



Terms of Service

Version: 23.08.2017

These Terms of Service are effective on and from Aug 23, 2017, and are subject to periodic revisions and updates.

YOUR USE OF SERVICES PROVIDED BY PGI, INCLUDING ANY BETA SERVICES AND/OR FREE SERVICES, (THE "SERVICES") IS AT ALL TIMES CONDITIONED UPON YOUR AGREEMENT TO THESE TERMS OF SERVICE, WHICH ARE UPDATED BY PGI FROM TIME TO TIME.

1. Definitions

"Agreement" means these terms and conditions, the PGI privacy policy which is located at <http://nz.pgi.com/privacy-policy/> or any successor website thereto and the Customer Service Agreement/Particular Agreement conditions.

"Minimum Commitment" shall mean any minimum commitment of time and usage for use of the Services by You during the Term of this Agreement.

"Named User Licences" For the avoidance of doubt, Named User licenses cannot be shared among multiple individuals and separate Named User licenses must be purchased for each individual. Named Users may only include up to the total number of Maximum Meeting Participants in any single conference. For the purposes of this provision and PGI provided services, a "Named User" is an individual designated and identified by the Customer as an organizer/administrator who is authorized to schedule conferences using PGI provided services and "Maximum Meeting Participants" means the maximum number of meeting participants, including the Named User, that may be in a conference using PGI provided services at the same time as designated by PGI. Only one conference using PGI provided services may occur at any given time (i.e. no concurrent meetings) per licensed Named User. Named Users may not combine with other Named Users or otherwise expand a conference using PGI provided services scheduled by a Named User to allow more than the Maximum Meeting Participants. For each conference using PGI provided services scheduled by a Named User, the Named User must (1) initiate or schedule the conference; (2) host the conference by entering as a presenter; and (3) act as an organizer of the conference through use of their organizer identification. Customer is at all times responsible for monitoring and maintaining the use of the Named User licenses within the forgoing parameters, and the Customer shall indemnify PGI in the event a claim is brought or damages are incurred due to Customer's misuse of the Named User license. A Named User designation may not be transferred to another Customer employee except upon (a) termination of the Named User's employment with Customer, or (b) in all other instances, PGI's express prior written approval.

"Term" means the duration of the Agreement as more particularly set out in the Customer Service Agreement/ Particular Agreement Conditions and as may be further agreed in writing between the Parties from time to time.

"You", "Your" or "Customer" means a party acting strictly in the course of a business and with whom PGI has entered into this Agreement and You accept this Agreement on behalf of that business.

2. Services and Pricing.

(a) Sales to the Customer. The Customer specified on page one of this Agreement ("You", "Your") will pay Premiere Conferencing Limited (1178893) d/b/a Premiere Global Services ("PGI") for the Services at the "Customer Rates" and "Standard Rates" (as below defined) and according to these Terms of Service (the "Terms") and the Service Agreement signed by You (collectively referred to as this "Agreement"). For purposes of this Agreement, Customer Rates are those rates which have been specifically negotiated between You and PGI, and Standard Charges are for those Services which are not subject to Customer Rates as well as the rates included on PGI's standard price list which may be obtained from your sales representative and all applicable taxes, fees and surcharges. Charges for the use of Services are invoiced on a monthly basis. Software license fees shall be invoiced in advance and usage fees are invoiced in arrears. You acknowledge and agree that PGI reserves the right to change pricing or modify or discontinue any or all of the Services and any related dial-in numbers or other methods of access at any time for any reason, without notice. Without limiting the foregoing, PGI reserves the right, in its sole discretion, to change or institute new or additional charges and/or fees for access to or use of Services (including for ancillary services, new or additional features and/or "apps") at any time as provided in this Agreement.

(b) Increasing Named User Licences. For so long as PGI supports such selections, You may increase Your number of Named Users, at any time, by submitting Your selections on PGI Hub for Global Meet, Cloud Controls for iMeet or through PGI Client Support team. All selections for increases in Named Users by You will become an integral part of this Agreement, increase your Total Subscription Fee and be subject to automatic renewal. You will be billed for such increase in Named Users, beginning as of the date of selection. For the avoidance of doubt, all selections and resulting Named Users shall be subject to PGI's terms and conditions, including without limitation, these Terms of Service for use of the Licensed Services, You are fully responsible and liable for any and all selections made on PGI Hub or Cloud Controls, submission of selections



Terms of Service

Version: 23.08.2017

to PGi using PGi Hub or Cloud Controls will be deemed Your signature and authorization for such orders, and PGi has no obligation to investigate or confirm whether the party submitting an order via PGi Hub or Cloud Controls has authority to bind You.

