



PULSANT GENERAL TERMS AND CONDITIONS

Introduction

These terms and conditions apply to all orders placed with companies in the Pulsant Group. In addition, all orders will be subject to Service Schedules specific to the individual Services.

For these purposes, "the **Pulsant Group**" consists of Pulsant Limited, Pulsant Data MK Limited, Pulsant Data Services limited, Onyx Group Limited, Onyx Internet Limited and Knowledge Limited (all companies being registered in England and Wales with company numbers 03625971, 06515855, 05760876, 05682619, 04061967 and 01554385 respectively, whose registered office is at Cadogan House, Rose Kiln Lane, Reading, Berkshire, RG2 0HP); Pulsant (Scotland) Limited and Pulsant (South Gyle) Limited, (both companies being registered in Scotland with company numbers SC236128 and SC195354 respectively, whose registered office is at Sugar Bond Building, Anderson Place, Edinburgh EH6 5NP); and any of their Group Companies (as defined in these Conditions). The company within the Pulsant Group with whom you are contracting is clearly set out on the Order Form that you will sign when you order Services and/or Equipment and, for the purposes of these Conditions, that contracting company is called "the **Supplier**".

1 Definitions and interpretation

- 1.1 Appendix 1 (Definitions and Interpretation) is incorporated into and forms part of these Conditions.

2 Basis of Contract

- 2.1 These Conditions shall apply to and be incorporated into each Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The contract shall be created on the Commencement Date provided the Supplier has signed the relevant Order Form and delivered it to the Customer and the Customer has completed the Direct Debit Instruction form and delivered it to the Supplier (unless an alternative payment method has been agreed in writing by the parties). In the event the Supplier has commenced providing the Services or incurred any costs in preparing to provide the Services prior to the Commencement Date, then a contract will be deemed to have come into existence on the basis of the Conditions from the date on which the provision of the Services by the Supplier commenced or such costs were incurred and relevant Charges shall apply from such date.
- 2.3 Each Order Form, the relevant Service Schedule(s) and these Conditions shall form a separate Contract.
- 2.4 Where an order for a domain name is being placed by the Supplier for the Customer, the Customer acknowledges that the contract for domain names shall be between the Customer, as Registrant, and the relevant domain name Registrar. The Supplier will provide the Customer with all relevant information and pricing on request.

3 The Services

- 3.1 The Supplier shall provide the Services to the Customer on and subject to the terms and conditions of the Contract.
- 3.2 The Supplier provides the Services to the Customer on a non-exclusive basis and is under no restriction as to whom and on what terms it may provide any services.
- 3.3 The Order Form may provide that any Initial Charges shall be payable in advance of the commencement of the Services.
- 3.4 The Services will be provided:
- 3.4.1 with reasonable care and skill;
 - 3.4.2 in accordance with Good Industry Practice and (subject as otherwise set out) all Applicable Laws; and
 - 3.4.3 in all material respects in accordance with the Service Levels.
- 3.5 Save as expressly provided in these Conditions, all conditions, warranties and other terms express or implied (and whether implied by statute, common law or otherwise), are strictly excluded to the fullest extent permitted by law. In particular, the Supplier does not give any warranties, guarantees or assurances regarding the performance of:
- 3.5.1 the Equipment and/or the Services when used with, or run in conjunction with, any particular operating systems and/or software including Supported Software and software of the Customer or any third parties; and/or

3.5.2 any operating systems and/or software, including Supported Software and software of the Customer or any third parties when they are used with, or run in conjunction with, the Equipment and/or the Services.

3.6 The Customer is responsible for ensuring, before using any operating systems or applications (including Supported Software) in conjunction with the Equipment and/or the Services, that the performance of such operating systems or applications when used together or run in conjunction with the Equipment and/or the Services is satisfactory to the Customer and for its purposes.

3.7 Without prejudice to Clauses 3.5 and 3.6, the Supplier shall not be responsible for any Event and shall be excused from any failure to meet any Service Level, response time, threshold or to perform any other obligation under any Contract, to the extent that such Event and/or failure is due :

3.7.1 to any breach of or failure to perform the Contract by the Customer or any other act or omission of the Customer, its employees, agents, or subcontractors other than the proper performance of the Customer's obligations in accordance with the Contract;

3.7.2 to any failure of Customer Equipment and/or of any software other than Supported Software;

3.7.3 to any Event of Force Majeure;

3.7.4 to any failure of the Customer to report an Event in accordance with the relevant Service Schedule;

3.7.5 to any circumstance to which Clause 6.2.2 applies;

3.7.6 planned maintenance notified to the Customer in accordance with the applicable Service Schedule or, if no such notice provisions are contained in the relevant Service Schedule, upon reasonable notice, or in the case of emergency notice, immediately.

4 Amendments and additional services

4.1 The Supplier is entitled to change these Conditions from time to time and will display the changed Conditions at <http://www.pulsant.com/termsfuse> . The Supplier will give the Customer at least sixty (60) days' notice of any such change, which shall take effect at the end of such sixty (60) day period.

4.2 Where the Supplier has given the Customer notice of a change to the Conditions in accordance with Clause 4.1 and such changes will have a material adverse effect on the Customer, the Customer shall be entitled to terminate the Contract by giving the Supplier not less than thirty (30) days' prior notice in writing to that effect, such notice to expire before the expiry of the 60 day notice period referred to in Clause 4.1.

4.3 The Supplier may at its discretion also provide from time to time additional services beyond the scope of the Services being provided to the Customer as at the Commencement Date, subject to prior written agreement between the parties. The pricing for such additional services will be set out and agreed in writing by the parties.

5 Charges and payment

5.1 The Customer will pay the Charges as follows:

5.1.1 the Supplier will invoice the Customer in advance for the Charges for the Services at the frequency specified in the Order Form, and the Customer will pay the full amount of each invoice in accordance with Clause 5.3;

5.1.2 non-Recurring Charges (such as the Initial Charges, infrastructure costs, migration costs, integration costs, provisioning costs, paid for support requests or other related Charges) will be payable on the earlier of (1) 30 days from the Commencement Date; (2) full delivery of the Equipment and/or Services set out in the Order Form; or (3) the terms of a milestone delivery and payment plan in a format to be agreed between the Parties and attached to the Order Form, by electronic payment to the Supplier's nominated bank account.

5.1.3 all Recurring Charges, will be paid either by direct debit or otherwise as stated in the Order Form, in either case with the frequency and on the date or dates referred to in the Order Form, to the Supplier's nominated bank account, details of which will be included in the Direct Debit Instruction or otherwise as stated in the Order Form;

5.1.4 in the event that part of the Services are delivered to the Customer, then the Supplier is entitled to invoice such Charges in respect of such part of the Services as and when those Services are made live (for example, if multi-line WAN projects, these will be invoiced as each circuit goes live); or

5.1.5 if otherwise agreed in writing by the parties in writing, by any other means of payment acceptable to the Supplier from time to time.

5.2 The Customer shall pay all amounts in full within twenty-eight (28) days of the date of the Supplier's invoice unless otherwise previously agreed in writing.

5.3 All payments by the Customer shall be made in pounds sterling (£) and without deduction or set off of any amount.

5.4 Any sum payable under the Contract is exclusive of VAT which will be payable in addition to that sum in the manner and at the rate prescribed by law from time to time, subject to receipt by the paying party of a valid VAT invoice.

