END-USER LICENCE AGREEMENT FOR NETPUMP® DATA and NETPUMP® VIDEO

Last updated: 27 October 2023

This Software License Agreement (this "**Agreement**") is a legal contract between you and/or the entity you represent ("**User**") and **PACBYTE LTD** (ABN: 12 110 974 242) ("**Licensor**"), the owner of Netpump Data and Netpump Video including all files, documentation and other accompanying material that have been provided to the User by either by Pacbyte or on behalf of Pacbyte by a third party to which Pacbyte has granted the right to license or to sublicense Netpump Data and Netpump Video (the "**Software**").

BY SELECTING "I AGREE" DURING INSTALLATION OF THE SOFTWARE, OR BY DOWNLOADING, INSTALLING, COPYING, OR USING THE SOFTWARE PROVIDED BY THE LICENSOR, OR BY OTHERWISE SIGNIFYING YOUR ACCEPTANCE OF THIS AGREEMENT, YOU ACKNOWLEDGE AND AGREE: (1) THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (2) THAT YOU AGREE TO BE BOUND BY EACH AND EVERY TERM OF THIS AGREEMENT; AND (3) IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY, THAT YOU HAVE THE POWER AND AUTHORITY TO DO SO AND TO BIND SUCH COMPANY.

IF YOU DO NOT AGREE TO EACH AND EVERY TERM AND CONDITION OF THIS AGREEMENT WHICH IS INTENDED TO BE ENTERED INTO AS A DEED, YOU MAY NOT USE ANY TECHNOLOGY PROVIDED BY THE LICENSOR. If you do not agree with each of the terms and conditions of this Agreement, do not click "I ACCEPT" or otherwise take any action that signifies your agreement to this Agreement and return the Software to the Licensor immediately.

By accessing the Software, the User acknowledges and agrees that:

(a)   The User will be bound by the joint promises set out in latest version of these Licence Terms available at http://www.pacbyte.com/licence; and

(b)   this Agreement applies to the Software that include, displays or links to this Licence Agreement or these Licence Terms and to any updates, supplements or support services for the Software.

1.   DEFINITIONS AND INTERPRETATION

1.1.   Definitions

In this Agreement, the following terms have the following meanings unless the context or subject otherwise requires:

Affiliate	of a Person, is an Associate or an Associated Entity of that Person;
Agreement	this agreement, which the Parties have intended to enter into in the form of a binding deed;
Authorisation	a) any consent, authorisation, registration, filing, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a Governmental Agency; and

b) in respect of anything which will be proscribed or restricted in whole or part by law if a Governmental Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without any intervention or action;

Authorised Users	Means on the individuals for whom the User has paid the required fees and whom are designated as an "Authorised User" to access and use the Software. Authorised Users may be an employee, contractor, consultant, agent or other third party who are acting on behalf of the User that has been authorised by the User to Use the Software;
Additional Services	Technical Account Manager ("TAM") services, Support and Maintenance or other services related to the Software provided to the User by the Licensor (or its agents), as identified in an Order.
Business Day	a day (other than a Saturday, Sunday or bank or public holiday) on which banks are open for general banking business in Sydney, New South Wales, Australia;
Claim	any claim, proceeding, loss, liability, indemnity, suit, judgment, cost, expense, penalty, fine or damage of any kind including consequential loss;
Claims or Actions	any claims, demands or causes of action (whether based in contract, tort (including negligence) or statute, or otherwise arising) in respect of: a) this Licence, these Licence Terms or any part of either of them; b) Netpump Data or Netpump Video; c) the Intellectual Property; or d) any aspect of the transactions contemplated by this Licence; and e) in relation to the User only, the User's Software;
Confidential Information	All code, inventions, know-how and business, technical and financial information disclosed by a Provider;
Consequential Loss	any form of incidental, indirect, special, exemplary, punitive or consequential Loss including any third party Loss, loss of profits, loss of production, increased operating costs, loss of revenue, loss of data, loss or denial of opportunity, loss of goodwill, loss of reputation, loss of anticipated savings, loss of interest or credit rating and pure economic loss, which is not a natural or normal consequence of a cause of action suffered or incurred by any person whether arising in contract or tort (including negligence) or under any statute;
Control	the capacity of a Person to dominate decision making, directly or indirectly, in relation to the financial and operating policies of another Person so as to enable that other Person to operate with it in pursuing the objectives of the controlling Person;
Corporations Act	the *Corporations Act* 2001 (Cth) of Australia;
Devices	Any connected devices capable of receiving or sending data across a network;

