

FREE TRIALS

Terms and Conditions

FREE TRIALS – TERMS AND CONDITIONS

Xpedite Systems Inc.(Malaysia) Sdn Bhd delivers telephone and web conferencing services, as well as messaging services. It trades under the name of Premiere Global Services (“PGS”).

1. DEFINITIONS

Meanings shall apply to capitalised terms used in this Agreement as specified in this provision, unless the context otherwise requires:

“**Authority**” means any governmental or semi governmental, statutory or judicial body, instrumentality, department, commission, authority, tribunal, agency or other similar entity. “Authorities” has a corresponding meaning.

“**Charges**” means all charges incurred during the Free Trial payable by the Customer in accordance with this Agreement.

“**Claim**” means any claim or cause of action in contract, tort or under statute or otherwise.

“**Confidential Information**” in relation to each separately named party means all information relating to each other separately named party, its business and the Services including, but not limited to:

- (a) Personal Information;
- (b) information contained in this Agreement or which is supplied by the one party to the other;
- (c) information stipulated to be confidential or would reasonably be inferred to be confidential;
- (d) trade secrets, know-how, techniques, business and marketing plans, projections, surveys, financial records, arrangements and agreements with third parties;
- (e) customer information, information proprietary to customers, formulae, customer lists;
- (f) designs, plans, models, and concepts not reduced to material form;
- (g) all notes and other records (whether or not in material form) relating to the Confidential Information; and
- (h) the fact that the parties have entered and/or will enter into any contemplated business transactions between them, including the terms of this Agreement.

“**Free Trial**” denotes a limited period of time where the Service shall be made available at no cost to the Customer, subject to these terms and conditions.

“**Free Trial End Date**” refers to the date that the Free Trial ends.

“**Free Trial Registration Form**” refers to the form available on PGS website which must be completed in order for the Customer to obtain a Free Trial of the Services.

“**Free Trial Start Date**” refers to the date that the Free Trial commences.

“**GST**” includes any value added tax, consumption tax, gross receipts tax or any other tax or charge or impost of a similar nature payable in respect of goods and/or services supplied, consumed or otherwise in connection with this Agreement.

“**Intellectual Property**” means any intellectual, industrial or commercial property, or right of a proprietary nature, including:

- (a) any patent, trade mark, service mark or design;
- (b) any copyright or work of authorship;
- (c) any business, trade or commercial name or designation, brand name, internet website or domain name, logo, symbol, source indication or origin appellation;
- (d) any Confidential Information;
- (e) any other industrial or commercial right derived from intellectual knowledge or activity of any industrial, scientific, literary or artistic nature or description, whether relating to any manufactured or natural service or otherwise;
- (f) any legal action relating to any previous item; and
- (g) any licence or other right to use or grant the user, or to become the registered proprietor or user of, any previous item, whether registered or unregistered or recorded or unrecorded, stored or incorporated in any medium of any nature or description.

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“**Law**” means the common law, where applicable, and requirements of all statutes, rules, ordinances, codes, industry and professional standards, regulations, proclamations and by laws or consents issued by an Authority, present and future.

“**Liability**” means charges, claims, payments, actions, judgments, damages, losses, costs, fees, expenses, liabilities and obligations.

“**Personal Information**” has the same meaning given to it by the Law on privacy.

“**Services**” means those services to be provided by the PGS Agreement as specified in this Agreement.

2. AGREEMENT

- a) By submitting a Free Trial Registration Form and utilising a Free Trial the Customer will be deemed to have agreed to be bound by the following terms and conditions for the Free Trial.
- b) Should the Customer use the Service following the Free Trial End Date, the Customer acknowledges and agrees to be bound by the terms and conditions which have been made available to the Customer and which the Customer has acknowledged as part of the registration process, and that the Customer will be billed for the usage of the Service pursuant to the terms and conditions.
- c) The Customer acknowledges and agrees that PGS may amend any of these terms and conditions at any time. Such amendments may be notified either on PGS's website <http://www.premiereglobal.com.my>, by email or post.

3. LIMITED LICENCE TO USE THE FREE TRIAL

Upon the processing of the Customer's Free Trial Registration Form, PGS may grant to the Customer a non-exclusive, non-transferable and non-sub-licensable licence to use the Service for a maximum period of 14 days.