5.5 If any sum payable under the Contract is not paid on or before the due date for payment the Supplier will be entitled to charge the Customer interest on that sum at the rate of four percent (4%) per annum above the base lending rate from time to time of The Royal

Bank of Scotland plc from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis.

- 5.6 The Customer will reimburse all reasonable costs and expenses (including legal costs) incurred by the Supplier in the collection of any overdue amount.
- 5.7 When referring to network services (including SDSL, EFM, MPLS, Leased Lines, IP Transit and MetroEthernet), the Charges quoted by the Supplier are subject to site survey and may vary according to local conditions not known to the Supplier at the time of contracting. Should the Charges be subject to material variation after a site survey, the provisioning process will be put on hold, and the Customer has the right to either agree to the variation in Charges, or terminate the relevant Contract in writing. The Customer shall reimburse the Supplier for any site survey costs reasonably and properly incurred should the Customer terminate the relevant Contract during the provisioning process.
- 5.8 The Supplier shall at its option be entitled to increase the Charges in respect of:
- 5.8.1 the cost of power as a result of market or supplier increases provided that any such increase will be limited to the actual cost increase on the Customer's committed power draw as incurred by the Supplier;
 - 5.8.2 any increase in the Consumer Price Index, as published by the National Office for Statistics, whereby the Charges may be increased by the same percentage as the increase in the Consumer Price Index; and
 - 5.8.3 any increase in price by a third party software or licence provider which is used solely for the provision of the Services;
 - 5.8.4 provided that in any case the Supplier has notified the Customer no less than sixty (60) days in advance of such increase unless (in the case of power or software provider costs increases) the Supplier itself has received less than sixty (60) days advance notice, in which case the Supplier shall give as much notice as it is reasonably able.
- 5.9 The Charges specified on the Order Form are exclusive of, and may be increased as a result of, the imposition by any relevant authority of any tax, impost, duty, levy, charge or any measure of equivalent effect to any of the foregoing including but not limited to any 'green levy' such as the carbon reduction commitment and the climate change levy, import/export duties or shipping and delivery charges. For the avoidance of doubt, only the actual amount of such increase will be passed on to the Customer.
- 5.10 The Customer shall be entitled at any time by notice in writing to request a change to the Services. Agreement to such requests shall be at the Supplier's sole discretion. If acceptable in principle, the Supplier will determine whether this change request is chargeable and upon receipt of such a change request, provide the Customer with the appropriate rate card for the implementation of the change. The Supplier will only action any change request upon written agreement as to the amount of any additional charges payable.
- 5.11 If the Supplier, during the investigation and diagnosis of any issue related to the delivery and provision of the Services, determines in its reasonable opinion that the issue is caused by the Customer or related to a solution and/or service not included under the Supplier's contracted support services or attributable otherwise than to the Supplier, then the Supplier reserves the right to stop working on the issue until the Customer has agreed to additional charges payable relating to any associated engineering time or other costs, unless otherwise agreed in writing by both parties.

Application and payment of Fee Credits

- 5.12 Fee credits are applicable against certain losses of service and/or failures to meet Service Levels, where expressly stated and defined in the applicable Service Schedule(s).
- 5.13 If in the Supplier's reasonable opinion only a proportion of any one Service used by the Customer is affected by the relevant loss of service, the Supplier shall credit the Customer's account with a reasonable proportion of the Fee Credit. For the purpose of calculating the proportion of a Fee Credit due to the Customer, the Supplier (in its sole discretion but acting reasonably) shall determine which proportion of the Services was affected.
- 5.14 The calculation of the Fee Credit shall be based on the Recurring Charges and shall not include any other Charges paid or payable by the Customer to the Supplier.
- 5.15 The maximum Fee Credit allowable in any given calendar month is limited to the amount of the Recurring Charges payable in that calendar month.
- 5.16 A Fee Credit shall not be credited to the Customer's account unless the Customer requests it from the Supplier's accounts department within 30 Business Days of the date on which the relevant ticket was issued. If the Customer does not claim the Fee Credit in this period, then the Fee Credit will lapse and may not be claimed by the Customer. A Fee Credit which is claimed by the Customer shall be applied by the Supplier as a reduction to the Recurring Charges payable by the Customer to the Supplier and shall be credited in the Supplier's subsequent invoices.
- 5.17 Subject to Clause 5.18, where Fee Credits are provided for in the Contract these shall be the sole and exclusive remedy of the Customer for the relevant loss of service and/or the Supplier's failure to meet the applicable Service Levels.
- 5.18 Clause 5.17 shall not exclude the Customer's right in accordance with this Contract to seek damages (or any other remedy available in law) in respect of material breach by the Supplier of the terms of this Contract, which cannot be remedied, provided that where the Supplier issues significant Fee Credits in three (3) consecutive months, this will not be deemed a material breach for the purposes of these Conditions.

Exceptions

- 5.19 Fee Credits will not be payable:
- 5.19.1 where any of Clauses 3.7.1 to 3.7.6 inclusive applies;
 - 5.19.2 in circumstances in which any Service Schedule provides that Fee Credits will not be payable;
 - 5.19.3 for any lack of service during maintenance, both planned and emergency; or
 - 5.19.4 where the Customer has not paid any Charges by the due date.

6 Customer obligations

- 6.1 The Customer shall at all times:
- 6.1.1 co-operate with the Supplier in all matters relating to the Services and the Contract;
 - 6.1.2 provide the information required by the Supplier for any Provisioning Form accurately, comprehensively and in good faith and check the accuracy of the Provisioning Form before signing it;
 - 6.1.3 provide to the Supplier, in a timely manner, such materials, documentation and other information ("**Customer Materials**") as the Supplier may reasonably require in order to perform the Services and ensure that the Customer Materials are complete and accurate in all material respects;
 - 6.1.4 obtain and maintain all necessary licences and consents and comply with the Acceptable Use Policy and all Applicable Law in relation to the Services, the installation of the Equipment, the use of Customer Materials and the use of the Customer Equipment in relation to the Services insofar as such licences, consents and Applicable Law relate to the Customer's business, staff and equipment;
 - 6.1.5 maintain at its own cost with a reputable insurance company such insurance cover against all risks which would normally be insured against by a prudent business (including insurance in relation to the Equipment; any loss or damage caused to the Supplier's property or to the Supplier's employees, agents or subcontractors by the negligence or default of the Customer, or the Customer's employees or agents; or caused by any malfunctioning of the Customer Equipment, and any related loss or business interruption) and shall upon reasonable request provide the Supplier with evidence that such insurance has been effected and is and will be maintained;
 - 6.1.6 comply at all times, and ensure Customer's visitors comply at all times, with all Applicable Law and Policies, including relating to health and safety, the Computer Misuse Act 1990, the DPA and otherwise relating to computing and/or the internet, and to electrical safety and testing of electrical items (including PAT testing), and the Customer acknowledges and agrees that the Supplier may change existing Policies and introduce new Policies at any time ;
 - 6.1.7 not hold itself out as being an agent, partner, representative or otherwise being entitled to bind the Supplier or other members of the Pulsant Group;
 - 6.1.8 not publish material or cause anything to be published, whether in hard copy or by any electronic medium, which contains adverse or derogatory comments about the Supplier or other members of the Pulsant Group;
 - 6.1.9 provide the Supplier with a twenty-four (24) hour contact telephone number (operational and manned twenty four hours per day seven days per week) for use by the Supplier in contacting the Customer. Any notice given to the Customer via such telephone contract number shall be deemed appropriate notice to the Customer of any Event affecting the Services, and an attempt by the Supplier to contact the Customer at such number shall fulfil the Supplier's duty to notify the Customer of such Event;
 - 6.1.10 provide the Supplier with a password unique to the Customer to permit telephone call verification as set out in Clause 12.6. The Customer will regularly change such password and inform the Supplier of the new password, and without limitation will do so every time that any of its staff, contractors or any agent who has had access to such password leaves its employment or service;
 - 6.1.11 provide the Supplier with the names and e-mail addresses of all persons who are authorised to issue instructions to the Supplier, and where any of those persons cease to be so authorised, notify the Supplier immediately;
 - 6.1.12 not put, or allow or enable to be put, the Equipment and/or the Services to illegal use or to any use which may bring disrepute to the Supplier or other members of the Pulsant Group;
 - 6.1.13 provide the Supplier with contact details of the Customer's accounts, or accounts payable, department; and
 - 6.1.14 allow the Supplier to refer to a relevant description of the Customer's business in any of its marketing material or on its website.

