PCA Predict

Software as a Service Agreement

PCA Predict SOFTWARE AS A SERVICE AGREEMENT

This Agreement is made between:

(1) **Postcode Anywhere (Europe) Ltd** (Company Number: 3347926), with registered address at Waterside, Basin Road, Worcester WR5 3DA, trading as Postcode Anywhere (**"PCA"**); and

(2) the **Customer**.

Acknowledgement By The Customer

The Customer acknowledges that:

- This Agreement governs the Customer's use of the Service.

- By installing, activating, copying or otherwise using the Service or Software Materials, or any part of them, the Customer agrees to the terms of this Agreement.

- If the Service or the Software Material is installed and/or activated by the Authorised Reseller for the Customer's use, then the Authorised Reseller and the Customer each confirm that the Customer has appointed the Authorised Reseller as its agent to confirm acceptance of this Agreement on its behalf, and the Customer agrees to be bound by this Agreement.

1 Definitions & Interpretation

1.1 In this Agreement the following expressions shall have the following meanings:

"Account Code"	a unique code used to identify and manage a Customer's account.
"Account Section"	the Customer's account section made available to the Customer, or the Authorised Reseller on the Customer's behalf, on the PCA Website.
"Authorised Reseller"	an authorised reseller of PCA.
"Business Days"	days falling within Monday to Friday (excluding Public and Bank Holidays).
"Business Hours"	hours falling within 9am to 5.30pm UK time, during Business Days.
"Credit"	a pre-paid credit purchased by the Customer from PCA, identified by PCA at the time of purchase as a 'credit'.
"Customer"	the organisation named as the 'Customer' or 'Business' or 'Company' in the registration form for use of the Service and Software Materials, the PCA Quote Sheet or this Agreement.
"Customer Cause"	any of the following: (1) any improper use, misuse or unauthorised alteration of the Software or Service by the Customer; (2) any use of the Software or Service by the Customer in a manner inconsistent with the then-current Documentation or PCA's instructions provided from time to time; (3) the Customer's use of any hardware, software or data not provided by PCA or approved by PCA in writing for use by the Customer in connection with the Software or Service; or (4) the use of a non-current version or release of the Software.
"Database"	a third party database, access to the whole or part of which is made available to the Customer by PCA.
"Documentation"	the user documentation made available to the Customer by PCA, or the online support pages on the PCA Website.
"Effective Date"	the date that this Agreement comes into force, either when it is accepted by the Customer on-line (via the Authorised Reseller or otherwise) or is signed by both parties.
"Emergency Maintenance"	a Maintenance Event (as defined in paragraph 5 of Schedule 1) which is undertaken on less than 5 days advance notice, or with no notice at all, which is necessary to: address a security issue; aim to prevent or address a Service disruption; aim to prevent data corruption or incorrect output from a Service; or comply with legislative requirements.
"Enterprise Software"	the software, databases and data made available by PCA to the Customer for the Customer's local installation and hosting, in order for the Customer to use the Service.
"Fault"	any failure of the PCA Offering to operate in all material respects in accordance with its Documentation, including any failure or error with the PCA Offering referred to in the table in Paragraph 9.1 b of the SLA.
"Licence Fee"	a payment to PCA for use of the Service other than by way of a Credit or SLA Charge.
"Licence Key"	a licence key issued to the Customer to use the Service.
"Licensor"	a third party licensor of the Database or any of the Software Materials.
"Monthly Recurring Fee"	1/12 of the current Year's Subscription Fees paid by the Customer or, if the Customer has not paid any