4. USE OF SERVICES

- 1) The Customer shall be solely responsible for the use, supervision, management and control of the Services. The Customer shall ensure that the Services are:
 - a) protected at all times from misuse, interference, damage, destruction or any form of unauthorised use; and
 - b) used in compliance with this Agreement.
- 2) Without limitation to any other provision, the Customer must not (nor cause or permit a third party to):
 - a) use the Services or related documentation in combination by any means and in any form with other goods and services not contemplated by this Agreement or approved by PGS;
 - b) use the Services or related documentation in a manner or for a purpose which is:
 - i) reasonably contemplated or not authorised by PGS; or
 - ii) improper, immoral or fraudulent;
 - iii) infringes any person's Intellectual Property Rights; or
 - iv) restricts or interferes with the provision of the Services by PGS to any other customers or users.
 - c) modify or alter the Services or related documentation without the prior written consent of PGS;
 - d) reverse assemble or reverse compile the whole or any part of the Services; or
 - e) enter into any transaction relating to the Services or related documentation with a party other than PGS, without PGS's prior written consent.
- 3) In relation to content:
 - i) the Customer must not, and must not allow any other person to use the Services to send or make available information or data which:
 - a) is indecent, obscene, pornographic, offensive, racist, menacing, illegal or confidential;
 - b) defames, harasses or abuses another person or entity; or
 - c) is misleading and/or deceptive as to the Customer's identity.
 - ii) The Customer warrants and covenants to ensure that any information and data provided, including but not limited to Personal Information, owned or used by the Customer in association

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with the Services is:

- a) accurate and has been collected and used in compliance with all relevant Laws on privacy; and
 - b) used with the consent and in compliance with the directions of any third party that holds copyright or any other Intellectual Property Rights in any of that information and date, as may be applicable.
- 4) PGS may at any time refuse to forward any information or data that does not comply with this clause, and shall not be liable for so doing.

5. SCOPE AND TERM OF FREE TRIAL

- a) PGS will determine the duration of the Free Trial at its discretion, up to a maximum period of 14 days. Following completion of the registration process, PGS will notify the Customer of the Free Trial Start Date and Free Trial End Date.
- b) Free Trial shall be made available only for the Services specified by the Free Trial Registration Form and may be limited to either the web or audio component of the Service.
- c) Free Trial includes access to the Service using local access numbers only. Any usage of International Toll Free (ITF) or National Toll Free (NTF) numbers during the Service Free Trial will be charged back to the Customer in accordance with clause 6.

6. CHARGES

- a) Any Service usage after the Free Trial End Date or access via an ITF or an NTF is deemed billable by PGS and the Customer agree to pay PGS any charges incurred from the use of these numbers on receipt of and in accordance with the payment terms set out in any tax invoice.
- b) All Charges are billed in arrears and will be based on actual usage of the Service. The Customer acknowledges that the Charges will vary according to the usage of the Service.
- c) PGS reserves the right to amend the Charges and any applicable rates.
- d) The Free Trial Registration Form will require the Customer to provide a credit card number and related information. By providing such commercial credit information to PGS, the Customer authorises PGS to submit the Charges to that credit card number for the use of the Service. If the Charges submitted to the Customer's credit card number are rejected at any time, PGS reserves the right to charge the Customer a processing fee.
- e) The Customer shall pay interest on any amount of the Charges due and not paid by the Customer after 14 days from the date of any invoice at the rate of 1.5% per month. Such interest will be calculated and will accrue daily from the due date for payment until the date PGS actually receives payment.
- f) The Charges do not include any amount on account of any tax. If any tax is payable by the Customer in relation to, or on any supply under or in connection with these terms and conditions, PGS will increase the Charges by, or charge the Customer an additional amount equal to the amount of the tax. In this clause 6.6, 'tax' means any tax, including any goods and services tax, value added tax, withholding tax, charge, rate, duty or impost imposed by any authority, but does not include any income or capital gains tax.
- g) The Customer must make full payment of all Charges notwithstanding any dispute as to the amount stated on any invoice. The Customer shall notify PGS in writing of any dispute with respect to the whole or any portion of the amount claimed in an invoice submitted by PGS. Such notice must be given within 14 days of receipt of the relevant invoice. If it is determined by PGS, acting reasonably, that some or all of the amount in dispute ought not to have been paid by the Customer, PGS shall credit that amount towards the payment of the next invoice issued by PGS, or where there is to be no further invoice issued by PGS, PGS shall reimburse to the Customer the relevant amount.

