

General



PDMS SaaS

Standard Terms & Conditions

Version: 1.0

Date: 01/10/2016



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1 Terms of Reference

1.1 About this Document

Please read these Terms and Conditions carefully, as they set out PDMS' and your legal rights and obligations in relation to PDMS' Software-as-a-Service (SaaS) Applications and Services. You will be asked to agree to these Terms and Conditions before becoming a Customer.

These Terms and Conditions are available in the English language only.

If you have any questions or complaints about our services, please contact us by writing to SaaS Manager, PDMS Limited, Global House, Isle of Man Business Park, Cooil Road, Douglas, Isle of Man, IM2 2QZ, British Isles or by email to saas@pdms.com.

1.2 Document Properties

Version	1.0
Date	01/10/2016
Classification	

1.3 Supporting Documents

The following should be read in conjunction with this document:

No	Document
1	Customer Code of Conduct.pdf
2	PDMS Standard Terms and Conditions.pdf
3	Data Protection Summary – Isle of Man.pdf

1.4 Change History

Revision	Date	Summary of changes
1.0	02/02/2012	First version
1.1		

1 Definitions and Interpretation

In the Agreement:

“**Affiliate**” means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

“**Agreement**” means the agreement between PDMS and the Customer for the provision of the Software-as-a-Service, incorporating these Terms and Conditions (including the Schedules), the Service Definition and the Customer Agreement, and any amendments to the Agreement from time to time;

“**Application**” means the Software-as-a-Service Application defined by the Customer Agreement and described by the Service Definition that is owned and operated by PDMS, and that will be made available to the Customer as a Service via the internet under the Agreement;

“**CCN**” means a Change Control Notice issued in accordance with Clause 12, Change Control Procedure, which may be in the form specified in Schedule 1, Form of Change Control Notice (CCN);

“**CCN Consideration Period**” means the period of 30 Working Days following the receipt of a CCN sent by the other party;

“**Change**” means any change to the terms of the Agreement;

“**Charges**” means the amounts payable by the Customer to PDMS under or in relation to the Agreement as set out in the Service Definition and Customer Agreement;

“**Client Application**” means a software application (other than an internet browser) supplied by PDMS to the Customer for the purpose of enabling the Customer to access and use the Application;

“**Confidential Information**” means both PDMS Confidential Information and the Customer’s Confidential Information;

“**Control**” means the legal power to control (directly or indirectly) the management of an entity (and “**Controlled**” will be construed accordingly);

“**Customer**” means the customer specified in the Customer Agreement;

“**Customer Agreement**” means the document made available by PDMS to the Customer during the order process and agreed between the parties that specifies the identity of the Customer, the identity of the Service or Services being supplied, and other matters relating to the Agreement;

“**Customer Confidential Information**” means

- (a) any information disclosed (whether disclosed in writing, orally or otherwise) by the Customer to PDMS that is marked as “confidential”, described as “confidential” or should have been understood by PDMS at the time of disclosure to be confidential;
- (b) the financial terms and conditions of the Agreement other than those published in the Service Definition and/ or the PDMS Website;
- (c) the Customer Materials;

"Customer Indemnity Event" has the meaning given to it in Clause 15.1;

"Customer Materials" means all works and materials:

- (a) uploaded to, stored on, processed using or transmitted via the Application by or on behalf of the Customer or by any person or application or automated system using the Customer's account; and
- (b) otherwise provided by the Customer to PDMS in connection with the Agreement;

"Customisations" means customisations to the Application that PDMS and the Customer agree PDMS will produce on behalf of the Customer;

"Defect" means a defect, error or bug having a materially adverse effect on the appearance, operation or functionality of the Application, but excluding any defect, error or bug caused by or arising as a result of:

- (a) an act or omission of the Customer, or an act or omission of one of the Customer's employees, officers, agents, suppliers or sub-contractors; or
- (b) an incompatibility between the Application and any other system, application, program or software not specified as compatible in the Service Definition;

"Documentation" means the documentation produced by PDMS and supplied to the Customer or made available to the Customer via the PDMS Website describing the Application and specifying how the Application should be used;

