



Customer Terms of Service

Pervasive Telemetry Pty Limited atf Pertel Unit Trust

ABN 90 042 341 785

Customer Terms of Service

Effective: 27 April 2017

These Customer Terms of Service (the “Customer Terms”) describe your rights and responsibilities when using our remote monitoring and telemetry field devices, and hosted data server platform, and online software based graphical reporting and productivity tools (the “Services”). Please read these Customer Terms carefully. If you are a Customer (defined below), these Customer Terms govern your access and use of our Services. If you are being invited to login to view a Customer's data, the User Terms of Service (the “User Terms”) govern your access and use of the Services.

This Contract

1 These “Customer Terms” Form a Part of a Binding “Contract”

These Customer Terms (or, if applicable, your written agreement with us incorporating or modifying any of these terms) and any Order Form(s) (defined below) together form a binding “Contract” between Customer and us. “We,” “our” and “us” currently refer to Pervasive Telemetry Pty Ltd as trustee for Pertel Unit Trust ABN 90 042 341 785, herinafter referred to “Pervasive Telemetry”.

2 Your Contract as “Customer” with Us

You acknowledge your understanding of the Contract and agreement to the Contract on behalf of Customer. Your first use of any part or all of the Services acknowledges your acceptance and consent on behalf of Customer to be bound by this Contract in relation to any use of the Services.

3 Who is “Customer”?

“Customer” is the organisation that you represent who has entered into this Contract with us by accepting its first Order Form confirmation from us for the delivery of our Services.

Individuals authorised by Customer to access the Services (an “Authorised User”) may use or submit information to the Services, such as messages or files or data and cause data from Customer infrastructure (“Customer Data”), and Customer may exclusively provide us with instructions on what to do with it. For example, Customer may provision or de-provision access to the Services, enable or disable third party integrations, manage profiles and permissions,

data retention and export settings, or transfer data to other platforms or devices. Since these choices and instructions may result in the access, use, disclosure, modification or deletion of certain or all Customer Data, please ensure the outcomes of any of these Customer actions complies with Customer's policies and directions. While we have data backup procedures in place and may have some capability to restore some Customer deleted data, we are not responsible for any data loss or disclosure, nor can we assure data restitution, that arises out of these examples or other actions by Customer in their use of the Services.

Customer will

- (a) inform Authorised Users of all Customer policies and practices that are relevant to their use of the Services and of any settings that may impact the processing of Customer Data; and
- (b) obtain all rights, permissions or consents from Authorised Users and other Customer personnel that are necessary to grant the rights and licenses in the Contract and for the lawful use and transmission of Customer Data and the operation of the Services.

Service is activated by Customer providing its written or oral directive to commence provision of Services from which we will create a record of request and Customer's agreement to be billed under these Terms of Service, noting any additional or varied Terms of Service requested by Customer that we may accept and which is transmitted by email to Customer as the offer of Services ("Order Form"). An Order Form can specify one or more Sites (defined below) for which Service is requested. Customer's acceptance of the emailed Order Form as indicated by Activation of the Services forms acceptance.

Activation of a Service allows an Authorised User to access the Services. No matter the role, an authorised login is required for each Authorised User. A login may be procured through the Services interface, or via a communication from us either in writing or orally. Each Authorised User acknowledges their agreement to these User Terms by use of their login to access the Services.

We may share information about our future product plans. Our statements about those product plans are an expression of intent, but do not rely on them when making a purchase unless they form a contract with us. If Customer decides to access or buy our Services, unless we have a separate contractual agreement that defines future availability of additional functionality or features, that decision should be based on the functionality or features we have made available today and not on the delivery of any future functionality or features.

4 Privacy Policy

Please see our Privacy Policy on our web site which guides us in maintaining the integrity and privacy of your Data.

Customer and Authorised Users

5 Use of the Services

Customer must comply with the Contract and ensure that its Authorised Users comply with the Contract and the User Terms. We may review conduct for compliance purposes, but we have no obligation to do so. We aren't responsible for the content of any Customer Data or the way Customer or its Authorised Users choose to use the Services to store or process any Customer Data. Services are not intended for use by Consumers and is intended for use by commercial

government tertiary educational and non-profit organisations for commercial purposes only and should not be used by anyone for consumer or private purposes.

