

PCS PANEL CLIENT SOFTWARE END USER LICENCE AGREEMENT

1. ACKNOWLEDGEMENT

- 1.1 By undertaking this download, you agree to:
- (a) the terms and conditions of this Agreement and to abide by Australian and international intellectual property laws;
 - (b) take all necessary steps to ensure that the terms and conditions of this Agreement are not violated by any person or entity under your control or in your service;
- 1.2 This Agreement relates to supply of the software product you are about to install, which may include software and related documentation and information (collectively, the **PCS Client Software**). The PCS Client Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties.
- 1.3 The PCS Client Software is licensed, not sold.
- 1.4 If you do not agree to the terms and conditions of this Agreement, select "I DO NOT ACCEPT". You will not be permitted to access or use the PCS Client Software.

2. DEFINITIONS

In this Agreement, unless the context indicates the contrary:

Agreement means this agreement and any schedules, appendixes or annexures to it, as may be amended by Radio Data Comms from time to time;

Confidential Information means all information, data, documentation, computer facilities (including software or technology embedded in the software) and trade secrets, (including information relating to financial position, technical matters, internal management, policies and strategies) and any other material whether owned or used by or licensed to the disclosing party obtained from the disclosing party in connection with this Agreement:

- (a) about that party or its Related Bodies Corporate, customers, employees or contractors or its business;
- (b) regarding the terms of this Agreement, or the commercial arrangements between the parties;
- (c) which is by its nature confidential or which is designated as confidential by that party; or
- (d) which any of the parties knows, or ought to know, is confidential,

whether that information was obtained, before, on or after the date of this Agreement;

Content means any and all data, text, software, images, audio or video material and other content, in any medium, provided through the PCS Client Software;

GST means the tax imposed under the GST Law;

GST Law means *A New Tax System (Goods Tax) Act 1999* and the related imposition Acts of the Commonwealth;

Intellectual Property Rights means all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, know-how, confidential information,

patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967;

Licence Fee means the amounts payable by you to Radio Data Comms for the licence to use the PCS Client Software in accordance with the terms and conditions of this Agreement. It is calculated as \$90.00 annually and any additional excess upload or download charges calculated at \$3.00 per session per device per month. The number of upload or download sessions permitted per poll plan are as follows:

Poll Plan	Once off included	Per month
P2	2	Zero
P3	2	Zero
P6	2	8
P7	2	8
P8	2	8
P9	2	8
P11	2	16
P13	2	16
P14	2	16
P15	2	16
P19	2	22
P20	2	22
P25	2	22

PCS Client Software means the PCS Client Software, including all software, Source Code and related documentation and information, owned by Radio Data Comms and delivered to the End User by Radio Data Comms pursuant to this Agreement;

Radio Data Comms means Radio Data Comms Trust ABN 89 228 094 879;

Source Code means the complete high level language computer programs which, when compiled, generate the object and executable program that constitutes the useable software product. Source Code includes the make files, flow charts, programming notes and other necessary instructions to the compiler and linker;

Tax Invoice has the meaning it has in the GST Law;

Taxable Supplies has the meaning it has in the GST Law;

Third Party means a person, firm or company who is not a party to the Agreement or who is not a Related Body Corporate of a party to the Agreement; and

Third Party Software means computer programs not produced by Radio Data Comms which Radio Data Comms is not authorised to sub-license to the Client or which require terms and conditions other than those applicable to Radio Data Comms's own software but which Radio Data Comms has chosen to incorporate or integrate in the PCS Client Software.

3. THE PCS CLIENT SOFTWARE

3.1 This Agreement is between you and Radio Data Comms only. Except as specified in this Agreement, Third Party Software providers are not a party to this Agreement. Radio Data Comms is solely responsible for:

(a) the PCS Client Software and its contents;

- (b) maintenance and support of the PCS Client Software;
- (c) warranties (whether express or implied) and claims, whether brought by you or by third parties, relating to or arising from supply of the PCS Client Software (including product liability claims, claims that the PCS Client Software fails to conform with any applicable legal or regulatory requirement and claims arising under consumer protection or similar legislation); and
- (e) the investigation, defense, settlement and discharge of any third party intellectual property infringement claim in respect of the contents of the PCS Client Software.