- (c) Payment Terms, Taxes and Other Charges.** PGi's payment terms are 30 days from date of invoice. You must notify PGi of any charge disputed in good faith, with supporting documentation, within 30 days from the date of invoice, or You will be deemed to agree to such charges and no adjustments to charges or invoices will be made. You remain responsible to pay undisputed charges by the due date. Without limiting any other rights herein, PGi may suspend Services if PGi determines that Your previous payment record with PGi so warrants. You will pay any collection costs, including reasonable attorneys' fees, and other expenses incurred by PGi to collect any such sums due under this Agreement. You will pay, and PGi reserves the right to collect in arrears taxes (other than taxes based upon PGi's net income), by any government authority upon or with respect to the Services provided. If You claim an exemption from charges, You must provide PGi with a current, valid exemption certificate from the applicable government authority.
- (d) Term and Termination.** If You have elected Services for a fixed number of months or years (a "Subscription Term"), after the Initial Subscription Term, this Agreement shall be automatically renewed for successive one (1) year terms (each a "Renewal Term"; the Initial Term and Renewal Terms are collectively the "Term"), unless You notify PGi of Your desire to terminate the Agreement by written notice no less than sixty (60) days prior to the end of the Term. In compliance with the notice requirement in the Agreement, such notification must be sent by email to the Your PGi Account Manager and/ or to the PGi Customer Support. In the event that You wish to terminate before the end of the Term in course, You must provide PGi with notice in writing and You will remain responsible for any and all fees and charges payable under this Agreement through the end of the Term that will become due within 30 days from the effective date of termination.
- (e) Termination for Cause.** This Agreement may be terminated by the non-breaching party: (i) upon a breach by the other party of a provision of this Agreement and such breach is not cured within thirty (30) days after written notice, (ii) if any portion of an invoice not reasonably disputed in good faith as herein provided remains unpaid when due; or (iii) for breach, not subject to cure. All terminations by PGi shall be effective as of the date designated in the termination notice, and PGi shall not be liable to you or any third party should PGi exercise its right to discontinue Services, in whole or in part, or terminate this Agreement pursuant to this Section 1(d).
- (f) Termination for Convenience.** Either party may terminate this Agreement at the end of a Term by providing written notice to the other party of such termination at least thirty (30) days prior to the end of the Term in course.
- (g) Effect of Termination.** You are not entitled to any pro-rata refund of software license fees paid in advance. In the event that You terminate the Services (for any reason other than due to breach by PGi) You remain responsible for any and all fees due and incurred through the Termination Effective Date. In addition, (for any reason other than due to breach by PGi) where You have entered into a fixed monthly minimum commitment or a Subscription Term, You are responsible to pay the remaining fixed term of the monthly minimum commitment or subscription license fee immediately upon termination.

3. Proprietary Information, Customer Data and Privacy.

- (a) Proprietary Information.** Each party and its employees and agents shall at all times, during the term of this Agreement and thereafter, keep in trust and confidence all information relating to the other party that is of a confidential and proprietary nature ("Proprietary Information") and shall not use such Proprietary Information other than in the course of their duties under this Agreement, nor shall either party or its employees and agents disclose any of such Proprietary Information to any individual or entity without the other party's prior written consent, or if required by law. Each party acknowledges that any such Proprietary Information received by the other party shall be received as a fiduciary of the other party. Each party further agrees to immediately return to the other party or destroy all Proprietary Information in its possession, custody or control in whatever form held (including all copies of all written documents relating to that) upon termination of this Agreement or at any time, or from time to time, upon the request of the other party.
- (b) Customer Data.** PGi acknowledges Your rights, title, and/or interest in and to all electronic data or information uploaded, stored, recorded, retrieved or transmitted by You through its use of the Service ("Customer Data") and such Customer Data is deemed to be Your confidential information under this Agreement. PGi shall not access any Customer Data, except to respond to service or technical problems which may arise and/or at Your request, or otherwise compelled by law. If PGi is compelled by law to disclose Your Proprietary Information or Customer Data, PGi shall provide You with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Your cost, if You wish to contest the disclosure. Customer Data will be protected by PGi with at least the same protective precautions that PGi takes to protect its similar proprietary or confidential information and such Customer Data shall be segregated from any other service which PGi may provide to other customers. PGi is not obligated to provide a disaster recovery plan in respect to