Customer is solely responsible for providing broadband internet service for itself and its Authorised Users to access and use the Services.

6 Our Removal Rights

If we believe that there is a violation of the Contract that can simply be remedied by Customer we will, in most cases, ask Customer to take direct action rather than intervene. However, we may directly step in and take what we determine to be appropriate action, if Customer does not take appropriate action, or if we believe there is a credible risk of harm to us, the Services, Authorised Users, or any third parties, or if legally required to do so.

What is an Agent, a Device, a Site, and the Pervasive Telemetry System?

Agent

An Agent is a field device with its own processing capability and input/output facilities and various buses that enable the collection of data about, and control of, Customer infrastructure assets. The processing capability allows data to be manipulated and decisions taken. Data processed and collected by, or commands for controls to be operated by, an Agent, are sent and received by inbuilt tele-communications capabilities. An Agent can also be a telecommunications device for moving data to and from other Agents via a telecommunications network or between network types. An Agent's type or function may be distinguished by a suffix including, but not exhaustively, AgentG2+, AgentCP, AgentLM, AgentLS etc. An Agent is a physical good designed and manufactured by Pervasive Telemetry. Collectively, all of these characteristics, and others, define an Agent ("Agent").

Device

When combined with physical ancillary equipment that enable the Agent's proper functioning, e.g. a plugin power pack, an external antenna, a battery, a solar panel, certain mounting hardware supplied by us, (all or any of which may be present or not), and the Agent itself, collectively defines a Device ("Device"). We may pair additional Agents together to appear to function cooperatively as one logical Agent ("Logical Agent"). There can only be one Logical Agent per Device.

Site

A Site is the logical representation by data of a physical Device that may be viewed or manipulated via a Browser. The data that is represented by graphs, reports, alarms, and tables, whether the representation is generated or created by us or by you all together represent the Site ("Site"). There can only be one Device per Site.

Pervasive Telemetry System

We provide processes that include the transmission storage calculation and processing of, and aggregation and management of, Customer Data from and to Sites, and then from and to our internet hosted data servers, and then the presentation of Customer Data or its derivations from and to Sites onto Customer's internet enabled access device(s). We provide and manage software functionalities within Agents, and provide tools for managing Agents' profiles,

reporting, alarming, and programmable decision making, and other related processes all of which form the Site's Customer specific functionality. All together, these are referred to collectively as "The Processes".

Devices, Pervasive Telemetry provided private telecommunications networks, third party provided public telecommunication networks, hosted data servers, and The Processes all functioning collectively together form a Pervasive Telemetry System ("The System").

Payment Terms

7 Payment Obligations

We agree to provide you Services which we have recorded on your Order Form and you agree to pay for them within the payment terms specified on our invoices.

8 Monthly Service Fee and Warranty

Our Service comprise two major components comprising a Service for

- (a) an NQA Warranty (described below) that ensures continuing good and proper continuing operation of physical devices manufactured by us that enable proper operation of Customer's Site.
- (b) the good and proper continuing operation of The Processes.

We sell the physical equipment to you for a one time price for which you take title and ownership.

We provide Services for an inclusive single monthly fee per Site ("The Monthly Service Fee").

The Site NQA Warranty included as a component of the Monthly Service Fee provides for an exchange service with no reason or cause required to be given by Customer. If after calling us by phone or notifying us by email, and we agree that an Agent is suspected to be faulty or impaired, we agree to ship at our cost a replacement Agent typically by next day. Customer then has 15 business days to return the failed Agent to us at your shipping for. We require the failed unit to be returned, to assist us to identify the reason for failure so that we may improve the reliability of the whole fleet of installed Agents not only with Customer but with all our customers. Without exclusion of any statutory warranties, this is our only warranty for the Site component of our Services. We call this our No Questions Asked Warranty ("NQA Warranty"). And if the Agent is not the source of problem we will work with you to check the Device is good. The NQA Warranty assures the good and continuing functioning of the Site

The Processes Warranty included as a component of the Monthly Service Fee also provides for our best endeavours to responsibly and expeditiously rectify any software deficiencies or failures you may notify us of, and to provide work arounds that we may develop, if practicable. We also endeavour to responsibly and expeditiously work with our third party vendors, who provide services like data telecommunications which form a part of our Services, to rectify or accelerate restoration or develop work arounds, to the extent practicable, of any interruptions or impairments to their services. Without exclusion of any statutory warranties, this is our only warranty for The Processes component of our Services.