"Effective Date" means the date that the Agreement comes into force as specified in the Customer Agreement;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected, including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars;

"Governing Jurisdiction" means the Governing Jurisdiction as specified in the Customer Agreement;

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Minimum Term" means the period specified as such in the Service Definition;

"PDMS" means PDMS Limited, a trading name of Professional Data Management Services Limited, a company incorporated in the Isle of Man (registration number 061568c) having its registered office at, Global House, Isle of Man Business Park, Cooil Road, Douglas, Isle of Man, IM2 2QZ, British Isles;

"PDMS Website" means www.pdms.com and its related pages;

"Permitted Purpose" means the purpose(s) for which the Application is intended for use as defined in the Service Definition;

"Personal Data" has the meaning given to it in the Data Protection legislation of the Governing Jurisdiction;

"Provider" means PDMS.

"Provider Confidential Information" means:

- (a) any information disclosed (whether disclosed in writing, orally or otherwise) by PDMS to the Customer that is marked as "confidential", described as "confidential" or should have been understood by the Customer at the time of disclosure to be confidential;
- (b) the financial terms and conditions of the Agreement other than those published in the Service Definition and/or the PDMS Website.

"Provider Indemnity Event" has the meaning given to it in Clause 15.3;

"Schedule" means a schedule attached to the Agreement;

"Service Definition" means the document made available by PDMS (online via the PDMS Website or by other mechanisms) to the Customer prior to and during the order process that describes the Service offered by PDMS and the Terms and Conditions in addition to those described herein for its use;

"Services" means all the services provided or to be provided by PDMS to the Customer under the Agreement, including the Support Services;

"Support Services" means support and maintenance services provided or to be provided by PDMS to the Customer as detailed in the Service Definition;

"Term" means the term of the Agreement;

"Upgrades" means new versions of, and updates to, the Application, whether for the purpose of fixing an error, bug or other issue in the Application or enhancing the functionality of the Application.

"Working Day" means any week day, other than a bank or public holiday in England;

"Working Hours" means between 09:00 and 17:30 London time on a Working Day;

- 1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:
 - (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - (b) any subordinate legislation made under that statute or statutory provision.
- 1.3 The Clause headings do not affect the interpretation of the Agreement.
- 1.4 The *ejusdem generis* rule is not intended to be used in the interpretation of the Agreement.

2 Agreement and Term

- 2.1 The advertising of the Services on PDMS' Website constitutes an "invitation to treat"; and the Customer's order for the Services constitutes a contractual offer. No contract will come into force between PDMS and the Customer unless and until PDMS accepts the Customer's order in accordance with the procedure detailed in this Clause 2.
- 2.2 In order to enter into the Agreement, the Customer must take the following steps:
- 1) The Customer must read the Service Definition for the required Service or Services on the PDMS Website and satisfy itself that this is what is required;
 - 2) The Customer must contact PDMS to request one of the Subscription options to the Service (as described in the Service Definition for the Service) by using one of the following mechanisms:
 1. By use of the Contact Form (www.pdms.com/Contact-Us) on the PDMS Website;
 2. Via e-mail to saas@pdms.com
 3. Via the telephone number +44(0)1624 664000.
 - 3) The Customer will be sent, and must complete and return, a Customer Agreement form;
 - 4) The Customer will be invoiced and must pay for the Minimum Payment Term as defined in the Service Definition using either:
 1. PayPal;
 2. BACS;
 3. Cheque;
 4. Electronic bank transfer;
 5. Other, by agreement.

(Appropriate information will be supplied when a choice of payment method has been made).
 - 5) After payment has been received, PDMS will send to the Customer an initial acknowledgement;
 - 6) Once PDMS has attempted to verify the Customer details, PDMS will send the Customer an order confirmation (at which point the Agreement will come into force) and further information on how to use the Service, or PDMS will confirm to the Customer that PDMS does not accept the Customer's offer.
 - 7) If the payment received subsequently fails to clear, then PDMS will inform the Customer and, at the discretion of PDMS, suspend/terminate the Services pending resolution.
- 2.3 Once in force, the Agreement will continue in force until the pre-paid term expires, upon which, after PDMS has notified the Customer, it will terminate automatically, or until terminated earlier in accordance with Clause 19.