Documentation	Any applicable documentation provided or made available by the Licensor with the Software;
Event of Default	the User defaults in the performance of any one of its obligations under this Licence and either: a) that default is not capable of remedy; or b) that default is capable of remedy but it is not remedied by the User within 10 Business Days (or any longer period agreed by the Licensor) of the default occurring;
Governmental Agency	any country, state or political subdivision or any government or central bank or any governmental, semi-governmental, international, judicial, administrative, municipal, local governmental, statutory, regulatory, fiscal, monetary or supervisory authority, body or entity;
Indemnified Person	the Licensor and any of its affiliates, successors and assigns, shareholders, partners, contractors, officers, servants, agents and employees;
Information	Being a superset of Confidential Information, means:

Information (continued):

a) all information (written, oral or otherwise) supplied or made available to the Recipient by the Provider, including information relating to or developed in connection with: i) the business technology or other affairs of the Provider or any of its Associated Entities; ii) the Software; iii) the Intellectual Property; and; iv) any data, feasibility studies, systems, technology, ideas, concepts, know-how, techniques, designs, specifications, diagrams, models, functions, capabilities and designs, (including computer software, manufacturing processes or other information embodied in drawings or specifications) or intellectual property owned or used by the Provider or any of its Associated Entities;

b) all notes, records, copies or other material in whatever form made or derived in whole or in part by the Recipient from, or from inspection or evaluation of, any information of the type referred to in paragraph (a); and

c) any knowledge or information which the Recipient may acquire as a direct result of acquiring or holding information referred to in paragraph (a) or paragraph (b);

Insolvency Event	the occurrence of any one or more of the following events in relation to any Person:

a) an application is made to a court for an order that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed, unless such application is vexatious or frivolous or is discharged within sixty (60) days;

b) liquidator or provisional liquidator is appointed, or steps are taken for such appointment;

c) an administrator or a controller is appointed to any of its assets, or steps are taken for such appointment;

d) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors;

e) it proposes a winding-up or dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;

f) it is insolvent as disclosed in its accounts, or otherwise states that it is insolvent, or it is presumed to be insolvent under an applicable law;

g) it becomes an insolvent under administration or action is taken which could result in that event;

h) it is taken to have failed to comply with a statutory demand as a result of the application of any applicable legislation;

i) a writ of execution is levied against it or a material part of its property;

j) it ceases to carry on business or threatens to do so;

k) it suspends payments of its debts generally; or

l) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition,

including a Credit Event but excluding any corporate restructure while solvent of that Person and its Related Bodies Corporate;

Intellectual Property	a) the intellectual property comprised in the Software;
	b) all patents granted or pending relating to the Software;
	c) all Intellectual Property Rights of any kind (other than those described in (b) relating to the Softwareor any similar formula, design or application, whether registered or not, having the same or a similar effect to the Software, whether or not used in connection with the Software;
	d) all Trade Marks;
	e) all Intellectual Property Rights, registered designs, patented technology, patented processes, trademarks, documented and undocumented knowhow, copyright materials and any other intellectual property the application of which is necessary or desirable in connection with the exploitation of the Software;
	f) the intellectual property comprised in the specifications or operating manuals for the development, Use or updating of the Software;
	g) all software comprising any part of or connected to or Used in connection with any of (a), (b), (c), (d), (e) or (f); and
	h) any improvements, enhancements, additions, modifications, supplements, variations to, or Works relating to, any of the property referred to in (a), (b), (c), (d), (e), (f) or (g), including any patent continuations,

together with any audio-visual or other sample content provided by, or to which access is given by, the Licensor for the purposes of or in connection with the User's use of the Softwareor the development of the User's Software;