These rights conferred on you under this clause 8 "Monthly Service Fee and Warranty"

- (a) cease to apply if this Contract is terminated for any reason; and

(b) are in addition to any non-excludable rights, conditions or warranties implied by law, including those under the Trade Practices Act 1974 (Cth) (subject to clause 10).

The Monthly Service Fee is not obligatory, but if not requested and confirmed by us in the form of an Order Form, and the Services are paid for, we are under no obligation to provide any of the Services. However, we will continue to provide access to Customer Data held on our data servers subject to Section 25 "[Data Portability and Deletion](#)"

9 Billing Policy

We offer fair billing for the Monthly Service Fee. Each Site incurs a Monthly Service Fee which is itemised on our Invoice. A Site's first billing is for the whole of the calendar month in which Services are first activated. When you discontinue the Monthly Service Fee for a Site the billing will be for the whole of the calendar month in which you discontinue Services.

We understand this to be fair and equitable as we have to undertake certain actions to activate and deactivate Services and we do not charge any one time activation or cancellation fees. Monthly Service Fees are billed in advance typically on the 1st of each month for payment within 30 days and any volume or other charges that may apply are billed in arrears also payable within 30 days of invoice.

10 Taxes

The Monthly Service may not include all taxes. You must pay us any applicable taxes that we include as part of your invoice for the Services. Applicable taxes may include any stamp and other duties, fees, taxes (including GST) and charges relating to this Contract or the performance of this Contract, and any other transaction arising out of this Contract.

GST ("GST") may be imposed on a supply we make to you under this Contract. Unless the consideration payable for the supply is expressed to include GST you must pay us an additional amount to cover the GST. We will issue a Tax Invoice ("Tax Invoice") to you for any supply on which GST is imposed.

"GST" and "Tax Invoice" have the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

11 Suspension of Services by You

We normally don't provide for temporary suspension of Monthly Service Fees. They continue for as long you are using or likely to use the Agent devices after which you may decide to discontinue them if you decide you no longer wish to receive our Services. We may by written agreement with you in advance make special arrangements for temporary suspension of billing for Monthly service Fees where you have good reason for the relocation or suspension of the Site in use. All billings for Monthly Service Fees for activations deactivations and suspension of service are by individual Site. You agree to follow our Directions for activating and deactivating service by serial number so that it can be reflected accurately in our billings to you.

12 Suspension of Services by US

Where you have not paid an overdue invoice without good reason agreed to by us in advance, and the invoice remains unpaid for a further 15 days, we may suspend or terminate the Services

without further notice. We will normally give you written notice of the unpaid invoices but we are under no obligation to do so. Our purpose is to retain your business and we commit to resolve any billing disputes or claims courteously fairly and promptly but if we believe that our invoice has not been paid by you and more than 60 days have elapsed since issue, we may summarily terminate Services without further notice to you.

13 Resupply of Services

Where Services have been terminated due non payment of our invoices and we agree to reinstate Services we may charge a Reconnection Fee consisting of the period of Monthly Service Fees that would have applied since termination of Services plus any unpaid invoices

14 Non-Pervasive Telemetry Products or Services

The System allows the Customer in some areas to use our Services included tools, or to use third party applications or software tools may use to develop applications that complement Customer's use of the The System. There are facilities for Customer to attach third party sensors interfaces or devices (each, a "Non-Pervasive Telemetry Product or Services"). While we may advise on the expected compatibility or performance of these devices or services these are not our products or services, so we do not warrant or support Non-Pervasive Telemetry Products or Services. Ultimately, Customer, not us, will decide whether or not to enable them. Any use of Non-Pervasive Telemetry Products and Services is solely between Customer and the applicable Third Party Provider.

Our Responsibilities

15 Providing the Services

We will

- (a) make the Services available to Customer and its Authorised Users as described in the Contract; and
- (b) not use or process Customer Data for any purpose without Customer's prior written instructions; provided, however, that "prior written instructions" will be deemed to include use of the Services by Authorised Users and any processing related to such use or otherwise necessary for the performance of the Contract.