3.2 Any queries, complaints or claims you have about the PCS Client Software must be directed to Radio Data Comms at mail@permaconn.com.

4. LICENCE

Radio Data Comms grants to you a personal, limited, non-exclusive, non-transferable, non-assignable licence to use the PCS Client Software:

- (a) on a product that you own or control that runs an operating system software compatible with the PCS Client Software;
- (b) in accordance with the terms and conditions of this Agreement.

You do not obtain any interest in or rights to the PCS Client Software other than as set out in this Agreement.

5. LICENCE FEES

5.1 Radio Data Comms agrees to licence the PCS Client Software to you in consideration of the Licence Fees.

5.2 Radio Data Comms allows you to use the PCS Client Software for free during a one (1) month Trial Period. The remaining day count is shown in the PCS Client Software. The Trial Period is linked to the associated Company and not the current username.

5.3 All Licence Fees properly invoiced will be paid by you within 30 days of receipt of a valid Tax Invoice. You will not be liable to pay any fees or charges until such time as it has received a Tax Invoice which complies with the following criteria:

- (a) it is addressed and delivered to the right addressee at the right office;
- (b) it is calculated in accordance with the price mechanisms set out in the schedule;
- (c) it provides any supporting documentation reasonably required;
- (d) it is date stamped the day of despatch; and
- (e) it constitutes one tax invoice for the month for all Radio Data Comms and Third Party resources deployed in the month, unless otherwise agreed by the parties.

Tax Invoices received which does not comply with the criteria set out in this clause may cause the payment to be delayed without liability to you. However, you agree to notify Radio Data Comms within five Business Days after it becomes aware of any non-compliance which may cause the payment to be delayed.

5.4 Radio Data Comms will provide a Tax Invoice to you in accordance with its usual invoicing terms. These are provided annually.

5.5 Where an amount is genuinely in dispute, the party disputing the amount must give notice of its dispute in writing to the other party within 14 days of the receipt of the Tax Invoice by the Client or notification of non-payment of an amount to Radio Data Comms. In the event that the Client disputes an amount it may withhold the amount in dispute until the resolution of the dispute in accordance with the dispute resolution procedures. The parties must otherwise continue to comply with their obligations under this Agreement until the dispute is resolved.

6. GST

6.1 All prices, fees, and other charges are inclusive of any and all taxes and duties excluding GST.

6.2 The parties acknowledge that some supplies made under or in connection with this Agreement may be Taxable Supplies and others may not. To the extent that any supply made under or in connection with the Agreement or an Agreement is a Taxable Supply, then the consideration for that supply is increased by an amount equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of that supply (except to the extent that the consideration is expressed to be inclusive of GST). The additional consideration is payable at the same time and in the same manner as the consideration to which it relates.

6.3 If either party is entitled under the Agreement or an Agreement to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with the Agreement or an Agreement, the reimbursement or indemnity will be net of any input tax credits which may be claimed by the party being reimbursed or indemnified in relation to that expense or outgoing.

6.4 The party that makes the supply must provide to the recipient of that supply a Tax Invoice as necessary to satisfy the relevant legislation.

6.5 Each party will comply with its obligations under the *Competition and Consumer Act 2011* and, if necessary, any consideration payable for a supply will be adjusted accordingly.

7. REGISTRATION INFORMATION AND PASSWORDS

7.1 You need to use your 'Atlas' credentials to use the PCS Client Software. Any personal data or information provided by you is processed by us in accordance with our **[PRIVACY POLICY]**. You agree:

- (a) that all information provided during the registration process is true and accurate and you will update this information in order to keep it current, complete and accurate; and
- (b) to the terms of our **[PRIVACY POLICY]**.