	Subscription Fees during that Year, 1/12 of the current Year's Subscription Fees which have been agreed to be paid by the Customer during that Year.
"Out Of Scope Support"	any services: (1) (including any investigation work) performed by PCA in connection with any apparent problem regarding the Service reasonably determined by the Supplier: a) not to have been caused by a Fault; or b) to have been caused by a Customer Cause or a cause outside the Supplier's control; (2) relating to issues with software and data which do not form part of the PCA Offering; (3) relating to issues with hardware or networks which are not under the direct control of PCA or the PCA hoster.
"Password"	the password selected by the Customer (or on its behalf by the Authorised Reseller) to use the Service.
"PCA Offering"	that part of the Software Materials and Service which is owned and developed by PCA or its group companies, but excluding (i) the Database; and (ii) any third party data, software, materials, services, or documentation (including third party software, data, documentation, materials and services provided, made available or owned by the Authorised Reseller).
"PCA Quote Sheet"	a document issued by PCA to the Customer headed 'Quote', which is intended by PCA to be binding with regard to pricing or the types of services which are to be offered (but excludes any separate sales proposal documentation, whether attached or not to the 'Quote').
"PCA Website"	any websites operated by PCA offering software or services, including that with the url of: www.pcapredict.co.uk
"Premium Service"	the additional arrangements referred to in the SLA.
"Service"	the online service made available, or agreed to be made available, by PCA to the Customer pursuant to this Agreement (excluding the Premium Service).
"Service Output"	any output response generated by the Service.
"SLA"	the document shown in Schedule 1.
"SLA Charge"	the annual fee for the Premium Service.
"SLA Report"	the Uptime Service Level report shown at www.pcapredict.co.uk/status
"Software"	the software (including any Enterprise Software) and data (including the relevant Databases) made available by or on behalf of PCA, which enable the Customer to access or use the Service; including any updates made available to the Customer from time to time by or on behalf of PCA. 'Software' excludes any software, data or databases provided by the Authorised Reseller under a separate contract between the Customer and the Authorised Reseller.
"Software Materials"	the Software and the Documentation.
"Subscription Fee"	a payment by the Customer for use of the respective Service for the respective Subscription Period, consisting of Credits and/or Licence Fees.
"Subscription Period"	the period during which the Customer may use the respective Service, as determined by the payment made to the Supplier in respect of such Service.
"Supplier"	PCA or, if the Customer is obtaining access to the Service via an Authorised Reseller, the Authorised Reseller.
"Support Period"	the 12 month period commencing on the date that PCA accepts the Customer's election (initially, and then on any agreed renewal) to have the Premium Service.
"Support Request"	a request for support made by the Customer in accordance with the SLA.
"Support Services"	maintenance of the then-current version or release of the Services, including help desk support, but excluding: (1) Out Of Scope Support; and (2) support relating to issues inherent in the Licensors' Software Materials.
"Third Party Contracts"	the Third Party Licences and Third Party EULAs.
"Third Party EULAs"	the material terms of the third party end user licences (which are in force (as set out in Appendices A-H) and which are stated as being applicable to the Customer's use of the Software Materials and/or Service.
"Third Party Licences"	the material terms of the third party licences which are in force (as set out in Appendices A-H, as applicable) and which are imposed by the Licensors on PCA in respect of the Software Materials and/or Service.
"Year"	a period of 12 months commencing on the Effective Date or an anniversary of the Effective Date.

Interpretation

1.2 The headings contained in this Agreement are for convenience only and shall not affect any interpretation.

1.3 References to "person" includes an individual, company, firm, partnership or other legal entity.

1.4 Words indicating the singular shall include the plural and vice versa. Words indicating a gender shall include each gender.

1.5 The words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation".

1.6 References to any statute or statutory provision shall include any subordinate legislation made under it, and any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

1.7 All sums payable hereunder are expressed exclusive of VAT which shall be added if appropriate at the rate prevailing at the relevant tax point.

1.8 To the extent of any conflict or ambiguity between the provisions of the Agreement and/or the Third Party Contracts, the decreasing order of precedence shall be:

a) the provisions of the Third Party Contracts; then

b) any variations to the Agreement agreed between the parties in writing (provided that such variations expressly refer to this Agreement); then

c) the provisions of the Agreement (other than the Schedule and Third Party Contracts); and then

d) the provisions of the Schedule.

2 Subscription

Grant of Licence and Prohibitions

2.1 PCA grants to the Customer the non-exclusive, non-transferable licence for the Subscription Period to use the Service, subject to the provisions of this Agreement. The Customer is responsible for licensing the correct number of users that will access the Service.

2.2 Except to the extent expressly permitted by law or agreed in writing by PCA, the Customer is prohibited from:

a) re-selling (whether for free or by charging) the Service Output or Service;

b) copying the Software Materials or any part (although the Customer may make a copy of the Software (and any Documentation provided electronically) for back-up purposes only);

c) translating, adapting, varying, or modifying the Software Materials or Services;

d) disassembling, decompiling or reverse engineering the Software.

2.3 The Customer may not (except to the extent expressly permitted by law or agreed in writing by PCA or in Third Party Contracts):

a) use the Service to provide any software or a service which competes with the Software Materials or Service;

b) undertake any data cleansing activities unless expressly permitted by the respective Third Party Contracts.

2.4 PCA and its third party licensors retain title to the Software Materials. No intellectual property rights are transferred pursuant to this Agreement other than the licence to use the Software Materials and Service.