We will ensure that

- (c) the Services will perform materially in accordance with our then-current Services definitions as stated in the then-current Terms of Service and per the device specifications applying no less than at the date of your purchase ; and
- (d) subject to the section 14" Providing the Services", we will not materially decrease the functionality of a Service during a Services term.

For any breach of a warranty in this section, Customer's exclusive remedies are those described in the sections titled "Termination for Cause", "Effect of Termination" and "Limitation of Liability".

16 Keeping the Services Available

We cannot offer specific uptime commitments paired with credits, if we fail to provide communications services from remote devices or our data servers or access to our data servers. We rely on others to provide those telecommunications services and cannot be held responsible for any shortfall failure interruption or discontinuation of those services. If we agree to any credits in exceptional circumstances, the credits will serve as liquidated damages and will be Customer's sole remedy for the downtime and related inconvenience and will be limited to the fair value of the component of Monthly Service Fee that that component of Service comprises. For all Services we will use commercially reasonable efforts to make telemetry and hosted data server on-line access service available 24 hours a day, 7 days a week, excluding planned downtime. We expect planned downtime to be infrequent but will endeavor to provide Customer with advance notice (e.g. through the Service), if we think it may exceed fifteen (15) continuous minutes in any calendar week. We will endeavour wherever reasonably possible to keep planned downtime out of any Australian business hours.

17 Protecting Customer Data

The protection of Customer Data a priority for us so we will maintain administrative, physical, and technical safeguards at a level not materially less protective than we give to our own commercial data and is reasonable for the value of the data held. Those safeguards will include measures for preventing unauthorised access, use, modification, deletion and disclosure of Customer Data by our personnel. Before providing necessary access to Customer Data with any of our third party service providers, we will ensure that the third party maintains, at a minimum, reasonable data practices for maintaining the confidentiality and security of Customer Data and preventing unauthorised access. Customer (not us) bears sole responsibility for adequate security, protection and backup of Customer Data when in Customer's or its representatives' or agents' possession or control or when Customer chooses to use unencrypted gateways (e.g., IRC/XMPP clients) to connect to the Services. We are not responsible for what Customer's Authorised Users or Non-Pervasive Telemetry Products or Services do with Customer Data. That is Customer's responsibility.

18 Pervasive Telemetry Extended Family

We may leverage our employees, those of our corporate affiliates and third party contractors (the "Pervasive Telemetry Extended Family") in exercising our rights and performing our obligations under the Contract. We will be responsible for the Pervasive Telemetry Extended Family's compliance with our obligations under the Contract.

Ownership and Proprietary Rights

19 Our Ownership and Proprietary Rights

As between us on the one hand, and Customer and any Authorised Users on the other, Customer will own all Customer Data. Subject to the terms and conditions of the Contract, Customer (for itself and all of its Authorised Users) grants us and the Pervasive Telemetry Extended Family a worldwide, non-exclusive, limited term license to access, use, process, copy, distribute, perform, export and display Customer Data, and any Non-Pervasive Telemetry Products or Services created by or for Customer, only as reasonably necessary:

- (a) to provide, maintain and improve the Services;
- (b) to prevent or address service, security, support or technical issues;
- (c) as required by law or as permitted by any Data Request Policy we may develop or apply; and
- (d) as expressly permitted in writing by Customer.

Customer represents and warrants that it has secured all rights in and to Customer Data from its Authorised Users as may be necessary to grant this license.

We own and will continue to own our Services, including all related intellectual property rights. We may make software components available, via app stores or other channels, as part of the Services. We grant to Customer a non-sublicensable, non-transferable, non-exclusive, limited license for Customer and its Authorised Users to use the object code version of these components, but solely as necessary to use the Services and in accordance with the Contract and the User Terms. All of our rights not expressly granted by this license are hereby retained.

Term and Termination

20 Contract Term

Unless otherwise agreed in writing, this Contract commences upon your first activation of a first Order Form for Services. A paid Monthly Service Fee for a Site has a term that starts on the first day of the calendar month in which it is activated and expires on the last day of the calendar month in which it is terminated by Customer, or immediately when terminated for cause by us. As further described below, Services continue until terminated.