7. COMPLIANCE WITH LAW

- a) The Customer shall only use the Services in compliance with all relevant Laws, and must not use the

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Services to breach any relevant Laws.

- b) Without limitation to any other rights and remedies available to PGS, PGS reserves the right to suspend the provision of Services, terminate this Agreement or take any such other appropriate action against the Customer in the event that PGS becomes aware that the Customer has used or permitted the use of the Services in contravention of any Law.

8. SUSPENSION OF SERVICES

- a) PGS may at any time - without notice to the Customer - suspend all or any part of the Services to:
 - (a) rectify unforeseen defects or failures with the Services, which in PGS opinion acting reasonably require urgent or immediate attention;
 - (b) comply with any Law or direction of any Authority;
- b) PGS may at any time upon providing the Customer with reasonable notice suspend all or any part of the Services to carry upgrades, maintenance or repair the Services.

9. INTELLECTUAL PROPERTY

- a) The parties acknowledge that PGS owns all Intellectual Property Rights subsisting in the Services and any documentation supplied by PGS in connection with the Services. Nothing in this Agreement transfers ownership of any of the Intellectual Property Rights subsisting in the Services or related documentation.
- b) The Customer must not exercise any of the rights of PGS as owner of the Intellectual Property Rights subsisting in the Services and related documentation except as expressly permitted by the terms of this Agreement.
- c) Unless otherwise agreed by the parties in writing, PGS will own all Intellectual Property Rights in any modification, adaptation or development of the Services carried out by the Customer notwithstanding that any such modification, adaptation or development by the Customer may be in contravention of this Agreement, and the Customer will do all such things that are necessary to confer those Intellectual Property Rights to PGS.

10. CONFIDENTIAL INFORMATION

- a) Any party, who receives Confidential Information during the term, and after termination or expiration of this Agreement, shall keep that information confidential and shall:
 - (a) not publish or disclose the Confidential Information to any person except as permitted under this Agreement or with the prior written consent of the other party;
 - (b) not use the Confidential Information for any purpose, except where strictly necessary for the performance of its liability under this Agreement; and
 - (c) comply with all applicable privacy and consumer laws.
- b) Both parties acknowledge that the contents of this Agreement are strictly confidential.
 - (a) The receiving party may disclose Confidential Information on a confidential basis to any Customer, officer or employee of that party to the extent reasonably necessary or desirable for the purposes of this Agreement during the term of this Agreement.
 - (b) The receiving party shall procure that any Customer, officer or employee of the receiving party shall be informed of, and comply with, the confidentiality liability of the receiving party under this Agreement.
- c) This provision shall not apply to any Confidential Information which:
 - (a) at the date of this Agreement is in or comes into the public domain, except through default under this Agreement by the receiving party or any Customer of the receiving party;
 - (b) can be shown by the receiving party to have been known by the receiving party before disclosure by the disclosing party to the receiving party;
 - (c) subsequently comes lawfully into the possession of the receiving party from a third party;
 - (d) is required by compulsion of law to be disclosed to a third party; or
 - (e) is disclosed to either party's legal advisers in the course of obtaining legal advice.

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11. SUB-CONTRACTORS

PGS may sub-contract the provision of any and part of the Services without the prior approval of the Customer.

12. GST

All amounts payable under this Agreement or any other agreement or document entered into between the parties are GST exclusive amounts. The Customer must in addition to the stated amounts pay GST on such amounts.

13. WARRANTIES

- a) The Customer represents and warrants that:
- (i) it has the power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by it and to carry on its business as contemplated in this Agreement;
 - (ii) it has taken all necessary steps, including any corporate action necessary in the event that it is a corporation, to authorise its entry into and performance of all of its obligations under this Agreement and to carry out the transactions contemplated by this Agreement;
 - (iii) the execution and performance by it of this Agreement and each transaction contemplated by this Agreement does not and will not in any respect violate the provisions of:
 - (iv) any statute, decree, rule or regulation or any determination, order or award of any court or any governmental, judicial or public body or authority binding on it;
 - (v) its constitution or other constituent documents;
 - (vi) any other document or agreement which is binding on it or its assets;
 - (vii) it is not knowingly in default or difficulty under any deed, agreement, financial commitment or other document or obligation which is reasonably likely to adversely affect the ability of the party to comply with its obligations under this Agreement;
 - (viii) so far as it is aware, it is in full and ongoing compliance with all companies and securities legislation and regulations and all other legislation and regulations to which the party may at any time and from time to time be subject;
 - (ix) no Insolvency Event has occurred and is continuing in relation to it; and
 - (x) no litigation or administrative or other proceedings before or of any court or governmental authority or agency or other tribunal have, to its knowledge, been initiated or threatened against it or any of its assets which would or might have a materially adverse effect upon its business, assets or financial condition.
- b) The Customer acknowledges that PGS has entered into this Agreement in reliance upon the warranties in this clause. For the avoidance of doubt, a breach of any of the warranties set out in this clause shall be a material breach of this Agreement.