3 Application

- 3.1 PDMS will make available the Application to the Customer by setting up an account for the Customer on the Application and providing to the Customer login details for that account within 3 Working Days following the Effective Date.
- 3.2 Subject to the limitations set out in Clause 3.3 and the prohibitions set out in Clause 3.4, PDMS hereby grants to the Customer a non-exclusive, non-transferable, revocable licence to use the Application for the Permitted Purpose via a web-browser (as determined by the Service Definition) (or by downloading any required Client Application as determined by the Service Definition and subject to Clause 4) in accordance with the Documentation during the Term.
- 3.3 The licence granted by PDMS to the Customer under Clause 3.2 is subject to the following limitations:
- (a) the Application must not be used at any point in time by more than the number of users specified in the Customer Agreement, providing that the Customer may add or remove users using the Application;
 - (b) unless by prior written agreement with PDMS, the Application may only be used by the employees of, agents of, sub-contractors of, customers of and suppliers to the Customer and:
 - (i) where the Customer is a company, the Customer's officers;
 - (ii) where the Customer is a partnership, the Customer's partners; and
 - (iii) where the Customer is a limited liability partnership, the Customer's members;
 - (c) the Customer must comply at all times with the terms of the "Customer Code of Conduct.pdf" and must ensure that all users of the Application agree to and comply with the terms of that acceptable use policy.
- 3.4 Except to the extent mandated by applicable law or expressly permitted in the Agreement, the licence granted by PDMS to the Customer under this Clause 3 is subject to the following prohibitions:
- (a) the Customer must not sub-license its right to access and use the Application or allow any unauthorised person to access or use the Application;
 - (b) the Customer must not frame or otherwise re-publish or re-distribute the Application;
 - (c) the Customer must not alter or adapt or edit the Application save as expressly permitted by the Documentation.
- 3.5 For the avoidance of doubt, the Customer has no right to access the object code or source code of the Application, either during or after the Term.
- 3.6 All Intellectual Property Rights in the Application shall, as between the parties, be the exclusive property of PDMS.
- 3.7 The Customer shall use all reasonable endeavours to ensure that no unauthorised person will or could access the Application using the Customer's account.

- 3.8 The Customer must not use the Application in any way that causes, or may cause, damage to the Application or impairment of the availability or accessibility of the Application, or any of the areas of, or services on, the Application.
- 3.9 The Customer must not use the Application:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
 - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

4 Client Application

- 4.1 When a Client Application is indicated as being required, or as an optional extra, by the Service Definition, then PDMS will within three (3) Working Days following the Effective Date make available for download by the Customer a copy or copies of the Client Application.
- 4.2 The use of a Client Application shall be subject to the following licensing terms:
- (a) the Customer may only use the Client Application for the Customer's business purposes;
 - (b) the Customer may download, install and use a number of copies of the Client Application equivalent to the number of users specified in the Customer Agreement, on any computer owned and operated by the Customer anywhere in the world;
 - (c) the Customer must not:
 - (i) copy or reproduce the Client Application or any part of it other than in accordance with the licence granted in this Clause 4;
 - (ii) sell, resell, rent, lease, loan, supply, distribute, redistribute, publish or re-publish the Client Application or any part of it;
 - (iii) modify, alter, adapt, translate or edit, or create derivative works of, the Client Application or any part of the it;
 - (iv) reverse engineer, decompile, disassemble the Client Application or any part of the it (except as mandated by applicable law);
 - (v) use the Client Application other than in accordance with the Documentation;
 - (vi) circumvent or remove or attempt to circumvent or remove the technological measures applied to the Client Application for the purposes of preventing unauthorised use.
- 4.3 All Intellectual Property Rights in the Client Application shall, as between the parties, be the exclusive property of PDMS.
- 4.4 The Customer shall be responsible for the security of the Customer's copies of the Client Application, and will use all reasonable endeavours to ensure that access to the Client Application is restricted to persons authorised to use it.