The Contract remains effective until all Services applicable under the Contract has expired or been terminated or the Contract itself terminates. Termination of the Contract will terminate all Services and all Order Forms.

21 Auto-Renewal

Unless an Order Form says something different,

- (a) all Monthly Service Fees automatically renew each month on the 1st of each month; and
- (b) the per-unit pricing during any automatic renewal term will remain the same as it was during the immediately prior term unless subject to escalation under additional contractual terms or unless we give you at least 90 days written notice of a price increase which in any case will not exceed the previous price adjusted for June 30th annual change in the Australia Bureau of Statistics Producer Price Index (Table 12 Index Number 2422) rounded up to the next nearest whole dollar.

Pervasive Telemetry can give Customer notice of non-renewal at least one (1) calendar year before the end of a Services term to stop the Services from automatically renewing. Customer must give notice of termination of any Monthly Service Fee at least by close of business on the last business day before the 1st of each month.

22 Termination for Cause

We or Customer may terminate the Contract on notice to the other party if the other party materially breaches the Contract and such breach is not cured within thirty (30) days after the non-breaching party provides notice of the breach. Customer is responsible for its Authorised Users, including for any breaches of this Contract caused by its Authorised Users. We may terminate the Contract immediately on notice to Customer if we reasonably believe that the Services are being used by Customer or its Authorised Users in violation of applicable law. Wherever possible and responsible we will contact Customer in advance to advise of impending action unless directed by legal advice or an agency of government not to do so.

23 Termination Without Cause

Customer may terminate its Services or any Monthly Service Fee immediately without cause.

24 Effect of Termination

Upon any termination for cause by Customer, we will refund Customer any prepaid fees covering the remainder of the term of all Monthly Service Fees after the effective date of termination.

Upon any termination for cause by us, Customer will pay any unpaid fees covering the remainder of the term of those Monthly Service Fees after the effective date of termination.

In no event will any termination relieve Customer of the obligation to pay any fees payable to us for the period prior to the effective date of termination.

25 Data Portability and Deletion

We are custodians of Customer Data. During the term of Services provided to Customer, Customer may at any time export or share Customer Data from the Services; provided, however, that because our Services and Customer's facilities may have different retention options, Customer acknowledges and agrees that the ability to export or share Customer Data is limited to the formats that we make available to the Customer.

Following termination or expiration of Services, we will have no obligation to maintain or provide any Customer Data but we do not cancel your ability to access and export the data and may retain that data on our data servers for as long as we deem practicable, and may thereafter, unless legally prohibited, delete all Customer Data in our systems or otherwise in our possession or under our control.

We will on Customer's written direction within a reasonable and prompt period initiate deletion of Customer's Data.

Representations Disclaimers and Indemnifications

26 Representations; Disclaimer of Warranties

Customer represents and warrants that it has validly entered into the Contract and has the legal power to do so. Customer further represents and warrants that it is responsible for the conduct of its Authorised Users and their compliance with the terms of this Contract and the User Terms. We take the responsibility to provide Services and will undertake all reasonable

endeavours to provide continuous timely secure and error free Services. However, our legal obligations are that except as expressly provided for herein, the Service and all related components and information are provided on an "As Is" and "As Available" basis without any warranties of any kind, and we expressly disclaim any and all warranties whether express or implied, including the implied warranties of merchantability, title, fitness for a particular purpose, and non-infringement. Customer acknowledges that we do not warrant that the Services will be uninterrupted, timely, secure, or error-free.

27 Limitation of Liability

OUR LIABILITY TO YOU

This Contract is made up of the terms that are expressly set out in this Contract and those implied by laws that cannot be excluded by us. No other terms apply.

You acknowledge you are a business/commercial/government customer using the Services for commercial purposes. We accept liability for direct loss caused by:

- (a) our failure to provide the Services with due care and skill;
- (b) any goods or materials supplied directly by us in connection with the Services not being reasonably fit for the purpose for which they are supplied; and
- (c) our breach of a condition or warranty that is implied into this Contract by the Trade Practices Act, provided that you have mitigated the direct loss by reasonable efforts. We are not liable for any loss to the extent that it is unreasonably caused by you, for example, through your wilful negligence or breach of this Contract.