8. PROHIBITIONS

You must not:

- (a) use, modify, deal with, reverse engineer, decompile or disassemble the PCS Client Software otherwise than in accordance with usage rules from the app store where you downloaded the PCS Client Software;
- (b) breach the requirements of any Third Party terms of agreement when using the PCS Client Software;
- (a) impose or attempt to impose an unreasonable or disproportionately large load, as determined by Radio Data Comms in its sole discretion, on the PCS Client Software infrastructure; or
- (b) interfere or attempt to interfere with the normal course and process of the PCS Client Software; or

- (c) use manual or automated software, devices, or other processes to harvest or scrape any Content from the PCS Client Software;
- (d) remove, obscure or in any way alter any copyright, proprietary or trademark notice or any notice acknowledging contributions to the PCS Client Software;
- (e) do any other act that may constitute an improper use of the PCS Client Software, as determined by Radio Data Comms in its sole discretion from time to time; or
- (f) permit or authorise any other person to do any of the acts referred to in paragraphs (a) to (e),

without the prior written consent of Radio Data Comms which may be withheld or made subject to conditions at Radio Data Comms discretion.

9. WARRANTIES AND DISCLAIMER

9.1 You warrant that you are not:

- (a) located in a country that is subject to an Australian Government or United States Government embargo, or a country that has been designated by the Australian Government or the United States Government as a "terrorist supporting" country; or
- (b) listed on any United States Government or Australian Government list of prohibited or restricted parties.

9.2 you also agree that you will not use the PCS Client Software:

- (a) for any activity that supports the development, production, handling, usage, maintenance, storage, inventory or proliferation of any weapons of mass destruction or weapons of mass destruction delivery systems or participation in transactions with persons engaged in such activities; or
- (b) for resupply to any person or country that is subject to any sanction imposed pursuant to a decision of the United Nations Security Council.

9.3 To the extent permitted by law, the PCS Client Software is provided "as is" and "as available" and without warranty of any kind, either express or implied, including, but not limited to, warranties of merchantability or fitness for a particular purpose.

9.4 Without limiting the foregoing, Radio Data Comms does not warrant that:

- (a) the PCS Client Software will meet your requirements;
- (b) the use of the PCS Client Software will be uninterrupted, timely, secure, or error-free;
- (c) the results that may be obtained from the use of the PCS Client Software will be accurate or reliable;
- (d) the quality of the PCS Client Software will meet your expectations; or
- (e) any errors in the PCS Client Software will be corrected.

10. LIMITATION OF LIABILITY AND INDEMNITY

10.1 To the maximum extent permissible by law, Radio Data Comms and its affiliated entities disclaim liability to you and to any third party for any special, incidental, indirect or consequential damages of any kind, or for loss of use, data or profits or other categories of economic loss, whether or not Radio Data Comms had been advised of the possibility of such

damages, and whether arising in contract, tort or otherwise, arising out of or in connection with the use of the PCS Client Software.