5 Support Services and Upgrades

- 5.1 During the Term PDMS will provide the Support Services to the Customer, and may apply Upgrades to the Application described by and in accordance with the terms set out in the Service Definition.
- 5.2 PDMS may sub-contract the provision of any of the Support Services without obtaining the consent of the Customer.

6 Customisations

- 6.1 From time to time PDMS and the Customer may agree that PDMS will customise the Application (and/ or the Client Application) in accordance with a specification agreed in writing between the parties using the Change Control Procedure set out in Clause 12.
- 6.2 From the date when a Customisation is first made available to the Customer, the Customisation shall form part of the Application (and/ or Client Application where appropriate) under the Agreement, and accordingly from that date the Customer's rights to use the Customisation shall be governed by Clause 3 (or Clause 4).
- 6.3 The Customer acknowledges that PDMS may make any Customisation available to its other Customers at the same time as or following the making available of that Customisation to the Customer.
- 6.4 All Intellectual Property Rights in the Customisations shall, as between the parties, be the exclusive property of PDMS.
- 6.5 The Customer will provide PDMS with:
 - (a) such access to the Customer's computer systems and such other co-operation as is required by PDMS (acting reasonably) to enable the performance by PDMS of its obligations under this Clause 6;
 - (b) all information and documents required by PDMS (acting reasonably) in connection with the performance by PDMS of its obligations under this Clause 6;
 - (c) any advice reasonably required to ensure the compliance of the Customisations with applicable laws, regulations and standards.
- 6.6 The Customer will be responsible for procuring any third party co-operation reasonably required by PDMS to enable PDMS to fulfil its obligations under this Clause 6.

7 Hosting Services

- 7.1 PDMS will use the services of multiple Internet Service Providers (ISPs) to provide the Service. The parties acknowledge that an ISP is a third party provider of services and in no event shall PDMS (in contract, tort or otherwise) be liable for any acts or omissions of an ISP beyond the terms explicitly set out in the Service Level Agreement. PDMS shall be entitled to use the services of any ISP that PDMS decides in its sole discretion is capable of providing the services reasonably required for PDMS to provide the Service.

- 7.2 In the event that the Customer is not reasonably satisfied with the Services supplied by PDMS that are the responsibility of the ISP, the Customer shall inform PDMS of such in writing and PDMS shall use all reasonable endeavours to work with the ISP to improve the ISP services to the reasonable satisfaction of the Customer or to obtain the services of a replacement ISP. Beyond the terms explicitly set out in the Service Level Agreement of the Service Definition, no warranty is given by PDMS to the Customer regarding the services of the ISP.
- 7.3 The parties acknowledge that the ISP and/ or PDMS may require to suspend the Hosting Services and/ or the PDMS Services due to a Planned Outage. The Customer shall be notified of the Planned Outage as soon as reasonably possible and PDMS shall and shall procure that the ISP will use all reasonable efforts to minimise the Downtime incurred due to the Planned Outage, in the terms of the Service Level Agreement. The Customer acknowledges that the ISP and/ or PDMS may be required to undertake urgent maintenance of its systems and in this event, PDMS shall use all reasonable endeavours to advise the Customer of such, subject to the information provided by the ISP to PDMS regarding the same.

8 Management

- 8.1 The Customer will ensure that all instructions in relation to the Agreement will be given by a Customer Representative to a Provider Representative, and PDMS:
- (a) may treat all such instructions as the fully authorised instructions of the Customer; and
 - (b) will not comply with any other instructions in relation to the Agreement without first obtaining the consent of a Customer Representative.
- 8.2 The parties will hold contract management meetings at:
- PDMS, Global House, Isle of Man Business Park, Cooil Road, Douglas, Isle of Man, IM2 2QZ, British Isles, or
 - another location, by agreement,
- or by telephone or via the internet, at the reasonable request of either party.
- 8.3 A party requesting a contract management meeting to be held will give to the other party at least three (3) Working Days' notice of the meeting.
- 8.4 Wherever necessary to enable the efficient conduct of business, the Customer will be represented at a contract management meeting by at least one Customer Representative and PDMS will be represented at a contract management meeting by at least one Provider Representative.