6.2 System Capacity and Performance

- 6.2.1 Should the Customer's usage of the Services or any component of the Services be in excess of capacity specifications which are recommended by the Supplier and/or published by any vendor of the relevant components, then the Supplier will, in a timely fashion, advise the Customer of any upgrades recommended by the Supplier.
- 6.2.2 If the Customer chooses not to upgrade as recommended by the Supplier in accordance with Clause 6.2.1, then the Supplier may notify the Customer in writing that all support in respect of such Services or component is thereafter provided on a reasonable commercial efforts, discretionary basis, and following such notice any provision to the contrary of any relevant Service Schedule shall be deemed to be suspended to that extent unless and until such time as the Supplier's recommended upgrades are implemented.
- 6.2.3 Where Service performance continues to be impacted due to a capacity issue as referred to in Clause 6.2.1 and as a result the Service is considered by the Supplier to be unsustainable, then without prejudice to Clause 6.2.2 the Supplier may at its option terminate the Contract in question upon giving not less than three (3) months' written notice to the Customer.

7 Customer warranties

- 7.1 The Customer represents, warrants and undertakes to the Supplier that:
- 7.1.1 it will comply in its use of the Services and/or the Equipment (wherever such Equipment is located) with all Applicable Law
- 7.1.2 it will comply timeously with its obligations under the Contract, and exercise all due skill and care in doing so;
- 7.1.3 it has all rights, consents, authority and capacity necessary to allow it to (i) enter into the Contract on the terms contained herein and (ii) to perform its obligations under the Contract;
- 7.1.4 by the Supplier providing the Services to the Customer, the Customer is not breaching the rights of any third party in or in relation to the Supplier Equipment, or any Applicable Law in respect of such use;
- 7.1.5 it will have responsibility for the Customer Equipment and will insure the same for its full replacement value with a reputable insurer and will ensure that for the term of the Contract it is maintained in good working order, in accordance with Good Industry Practice; and
- 7.1.6 it will ensure that the operation and/or condition of the Customer Premises will comply with any reasonable written requirements of the Supplier from time to time so as not to adversely affect the correct functioning of the Supplier Equipment.

8 Rights of the Supplier

- 8.1 Where any Customer Equipment or other property ("**Property**") belonging to or provided by the Customer is located within the Co-Location Facility, the Customer grants the Supplier a lien over such Property to secure all sums due, owing or incurred to the Supplier under the Contract and such lien shall continue and the Supplier shall be entitled to retain possession of all Property (and the Customer shall not be entitled to remove the Property from the Co-Location Facility) until the Supplier has received all such sums in cleared funds.
- 8.2 Where the use of the Services and / or any Equipment is the cause (in whole or in part), or the Supplier has reasonable grounds to believe that it is the cause, of any problem affecting the Supplier Network, the Services, the Equipment or any other services being provided by the Supplier to a third party, the Supplier may suspend the provision of Services in relation to the affected part (including by disconnecting the Customer from the Supplier Network or removing the Equipment (or any part of it) from the Supplier Network) for so long as is reasonably necessary to determine whether the Customer's activity or use of the Services and / or Equipment is the cause of any such problem, and/or disconnect or partially block the Services, where appropriate, until such time as the Customer provides evidence to the Supplier that the problem is no longer in effect.
- 8.3 All IP addresses assigned to the Customer by the Supplier remain the property of the Supplier.
- 8.4 The Supplier shall be entitled to require relocation of the Equipment within the Co-Location Facility on (except in the case of emergency) not less than thirty (30) days' written notice to the Customer. The Supplier shall use its reasonable endeavours to ensure that the disruption caused to the Customer's business is kept to a minimum.
- 8.5 The Supplier shall have no liability to the Customer or any third party for any act or omission of the Supplier that is necessary in order to comply with any Applicable Law.
- 8.6 If the Customer is in breach of any warranties, representations or undertakings as set out in Clause 7, any Applicable Laws or the Acceptable Use Policy or any other obligation under the Contract (or the Supplier has reasonable grounds to believe that the Customer has committed such a breach), then without prejudice to its other rights and remedies the Supplier may suspend or discontinue the Services until such time as the Customer has cured such breach. The Customer will continue to be liable for the Charges during the suspension period. The Customer will meet any reasonable cost or expense incurred by the Supplier arising from a breach by the Customer of any of its obligations referred to in this Clause 8.6.

9 Obligations in respect of Supplier IP Addresses

- 9.1 If the Customer obtains a Supplier IP Address, then the following will apply:
- 9.1.1 the Customer acknowledges that IP Addresses are in increasingly short supply and that the Supplier is required to determine how to monitor, manage and distribute them;
 - 9.1.2 where a Supplier IP Address is to be provided, the Customer will agree, in writing with the Supplier, a timeframe during which the allocated range of Supplier IP Addresses will be put into operational use, which in any event shall not exceed twelve (12) months; and
 - 9.1.3 the Customer acknowledges that the Supplier is entitled at any time on consultation with the Customer but otherwise at the Supplier's discretion to change any IP Address(es) within any range or allocation made available to the Customer to one or more other ranges or allocations.
- 9.2 The Customer irrevocably agrees that a Supplier IP Address will be forfeited and returned by default to the Supplier, without compensation or re-imburement, upon the happening of any one or more of the following events:
- 9.2.1 the Customer fails to make use of its assigned Supplier IP Address range in accordance with the pre-agreed business plan and timeframe;
 - 9.2.2 the Customer fails to pay any Charges on the due date;
 - 9.2.3 the Customer fails to use the range of Supplier IP Addresses in full conformity with Supplier's published policies and terms of service, as from time to time in force;
 - 9.2.4 the Contract is terminated by reason of any of the events in Clauses 4.2, 13, 14 or 16.3.