Terms of Service

Version: 23.08.2017

Customer Data and PGI accepts no responsibility to You for the recovery of deleted Customer Data. PGI reserves the right to remove any Customer Data that constitutes Objectionable Material or violates any Service Provider rules regarding appropriate use, but is not obligated to do so.

- (c) Privacy.** Except as otherwise stated in this Agreement, the Services and any personal information received from You, is subject to PGI's Privacy Policy at <http://nz.pgi.com/privacy-policy/>. In order to provide the Services, You acknowledge that it is necessary for PGI to disclose such personal information received from You and/or Your Named Users to PGI's group companies in other countries (including the United States of America and other overseas locations where PGI shall maintain adequate level of protection), and You hereby consent to such transfer. Notwithstanding the above, the transfer of personal information shall not affect PGI's obligations at law, in relation to such personal information.

4. Intellectual Property.

- (a) The Services provided under this Agreement and all associated intellectual and proprietary rights are the sole property of PGI and/or its affiliates or suppliers, and except as required for use of the Services, You have no right or license to use any of the trademarks or trade names owned by, licensed to or associated with PGI (the "PGI Marks") during the term of this Agreement without express written consent from PGI. Despite prior approval, You will immediately cease and desist using the PGI Marks upon notice from PGI or upon termination of this Agreement for any reason. Any use by You of the PGI Marks other than as described above will constitute a breach of this Agreement for which, in addition to any other remedies available at law or in equity, PGI may terminate this Agreement.
- (b) You are being granted a limited, non-exclusive, non-transferable, non-sublicensable revocable right to use Services, and any software associated with the Services. All other rights are reserved by PGI, and You agree that it shall not remove, obscure or alter any proprietary rights notices (including copyright and trademark notices) which may be affixed to or contained within the Services.
- (c) You acknowledge and agree that all third-party information (such as data files, written text, computer software, music, audio files or other sounds, photographs, videos or other images) which You may have access to as part of, or through the use of the Services are the sole responsibility of the individual or entity from which such content originated ("Third-Party Content"). Such Third-Party Content may be protected by intellectual property rights that are owned by the sponsors or advertisers who provides such Third-Party Content to PGI (or by other individuals or entities on their behalf). You shall not modify, rent, lease, loan, sell, distribute or create derivative works based on this Third-Party Content (either in whole or in part). PGI reserves the right (but shall have no obligation) to pre-screen, review, flag, filter, modify, refuse or remove any or all Third-Party Content from the Services. PGI may also provide tools (but has no obligation) to filter out explicit content and You understand that, by using the Services, you may be exposed to Third-Party Content that You may find offensive, indecent or objectionable. You use the Services at Your own risk.

5. Indemnities

You shall indemnify and defend PGI, its officers, directors, employees, affiliates and its suppliers from any claims, losses, damages, penalties or costs (including without limitation reasonable attorneys' or expert witness fees) to the extent caused by or contributed to by Your (or any individual or entity accessing the Services through Your account): (i) use of the Services in contravention with the terms of this Agreement or in violation or alleged violation of any applicable laws or regulations with respect to the Services; or (ii) the infringement of any intellectual property rights of any third party. The obligations contained in this paragraph shall survive any termination or suspension of the Services contemplated herein, the expiration or termination of this Agreement and final payment.

6. Limited Warranty

All Services provided pursuant to this Agreement are provided or performed on an "as is", "as available" basis and Your use of the Service is solely at Your own risk. You acknowledge that Services may not reliably work or maybe limited or restricted in some international jurisdictions that regulate particular telecommunication or data services or where the local government actively blocks or otherwise interferes with cross-border data flows. Any condition or warranty which would otherwise be implied in this Agreement is hereby excluded. Where legislation implies in this Agreement any condition or warranty, and that legislation prohibits provisions in a contract excluding or modifying the application of or liability under such condition or warranty but allows the liability thereunder to be limited, the condition or warranty shall be deemed to be included in this Agreement and PGI's liability for any breach of such condition or warranty shall be limited, at its option, to one or more of the following the supplying of the services again or the payment of the cost of having the services supplied again.