9 Customer Materials

- 9.1 The Customer grants to PDMS a non-exclusive licence to store, copy and otherwise use the Customer Materials for the purposes of operating the Application, providing the Services, fulfilling its other obligations under the Agreement, and exercising its rights under the Agreement.

- 9.2 Subject to Clause 9.1, all Intellectual Property Rights in the Customer Materials will remain, as between the parties, the property of the Customer.
- 9.3 The Customer warrants and represents to PDMS that the Customer Materials, and their use by PDMS in accordance with the terms of the Agreement, will not:
- (a) breach any laws, statutes, regulations or legally-binding codes;
 - (b) infringe any person's Intellectual Property Rights or other legal rights; or
 - (c) give rise to any cause of action against PDMS or the Customer or any third party,
- in each case in and under the law of the Governing Jurisdiction.
- 9.4 Where PDMS reasonably suspects that there has been a breach by the Customer of the provisions of this Clause 9, PDMS may:
- (a) delete or amend the relevant Customer Materials; and/ or
 - (b) suspend any or all of the Services and/ or the Customer's access to the Application while it investigates the matter.
- 9.5 Any breach by the Customer of this Clause 9 will be deemed to be a material breach of the Agreement for the purposes of Clause 19.
- 9.6 PDMS shall ensure that the Customer Materials stored and processed by the Application are stored separately from, and are not co-mingled with, the materials of other customers of PDMS.

10 Trial Period

If a period of trial use of a Service is available and, if so, the duration of that trial period, then it will be stated in the Service Definition for that Service. If so, then during the trial period all of the provisions of this Agreement shall apply, save as follows:

- (a) the Customer shall have no obligation to pay any Charges in respect of the trial period;
- (b) PDMS shall have no obligation to meet the Service Level Agreement as defined in the Service Definition;
- (b) either party may terminate the Agreement immediately by giving written notice to the other party at any time before the end of the trial period.

11 Charges

- 11.1 PDMS will issue invoices for the Charges to the Customer in accordance with the prices determined by the Service Definition (including the relevant "Service Pricing Document.pdf" where applicable) and the subscription option determined by the Customer Agreement.
- 11.2 The Customer will pay the Charges to PDMS in advance of using the Service for a period of not less than the Minimum Payment Term determined by the Service Definition.

- 11.3 All Charges stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise. VAT will be payable by the Customer to PDMS in addition to the principal amounts.
- 11.4 Charges will be paid by BACS, PayPal, Cheque, Electronic Bank Transfer or Other, by agreement, (using such payment details as are notified by PDMS to the Customer from time to time).
- 11.5 If the Customer does not pay any amount properly due to PDMS under or in connection with the Agreement, PDMS may:
- (a) charge the Customer interest on the overdue amount at the rate of 2% per year above the base rate of Barclays Bank Plc from time to time (which interest will accrue daily and be compounded quarterly); or
 - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998; or
 - (c) suspend access to the Application and the provision of the Services.
- 11.6 PDMS may vary the Charges determined by the Service Definition by giving to the Customer not less than 90 days' written notice of the variation, providing that no such variation will result in the relevant element of the Charges increasing during any pre-paid Term.

12 Change Control Procedure

- 12.1 The provisions of this Clause 12 apply to all Changes requested by a party.
- 12.2 Either party may request a Change at any time.
- 12.3 When requesting a Change, the requesting party will notify the other party and provide a CCN (which may be in the form specified in Schedule 1). The CCN will set out (as a minimum):
- (a) details of the impact on the Services;
 - (b) details of any additional resources expected to be required as a result of the Change;
 - (c) details of any variation to the Charges consequent upon the Change.
- 12.4 The other party will consider any proposed Change within the CCN Consideration Period.
- 12.5 Either party may:
- (a) accept or reject a CCN issued by the other party;
 - (b) request further information concerning any aspect of a CCN issued by the other party; and/or
 - (c) request amendments to a CCN issued by the other party.
- 12.6 Following agreement of a CCN, each party will confirm its agreement to the CCN by:
- (a) signing a copy of the CCN and sending the signed CCN to the other party; or
 - (b) otherwise sending its written acceptance of the CCN to the other party.

- 12.7 Until a CCN recording a proposed Change has been signed or agreed in writing by each party, the proposed Change will not take effect.