10 Intellectual Property Rights

- 10.1 As between the Customer and the Supplier, all Intellectual Property Rights in relation to the Services shall be owned by the Supplier. The Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis for the term of the Contract to such extent as is necessary to enable the Customer to make reasonable use of the Services. If the Contract terminates, this licence shall automatically terminate. Subject to Clause 10.2, any Intellectual Property Rights created in the course of providing the Services are the property of and shall fully vest in the Supplier.
- 10.2 For the avoidance of doubt:
- 10.2.1 to the extent that any Intellectual Property Rights are created or owned by the Customer prior to the Commencement Date, then such Intellectual Property Rights shall fully vest and continue to remain the property of the Customer; and.
 - 10.2.2 as between the Supplier and the Customer, the Customer will own the Intellectual Property Rights in and to the Customer Data.
- 10.3 The Supplier will indemnify the Customer against all liability arising in relation to any infringement of any Intellectual Property Right of any third party in connection with any software or materials provided by the Supplier to the Customer in the performance of the Services. This indemnity will not apply where such software or materials are used (a) in combination with other materials not previously approved in writing by the Supplier where but for such combination the infringement would not have occurred and/or (b) otherwise than in accordance with the Contract.
- 10.4 The Customer will indemnify the Supplier against all liability arising in relation to any infringement of any Intellectual Property Rights of any third party or otherwise in connection with the Customer Data.
- 10.5 In relation to the indemnities at Clauses 10.3 and 10.4, the party indemnified (the "**Indemnitee**") must notify the other party (the "**Indemnitor**") promptly of the claim and provide the Indemnitor with all information relating to it. The Indemnitor shall have exclusive control over all negotiations and litigation. The Indemnitee agrees to give all reasonable assistance to the Indemnitor in the defence of such claim.

11 Confidentiality

- 11.1 "**Confidential Information**" means any information (whether written, oral, in electronic form or in any other media) that:
- 11.1.1 is disclosed by or on behalf of a party (the "**Discloser**") to the other party (the "**Recipient**") in connection with the Contract and that relates (in whole or in part) to the Discloser or its business;
 - 11.1.2 relates to the Services; and/or
 - 11.1.3 relates to the terms of the Contract,
- but excluding any information that falls within the exclusions set out in Clause 11.5.

- 11.2 The Customer and the Supplier will each treat as confidential all Confidential Information obtained from each other under or in connection with the Contract. The party disclosing such confidential information shall be the "**Discloser**" and the other party shall be the "**Recipient**".
- 11.3 The Recipient shall not without the prior written consent of the Discloser disclose any such Confidential Information to any person, or use the same, except as permitted by Clause 11.4.
- 11.4 The Recipient may disclose Confidential Information obtained from the Discloser under these Conditions to the following persons:
- 11.4.1 the Recipient's own employees, agents and contractors, to the extent that such persons need to know it for the purposes of the Contract, and provided that they are first made aware of the confidential nature of the Confidential Information and the Recipient's obligations in relation to it, and themselves are under an obligation to treat the Confidential Information confidentially on terms no less onerous than those of this Clause 11;
- 11.4.2 the Recipient's auditors and other professional advisers; and
- 11.4.3 to the extent required by Applicable Law or a court of competent jurisdiction or the rules of any listing authority, stock exchange, the Panel on Takeovers and Mergers or a regulatory authority. Where reasonably practicable and lawful the Recipient will give notice to the Discloser in advance of such disclosure, will consult with the Discloser as to the content, purpose and means of disclosure and will seek to make such disclosure subject to obligations of confidence consistent, so far as possible, with the terms of this Clause 11.
- 11.5 Clause 11.1 does not apply to information which the Recipient can show by reference to documentary or other evidence:
- 11.5.1 was rightfully in its possession prior to its receipt from the Discloser, other than in circumstances where the Recipient received it under an obligation of confidence; or
- 11.5.2 is already public knowledge or which becomes so at a future date (otherwise than as a result of a breach of the Contract or other confidentiality obligation owed to the Discloser by the Recipient); or
- 11.5.3 is received from a third party who is not under an obligation of confidentiality in relation to that information; or
- 11.5.4 is trivial or obvious.
- 11.6 The obligations of confidentiality in this Clause 11 (but not the rights to use Confidential Information) will remain in force following the expiry or other termination of the Contract, without limit in time.
- 11.7 Notwithstanding the foregoing provisions of this Clause 11, where the Supplier is the Recipient of Confidential Information, the Customer acknowledges that there are circumstances in which such Confidential Information (including Personal Data) may need to be disclosed to third parties as follows:
- 11.7.1 details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the Services;
- 11.7.2 without prejudice to Clause 11.4.3, details of the Customer's name, address and assigned IP Addresses may be released to law enforcement agencies upon production of valid notices and/or to third parties upon service of a valid disclosure notice issued by a court of competent jurisdiction;
- 11.7.3 details of the Customer's name, address, telephone and fax numbers together with email address(es) and assigned IP Addresses may be released to the RIPE NCC to ensure that both Supplier and Customer fulfil their obligations under prevailing RIPE policies and that such data may be published in whole or in part in the RIPE WHOIS database.

12 Limitation of liability

- 12.1 Subject to Clauses 12.2, 12.3 and 12.4, the Supplier's maximum aggregate liability (including any liability for the acts or omissions of its Group Companies, and its and their respective employees, agents, consultants, and subcontractors) arising out of or in connection with any Contract, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever arising or caused including by negligence and also including any liability under an indemnity contained in that Contract and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of the Supplier's obligations under that Contract and/or any defect in the Services or any of them or any part of them and/or any use made of the Services or any of them or any part of them will be limited in respect of all Events which occur in any one Year to an amount equal to 125% of the aggregate Charges which (i) have been paid (ii) remain to be paid and (iii) are scheduled in accordance with the relevant Contract to be paid in respect of that Year.
- 12.2 Subject to Clauses 12.3 and 12.4, the Supplier's maximum aggregate liability for any loss of or damage to tangible property (excluding data) which arises from any one Event (or two or more connected Events) shall be limited to £2,000,000 (two million pounds).
- 12.3 Nothing in any Contract will operate to exclude or restrict a party's liability (if any):
- 12.3.1 for death or personal injury resulting from its negligence or by the negligence of a person for whom it is vicariously liable (negligence being as defined in Section 1(1) Unfair Contract Terms Act 1977);
- 12.3.2 for its fraud or fraudulent misrepresentation or the fraud or fraudulent misrepresentation by a person for whom it is vicariously liable;
- 12.3.3 for breach of its obligations arising under section 12 Sale of Goods Act 1979;

- 12.3.4 for breach of its obligations arising under Section 2 Supply of Goods and Services Act 1982;
- 12.3.5 for breach of its obligations arising under Section 8 Supply of Goods (Implied Terms) Act 1973;
- 12.3.6 arising under Section 2(3) Consumer Protection Act 1987;
- 12.3.7 for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

The amount of the Supplier's liability for any such matter will not be taken into account in assessing whether the financial limit in Clause 12.1 has been reached.