Our liability under this Contract is limited to, at our option:

- (d) resupplying or paying for the costs of having the services resupplied, if the liability relates to services; or
- (e) repairing the goods or refunding the purchase price of the goods, if the liability relates to goods (including for example, Agent(s)).

To the extent permitted by law, we exclude all liability to you for any indirect or consequential loss arising from or relating to this Contract (including your use of the Services) including:

- (f) any loss of profits or loss of business (whether direct, indirect, anticipated or otherwise); or
- (g) any loss you may suffer as a result of any faults or interruptions in your Services, or
- (h) any loss caused by any use made of the Services (including any content or Customer Data that is sent, received, viewed or hosted using the Services).

To the extent permitted by law, our total liability for loss that is not (for any reason) covered by or excluded or limited by this clause is limited in aggregate for any and all claims to one (1) month of the Monthly Service Fee for each Site that is directly related to the loss.

YOUR LIABILITY TO US

Customer is responsible for all login credentials, including usernames and passwords, for administrator accounts as well the accounts of your Authorised Users. We will not be responsible for any damages, losses or liability to Customer, Authorised Users, or anyone else, if such information is not kept confidential by Customer or its Authorised Users, or if such information is correctly provided by an unauthorised third party logging into and accessing the Services.

You are liable to us if you materially breach this Contract or act negligently under the principles applied by the courts. However, you are not liable for any loss we suffer to the extent that it is caused by us, for example, through our negligence or breach of this Contract.

EXCLUSION OF LIABILITY FOR OTHER SYSTEMS

The provision of the Services is dependant on other systems and services not owned or controlled by us – for instance, telephone networks (including mobile telephone networks), electricity suppliers, internet service providers, etc (collectively referred to as “other systems”). In retaining us to provide the Services to you, you expressly acknowledge and agree that we are not liable:

- (i) if Services are not provided, or not properly provided;
- (j) if the Equipment does not function or does not properly function; or
- (k) by reason of any failure of other systems to function or provide their service for any period of time.

The foregoing will not limit Customer's payment obligations under the "Payment Obligations" section above.

EXCLUSION OF LIABILITY BY EITHER PARTY TO THE OTHER PARTY OR THIRD PARTY

In no event will either Customer or any member of the Pervasive Telemetry Extended Family have any liability to the other Party or to any third party for any lost profits or revenues or for any indirect, special, incidental, consequential, cover or punitive damages however caused, whether in contract or tort, and whether or not the party has been advised of the possibility of such damages. The foregoing disclaimer will not apply to the extent prohibited or excluded by applicable law.

LIMITATIONS AND PROVISIONS

The limitations under this “Limitation of Liability” section apply whether in contract, tort or otherwise, and to the extent permitted by law. The provisions of this “Limitation of Liability” section allocates risk under this Contract between the parties, and the parties have relied on these limitations in determining whether to enter into this Contract and the pricing for the Services.

28 Our Indemnification of Customer

We will defend Customer from and against any and all third party claims, actions, suits, proceedings, and demands alleging that the use of the Services as permitted under the Contract infringes or misappropriates a third party’s intellectual property rights (a “Claim Against Customer”), and will indemnify Customer for all reasonable legal fees incurred and damages and other costs finally awarded against Customer in connection with or as a result of, and for amounts paid by Customer under a settlement we approve of in connection with, a Claim Against Customer; provided, however, that we will have no liability if a Claim Against Customer arises from

- (a) Customer Data or Non-Pervasive Telemetry Products or Services; and
- (b) any modification, combination or development of the Services that is not performed by us, including in the use of any application programming customer may perform.

Customer must provide us with prompt written notice of any Claim Against Customer and allow us the right to assume the exclusive defence and control, and cooperate with any reasonable

requests assisting our defence and settlement of such matter. Any Claim under this section is limited to the maximum extent of our Professional Indemnity insurance policy. This section states our sole liability with respect to, and Customer's exclusive remedy against us and the Pervasive Telemetry Extended Family for, any Claim Against Customer.