Subscription Fees And Subscription Periods

2.5 Subscription Fees can be paid using a Credit and/or Licence Fee, as communicated by PCA in respect of the relevant Service.

2.6 A Service is only accessible for the Subscription Period reflecting the level of Subscription Fee paid. No Service is available on a perpetual basis.

Third Party Contracts

2.7 The Services may include use of third party software and services which are governed by Third Party Licences and Third Party EULA's. The terms of these Third Party Contracts are in Appendices A-H. The Customer confirms that it has read, agrees to, and shall be bound by the terms of the applicable Third Party Contracts and will observe those provisions in any applicable Third Party Contracts relating to the Services. Further the Customer represents and warrants that it has the capacity, power and authority to enter into and agree to the Third Party Contracts.

2.8 The Customer agrees that by requesting access to any third party software or data which is subject to a Third Party EULA, the Customer shall be bound by such Third Party EULA's (where this is the intention of the Third Party EULA), and the Licensor will have rights and remedies against the Customer pursuant to this Agreement and the Third Party EULA. Without prejudice to clause 8.10, where PCA receives a claim for losses incurred by a Licensor

owing to the Customer's acts or omissions, PCA reserves the right to recover such losses as claimed by a Licensor, from the Customer.

2.9 By receiving the applicable Services in Appendices A-G, the Customer is deemed to enter into the relevant Third Party EULA. The Customer represents and warrants that it will not make any statement/promise in respect of any Licensor, and that it has not relied on any statement/promise from a Licensor to obtain any part of the Service, other than expressly set out in the Appendices. Where the Customer enters into a Third Party EULA, it will bring any claims in respect of the third party software and data against the Licensor pursuant to the Third Party EULA and not against PCA.

3 Enterprise Software

3.1 In relation to Enterprise Software, the Customer:

a) must obtain PCA's prior written approval (not to be unreasonably withheld) if it requires Enterprise Software to be hosted by the Customer's third party (the "**Customer Hoster**"). If PCA gives such approval, the Customer must ensure that the Customer Hoster complies with the same obligations in respect of the Enterprise Software (other than payment obligations, which will reside solely with the Customer);

b) will maintain accurate and up-to-date records of the number and location of all copies of the Enterprise Software, which will be made available upon request to PCA, the Authorised Reseller and/or the Licensors;

Hosting, Maintenance & Support

c) will host the Enterprise Software in an environment which complies with PCA's minimum specification requirements, as notified from time to time by PCA;

d) will be responsible for all installation, maintenance and configuration of the Enterprise Software and the Customer's infrastructure (and will put in place equivalent measures with the Customer Hoster);

e) agrees the SLA will not apply in respect of any issues arising from the local hosting, installation, configuration or maintenance of the Enterprise Software;

f) will promptly apply any updates made available from time to time by PCA.

4 Assurances

Provision Of Software Materials

4.1 PCA agrees that during the Subscription Period it is licensed to provide access to the Software Materials and Services to the Customer and subject to Clause 4.11 a) it will:

a) use anti-virus scanning measures in respect of the Software when it makes such Software available as part of the Service;

b) use reasonable endeavours to allow access to the respective Service during the Subscription Period, subject to any maintenance or matters outside PCA's reasonable control.

Errors In Software And Data

4.2 The Customer agrees that:

a) subject to Clause 4.4, software and data are not error-free and the existence of such errors in the Software, Service or Service Output shall not constitute a breach of this Agreement;

b) where the software integration code made available by PCA is provided free of charge, it is provided on an 'as is' basis, without any assurance (including any warranty) whatsoever, and no assurance whatsoever is provided in respect of its suitability, performance, functionality, quality or otherwise. The Customer's sole and exclusive remedy is to cease using such code;

c) where the software integration code made available by PCA is provided on a chargeable basis, it is provided solely on the basis that it will materially comply with its stated description on the PCA Website. If such software integration code fails to materially comply with such description, the Customer will inform PCA in writing within 7 days of paying the software integration code licence fee, and if PCA is unable to remedy the issue within 30 days of receiving such notification, the Customer's sole and exclusive remedy is a refund of the software integration code charges which the Customer paid to PCA (and use of such software integration code will terminate from the date of such refund);

d) if any third party updates its software or platform, which causes an issue in respect of the Software or Service, the Customer accepts that this is not an issue with the Software or Service itself, nor a breach by PCA of its obligations under this Agreement.

Database

4.3 The Customer acknowledges that the Database contains third party data and accordingly is provided on an 'as is' basis, and (to the extent permitted by law) no assurance in respect of it is provided.

