknowledges that the Services and Equipment are not guaranteed to be secure and PCSG does not guarantee the prevention or detection of any unauthorised attempts to access the Services or Equipment.

20.5 The Client acknowledges that (unless otherwise agreed in writing by PCSG) PCSG has no control of a Client's PABX/switch configuration, voicemail security or other feature services enabled.

20.6 Save as provided in the remainder of this condition 20.6 PCSG shall not be responsible for call charges or other charges resulting from fraudulent and/or unauthorised use of the Equipment and/or Services or any use of the Equipment and/or Services by any unauthorised third parties (who are not employees of PCSG), and the Client shall be responsible for all use of the Services in association with the Client's accounts whether or not authorised by the Client. The Client agrees to immediately notify PCSG of any unauthorised use of the Client's account of which the Client becomes aware and (subject to condition 5.10.4 (if applicable)) the Client agrees to pay all additional charges related to fraudulent and/or unauthorised usage. The Client is therefore urged to verify with their equipment provider and maintainer that all necessary steps to combat fraudulent and/or unauthorised use have been taken.

20.7 Any assistance given by PCSG in relation to fraudulent and/or unauthorised use by the Client or third parties (or the prevention of such use) will be on a reasonable endeavours basis only and no liability can be accepted by PCSG for any loss sustained by the Client via fraudulent and/or unauthorised means that are beyond PCSG's reasonable control (save for any fraud and/or unauthorised use by an employee of PCSG acting in that capacity).

20.8 The Client shall, at all times, be responsible for:-

20.8.1 preventing unauthorised use of the Equipment and/or Services;

20.8.2 maintaining the security of all systems, Services, network elements and Equipment within its (or its employees', agents' or contractors') control; and

20.8.3 maintaining (and ensuring that each of its authorised users maintains) at all times, the integrity and secrecy of all passwords, log-in details and access codes used for the purposes of accessing or using the Services or any systems, network elements or Equipment.

20.9 Without limitation, the Client shall put in place and comply at all times with the following security measures:-

20.9.1 the Client shall ensure that the password used in connection with the Equipment and/or Services is strong and is made up of not less than eight characters which shall include at least one number, one letter and one alphanumerical symbol;

20.9.2 the Client shall regularly and at least every 6 (six) weeks change the password set out at condition 20.9.1 above;

20.9.3 the Client shall restrict access to passwords to key individuals;

20.9.4 the Client shall ensure that it has up to date anti-virus protections and that it has firewalls in place which are maintained by the Client in accordance with best industry practices; and

20.9.5 the Client shall, without delay, follow any security directions given to it by PCSG from



time to time.

20.10 The Client acknowledges and agrees that it is responsible for all security measures directly relating to the CPE and Supported Equipment (if applicable).

20.11 The Client shall ensure that when accessing any of its Hosted Data, it shall not access or attempt to access any other data held by PCSG. If the Client gains access to data other than the Hosted Data, it shall notify PCSG immediately.

## **21 ANTI-BRIBERY**

21.1 The Client shall, and shall procure that its officers, employees, agents and any other persons who perform the services for and on behalf of it in connection with a Contract shall;

21.1.1 comply with all applicable Anti-Bribery Laws;

21.1.2 not offer, promise, give, request, agree to receive, receive or accept a bribe or financial or other advantage or commit any corrupt act;

21.1.3 Client shall have and shall maintain in place throughout the term of all Contracts its own policies and procedures, including adequate procedures under the Bribery Act, to ensure compliance with the Anti-Bribery Laws, and will enforce them where appropriate;

21.1.4 not do or omit to do any act or thing which constitutes or may constitute an offence under Anti-Bribery Laws;

21.1.5 not do or omit to do any act or thing which causes or may cause PCSG and/or its Group to be in breach of and/or commit an offence under any Anti-Bribery Laws;

21.1.6 without prejudice to condition 21.1.6, not do or omit to do any act or thing which causes or may cause PCSG or any member of PCSG's Group to be guilty of an offence under section 7 of the Bribery Act (or would or may do so if PCSG was unable to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct); and

21.1.7 provide PCSG and any member of PCSG's Group (at the Client's cost) with such reasonable assistance as it may require from time to time to enable it to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any Anti-Bribery Laws.

## **22 INTELLECTUAL PROPERTY RIGHTS**

22.1 Any Intellectual Property Rights supplied by PCSG or any member of PCSG's Group to the Client, or specifically produced by PCSG for the Client, in connection with a Contract, shall be the exclusive property of PCSG and/or the relevant member of PCSG's Group and/or relevant licensor and to the extent that any such rights vest in the Client shall be deemed to be and shall be assigned to PCSG or the relevant member of PCSG's Group by the Client. The Client shall not disclose to any third party or use any such Intellectual Property Rights except to the extent that it is or becomes public knowledge through no fault of the Client, or as required for the performance of the Client's obligations under a Contract. Any Intellectual Property Rights belonging to, licensed to or supplied by PCSG or any member of PCSG's Group to the Client shall be used by the Client as expressly permitted under the terms of the relevant Contract and in accordance with the instructions of PCSG or any member of PCSG's Group.

22.2 Any licence provided by PCSG to the Client in relation to the Intellectual Property Rights shall be personal to the Client, non-exclusive, revocable and limited to the United Kingdom and in the absence of earlier revocation shall terminate upon termination of the relevant Contract.