12.4 Subject to Clause 12.3, neither party will have any liability for any:

- 12.4.1 loss of profit (direct or indirect);
- 12.4.2 loss of revenue, loss of production or loss of business (in each case whether direct or indirect);
- 12.4.3 loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct or indirect);
- 12.4.4 loss of anticipated savings or loss of margin (in each case whether direct or indirect);
- 12.4.5 liability of the other party or any Third Party User to third parties (whether direct or indirect) and where the other party referred to is the Customer, this include fines or other regulatory sanctions or remedies imposed or applied by any regulator having the power to enforce compliance by the Customer;
- 12.4.6 indirect, consequential or special loss;
- 12.4.7 loss of use or value of any data or software (except to the extent that such loss of use or value of data or software is caused by the wilful default or negligence of the other party);
- 12.4.8 wasted management, operational or other time; or
- 12.4.9 loss or damage arising out of any failure by the other party or any third party user to keep full and up to date security copies of any computer programs and data held or used by or on behalf of the Customer or that third party user;

arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence.

12.5 Subject to the express terms of any Service Levels, the Supplier does not warrant, guarantee or undertake on behalf of itself or any third party supplier that any internet access will be uninterrupted or error free or of any particular level of availability or quality, and shall not under any circumstances be liable for any interruptions or downtime of any service.

12.6 The Supplier accepts no liability for, and the Customer will hold harmless and indemnify the Supplier in respect of, the Supplier's staff acting in accordance with (i) a telephone instruction given using a valid telephone verification password which was issued by the Customer to the Supplier pursuant to Clause 6.1.10; or (ii) an email or other instruction sent or given by a person authorised by the Customer to issue instructions pursuant to Clause 6.1.11.

12.7 The Customer is solely responsible for all paperwork and documentation in respect of, and payment of, customs duties, imports, levies, taxes or charges in respect of deliveries it may arrange to be made to the Customer Premises and the Customer acknowledges that the Supplier will not arrange, and is not responsible for arranging, such deliveries or such payments. The Supplier takes no responsibility and accepts no liability whatsoever for its failure to act upon paperwork sent to it in respect of such deliveries or payments.

12.8 The Customer acknowledges and agrees that the allocation of risk in this Clause 12 is fair and reasonable having regard to all the circumstances.

12.9 In entering into the Contract the Customer acknowledges and confirms that it has had reasonable opportunity to take independent legal advice regarding the limitations of liability contained herein and that the Customer has had the opportunity to discuss such limitations with the Supplier and amend them where possible. The Customer acknowledges and confirms that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Contract.

12.10 The Supplier shall not have any liability for any breach unless the Customer gives the Supplier written notice of that breach within (i) 12 calendar months of that breach occurring or, if later, (ii) the date on which the Customer became aware (or should reasonably have become aware) of the breach specifying in reasonable detail (to the extent such information is available at the time such notice is given) the nature and extent of the breach and the amount claimed by the Customer arising from the breach and proceedings in respect of that breach are issued and served on the Supplier within a period of 6 calendar months starting on the date of notification of a claim for that breach.

13 Duration

13.1 Each Contract shall come into force on its applicable Commencement Date and shall continue in force unless or until terminated by either party in accordance with the provisions of Clauses 4.2, 6.2.3, 13, 14 or 16.3.

13.2 Save where agreed otherwise in the Order Form, the Contract can be terminated for convenience by a party ("**the Terminating Party**") giving not less than three (3) calendar months' notice to the other party, such notice only to expire on or after the expiry of the relevant

Minimum Period, or the Renewal Term as the case may be. Any notice of termination under this Clause 13.2 must clearly refer to this Clause 13.2 and must specify the Contract that is being terminated using the Supplier Contract reference set out in the relevant Order Form.

13.3 After the expiry of the Minimum Period, the Term will automatically renew for additional service terms of one (1) year (the "Renewal Term"), unless either Party provides written termination notification to the other Party in accordance with Clause 13.2. If the Customer does not sign a renewal of the Contract but continues to use the Services on this rolling one (1) yearly basis, then the Supplier may increase the Charges at any time by any amount, on giving the Customer three (3) months' prior written notice.

13.4 In the event that the Customer wishes to terminate the Services prior to the expiry of the relevant Minimum Period or prior to the expiry of the Renewal Term as the case may be, the Customer may do so upon giving not less than three (3) months' notice in writing to the Supplier, subject to payment by the Customer in full of all sums which would have been payable to the Supplier had the Contract run (and had the Services been provided) until the expiry of the Minimum Period, or the expiry of the Renewal Term as the case may be, the amount of such payment to be agreed between the parties and paid to the Supplier before expiry of the notice of termination.

13.5 For the purposes of this Clause 13, a Customer who has registered as a user at the Customer portal must give the requisite notice under this Clause using the appropriate page on the portal provided they comply with the applicable rules, procedures and user instructions of the portal from time to time.

14 Termination

14.1 The Supplier shall be entitled to terminate the Contract forthwith on written notice in the event that:

14.1.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or;

14.1.2 the Supplier has terminated, or is entitled to terminate, any other contract that it has entered into with the Customer.

14.2 Either party shall be entitled to terminate the Contract on notice in writing to the other party if:

14.2.1 the other party materially breaches its obligations under this Contract and does not fix such breach within 14 days after receipt of written notice from the other party setting out the breach in reasonable detail and requiring it to be fixed; or

14.2.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership or a limited partnership) has any partner or member to whom any of the foregoing apply; or

14.2.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or

14.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or

14.2.5 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or

14.2.6 a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or

14.2.7 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or

14.2.8 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days; or

14.2.9 any Event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this Clause 14.2 (inclusive); or

14.2.10 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or,

14.2.11 the other party makes, threatens, whether orally or in writing (whether in hard copy, by any electronic medium or otherwise), to adversely affect the ongoing operations of the other party's business or that of any of its affiliates (provided that this Clause shall not apply to any action taken by the Supplier in accordance with the Contract or at any time that the Customer has not paid the Charges by the due date).

14.3 Without prejudice to any other rights or remedies which the Supplier may have, the Supplier may at its option terminate the Contract without liability to the Customer:

- 14.3.1 on three (3) months' written notice to the Customer if there is a change of control of the Customer (as defined in Sections 450 and 451 Corporation Tax Act 2010);
- 14.3.2 if the Customer or any of its affiliates is in arrears with regard to its payments to any other Pulsant Group Company and fails to remedy such default within seven (7) days of such being notified to the Customer; or
- 14.3.3 if the Customer fails to maintain throughout the term of this contract an operational direct debit mandate on a UK bank account within the BACS clearing system that can be collected from for the purposes of Clause 5.1.3 (unless an alternative payment method has been agreed in advance by the parties); or
- 14.3.4 if the Customer has, within a continuous period of six (6) months, failed to pay the Charges in cleared funds on the due date on more than two occasions.