PCA Offering

4.4 PCA warrants for the Subscription Period that the PCA Offering will materially function in accordance with its Documentation. If the Customer notifies PCA of a non-compliance, PCA shall use

reasonable endeavours to correct and provide within a reasonable time by patch or new release (at its option) that part of the PCA Offering which does not so comply, provided that such non-compliance has not been caused by:

a) any modification, variation, configuration or addition to the Software or Service not performed by PCA;

b) its incorrect use, abuse or corruption of the Software or Service by the Customer or its third parties;

c) use of the Software or Service with other software, data or equipment with which it is incompatible (unless the respective software, data or equipment is expressly stated by PCA in its Documentation or otherwise in writing to be compatible); or

d) as a result of third party updates referred to in Clause 4.2 d).

IPR Warranty & Indemnity

4.5 PCA warrants for the Subscription Period that the software, documentation, data and services forming the PCA Offering will not infringe any third party's intellectual property rights.

4.6 PCA indemnifies the Customer against all direct losses, liabilities, costs, expenses and damages suffered or incurred by the Customer resulting from any valid third party claim made against the Customer for infringement of a third party's intellectual property rights resulting in a breach of Clause 4.5, provided that the Customer discharges its obligations under Clause 4.7.

4.7 If any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to liability under the indemnity in Clause 4.6 or if the Customer becomes aware of any potential or actual claim from a third party in respect of any Third Party Licence (the "Claim"), the Customer shall:

a) as soon as reasonably possible give written notice of the Claim to PCA, and if relevant, the applicable Licensor, giving reasonable details of the Claim;

b) not make any admission of liability or compromise in relation to the Claim, without PCA's, or the Licensor's prior written consent, as applicable (such consent not to be unreasonably withheld);

c) give PCA or the Licensor as applicable and its professional advisers all reasonable assistance (at the reasonable expense of PCA);

d) use its reasonable endeavours to mitigate its and PCA's/Licensor's losses, liabilities, costs and expenses in respect of the Claim.

Data Protection

4.8 Each party will comply with all relevant provisions of the Data Protection Act 1998 ("DPA"), and will:

a) process personal data only in accordance with this Agreement;

b) not transfer personal data outside the European Economic Area without the prior written approval of the data controller (which may be withheld at its absolute discretion);

c) assist the data controller to comply with any valid requests for access to personal data;

d) respond reasonably to any questions raised by the data controller relating to the processing of personal data, in order to ascertain compliance with the DPA.

4.9 By submitting data for verification under the Service, the Customer grants PCA a non-exclusive, royalty-free, worldwide, irrevocable and perpetual licence to retain, store, use, and disclose such data solely: (a) in connection with the provision of the Services; (b) for PCA's internal purposes; (c) to protect the operation of the Services; (d) to create aggregated, anonymised data, including for usage statistics; and (e) to satisfy applicable legal, accounting or regulatory requirements.

Mutual Confidentiality

4.10 Each party agrees to maintain the confidentiality of the other party's confidential information.

Customer Obligations

4.11 The Customer will:

a) maintain daily back-up and disaster recovery measures in respect of its and its third parties' (where third parties are permitted by PCA) systems and data with which the Software Materials or Services are used, and reasonable firewall and virus prevention measures;

b) ensure that the Customer's technical implementation to use the Services avoids binding to a single datacentre and instead uses the standard PCA load balanced service;

c) (where the use of the data or services relates to Royal Mail) only use the services in accordance with the use which has been authorised for the respective services (to which different charges may apply), and the Customer must ensure that it has selected the correct licensing use option corresponding to its intended use by the Customer. If the Customer does not select the correct licensing option, then

the Customer will also make the additional payments pursuant to Clause 8.10.

d) use the Services only for the purposes agreed in writing with PCA on any PCA Quote Sheet (and allow PCA to block any Service use where such use is not in accordance with the PCA Quote Sheet);

e) not undertake any act or omission, or use or otherwise make available the Software Materials or Service in a way which causes PCA to breach the Third Party Licences;

f) not allow any third party who is not authorised by this Agreement to access the Software Materials or Services.

4.12 Without prejudice to PCA's and the Licensors' additional rights and remedies, if the Customer fails to comply with Clause 4.11 c), e) or f), it will immediately upon request pay to PCA such amount as is required by the Licensors to be paid by PCA for the Customer's non-compliance.

5   Charges and Payment

Charges

5.1 The charges for the Services are set out on the PCA Website (updated from time to time) or, if different, in a PCA Quote Sheet or on a PCA written request for payment.