13 Incident Management

- 13.1 The mechanism by which incidents (including, but not limited to, faults in the Services, failure of PDMS to deliver the Services, suspected security breaches in the Services) are to be raised with PDMS is described in the Service Definition.
- 13.2 Further to this, incidents can be escalated, if deemed appropriate, using the following mechanisms:
1. Via e-mail to saas@pdms.com
 2. Via the telephone number +44(0)1624 664000 during Working Hours
- 13.3 The PDMS officers responsible for dealing with incident escalation are:
1. Andrew Cairns (andrew.cairns@pdms.com) – SaaS Manager
 2. Chris Gledhill (chris.gledhill@pdms.com) – Managing Director

14 Warranties

- 14.1 The Customer warrants and represents to PDMS that it has the legal right and authority to enter into and perform its obligations under the Agreement.
- 14.2 PDMS warrants and represents to the Customer:
- (a) that it has the legal right and authority to enter into and perform its obligations under the Agreement;
 - (b) that it will perform its obligations under the Agreement with reasonable care and skill;
 - (c) that the Application will perform in accordance with the Documentation (subject to any Upgrades and Customisations);
 - (d) that the Application will be hosted in accordance with the requirements set out in the Service Definition, and will be available to the Customer in accordance with the Availability determined by the Service Definition;
 - (e) the Application (excluding for the avoidance of doubt the Customer Materials) will not:
 - (i) breach any laws, statutes, regulations or legally-binding codes;
 - (ii) infringe any person's Intellectual Property Rights or other legal rights;
 - (iii) give rise to any cause of action against PDMS or the Customer or any third party
- in each case in and under the law of the Governing Jurisdiction.
- 14.3 The Customer acknowledges that:

- (a) complex software is never wholly free from defects, errors and bugs, and PDMS gives no warranty or representation that the Application will be wholly free from such defects, errors and bugs;
 - (b) PDMS does not warrant or represent that the Application will be compatible with any application, program or software (other than the Client Application) not specifically identified as compatible in the Service Definition;
 - (c) PDMS will not and does not purport to provide any legal, taxation or accountancy advice under the Agreement or in relation to the Application and (except to the extent expressly provided otherwise) PDMS does not warrant or represent that the Application will not give rise to any civil or criminal legal liability on the part of the Customer or any other person.
- 14.4 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement.

15 Indemnities

- 15.1 Subject to PDMS' compliance with Clause 15.2, the Customer will indemnify and will keep indemnified PDMS against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid in settlement of any disputes) suffered or incurred by PDMS and arising as a result of any breach by the Customer of Clause 9.3 (a "**Customer Indemnity Event**").
- 15.2 PDMS will:
- (a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;
 - (b) provide to the Customer all reasonable assistance in relation to the Customer Indemnity Event;
 - (c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements relating to the Customer Indemnity Event;
 - (d) not admit liability in connection with the Customer Indemnity Event or settle the Customer Indemnity Event without the prior written consent of the Customer.
- 15.3 Subject to the Customer's compliance with Clause 15.4, PDMS will indemnify and will keep indemnified the Customer against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid in settlement of any disputes) suffered or incurred by the Customer and arising as a result of any breach by PDMS of Clause 14.2(e) (a "**Provider Indemnity Event**").
- 15.4 The Customer will:
- (a) upon becoming aware of an actual or potential Provider Indemnity Event, notify PDMS;
 - (b) provide to PDMS all reasonable assistance in relation to PDMS Indemnity Event;
 - (c) allow PDMS the exclusive conduct of all disputes, proceedings, negotiations and settlements relating to PDMS Indemnity Event;

- (d) not admit liability in connection with PDMS Indemnity Event or settle PDMS Indemnity Event without the prior written consent of PDMS.