- 10.2 In no event shall we be liable for any indirect, punitive, special, incidental or consequential damage (including loss of business, revenue, profits, use, privacy, data, goodwill or other economic advantage) however it arises, whether for breach of contract or in tort, even if it has been previously advised of the possibility of such damage.
- 10.3 We do not endorse the any Content, and expressly disclaim any and all liability in connection with them. In no event shall we be liable for any claims by a third party in tort or contract, or pursuant to the *Competition and Consumer Act 2010* (Cth) including, but not limited, to any misleading statements made and/or incorporated into any Content created or accessed through the PCS Client Software. It is your sole responsibility to ensure the accuracy of the data inputted.
- 10.4 You have sole responsibility for adequate security protection and backup of data and/or equipment used in connection with your usage of the PCS Client Software and will not make a claim against for lost data, re-run time, inaccurate instruction, work delays or lost profits resulting from the use of the PCS Client Software.
- 10.5 To the extent that any term, condition or warranty implied by law cannot be excluded, Radio Data Comms's liability in respect of such term, condition or warranty is limited to, at Radio Data Comms's option:
- (a) in the case of goods, repairing or replacing those goods or paying the cost of repairing or replacing those goods; and
 - (b) in the case of services, resupplying those services or paying the cost of resupplying those services.
- 10.6 As a condition of your access to and use of the PCS Client Software, you agree to indemnify Radio Data Comms and its successors and assigns for all damages, costs, expenses and other liabilities, including but not limited to legal fees and expenses, relating to any claim arising out of or related to:
- (a) your access to and use of the PCS Client Software; or
 - (b) your breach of this Agreement and any applicable law or the rights of another person or party.

This indemnification section survives the expiration of your registration or your use of the PCS Client Software, and applies to claims arising both before and after the registration or use of the PCS Client Software ends.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 You acknowledge that:
- (a) all Intellectual Property Rights in the PCS Client Software are owned by Radio Data Comms; and
 - (b) nothing in this Agreement has the effect of assigning any ownership of the Intellectual Property Rights in the PCS Client Software to the you.
- 11.2 Our Intellectual Property must not be used in connection with a product or service that is not affiliated with us or in any way brings us in disrepute.

- 11.3 You must not modify the physical or digital copies of any Content you print off or download in any way, and you must not use any illustrations, photographs, video or audio, or any graphics separately from any accompanying text.
- 11.4 Any opinions, advice, statements, services, offers, or other information or content expressed or made available by Customers are those of the respective author(s) or distributor(s) and not of Radio Data Comms.
- 11.5 You must take reasonable steps to ensure the PCS Client Software is not used, copied or disclosed in a way not authorised under this Agreement.
- 11.6 If you become aware of any suspected or actual infringement of the Intellectual Property Rights in the PCS Client Software or any suspected or actual use, copying or disclosure of the PCS Client Software not authorised under this Agreement, you must, at your own expense, immediately:
- (a) notify Radio Data Comms in writing;
 - (b) take all reasonable steps to prevent or stop the suspected or actual conduct; and
 - (c) provide Radio Data Comms with any assistance reasonably requested by Radio Data Comms in relation to any proceedings Radio Data Comms may take against any person in relation to the conduct.

12. **PRIVACY**

- 12.1 In downloading and using the PCS Client Software, you will likely share personal information with Radio Data Comms.
- 12.2 You authorise Radio Data Comms to collect, use, process, transmit and/or disclose this personal information for:
- (a) their internal purposes;
 - (b) understanding and meeting Radio Data Comms needs and preferences relating to its use of app stores;
 - (c) understanding and meeting your needs and preferences;
 - (d) managing and developing their business and operations;
 - (e) any purposes authorised by or required to comply with applicable laws;
 - (f) any purpose set out in Radio Data Comms's **[PRIVACY POLICY]**.
- 12.3 You may access, modify, or request deletion of your data. If you do not provide this consent, you may not download the PCS Client Software.
- 12.4 If you do not provide this consent, you may not install the PCS Client Software.

13. **TERMINATION**

- 13.1 This Agreement will terminate immediately if you breach any condition of this Agreement.
- 13.2 On termination of this Agreement, the licence granted under this Agreement will also terminate and you must immediately:
- (a) cease using the PCS Client Software; and

- (b) permanently delete the PCS Client Software from any storage medium on which it is stored,

and you must not access or allow any other person to access any Product that may remain on any back-up media.

14. GST

If this Agreement, or any supply made pursuant to this Agreement becomes subject to GST, and if the recipient of the consideration is liable to pay GST in relation to the supply, the parties agree that the amount payable for the supply by any party will be adjusted by the amount of the GST. Each party agrees to do all things, including providing invoices or other documentation in such form and detail that may be necessary to enable or assist the other party to claim or verify any input tax credit, set off, rebate or refund in relation to any GST payable under this Agreement or in respect of any supply pursuant to this Agreement.