5.2 The charges for the services are Subscription Fees (for access to the respective Services) and the SLA Charge (for the Premium Service).

5.3 The Customer authorises PCA (or the Authorised Reseller at PCA's discretion) to take payment from the Customer by the relevant due date if the auto-top up payment option has been set up for the Customer. The amount of a top up or an auto-top up is deemed to be a new Credit. Payments for the respective Service will be automatically debited to the respective credit or debit card (details of which are provided as part of the registration process or updated in the Account Section by the Customer from time to time).

5.4 Without prejudice to PCA's rights and remedies, if the Customer fails to make any payments on time, PCA may:

a) charge the Customer interest in accordance with the applicable statutory provisions; and/or

b) suspend and/or terminate any of the Customer's Services and/or Premium Service.

5.5 PCA may vary the charges payable under this Agreement by giving reasonable notice to the Customer. The Customer agrees that once it is informed of an increase in charges and the date they will become effective (the "New Charges Date"), it will be deemed to accept such new charges if it continues to use the Service or Premium Service affected by the new charges after the New Charges Date.

Credits, Refunds By PCA & Credit Expiry

5.6 Credits have an expiry date, following which any unused Credit will no longer be usable, nor will it be refunded. A Credit is valid for a maximum period of twelve months from the date of purchasing the respective Credit or (if earlier) until the Credit has been fully expended to purchase one or more Services.

5.7 Each auto-top-up, or a top-up applied to an existing Credit, is deemed to be a new Credit reflecting the amount of the top-up or auto-top-up.

5.8 Subject to Clauses 11 and 12, Credit is not transferrable to third parties, nor may it be used for the benefit of third parties by the Customer.

5.9 Except as expressly stated in this Agreement, no refunds are available in respect of any Credit or other charges.

6   The Service

Account Code

6.1 Once the Customer's request to use the Services is accepted by PCA, the Customer will receive a unique Account Code.

Customer's Confirmation of Accuracy Of Registration Details

6.2 The Customer confirms that all information it provides will be accurate and complete. If the information becomes inaccurate, incomplete or misleading any time thereafter, the Customer will promptly update its details in the Account Section. The Customer will promptly notify PCA in writing if it ceases to use, or changes, its Authorised Reseller.

6.3 The Customer acknowledges that any failure to comply with Clause 6.2 may result in PCA exercising its rights pursuant to Clause 5.4.

Customer's Own Use Only & Audits

6.4 The Service and Software Materials are provided solely for the Customer's own use. The Customer may not resell or attempt to resell the Service Output, or market or otherwise distribute the Software Materials or Service without PCA's express written permission.

6.5 PCA reserves the right to check the URL of the Customer's website which is using the Service to assist it in determining whether the Service is being used in accordance with this Agreement.

6.6 The Customer agrees to provide reasonable access to its premises, facilities and personnel (where specifically requested by the Licensors) and reasonable information to allow PCA or the Licensors to verify that the Customer is using the Software Materials and

Service in accordance with this Agreement and the Licensors' requirements. The Customer expressly consents to PCA disclosing information about the Customer's identity and its use of the Software Materials and Service to the Licensors (and in the case of any data services using data from Ordnance Survey, the disclosure requirement would extend to Royal Mail Group plc), and for the respective Licensors to contact the Customer in relation to the Customer's use of the Licensor's licensed data, software and other materials.

Account & Technical Changes By PCA

6.7 PCA (acting reasonably) reserves the right to vary the technical specifications of the Software and Service at any time, or change Account Codes, Licence Keys or Passwords, giving the Customer prior reasonable notice where such changes will materially adversely affect the Customer.

Support Arrangements

6.8 PCA provides enhanced support services via the Premium Service. If the Customer elects the Premium Service, it will pay the respective SLA Charge and the additional provisions in the SLA will apply.

6.9 PCA will not be liable for any support nor Service availability issues unless the Customer elects the Premium Service and pays the SLA Charge.

6.10 If the Customer does not have a valid Subscription Period (for which it has paid the respective Subscription Fees) which is at least equal to the period covered by the Premium Service, no refund will be provided in respect of the Premium Service.

7 Password Security and Responsibility for Unauthorised Use

7.1 The Customer shall maintain the confidentiality and security of its Passwords and any Account Code and Licence Keys disclosed to it.