16 Limitations and Exclusions of Liability

- 16.1 Nothing in the Agreement will:
 - (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
 - (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
 - (c) limit any liability of a party in any way that is not permitted under applicable law;
 - (d) exclude any liability of a party that may not be excluded under applicable law.
- 16.2 The limitations and exclusions of liability set out in this Clause 16:
 - (a) are subject to Clause 16.1;
 - (b) govern all liabilities arising under the Agreement or in relation to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty;
 - (c) will not limit or exclude the liability of the parties under the express indemnities set out the Agreement.
- 16.3 Neither party will be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.
- 16.4 Neither party will be liable for any loss of business, contracts or commercial opportunities.
- 16.5 Neither party will be liable for any loss of or damage to goodwill or reputation.
- 16.6 Neither party will be liable in respect of any loss or corruption of any data, database or software.
- 16.7 Neither party will be liable in respect of any special, indirect or consequential loss or damage.
- 16.8 Neither party will be liable for any losses arising out of a Force Majeure Event.
- 16.9 Neither party's liability in relation to any event or series of related events will exceed the total amount paid and payable by the Customer to PDMS under the Agreement during the 1 month period immediately preceding the event or events giving rise to the claim.
- 16.10 Neither party's aggregate liability under the Agreement will exceed the total amount paid and payable by the Customer to PDMS under the Agreement.

17 Data Protection

- 17.1 The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to PDMS under or in connection with the Agreement.

17.2 PDMS warrants that:

- (a) it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by PDMS on behalf of the Customer;
- (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by PDMS on behalf of the Customer.

18 Confidentiality and Publicity

18.1 PDMS will:

- (a) keep confidential and not disclose the Customer Confidential Information to any person save as expressly permitted by this Clause 18;
- (b) protect the Customer Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care; and
- (c) without prejudice to the generality of Clause 18.1(b), deploy and maintain the security systems and technologies detailed in the Service Definition in relation to the Customer Confidential Information held on the Application.

18.2 The Customer will:

- (a) keep confidential and not disclose PDMS Confidential Information to any person save as expressly permitted by this Clause 18;
- (b) protect PDMS Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

18.3 Confidential Information of a party may be disclosed by the other party to that other party's officers, employees, agents, insurers and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information disclosed.

18.4 The obligations set out in this Clause 18 shall not apply to:

- (a) Confidential Information that is publicly known (other than through a breach of an obligation of confidence);
- (b) Customer Confidential Information that is in possession of PDMS prior to disclosure by the Customer, and Provider Confidential Information that is in possession of the Customer prior to disclosure by PDMS;
- (c) Customer Confidential Information that is received by PDMS, and Provider Confidential Information that is received by the Customer, from an independent third party who has a right to disclose the relevant Confidential Information;
- (d) Confidential Information that is required to be disclosed by law, or by a governmental authority, stock exchange or regulatory body.

- 18.5 Neither party will make any public disclosure relating to the Agreement (including press releases, public announcements and marketing materials) without the prior written consent of the other party.

19 Termination

- 19.1 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party:
- (a) commits any material breach of any term of the Agreement, and:
 - (i) the breach is not remediable; or
 - (ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so;
 - (b) persistently breaches the terms of the Agreement (irrespective of whether such breaches collectively constitute a material breach).
- 19.2 Either party may terminate the Agreement immediately by giving written notice to the other party if:
- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
 - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement); or
 - (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.
- 19.3 The Customer may terminate the Agreement by giving at least 7 days' written notice of termination to PDMS, expiring at any time after the end of the Minimum Term.
- 19.4 If PDMS stops or makes a good faith decision to stop operating the Application generally, then PDMS may terminate the Agreement by giving at least 90 days' written notice of termination to the Customer.
- 19.5 Either party may terminate the Agreement by giving written notice of termination to the other party in the event that the parties cannot reasonably agree on any Change request made in accordance with Clause 12.

- 19.6 PDMS may terminate the Agreement immediately by giving written notice of termination to the Customer where the Customer fails to pay to PDMS any amount due to be paid under the Agreement by the due date.