22.3 By using the Services (in particular, but without limitation, the Hosting Services) the Client shall provide PCSG with information and data, title to which shall remain vested in the Client (or its licensors). The Client warrants, represents and undertakes that it has all necessary rights and licences to use and transmit over the internet to the Client all information and data which will be subject to the Hosting Services and hereby grants PCSG a non-exclusive licence to use such information and data for the purposes of performing the Services.

## **23 GENERAL**

23.1 Subject to any deemed acceptance by the Client under condition 10.2.2 and/or condition 19.3, no forbearance or indulgence shown or granted by PCSG to the Client whether in respect of these Terms and/or any Service Specific Terms or otherwise shall in any way affect or prejudice the rights of PCSG against the Client or be regarded as a waiver of any of these Terms and/or any Service Specific Terms.

23.2 A Contract (and any non-contractual matters arising out of or in connection with it) shall be governed by and construed in all respects in accordance with English law and the Client hereby submits for all purposes of and in connection with the Contract to the exclusive jurisdiction of the English Courts (including in relation to non-contractual disputes).

23.3 A Contract is made for the benefit of the parties to it and (where applicable) their

successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else and no third party shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

23.4 Any notice, invoice or other document which may be given by either party under the Contract shall be in writing (except as provided otherwise) sent for the attention of the relevant person, and to the postal address or email address, as notified at <https://www.pcsupportgroup.com/terms> (or such other postal address, email address or person as the relevant party may notify to the other party) and shall be delivered personally, sent by email or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of email, at the time of sending, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting or if earlier upon receipt and, if deemed receipt under this condition 23.4 is not within Normal Working Hours, at 9.00 am on the first Business Day following delivery. To prove service, it is sufficient to prove that the notice was sent by email, to an email address of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

23.5 Any director or representative of the Client who signs on behalf of the Client will be deemed an authorised signatory and thereby PCSG shall be entitled to rely on such signatory as binding the Client to the obligations in a Contract in all respects.

23.6 The Client shall not, without the prior written consent of PCSG, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under a Contract.

23.7 PCSG 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 a Contract without the consent of the Client. However, the Client shall, if PCSG requires, execute such deeds and/or documents as may be necessary or required by PCSG to give effect to any such dealing in such rights and/or obligations.

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

23.9 The Client shall not, without the prior written consent of PCSG, at any time from the date of a Contract to the expiry of six months after the termination or expiry of the relevant Contract, actively solicit or entice away from PCSG, or actively employ or attempt to employ (save where the relevant person has responded to a general advertisement by the Client for the relevant job vacancy), any person who is, or has been, engaged as an employee or sub-contractor of PCSG in the provision of the Services to the Client. Any consent given by the PCSG in accordance with this condition 23.9 shall be subject to the Client paying to PCSG a sum equivalent to twenty per cent of the then current annual remuneration of PCSG's employee or sub-contractor or, if higher, twenty per cent of the annual remuneration to be paid by the Client to that employee or sub-contractor.

23.10 PCSG and the Client agree that the Employment Regulations will not apply to transfer the employment or engagement of any Employee to PCSG in connection with the Contract or the termination or expiry of all or part of any contract between the Client and a Contractor or any other provision of the Services and/or Equipment.

23.11 The Client agrees to indemnify and keep indemnified PCSG against all liabilities, losses, actions, proceedings, damages, costs (including legal and employment costs), claims, demands and expenses brought or made against or suffered or incurred by the PCSG or any of its suppliers arising out of or connected with:

23.11.1 the transfer or alleged transfer of the employment or engagement of any Employee to PCSG or any of its suppliers pursuant to the Employment Regulations or otherwise; and

23.11.2 the employment or engagement or termination of employment or engagement by the Client or a Contractor and/ or any Subcontractor of any Employee.

23.12 If any provision (or part of a provision) of a Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

23.13 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or modified, that provision will apply with whatever minimum modification is necessary to make it valid, enforceable and legal whilst still giving effect to the commercial intention of the parties.

23.14 Save where the context otherwise requires, in these Terms a reference to a "person" shall include a company, body corporate, unincorporated association, state, governmental or statutory body or authority, and/or a partnership, as well as a natural person (as appropriate).

23.15 Except with the prior written consent of the other party, neither party shall:

23.15.1 make any public statement about the Equipment and/or Services or otherwise publicise a Contract or any information relating to it; or

23.15.2 use any trademarks or identifying logos owned or licensed to any member of the other party in any manner.

23.16 Nothing in a Contract is to be construed as establishing or implying any partnership or joint venture between the parties, or as appointing any party as the agent or employee of any other party. No party shall hold out any other party as its partner or joint venturer. Except, and to the extent, that a Contract expressly states otherwise, no party may incur any expenses or



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negotiate on behalf of any other party or commit any other party in any way to any person without that other party's prior written consent.

23.17 Each party shall do and execute, or arrange and procure for the doing and executing of, any act and/or document reasonably requested of it by any other party to implement and give full effect to the terms of the relevant Contract.

23.18 A Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter. Save in the event of fraud or fraudulent misrepresentation, neither party has entered into a Contract in reliance upon and nor shall they have any remedy in respect of, any representation or statement (whether made by the other party or any other person) which is not expressly set out in the Contract.

23.19 A Contract may be entered into in any number of counterparts and by the parties on separate counterparts, all of which taken together shall constitute one and the same instrument.