14. INDEMNITIES AND RELEASES

- a) The Customer indemnifies and must keep indemnified PGS from and against all Claims and Liabilities sustained, recovered or made against PGS or PGS's servants, contractors or agents in connection with:
- (a) any breach of this Agreement by the Customer;
 - (b) caused or contributed to by an act, omission, negligence or default of the Customer, including but not limited to any damage to person or property;
 - (c) any Liability in consequence of or resulting directly or indirectly out of the supply, performance or the use of the Services by the Customer, to any third party.
- b) The Customer agrees to use the Services at its own risk. The Customer hereby releases to the fullest extent permitted by law PGS and its contractors, servants and agents from all Claims and demands of every nature resulting from or in relation to:
- (a) any statement, representation, warranty, promise, undertaking or agreement in connection with the provision of the Services unless the same is specified in this Agreement;
 - (b) any Liability by the Customer in consequence of or resulting directly or indirectly out of the supply, performance or the use of the Services by any third party or out of any breach, default,

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- fault or negligence of PGS in or in connection with this Agreement or otherwise except to the extent the Liability arises under an express obligation or a warranty in this Agreement;
- (c) any loss of or interruption to data or computer time, loss due to any inaccuracy, alteration or erroneous transmission of data, unauthorised access to data processed or transmitted by, to or through the Services, software errors or the infringement of any intellectual property rights of the Customer or any other person; or
 - (d) suspension or termination of the Services in accordance with the terms of this Agreement or as otherwise directed by any Authority.

15. LIMITATION OF LIABILITY

- a) The Customer acknowledges that it has made its own assessment as to the condition, quality, value, suitability and fitness for the purpose of the Services and has placed no reliance in that assessment on any statement, conduct or representation by PGS in relation to those matters. To the fullest extent permitted by law, all conditions, representations or terms implied or imposed by the Law as to fitness for purpose and quality are excluded and the Customer waives any rights it may have in respect of them.
- b) The terms and conditions of this Agreement which exclude or limit the liability of PGS shall apply only to the extent permitted by law. This Agreement shall be read and construed subject to any such statutory provisions. If any such statutory provisions apply, then to the extent to which PGS is entitled to do so, the liability under those statutory provisions shall be limited at the option of PGS to:
- c) in the case of the supply of goods:
 - i. the replacement of the goods or the supply of equivalent goods; or
 - ii. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - iii. the payment of the cost of having the goods repaired; or
 - iv. the repair of the goods; or
 - v. the refunding to the Customer of the price or fees paid in respect of the goods giving rise to the liability; and
- d) in the case of services:
 - i. the supplying of the services again; or
 - ii. the payment of the cost of having the services performed again; or
 - iii. the refunding to the Customer of any sums paid in respect of such services.

16. FORCE MAJEURE

PGS shall not be liable to the Customer for any Liability incurred as a direct result of failing or being prevented, hindered or delayed in the performance of its liability under this Agreement by reason of a Force Majeure Event.

17. TERMINATION AND WITHDRAWAL FROM FREE TRIAL

- a) Without limiting its rights at law, PGS may terminate the Free Trial and its obligations under these terms and conditions immediately by notice in the event of any conduct by the Customer which PGS, in its sole discretion, considers to be unacceptable, or in the event of any breach by the Customer of these terms and conditions.
- b) Notwithstanding termination of the Free Trial by either party, clauses 6, 7, 9, 10, 13, 14, 15 will survive.

18. PERSONAL INFORMATION

- a) The Customer acknowledges that in providing the Free Trial, PGS may need to collect and store certain Customer Data.
- b) The Customer is responsible for ensuring that all Customer Data provided to PGS is free from viruses and software defects.
- c) The Customer must comply with all physical, electronic and data security procedures in connection with the use of the Free Trial as notified from time to time by PGS. The Customer must also comply with all instructions relating to security and use of all password access and user codes provided by PGS and

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must notify PGS immediately of any actual or suspected breach of security procedures or any fraudulent or other misuse of any passwords and user codes.