20 Effects of Termination

- 20.1 Upon termination of the Agreement, all the provisions of the Agreement will cease to have effect, save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 4.4, 11.5, 15, 16, 18.1 to 18.4, 21 and 23.
- 20.2 Termination of the Agreement will not affect either party's accrued liabilities and rights as at the date of termination.
- 20.3 Subject to Clause 20.5, within 30 days following the termination of the Agreement, PDMS will:
- (a) irrevocably delete from the Application all Customer Confidential Information;
 - (b) irrevocably delete from its other computer systems all Customer Confidential Information;
 - (c) either:
 - (i) in the case where the Agreement was terminated by a mechanism other than described in Clause 19.6, return to the Customer by the mechanism described in the Service Definition or dispose of as the Customer may instruct all documents and materials containing Customer Confidential Information; or
 - (ii) in the case where the Agreement was terminated by the mechanism described in Clause 19.6, dispose of as PDMS sees fit all documents and materials containing Customer Confidential Information.
- 20.4 Subject to Clause 20.5, within 30 days following the termination of the Agreement, the Customer will:
- (a) return to PDMS or dispose of as PDMS may instruct all documents and materials containing Provider Confidential Information;
 - (b) irrevocably delete from its computer systems all Provider Confidential Information.
- 20.5 A party may retain any document (including any electronic document) containing the Confidential Information of the other party after the termination of the Agreement if:
- (a) that party is obliged to retain such document by any law or regulation or other rule enforceable against that party;
 - (b) the document in question is a letter, fax, email, order confirmation, invoice, receipt or similar document addressed to the party retaining the document.

21 Notices

- 21.1 Any notice given under the Agreement must be in writing (whether or not described as “written notice” in the Agreement) and must be delivered personally, sent by post, or sent by fax or by email (provided confirmation of receipt is received from the recipient), for the attention of the relevant person, and to the relevant address or fax number or email address given, in the case of PDMS, below or, in the case of the Customer, in the Customer Agreement:

PDMS:

Post: PDMS, Global House, Isle of Man Business Park, Cooil Road, Douglas, Isle of Man, IM2 2QZ, British Isles

Fax: +44 (0) 1624 678787

Email: saas@pdms.com

- 21.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Working Hours, when Working Hours next begin after the relevant time set out below):
- (a) where the notice is delivered personally, at the time of delivery;
 - (b) where the notice is sent by post, 48 hours after posting;
 - (c) where the notice is sent by fax or email, at the time of the transmission (providing the sending party retains written evidence of the transmission).

22 Force Majeure Event

- 22.1 Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under the Agreement, those obligations will be suspended for the duration of the Force Majeure Event.
- 22.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under the Agreement, will:
- (a) forthwith notify the other; and
 - (b) will inform the other of the period for which it is estimated that such failure or delay will continue.
- 22.3 The affected party will take reasonable steps to mitigate the effects of the Force Majeure Event.

23 General

- 23.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
- 23.2 If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue

- in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 23.3 Nothing in the Agreement will constitute a partnership, agency relationship or contract of employment between the parties.
- 23.4 The Agreement may not be varied except in accordance with Clause 12 or by a written document signed by or on behalf of each of the parties.
- 23.5 Each party hereby agrees that the other party may freely assign any or all of its contractual rights and/or obligations under the Agreement to any Affiliate of the assigning party or any successor to all or a substantial part of the business of the assigning party from time to time. Save as expressly provided in this Clause or elsewhere in the Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any contractual rights or obligations under the Agreement.
- 23.6 Neither party will, without the other party's prior written consent, either during the term of the Agreement or within six (6) months after the date of effective termination of the Agreement, engage, employ or otherwise solicit for employment any employee, agent or contractor of the other party who has been involved in the performance of the Agreement.
- 23.7 Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under the Agreement.
- 23.8 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.
- 23.9 Subject to Clause 16.1:
- (a) the Agreement constitutes the entire agreement between the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter; and
 - (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement.
- 23.10 The Agreement will be governed by and construed in accordance with the laws of the Governing Jurisdiction, and whose courts will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.

2 Schedule 1 - Form of Change Control Notice (CCN)

Title of Change:	
CCN number:	
Change proposed by:	
Date of issue of CCN:	
Date of CCN expiry:	
Summary details of proposed Change:	

1. Detailed description of Change.

2. Details of the impact on the timetable for the provision of the Services.

3. Details of any additional resources expected to be required as a result of the Change.

4. Details of any variation to the Charges consequent upon the Change.

5. Any other consequences of, or matters relating to, the Change.

Contact Us

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