15 Effect of Expiry or Termination

- 15.1 The expiry or termination of the Contract shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination. Without limiting the terms of this Clause 15.1, such provisions shall include Clauses 9, 10 and 11.
- 15.2 Promptly upon termination or expiry of the Contract, the Customer shall at its own cost remove the Customer Equipment from the Co-Location Facility. Such removal shall take place at a time to be agreed with the Supplier (subject to any lien which the Supplier may have over the Customer Equipment pursuant to Clause 8.1). Should the Customer fail to remove the Customer Equipment from the Co-Location Facility within a period of thirty (30) calendar days from the date of expiry or termination or agreed time of removal, the Supplier shall be entitled to remove all data stored on the Customer Equipment, disconnect, remove and sell the Customer Equipment, and account to the Customer for the proceeds of sale less any sums owing to the Supplier pursuant to the Contract. The Supplier is not responsible for any loss incurred due wholly or in part to the exercise of its rights under this Clause 15.2.
- 15.3 Following expiry or termination of the Contract, the Supplier will be entitled to access all CPE and data stored on that Equipment and to disconnect and remove such Equipment and remove all data stored on all Equipment (not being Customer Equipment or CPE). The Customer is obliged to have ensured that any and all data (including Customer Data) is recovered or removed from the CPE or such Equipment prior to the expiry or termination of the Contract. The Supplier shall not be held responsible for any loss incurred due wholly or in part to the Customer failing to do this.
- 15.4 In any situation where the Supplier is entitled to terminate the Contract, the Supplier may choose to suspend or terminate the Services instead of terminating the Contract, although such choice shall be without prejudice to its other rights and remedies including the right subsequently to terminate the Contract.
- 15.5 If within twenty-eight (28) days before termination, the Customer has requested the Supplier in writing to provide assistance in relation to transitioning the terminated Services back in-house or to an alternative provider, the Supplier will use reasonable efforts to provide the assistance requested for a period not exceeding one (1) month after termination provided that (i) the Customer pays the Supplier for its assistance at the Supplier's then prevailing time & materials rates; (ii) the Supplier shall be entitled to invoice in advance for such part of the anticipated assistance that it considers reasonable; and (iii) where the transition is to an alternative provider, that provider shall have entered with the Supplier into written confidentiality undertakings in form and substance reasonably acceptable to the Supplier.
- 15.6 Without prejudice to any other rights or remedies of the Customer under this Contract, where the Customer is entitled to terminate this Contract pursuant to clause 14.2 (an "Insolvency Event") (but has not terminated this Contract), the Customer may on 14 days' written notice to the Supplier elect to:
 - 15.6.1 receive services equivalent to the Services from a third party, or provide them in-house, and, in either case, to temporarily suspend the receipt of the Services from the Supplier; or
 - 15.6.2 assume responsibility for the delivery of services equivalent to the Services, and the Supplier shall provide all reasonable access to the appropriate servers and all other dedicated systems and facilities used by the Supplier for the provision of such Services,(each a "Step-in Right"), for such period that the Insolvency Event persists (the "Step-in Period").
- 15.7 For the duration of the Step-in Period, the Supplier:
 - 15.7.1 shall not be liable for meeting any Service Levels in respect of the Services or for any liability suffered by the Customer arising from the exercise of the Step-in Right;
 - 15.7.2 shall not be entitled to receive any Charges for the Services other than ongoing power and IP Transit charges.
 - 15.7.3 As soon as the Supplier can reasonably demonstrate that the Insolvency Event no longer persists, then the Customer shall as soon as is reasonably practicable and, in any event, within 14 days cease the exercise of the Step-in Right and the Supplier shall resume the provision of the Services.

16 Force Majeure

- 16.1 The Customer acknowledges and agrees that the Supplier does not and cannot control the flow of data to or from its networks or the storage of data held outside its networks. Such flow and/or storage depend in large part on the performance of internet services and/or

telecommunications networks provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt the Supplier's connections to the internet (or portions thereof) or such other platforms upon which access to the Services may be provided. Although the Supplier will use reasonable efforts to take all actions reasonably necessary to remedy and avoid such events, the Supplier cannot guarantee that such events will not occur. Accordingly, save as provided expressly in the Contract, the Supplier gives no warranty or other commitment and is not liable in relation to such events and any occurrence of such will be classed as an Event of Force Majeure.

16.2 Either party will give notice forthwith to the other party upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

16.3 If a failure or delay in performance due to an Event of Force Majeure shall continue for more than four (4) weeks, then either party will be entitled to terminate the Contract. Neither party shall have any liability to the other in respect of the termination of the Contract as a result of an Event of Force Majeure.

17 Data protection

17.1 Each party undertakes to the other that it will take all necessary steps to ensure that it operates at all times in accordance with the DPA and General Data Protection Regulation ("**GDPR**") on the basis that the Customer is the Data Controller and (where the Supplier processes Personal Data but not otherwise) the Supplier is the Data Processor in relation to Personal Data.

17.2 Without limiting Clause 17.1, if either party (the "**Data Provider**") passes to the other party (the "**Data Recipient**"), or otherwise gives the Data Recipient access to, Personal Data under these Conditions:

17.2.1 the Data Recipient will not Process Personal Data under the Contract except in accordance with the Contract or otherwise on the instructions of the Data Provider;

17.2.2 the Data Recipient will implement appropriate technical, security and organisational measures against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of or damage to Personal Data in compliance with the DPA and GDPR;

17.2.3 the Data Recipient will only Process such Personal Data in accordance with the data protection principles set out in the DPA and GDPR;

17.2.4 the Data Recipient will comply promptly and in full with any request made by the Data Provider further to the Data Provider's statutory obligations pursuant to the DPA and GDPR;

17.2.5 the Data Provider represents, warrants and undertakes that it has all necessary consents and permissions in relation to the Personal Data concerned; and

17.2.6 Where the Supplier is the Data Recipient, the Data Recipient will not transfer any of the Personal Data concerned outside the UK and/or the EEA without the prior written consent of the Customer (as Data Provider).

17.3 For the purposes of this Clause 17, "**Data Controller**", "**Data Processor**", "Personal Data" and "Process" bear the meanings given to them within the DPA and GDPR.

18 Notices and communications

18.1 Where any notice or other communication is to be given under the Contract, it must be in writing. Notices or communications:

18.1.1 may be left at or sent by post or sent by email to the address of the party as set out in the Order Form or any other address notified by that party to the other in writing for the purposes of this Clause 18 as an address to which notices, invoices and any other documents may be sent; and

18.1.2 shall be deemed to have been served (if by post) two (2) Business Days from the date of posting (and in proving such service or delivery, it shall be sufficient to prove that such communication was properly addressed, stamped and posted)

18.2 It is the Customer's responsibility to ensure that any amendments to the details of the Customer primary contact, together with those of any 24x7 contact number provided in accordance with Clause 6.1.9, are promptly communicated to the Supplier. The Customer acknowledges and accepts that the Supplier is not responsible or liable for any shortfalls in the Services which arise through the Supplier's inability to contact the Customer Nominated Contact, or 24x7 contact where applicable, where such contact details have been amended but such amendments not communicated to the Supplier.

18.3 This Clause 18 will not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.

19 Assignment and Subcontracting

19.1 The Customer shall not be entitled to assign the Contract or assign or subcontract all or any of its rights and obligations thereunder without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed.

19.2 The Supplier shall be entitled to assign the Contract or assign or subcontract all or any of its rights and obligations under the Contract to any person without the prior written consent of the Customer.

20 Dispute Resolution

- 20.1 In the event a dispute arises between the parties in connection with this Contract or the performance, validity or enforceability of it, then the parties shall follow the procedure below:
- 20.1.1 either party shall give to the other written notice of the dispute setting out its nature and full details ("Dispute Notice"), together with any supporting documents. On service and receipt of such Dispute Notice, the parties through their authorised representatives shall attempt in good faith to resolve the dispute. Each party's authorised representative will be nominated in writing from time to time.
- 20.1.2 if the authorised representatives are unable to resolve the dispute within seven (7) days of the issue of the Dispute Notice, then the Dispute shall be escalated to the parties' senior management. The parties' senior management shall meet promptly to discuss the dispute and shall make reasonable efforts to resolve the dispute in good faith to their mutual satisfaction.