7.2 The Customer is responsible for all transactions undertaken using the Account Code, Licence Key or Password, subject to the provisions of this Clause 7.2 in respect of unauthorised transactions. Any unauthorised transactions must be promptly reported to PCA and, unless such transactions have occurred due to the wrongful acts of PCA, the Customer accepts full responsibility and liability for such transactions.

8 Liability

Caveat To Limitations And Exclusions Of Liability

8.1 **Nothing in this Agreement shall limit or exclude PCA's liability for death; personal injury; fraud; fraudulent misrepresentation; and any liability which may not be lawfully limited or excluded.**

8.2 **Subject to Clauses 5.4, 8.1 and 8.10, neither party shall be liable for:**

a) **consequential, special, incidental or indirect losses, or**

b) **the following losses whether direct, consequential, special, incidental or indirect losses: loss of profits; loss of revenue; loss of turnover; loss of sales; economic loss; loss of business or contracts; loss of anticipated savings or goodwill; losses relating to brand; loss of software or data; stock exchange related losses;**

in each case whether such losses arise under contract, statute, tort (including negligence), or otherwise.

Liability Limits

8.3 Where any software, data, documents or service are provided on an 'as is' basis, or where PCA has expressly excluded its liability for the respective issue then, subject to Clause 8.1, PCA accepts no liability in such circumstances.

8.4 If the Customer elects the Premium Service, PCA's liability for support or Service availability issues will be as stated in the SLA. If the Premium Service is not purchased, PCA has no liability for Service availability issues.

8.5 Subject to Clauses 8.1 to 8.4 (inclusive), 8.6, 8.7 and 8.10, the aggregate liability of PCA in connection with this Agreement (whether arising under contract, statute, tort (including negligence), or otherwise) shall be limited:

a) in respect of all issues with the Software Materials, Services, Premium Service and/or Service Output occurring within a particular Year, to a total aggregate of the total amounts paid by the Customer to PCA in that Year (the **"Liability Cap"**). (Any amount spent from a Credit (whether in the same or a different Year) will not constitute an amount paid for the purposes of this Clause); or

b) in respect of all other issues arising under or in connection with this Agreement to an aggregate amount of £20,000 (the **"Additional Liability Cap"**).

8.6 If the Customer has not paid any amounts invoiced in a particular Year, but suffers an issue in that Year for which PCA is liable, then for the purposes of Clause 8.5, the 'Liability Cap' for the respective Year will equate to the greater of (i) £20,000 and (ii) the total amount paid by the Customer to PCA in the immediately preceding Year.

8.7 Subject to Clauses 8.1 and 8.10, the aggregate liability of each party for all claims arising under or in connection with this Agreement (whether arising under contract, statute, tort (including negligence), or otherwise) in respect of:

a) breach of its obligations in respect of the DPA under Clause 4.8;

b) breach of its obligations in respect of confidentiality under Clause 4.10; and

c) the intellectual property rights warranty and indemnity under Clauses 4.5 and 4.6;

is limited to £1 (one) million pounds in aggregate.

Limitation Period

8.8 PCA shall not be liable for any claim which is not brought against PCA within 12 months following the earlier of: (1) when the event giving rise to the cause of action arose; and (2) termination of the Agreement.

Exhaustion Of Liability Limits

8.9 Either party may terminate the Agreement for convenience if the Liability Cap or Additional Liability Cap becomes exhausted as a result of the Customer successfully bringing claims against PCA. Such termination will not give rise to any additional remedies or refund rights.

Customer's Additional Obligations for Wrongful Actions

8.10 **The Customer will be liable for all amounts to:**

a) **PCA and the Licensors in respect of any claim made against, or loss incurred or suffered by, PCA and/or the Licensors where this is wholly or partly attributable directly or indirectly to the Customer breaching any of the provisions of the Third Party Contracts; and**

b) **PCA in respect of any breaches of PCA's or its third parties' intellectual property rights.**

9 Duration, Termination and Suspension

Duration

9.1 The Agreement will commence on the Effective Date and continue for 1 (one) year ("Initial Term"). At the expiration of the Initial Term the Agreement will automatically renew for successive 1 (one) year periods (each a "Renewal Term" and collectively with Initial Term, "Term") unless earlier terminated pursuant to the provisions of this Agreement or a party provides the other party with notice that it does not want to renew at least 90 (ninety) days prior to the expiration of the then current term.

9.2 The licences to use the respective Services and/or any Software Materials granted pursuant to this Agreement will be valid until the earliest of:

a) expiry of the Subscription Period;

b) (where use is granted subject to Credit), such Credit expires through time or use;

c) expiry of the period specified in the Account Section or invoice (or otherwise agreed between the parties in writing); or

d) the termination of the Agreement.