- d) The Customer warrants that the Customer Data does not (i) infringe any third party's intellectual property rights; or (ii) contain any defamatory or offensive information or material. The Customer further warrant that any Personal Information provided to PGS is accurate, complete and up to date.
- e) The Customer acknowledges that certain Customer Data may remain stored as a historical document on PGS's servers until the Customer deletes the data.
- f) PGS is entitled to use the EUSI for the purposes of planning, provisioning and billing of the services and equipment provided by it, managing bad debt and preventing fraud, facilitating interconnection and interoperability between service providers or providing assistance to law enforcement or government agencies.
- g) PGS undertakes not to use the EUSI for the development or marketing of other goods or services or for any other purpose aside from that stated in clause 18.6, without first obtaining the Customer's consent.
- h) PGS will not provide EUSI to affiliates or any third parties without first obtaining the Customer's consent.

19. ASSIGNMENT

- a) The Customer shall not transfer any right or liability under this Agreement without the prior consent of PGS, except where this Agreement provides otherwise.
- b) PGS may without notice transfer any right or liability under this Agreement. Where required by PGS to affect the transfer of any such rights or liabilities, the Customer will sign and enter into an agreement on substantially similar terms and conditions to this Agreement with the party to which PGS transfers its rights and liabilities.

20. CUSTOMER AUTHORITY

The Customer represents and warrants to PGS that the following are true and correct at the date of this Agreement and will remain true and correct for the term of this Agreement:

- a) the Customer and the party or individual(s) entering into this Agreement on behalf of the Customer are authorised to enter into this Agreement and bind the Customer;
- b) the execution and delivery of this Agreement has been properly authorised including where necessary by all required corporate action of the Customer (where the Customer is a corporate entity); and
- c) the Customer has full corporate power and lawful authority to execute and deliver this Agreement and to perform or cause to be performed its obligations under this Agreement.

21. NOTICES

- a) Any notice to or by a party under this Agreement shall be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender, including any director, secretary or person notified in that capacity by that corporate party, or under the seal of or any power of attorney conferred by the sender.
- b) Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient and shall be effective for the purposes of this Agreement upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report.

22. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the appropriate foreign, federal and local governments.

23. GENERAL PROVISION

- a) PGS may make amendments to this Agreement from time to time if:
 - (a) the amendments will benefit or will not permanently and adversely affect the Customer;
 - (b) the Customer agrees to the amendments; or

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- (c) PGS reasonably expect the amendments to permanently and adversely affect the Customer, and PGS has given the Customer reasonable notice of the amendments and offering the Customer the right to terminate the Services (without fault) within 30 days of the notice and the Customer does not terminate the Services.
- b) This Agreement:
 - (a) expresses and incorporates the entire agreement between the parties in relation to its subject-matter, and all the terms of that agreement; and
 - (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject-matter or any term of that agreement.
- c) Each party shall execute any document and perform any action necessary to give full effect to this Agreement, whether prior or subsequent to performance of this Agreement.
- d) Any failure or delay by any party to exercise any right under this Agreement shall not operate as a waiver and the single or partial exercise of any right by that party shall not preclude any other or further exercise of that or any other right by that party.
- e) The rights of a party under this Agreement are cumulative and not exclusive of any rights provided by law.
- f) Any provision of this Agreement which is invalid in any jurisdiction shall be invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

24. USER ACCOUNT AND USER ACCESS SECURITY POLICY

- a) PGS reserves the right to cancel or suspend user accounts or passcodes access where there has been no activity on the account for a period of 12 consecutive months. The User Account will remain open, and the client can contact the local PGS Client Services to re-issue new accounts passcodes and passwords.
- b) PGS Internal IT and Network Security policy requires customers to use 'strong' passcodes and passwords. A strong passcode / password is one that is:
 - a) numeric: six-ten numeric digit passcode, consisting of none consecutive or the same numbers (i.e.: 123456; 888888; 654321)
 - b) alpha / numeric: six-ten alpha/numeric characters; consisting of none consecutive characters or familiar name (i.e.: Sydney office; ABC123)
- c) PGS will periodically sweep its database to identify and change 'soft' passcodes to 'strong' passcodes/passwords. PGS may communicate to account owners advising them of this action undertaken to mitigate risk of unlawful usage of user accounts.