21 Third Party Rights

- 21 Except as provided for in this Clause, it is not intended that any third party should have the right to enforce any provision of the Contract and, to the extent that the Contract may be governed by English law, the parties hereby exclude the application of the Contracts (Rights of Third Parties) Act 1999.

22 Severability

- 22.1 If any provision of the Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of the Contract and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.
- 22.2 If any provision of the Contract is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid.
- 22.3 The parties agree that in the circumstances referred to in Clause 22.1 and if Clause 22.2 does not apply, they will attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision. The obligations of the parties under any invalid or unenforceable provision of the Contract shall be suspended whilst an attempt at such substitution is made.

23 Entire Agreement and Variation

- 23.1 These Conditions together with the Order Form and any documents explicitly referenced therein, including any applicable Service Schedules, constitute the entire agreement between the parties in relation to the subject matter of the Contract and supersede and extinguish all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- 23.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not expressly set out in the Contract.
- 23.3 The only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into the Contract and which is expressly set out in the Contract will be for breach of contract.
- 23.4 Nothing in this Clause 23 shall limit or exclude any liability for fraud or fraudulent misrepresentation.
- 23.5 Except as expressly provided, no variation of any Contract will be effective unless agreed in writing and signed by a duly authorised representative of each party.

24 General

- 24.1 The waiver by either party of a breach or default of any of the provisions of the Contract shall not be construed as a waiver of any succeeding breach of the same or other provisions, and nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.
- 24.2 Except where permitted by Clause 4, additions or changes to the Contract will only be binding upon the parties where they are written and signed by a duly authorised representative of each party.
- 24.3 Nothing in the Contract shall create or be deemed to create a joint venture, partnership or agency or the relationship of employer and employee between the parties.
- 24.4 The governing law for the Contract shall be determined as follows:
- 24.4.1 Where the Customer is a company registered in England or Wales, the Contract and any non-contractual obligations arising out of or in connection with it shall in all respects be governed by and construed in accordance with the laws of England, and the parties irrevocably submit to the non-exclusive jurisdiction of the English courts (including in relation to any non-contractual obligations); or
- 24.4.2 For all other Customers, the Contract and any non-contractual obligations arising out of or in connection with it shall in all respects be governed by and construed in accordance with the laws of Scotland, and the parties irrevocably submit to the exclusive jurisdiction of the Scottish courts (including in relation to any non-contractual obligations).

DEFINITIONS AND INTERPRETATION

- 1.1 This Appendix 1 is incorporated into and forms part of the Conditions. Paragraph 1.2 sets out the meaning of terms defined in the Contract (including the Service Schedules and Order Forms) and paragraphs 1.3 to 1.10 set out rules of interpretation of the Contract, in any case unless the context otherwise requires.
- 1.2 The following words and expressions shall have the following meanings:
- "Acceptable Use Policy" or "AUP"** - the acceptable use policy from time to time in relation to the use by the Customer of the Equipment or the Services as published by the Supplier from time to time on the Supplier's Website;
- "ADSL"** – Asymmetric Digital Subscriber Line;
- "API"** - an application programming interface for the protocols or languages used to provide the relevant Services;
- "Applicable Law"** – any relevant statute, statutory instrument, subordinate legislation, bye-law, order, directive, treaty, decree or law (including any common law, judgment, demand, order or decision of any court, regulator or tribunal) in any case having the force of law; and any relevant rule, policy, guidance, recommendation, industry code of conduct or guideline issued by any governmental, statutory or regulatory body having the power to enforce compliance with the party to whom it is addressed; ;
- "Business Day"** - any day other than a Saturday or Sunday on which the clearing banks are open for business (other than solely internet or telephone banking only) in the City of London;
- "Business Hours"** – the hours of 9am to 5pm on a Business Day;
- "Charges"** - the charges for the Services and/or Equipment as set out in, or capable of being calculated in accordance with the terms of, the Order Form (and as varied from time to time in accordance with Clause 5);
- "Co-Location Facility"** - the co-location facility or facilities where any of the Customer Equipment, the Dedicated Server and / or Network Equipment is located. Details of Pulsant's co-location facilities can be found on the Supplier Website, and the relevant location(s) will be set out on the Order Form;
- "Co-Location Services"** - those services set out in the service order form (if selected by the Customer);
- "Commencement Date"** - the date of signature of the relevant Contract as set out in the Order Form from which Charges shall apply;
- "Conditions"** - these terms and conditions;
- "Connection"** - the Leased Line or Metro Ethernet, EFM, SDSL or other broadband network connection provided from an appropriate Pulsant point of presence to the Customer Premises;
- "Contract"** - a contract between the Supplier and the Customer and consisting of the applicable Order Form, the relevant Service Schedule(s), related Provisioning Form(s) (if any) and these Conditions and any terms of Service Description in relation to a Service Schedule that are stated to have contractual effect;
- "CPE"** - Customer premises equipment being the Equipment provided by the Supplier and/or other third parties to be located in the Customer Premises, in order to allow the Connection to be provided and connected to the Customer's network;
- "Critical"** – an Event consisting of a complete loss of a Service or of a critical component of a Service;
- "Customer"** - the person, company, or other entity identified within the relevant Order Form;
- "Customer Materials"** – has the meaning given in Clause 6.1.3;
- "Customer Nominated Contact"** - the Customer's nominated contact who is authorised by the Customer to request administration and / or technical changes to the Services or Equipment, and whose details are set out in the Administration Form as such details may be updated from time to time;
- "Customer Data"** – the data inputted by the Customer by means of any Equipment and data generated from it, in any case as stored and processed by means of the Services;
- "Customer Equipment"** - any and all Equipment installed and supported by the Customer or third parties in the Co-Location Facility or at the Customer Premises in the case of network services, as specified in the Order Form;
- "Customer Premises"** - the Customer's office(s) or designated location(s) as specified in the Order Form;
- "DDoS"** - distributed denial of service attack, being when the bandwidth or resources of a targeted system are exhausted or flooded by one or more compromised systems so as to materially adversely affect the operation of the targeted system. **"DoS"** means a denial of service attack being an attempt to make a targeted system unavailable to its intended users;
- "Dedicated Hosting Services"** - those services of that name set out in the service order form (if selected by the Customer);

"Dedicated Server" - any and all server Equipment owned and installed by the Supplier for use by the Customer in the Co-Location Facility;

"Direct Debit Instruction" –an instruction to Customer's bank or building society to pay the Supplier the Charges under the direct debit guarantee contained in the Order Form;

"DPA" - the Data Protection Act 1998;

"Equipment" - includes all network, dedicated server and other equipment, hardware, devices, managed router, firewall device(s), software managed device(s), load balancers, VPN and all equivalent virtual equipment, whether being used by the Supplier to provide the Services, or by the Customer, to receive them;

"Ethernet First Mile" or **"EFM"**– a Leased Line service using G.SHDSL.bis (ITU-T G.991.2 (2004)) technology as described more particularly, and published, from time to time on the Supplier's Website;

"Event" - an act, event, omission or circumstance;