Temporary Suspension Of Service

9.3 PCA (acting reasonably) may temporarily suspend the Service and/or making available any of the Software Materials for emergency or urgent operational reasons, but where reasonably practicable, it will give the Customer advance warning of such suspension.

Suspension or Termination by PCA

9.4 If PCA reasonably believes that the Customer's abnormal use of the Service or Software Materials is impairing the Service's performance or resulting in abnormal Credit consumption, PCA may suspend the Customer's access until the cause of the impairment has been resolved.

9.5 Without prejudice to Clause 5.4, PCA may suspend or terminate this Agreement immediately upon notice if the Customer fails to comply with any material provision of this Agreement. Termination of the Agreement in such circumstances will not entitle the Customer to any refund.

9.6 Any suspension of this Agreement pursuant to Clauses 9.4 or 9.5 will not affect the Customer's liability to continue paying the relevant charges for the suspended Service or Premium Service, nor will it extend the respective Subscription Period in respect of any Credit.

9.7 PCA may terminate the Agreement (in whole or in part, including for the avoidance of doubt, a part of the Service such as Addressing and Geocoding for example) immediately upon notice to the Customer at any time, if:

a) PCA cannot provide the Service or Software Materials (in whole or in part) due to acts or omissions of the Licensors;

b) any of the Third Party Contracts terminate for any reason or the Licensors vary their terms and conditions, requirements, or pricing in a manner which adversely affects PCA or the Customer;

c) required by a Licensor owing to the use made of the Service, or relevant part, by the Customer, or legislation affecting the Licensor's ability to provide the relevant part of the Service;

d) a Licensor claims that the use of the Database or the Software Materials in the manner in which they are being used by PCA or the Customer is not permitted; or

e) the Customer brings PCA or the Licensors into disrepute.

9.8 Without prejudice to Clauses 9.7 and 9.10, either party may terminate the Agreement for convenience on at least 90 days' notice to the other party at any time, with such termination to take effect on the next anniversary of the Agreement.

9.9 The respective Third Party EULA will automatically terminate with immediate effect if the corresponding Third Party Licence is terminated, and consequently the Service (including the Premium Service if applicable) which was subject to such Third Party Contracts will also automatically terminate immediately, save where specified otherwise in Appendices A-H, as applicable,. PCA will provide prompt notice of such event to the Customer.

9.10 PCA may terminate the Agreement in whole or in part at any time upon written notice (such termination being effective on the date specified in the notice) where such termination is necessary for PCA to comply with the Third Party Licences. In such circumstances, where applicable, PCA shall provide a pro rata refund in accordance with Clause 9.15.

Termination By The Customer

9.11 The Customer may terminate the Agreement with immediate effect, if PCA is in material breach of this Agreement. However, where such breach is capable of remedy, the Customer must provide PCA with at least 30 days written notice requiring PCA to remedy the breach, and the Customer may only terminate the Agreement if PCA does not remedy the breach within this time period.

Termination By Either Party

9.12 Either party may terminate the Agreement immediately by notice to the other if:

a) the other party is unable to pay its debts as they fall due or otherwise becomes insolvent, or a similar analogous event occurs;

b) the other party unreasonably discloses any confidential information of the terminating party (or of the Licensor).

SLA Consequences In Respect Of Suspensions Or Termination

9.13 Suspension or terminations which are attributable to the wrongful actions of the Customer and Force Majeure Events will not constitute downtime in calculating the Uptime Service Level in respect of the SLA, and will not give rise to any Service Credits, payments or other remedies to the Customer.

Consequences Of Termination

9.14 Termination of the Agreement is without prejudice to both parties' accrued rights and remedies. The provisions of this Agreement which are expressed to, or intended to, survive termination shall continue in full force and effect. Within 7 days after the termination of this Agreement, or termination of PCA's obligation to make available any part of the Software Materials or Service for whatever reason, Customer agrees to destroy or return the Software Materials and all of PCA's software which uses Ordnance Survey Data (including all copies) in respect of which this Agreement has been terminated (in whole or in part), in the reasonable manner directed by PCA, and where requested, certify in writing to PCA that this has been completed.