29 Customer's Indemnification of Us

Customer will defend Pervasive Telemetry and the members of the Pervasive Telemetry Extended Family (collectively, the "Pervasive Telemetry Indemnified Parties") from and against any and all third party claims, actions, suits, proceedings, and demands arising from or related to Customer's or any of its Authorised Users' violation of the Contract or the User Terms (a "Claim Against Us"), and will indemnify the Pervasive Telemetry Indemnified Parties for all reasonable legal fees incurred and damages and other costs finally awarded against a Pervasive Telemetry Indemnified Party in connection with or as a result of, and for amounts paid by a Pervasive Telemetry Indemnified Party under a settlement Customer approves of in connection with, a Claim Against Us. We must provide Customer with prompt written notice of any Claim Against Us and allow Customer the right to assume the exclusive defence and control, and cooperate with any reasonable requests assisting Customer's defence and settlement of such matter. This section states your sole liability with respect to, and the Pervasive Telemetry Indemnified Parties' exclusive remedy against Customer for, any Claim Against Us.

30 Limitations On Indemnifications

Notwithstanding anything contained in the two preceding sections,

- (a) an indemnified party will always be free to choose its own counsel if it pays for the cost of such counsel; and
- (b) no settlement may be entered into by an indemnifying party, without the express written consent of the indemnified parties (such consent not to be unreasonably withheld), if
 - i. the third party asserting the claim is a government agency,
 - ii. the settlement arguably involves the making of admissions by the indemnified parties,
 - iii. the settlement does not include a full release of liability for the indemnified parties, or
 - iv. the settlement includes terms other than a full release of liability for the indemnified parties and the payment of money.

Confidentiality

31 Confidential Information

Each party ("Disclosing Party") may disclose "Confidential Information" to the other party ("Receiving Party") in connection with the Contract, which is anything that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure including all financial details of Services, as well as non-public business, product, and technology information. Confidential Information of Customer includes Customer Data. If something is labelled "Confidential," that's a clear indicator to the Receiving Party that the

material is confidential. Notwithstanding the above, Confidential Information does not include information that

- (a) is or becomes generally available to the public without breach of any obligation owed to the Disclosing Party;
- (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party;
- (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or
- (d) was independently developed by the Receiving Party.

32 Protection and Use of Confidential Information

The Receiving Party will

- (a) take at least reasonable measures to prevent the unauthorised disclosure or use of Confidential Information, and limit access to those employees, affiliates and contractors who need to know such information in connection with the Contract ; and
- (b) not use or disclose any Confidential Information of the Disclosing Party for any purpose outside the scope of this Contract.

Nothing above will prevent either party from sharing Confidential Information with financial and legal advisors; provided, however, that the advisors are bound to confidentiality obligations at least as restrictive as those in the Contract.

33 Compelled Access or Disclosure

The Receiving Party may access or disclose Confidential Information of the Disclosing Party if it is required by law; provided, however, that the Receiving Party gives the Disclosing Party prior notice of the compelled access or disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the access or disclosure. If the Receiving Party is compelled by law to access or disclose the Disclosing Party's Confidential Information, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing access to such Confidential Information as well as the reasonable cost for any support provided in connection with the Disclosing Party seeking a protective order or confidential treatment for the Confidential Information to be produced.

34 Survival

The sections titled "Non-Pervasive Telemetry Products or Services," "Our Removal Rights," "Payment Obligations", "The Pervasive Telemetry Extended Family," "Effect of Termination," "Data Portability and Deletion," "Representations; Disclaimer of Warranties," "Limitation of Liability," "Our Indemnification of Customer," "Customer's Indemnification of Us," "Limitations On Indemnifications," "Confidentiality" and "Survival," as well as all of the provisions under the general heading "General Provisions," will survive any termination or expiration of the Contract.

General Provisions

35 Publicity

Where we have first obtained your written agreement, Customer grants us the right to use Customer's company name and logo as a reference for marketing or promotional purposes on our website and in other public or private communications with our existing or potential customers, subject to Customer's standard trademark usage guidelines as provided to us from time-to-time. We don't want to list customers who don't want to be listed, so Customer may advise us by phone and confirm in writing at any time stating that it does not wish or no longer wishes to be used as a reference.

36 Force Majeure

Neither us nor Customer will be liable by reason of any failure or delay in the performance of its obligations on account of events beyond the reasonable control of a party, which may include denial-of-service attacks, a failure by a third party hosting provider or utility provider, strikes, shortages, riots, fires, acts of God, war, terrorism, and governmental action.