"Event of Force Majeure" – any cause beyond the Supplier's reasonable control including but not limited to fires, floods, lightning, war, revolution, act of terrorism, riot, civil commotion, act of God, industrial disputes, strikes (of its own or other party's employees), casualties, accidents, power failure, breakdown in equipment, failure of suppliers, failures of transportation, telecommunications failures or internet downtime or available bandwidth shortage any DDoS or threatened DDoS attack and such other circumstances set out in Clause 16.1 and whether occurring in respect of the Supplier or its subcontractors;

"Fee Credits" - the credits referred to in Clause 5.12;

"Fix Time" – the period of time commencing at the time the relevant Event is reported to the Supplier and ending when the Supplier achieves a resolution of the relevant hardware problem (and resolution may include a workaround);

"Good Industry Practice" - the exercise of that degree of skill, diligence, prudence, foresight and practice which would reasonably and ordinarily be expected from a skilled and experienced person engaged in providing or receiving services which are the same as or similar to the Services;

"Group Compan(y)(ies)" - in relation to a party, any subsidiary or subsidiaries of that party, or holding company of that party, or subsidiary or subsidiaries of such a holding company, where the terms "holding company" and "subsidiary" and "subsidiaries" have the meanings given to them in the Companies Act 2006;

"Impacting" – an Event consisting of a partial loss of a Service, the loss of a component of a Service, or the degradation of a Service.

"Initial Charges" - that element of the Charges which consists of initial one off charges as shown in the Order Form;

"IP" - internet protocol;

"IP Address(es)" means an internet protocol address;

"Intellectual Property Rights" - all intellectual and industrial property rights of any kind whatsoever including patents, supplementary protection certificates, rights in know-how, registered trade marks, registered designs, models, unregistered design rights, unregistered trade marks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions;

"Leased Line" - is a symmetric telecommunications line connecting two locations. Unlike traditional PSTN lines it does not have a telephone number, each side of the line being permanently connected to the other. Leased Lines can be used for telephone, data or Internet services;

"Licensed Space" - the space allocated to the Customer Equipment by the Supplier at the Co-Location Facility, being determined in Floor Space Racks, Quarter Racks, Half Racks or individual Units and/or incorporating a Cage;

"Managed Router / Firewall Service(s)" - those services set out in the Managed Router/Firewall Services Service Schedule, if such Services are selected by the Customer;

"Metro Ethernet" - a Leased Line which carries traffic and terminates at the Customer Premises using ethernet technology;

"Minimum Period" - the minimum period or Contract length specified in the Order Form, or if no Contract length is specified, then the Minimum Period is twelve (12) months from the Service Live Date;

"Network Equipment" - any and all firewall, VPN, load balancer or other network Equipment owned and installed by the Supplier for use by the Customer in the Co-Location Facility;

"Ofcom" - the regulator for the communications industry in the UK to include any replacements for Ofcom from time to time;

"Order Form" - the order form (and any schedules to the order form) completed by the Customer and the Supplier which sets out details which include (i) the Equipment and / or Services to be supplied to or utilised by the Customer pursuant to the relevant Contract, and (ii) the Charges;

"Policies" – any and all policies and procedures of the Supplier or any Group Company (including the Acceptable Use Policy and as to security, access and otherwise) published at any time on the Supplier's website or any other URL or as otherwise made available or communicated to the Customer;

"Provisioning Form(s)" – the form on which technical, operational and any other service details specific to the Customer and associated with the Services requested in the Order Form are set out and which shall be completed after entering into the relevant Contract;

"PSTN" - the public switched telephone network;

"Pulsant Group" has the meaning set out on the front page of these Conditions;

"Quarter" – means any three (3) calendar month period where the first Quarter shall commence on the Commencement Date and each subsequent Quarter shall commence on the day next following the last day of the immediately preceding Quarter.

"Quarter Racks" – a space equivalent to a quarter of a 42Unit high 19" Rack;

"Racks" – racks or rack space units which unless otherwise stated measure 42Unit high, 600mm wide x 100mm deep usable space for a 19" rack system, not including appropriate corridor space;

"Recurring Charges" - any element of the Charges which is payable periodically (e.g. weekly or monthly) as set out in the Order Form;

"Response Time" – the period of time commencing at the time the relevant Event is reported to the Supplier and ending when the Supplier contacts the Customer confirming the report of the Event and advising the Customer of the course of action to be taken to achieve resolution;

"RIPE NCC" - the Réseaux IP Européens Network Co-ordination Centre;

"Routine" – a standard change request or the application of a temporary fix;

"SDSL" - a Leased Line service using G.SHDSL technology as described more particularly, and published, from time to time on the Supplier's Website;

"Service Level" - any service level standards which the Supplier has agreed in relation to a Service being the service level standards (i) set out in the applicable Service Schedule or (ii) set out in the Order Form, and in each case expressly identified as a Service Level;

"Service Live Date" – the first date on which the Services have been delivered to the Customer in accordance with the requirements of the Contract and have become available for use by the Customer;

"Services" - the Services being provided by the Supplier to the Customer as specified in the Order Form as such Services may be modified from time to time in accordance with the Contract, and **"Service"** shall mean an element of the Services;

"Service Schedule" – the Service-specific schedule applicable to each relevant Service, as such Service Schedules are identified in the Order Form. Where a particular service schedule refers to a service description document for that Service, the only terms of that document that form part of the Contract are the terms expressly referred to in that behalf at paragraph 1 (Introduction and Scope) of that document. All the other parts of that document are for information only and do not form part of the Service Schedule or the Contract or constitute representations by the Supplier.

"Supplier" - has the meaning set out on the front page of these Conditions;

"Supplier Equipment" - means any Equipment used by the Supplier to provide any of the Services to the Customer other than CPE or the Customer Equipment;

"Supplier Network" - the Supplier core IP networks designed, built and operated by the Supplier;

"Supplier's Website" – the website at URL www.pulsant.com (or such other URL as the Supplier may notify to the Customer from time to time);

"Supported Software" - any operating system and software applications identified in the Order Form as being supplied by the Supplier;

"VAT" - value added tax;

"Year" means in respect of the relevant Contract a period of 12 calendar months commencing on the Commencement date or any anniversary of the Commencement date.

1.3 A reference to a "Clause" is to the relevant Clause of the Conditions, unless otherwise stated;

1.4 All headings are for ease of reference only and shall not affect construction or interpretation;

1.5 References to the singular include the plural and vice versa and references to any gender include every gender;

1.6 References to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);

1.7 References to a "day" or "days" are to any day of the week, Monday to and including Sunday and references to "Business Days" are to the term as defined at paragraph 1.1 above;

- 1.8 References to Applicable Law will be construed as references to the relevant statute, rule or other measure concerned as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time;
- 1.9 References to a party shall, except where the context otherwise requires, include its successors in title and permitted assigns;
- 1.10 Any words following the words "include", "includes", "including", "in particular", "for example", "such as" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;
- 1.11 To the extent only of any conflict or inconsistency between (a) the Conditions and any of the Service Schedules, the Conditions shall prevail over the Service Schedules and/or (b), any Service Schedule and any Service Description document it refers to, the Service Schedule shall prevail over the Service Description, unless otherwise expressly stated in any case; and
- 1.12 Where the governing law for the Contract in terms of Clause 24.4 is English law, any reference to a Scottish legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall be deemed to include a reference to what most nearly approximates under English law to the Scottish legal term.