Terms of Service

Version: 23.08.2017

7. Limitation of Liability

Except in relation to liability for personal injury (including sickness and death) caused by the negligence or wilful default of PGi, PGi shall have no liability to You in respect of any loss or damage (including without limitation loss of revenue, loss of profits, loss of goodwill, loss of anticipated savings, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair or replacement) loss of opportunity or expectation loss of any other form of consequential, special, indirect, punitive or exemplary loss or damage) which may be suffered or incurred in respect of services supplied pursuant to this Agreement or in respect of a failure or omission on the part of PGi to comply with its obligations under this Agreement. The entire liability of PGi under or in connection with the supply of the Services, whether for negligence, breach of contract, misrepresentation or otherwise is limited to an amount equivalent to the charges (calculated on a pro-rated basis for advance payments) paid to PGi by You for the Services performed during the twelve (12) month period immediately prior to the date of the event, act or omission giving rise to the liability. In the event some or all of the foregoing limitations in this Section 6 may not be effective in the applicable jurisdiction or to the extent the applicable law mandates a more extensive warranty, the applicable law will prevail over these terms.

8. Notices.

All other notices, requests, claims, demands and other communications hereunder ("**Notices**") shall be in writing in English and shall be given (i) by delivery in person (ii) sent by registered mail or (iii) by electronic mail to the address of the party specified in the Service Agreement or such other address as either party may specify in writing. Notifications to PGi, including without limitation all termination notices, shall be addressed to: Premiere Conferencing Limited (1178893) Level 3, Cathedral House, 48 Wyndham Street, Auckland, New Zealand and duplicate of such notice may be submitted by electronic mail. If You have a designated PGi Sales Representative, You must also provide a written copy of any termination notice to such Sales Representative; provided, such copy does and shall not relieve You of Your obligation to follow any other noticing requirements as set forth in this Agreement. Your notices for billing or account management purposes will be addressed to the address (postal and/or e-mail address) provided to PGi.

9. Miscellaneous.

If any provision herein is held by a court to be illegal, invalid or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of the illegality, invalidity or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability in any other jurisdiction. Any failure by a party to comply with this Agreement may be waived by the other party, but any such waiver must be in writing signed by the waiving party and will not be deemed a waiver of any subsequent failures. Each party enters into this Agreement solely for its own benefit and purpose, and except for PGi's suppliers, this Agreement in no way confers any rights upon, or imposes obligations on either of the parties toward, any third party, including but not limited to any recipient of content transmitted through the Services. This Agreement shall be binding upon and inure to the benefit of the parties' successors, legal representatives and authorized assigns. PGi may assign its rights and obligations under this Agreement to an entity that either now or in the future controls, is controlled by or is under common control with PGi or as a consequence of merger, acquisition, change of control or asset sale. You shall not assign Your rights and obligations under this Agreement without PGi's written consent. All sections in this Agreement intended to survive any cancellation, termination, expiration or suspension of this Agreement will so survive. This Agreement shall be governed by, and construed and enforced in accordance with the laws of New Zealand applicable to agreements made and to be performed therein, without regard to any conflicts or choice of law rules. The parties agree to submit to the exclusive jurisdiction of the courts in New Zealand to resolve any disputes arising hereunder.

10. Entire Agreement.

This Agreement constitutes the final, complete and entire agreement between the parties with respect to the subject matter hereof, and supersedes any previous proposals, negotiations, agreements or arrangements, whether verbal or written made between the parties with respect to such subject matter. There are no other verbal agreements, representations, warranties, undertakings or other agreements between the parties.

If you reside in a country within the European Union, these terms are an agreement between you and Premiere Conferencing (Ireland) Ltd. Under this agreement, goods and/or services will be delivered via Premiere Conferencing (Ireland) Ltd. as an agent of Premiere Conferencing Ltd or by Premiere Conferencing Ltd, depending on the type of payment method used for the purchase of the goods and/or services. If you reside in any other country, then these terms are an agreement between you and Premiere Conferencing Ltd and goods and/or services will be delivered by Premiere Conferencing Ltd directly.