15. NOTICE

15.1 By using the PCS Client Software, you accept that communication with us will be mainly electronic. We will contact you by email or provide you with information by posting notices on the PCS Client Software.

15.2 You acknowledge that all contracts, notices, information and other communication we may provide electronically comply with any legal requirements that such documents are in writing.

15.3 Notice will be deemed received and properly served immediately when posted on the PCS Client Software, 24 hours after an email is sent, or 3 days after the date of posting any letter. As proof of service, it is sufficient that:

- (a) For letters, the letter was properly addressed, stamped and placed in the post; and
- (b) For emails, the email was sent to the specified email address.

16. NO WAIVER

16.1 If we fail, at any time, to insist upon strict performance of your obligations under this Agreement, or if we fail to exercise any of the rights and remedies we are entitled to under this Agreement, this will not constitute a waiver of such rights or remedies and it will not relieve you from compliance with your obligations.

16.2 If we waive a default, it does not constitute a waiver of any subsequent defaults.

16.3 No waiver is effective unless it is expressly stated by us to be a waiver and is communicated to you in writing as per clause 12.

17. FORCE MAJEURE

We shall be under no liability to you in respect of anything that, if not for this provision, would or might constitute a breach of this Agreement, where this arises out of circumstances beyond our control, including but not limited to:

- (a) Acts of god;
- (b) Natural disasters;
- (c) Sabotage;
- (d) Accident;

- (e) Riot;
- (f) Shortage of supplies, equipment, and materials;
- (g) Strikes and lockouts;
- (h) Civil unrest;
- (i) Computer hacking; or
- (j) Malicious damage.

18. SEVERABILITY

If any court decides that any of the provisions of this Agreement are invalid, unlawful or unenforceable to any extent, that term will, to that extent only, be severed from the remaining terms. The rest of this Agreement will continue to be valid.

19. ASSIGNMENT

This Agreement may not be assigned or novated by you in whole or in part without the prior written consent of Radio Data Comms.

20. ENTIRE AGREEMENT

- 20.1 This Agreement, and the documents expressly referred to in them, constitute the entire agreement between you and Radio Data Comms, and supersede all previous discussions, correspondence, negotiations, previous arrangements, understanding or agreement between us relating to the Services.
- 20.2 We each acknowledge that, in entering into this Agreement, neither of us relies on, and subsequently will have any remedies for, any representation or warranty that is not set out in this Agreement.

21. GOVERNING LAW

This Agreement is governed by the laws of the State of New South Wales, Australia and each party submits to the jurisdiction of the courts of the State of New South Wales, Australia.

22. UPDATES TO THIS AGREEMENT

- 22.1 We reserve the right, in our discretion, to correct any errors or omissions in any part of the PCS Client Software. We may restrict access to parts or the entire PCS Client Software at any time, including, but not limited to, Content, certain features, hours of availability, and equipment needed for access or use, without notice or liability.
- 22.2 Any material on the PCS Client Software may be out of date at any given time and we are under no obligation to update such material.
- 22.3 We reserve the right, in our sole discretion, to change, modify, add or remove any part of this Agreement, in whole or in part, at any time. Notification of the changes to this Agreement will be posted on the PCS Client Software and will be effective immediately, unless expressed otherwise.
- 22.4 It is your sole responsibility to periodically check this Agreement for any changes. If you do not agree with any of the changes to this Agreement, it is your sole responsibility to unsubscribe from the PCS Client Software. Your continued use of the PCS Client Software will be deemed as your acceptance thereof.

22.5 We may assign or sublicense any of our rights or obligations under this Agreement at any time, without obtaining your consent.

Last updated on: 30 April 2014