37 Relationship of the Parties; No Third Party Beneficiaries

The parties are independent contractors. The Contract does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. There are no third party beneficiaries to the Contract.

38 Email Messages

Except as otherwise set forth herein, notices under the Contract may be by email, although we may instead choose to provide notice to Customer through the Services (e.g., a notification on Customer's web portal). Notices to Pervasive Telemetry will be sent to admin@pervasivetelemetry.com.au, except for legal notices, such as notices of termination or an indemnifiable claim, which must be sent both by email AND by mail. Notices will be deemed to have been duly given

- (a) the day after it is sent, in the case of notices through email or through the Services; and
- (b) within three (3) business days, in the case of notices sent by mail within Australia.

39 Modifications

As our business evolves, we may change these Customer Terms and the other components of the Contract (except any Order Forms).

We must give you at least 30 days prior notice of the change, unless:

- (a) we need to make the change immediately in order to act legally or the change results from changes in the law. If this is the case, we will give you as much notice as we reasonably can; or
- (b) the change will benefit you. If this is the case, we can make the change and without giving you notice.

If we make a material change to the Contract, Customer can review the most current version of the Customer Terms at any time by visiting our website. The materially revised Contract will become effective on the date set forth in our notice, and all other changes will become

effective upon posting of the change. If Customer (or any Authorised User) accesses or uses the Services after the effective date, that use will constitute Customer's acceptance of any revised terms and conditions. We will use our reasonable endeavours to make as few changes as reasonable and to avoid where we reasonably can making changes that are materially adverse to Customer.

40 Waiver

No failure or delay by either party in exercising any right under the Contract will constitute a waiver of that right. No waiver under the Contract will be effective unless made in writing and signed by an authorised representative of the party being deemed to have granted the waiver.

41 Severability

If any provision of the Contract is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of the Contract will remain in effect.

42 Assignment

Except with respect to the Pervasive Telemetry Extended Family, neither party may assign or delegate any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign the Contract in its entirety (including all Order Forms), without consent of the other party, to a corporate affiliate or in connection with a merger, acquisition, corporate reorganisation, or sale of all or substantially all of its assets.

Customer will keep its billing and contact information current at all times by notifying Pervasive Telemetry of any changes.

Any purported assignment in violation of this section is void. A party's sole remedy for any purported assignment by the other party in breach of this section will be, at the non-assigning party's election, termination of the Contract upon written notice to the assigning party. In the event of such a termination by Customer, we will refund Customer any prepaid fees covering the remainder of the term of all Services after the effective date of termination.

Subject to the foregoing, the Contract will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

43 Governing Law

The Contract, and any disputes arising out of or related hereto, is governed by the laws of the State of NSW Australia. Any legal proceedings are to be held in an appropriate court of law of the State of NSW in Sydney.

Neither party shall undertake legal proceedings without first seeking to negotiate in good faith with the other party to remedy any breach which if not remedied or agreed within thirty (30) days may be referred to mediation administered by the Australian Disputes Centre ("ADC") before having recourse to litigation. The mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC

("the Guidelines"). The terms of the Guidelines are hereby deemed incorporated into this Contract.

Nothing shall prevent either party seeking legal injunction or proceedings where their rights are in danger of material adverse infringement.

44 Entire Agreement

The Contract, including these Customer Terms and all referenced pages and Order Forms, if applicable, constitutes the entire agreement between the parties and supersedes all prior agreements, proposals or representations, written or oral, concerning its subject matter.. However, to the extent of any conflict or inconsistency between the provisions in these Customer Terms and any other documents or pages referenced in these Customer Terms, the following order of precedence will apply:

- (1) the terms of any Order Form (if any),
- (2) any other documents or pages referenced in the Order Form,
- (3) these Customer Terms of Service, and
- (4) finally any preceding Contract of supply between the parties relating to the supply of Agents.

Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order, vendor onboarding process or web portal, or any other Customer order documentation (excluding Order Forms or documents referenced in Order Forms) will be incorporated into or form any part of the Contract, and all such terms or conditions will be null and void.

45 Contacting Pervasive Telemetry

Pervasive Telemetry Pty Ltd
Unit 33, 7 Sefton Road,
Thornleigh, NSW 2120, Australia
admin@PervasiveTelemetry.com.au