Refunds On Termination

9.15 Where the Agreement is terminated:

a) by PCA for convenience (other than (1) due to expiry of the Agreement through effluxion of time; (2) expiration or exhaustion of the Subscription Fees or SLA Charges or (3) directly or indirectly as a result of the wrongful acts or omissions of the Customer); or

b) by the Customer pursuant to Clauses 9.11 or 9.12;

the Customer will be entitled to a pro-rata refund of any unused Credits, Licence Fees and SLA Charge at the date of termination of the Agreement, to reflect the extent to which it is no longer able to use the respective Service for the unexpired Subscription Period or Premium Service for the unexpired Support Period, with such payment being calculated and determined by PCA acting reasonably. The Customer agrees that this is its sole and exclusive financial remedy in such circumstances.

10 Force Majeure

10.1 If either party is prevented from complying with its obligations due to any event beyond its reasonable control (a **"Force Majeure Event"**) (including any issues arising from the data, software or documentation supplied by the Licensors), it shall not be in breach of this Agreement nor liable to the other party for any failure or delay in performance of its obligations due to such Force Majeure Event.

10.2 If a Force Majeure Event continues for a period of more than 14 consecutive days, then either Party may terminate this Agreement. Both parties acknowledge that there will be no compensation due from either party to the other for termination in such circumstances (other than any arising under Clause 9.15).

11 Assignment And Subcontracting

11.1 The Customer may not assign or subcontract its obligations and/or this Agreement (whether in whole or in part) without PCA's prior

written consent (such consent not to be unreasonably withheld).

11.2 PCA may freely subcontract and/or assign any or all of its obligations under this Agreement.

12 3rd Parties & Contracts (Rights of Third Parties) Act 1999

12.1 Where the Customer is permitted pursuant to Clause 12.3, to allow use of the Software Materials, Services and Premium Service by its group companies or other related organisations, the Customer will remain responsible for all payment obligations and for ensuring compliance by such third parties with the Agreement. The Customer will ensure that such third parties and the Customer have joint and several liability to PCA and the Licensors in respect of the Agreement.

12.2 The Customer is authorised, as agent, on behalf of its group companies and its related third party organisations to accept any changes made to the Agreement by PCA and to the Third Party Contracts by the Licensors.

12.3 The Customer's third parties referred to in a schedule of authorised third parties issued by PCA are authorised to use the Software Materials and Service (and where applicable, the Premium Service) in accordance with the provisions of this Agreement. Each third party must pay additional charges to use the Services and Premium Service via the Customer. PCA and the Customer may update the schedule of authorised third parties from time to time by written agreement (including by email).

12.4 The Licensors and the Customer's third parties listed in the schedule referred to in Clause 12.3 shall have the right to enforce the provisions of this Agreement which are for their benefit under the Contracts (Rights of Third Parties) Act 1999. No other third party shall have the right to enforce any provision of this Agreement.

12.5 The parties may, notwithstanding section 2(1) of the Contracts (Rights of Third Parties) Act 1999, vary or terminate this Agreement (in whole or in part) without requiring the consent of the Licensors or any other third parties (whether referred to in Clause 12.4 or otherwise).

13 Variations

13.1 No purported alteration or variation of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each of the parties to this Agreement.

14 Severability

14.1 If at any time any part of this Agreement becomes void or unenforceable under any applicable law it shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue unaffected.

15 Waiver

15.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended, unless agreed otherwise by both Parties in writing; however, where a right must be exercised within a specified time period, that right will be waived if it is not exercised within such time period. If any provision is waived, that waiver shall operate for that instance only and not future instances, unless agreed otherwise by both Parties in writing.

16 Entire Agreement

16.1 This Agreement, together with the documents referred to in it, contains the entire agreement between the parties with respect to the subject matter in it and as of the Effective Date supersedes all prior oral and written agreements, arrangements, communications and representations.

16.2 Except as expressly stated in this Agreement, all implied terms, conditions and warranties (whether implied by statute, common law or otherwise are excluded to the maximum extent permitted by law.

16.3 Nothing in this Agreement limits or excludes either party's liability for fraudulent misrepresentations.

17 Law And Jurisdiction

17.1 This Agreement and any dispute or claim arising in connection with it shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English Courts.

18 Notices & Privacy Policy

18.1 Any notices to PCA in relation to this Agreement, must be sent in writing to The Legal Department, Postcode Anywhere (Europe) Ltd, Waterside, Basin Road, Worcester WR5 3DA or by e-mail to legals@postcodeanywhere.co.uk. Notices will only be validly served pursuant to this Agreement by the Customer, where the notice has been sent by tracked delivery or where receipt of the notice is acknowledged in writing by PCA.

18.2 The Customer agrees that PCA and the Licensors may use the information gained pursuant to this Agreement in accordance with PCA's Privacy Policy (available from the PCA Website).