Intellectual Property Rights	all forms of intellectual property rights throughout the world including copyright, registered patent, design, trade mark and Information, including know-how and trade-secrets;
Licence	the licence granted to the User under clause 2 of this Agreement;
Licence Key	is an alphanumeric code or similar installation, access or usage control code issued by the Licensor;
Licence Terms	these terms and conditions;
Material Adverse Effect	a material adverse effect upon either: a) the ability of a Person to comply with its respective obligations under this Licence; or b) the effectiveness, priority or enforceability of this Licence;
Moral Rights	has the meaning given to the term "moral rights" in the *Copyright Act 1968* (Cth) and includes rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed and similar rights that exist or may come to exist anywhere in the world;
New Releases	any bug fixes, patches, major or minor releases, or any other changes, enhancements, or modifications to the Software that Pacbyte makes available to you as part of Support and Maintenance.
Netpump Data (or alternatively, the Software)	the data transmission software-as-a-service solution (including the corresponding mobile, desktop or other application(s)) currently branded as *"Netpump Data"* and made available by the Pacbyte to the User under this Agreement; including the Intellectual Property Rights which are controlled by Pacbyte that relate to Netpump Data, any documentation produced by the Pacbyte relating to the use of Netpump Data and all maintenance releases, updates, upgrades, or features to the Software, if any, provided by Pacbytedirectly or indirectly through a licensee/agent to the User and such other additional software or products of Pacbyte which it may add from time to time.
Netpump Video	the video transmission software-as-a-service solution (including the corresponding mobile, desktop or other application(s)) currently branded as *"Netpump Video"* and made available by Pacbyte to the User under this Agreement; including the Intellectual Property Rights which are controlled by Pacbyte that relate to Netpump Video, any documentation produced by Pacbyte relating to the use of Netpump Video and all maintenance releases, updates, upgrades, or features to the Software, if any, provided by Pacbyte directly or indirectly through a licensee/agent to the User and such other additional software or products of Pacbyte which it may add from time to time.

Order	Pacbyte's applicable ordering documentation or other purchase flow referencing this Agreement. Orders may include purchases of Software licenses, Support and Maintenance, Additional Services, increased or upgraded Scope of Use or renewals;
Pacbyte	Pacbyte Limited (ABN 12 110 974 242), a proprietary company limited by shares established under the Corporations Act, and, where appropriate, each of its subsidiaries, whether wholly owned or majority owned and its Related Bodies Corporate;
Party	each of the Licensor and the User;
Person	any corporation, company, trust, partnership, estate, unincorporated association, joint venture, Governmental Agency, or other legal entity, including an individual;
Provider	with respect to Information or Confidential Information, the Party supplying or providing the Information whether directly or by a Representative of that Party;
Recipient	with respect to Information, the Party or any Representative of the Party, to whom Information is supplied or provided;
Related Body Corporate	means a "*related body corporate*" as determined in accordance with section 50 of the Act;
Representative	in relation to a Party, any Affiliate, officer, employee, contractor, adviser or agent of that Party;
Server	a single physical computer running no more than one (1) unique copy of an operating system. Multiple Servers include: (i) multiple computers that share processing power or operate in a networked configuration as a single logical computer, such as a "server farm," "cluster," or similar arrangement; and (ii) multiple virtual machines within a technical environment that partitions a physical computer into multiple virtual machines such that each virtual machine has the appearance and capability of running on its own dedicated machine;
Support and Maintenance Services	Maintenance and support services, and includes Support, Updates and Upgrades;
Services Period	means the period(s) of time during which the User has purchased the right to obtain the Services. License Keys each have individual Services Periods;
Tax	withholding tax (including deductions pursuant to a royalty withholding obligation), fringe benefits tax, customs duty, sales tax, payroll tax, land tax, stamp duty, goods and services tax, value added tax, financial institutions duty, debits tax, municipal rates and all other taxes, charges, imposts, duties and levies and any penalties, interest, fines or other costs relating thereto;

Term	the period of the Licence determined in accordance with clause 9.1 and the Order;
Territory	as specified in the Order;
Trade Mark	a) the trade mark "Netpump" (with Australian registration number 1815349 and United States USPTO registration number 5471970) or any extension, replacement, variation or adaptation of that trademark and whether Used in relation to any of the goods or services of "Class 9" or "Class 42" as defined under the Australian Trademark IP Australia database www.ipaustralia.gov.au or otherwise;
	b) the trade mark "Pacbyte®" (with Australian registration number 1758251 and United States USPTO registration number 5253194) or any extension, replacement, variation or adaptation of that trademark and whether Used in relation to any of the goods or services of "Class 9" or "Class 42" as defined under the Australian Trademark IP Australia database www.ipaustralia.gov.au or otherwise;
	c) the trade mark "PacByte®" (with Australian registration number 1022257) or any extension, replacement, variation or adaptation of that trademark and whether Used in relation to any of the goods or services of "Class 9" as defined under the Australian Trademark IP Australia database www.ipaustralia.gov.au or otherwise;
	d) any trademark that is the same as or similar to any of the trademarks described in (a), (b) or (c) that any member of the Pacbyte may register or permit to be registered in any jurisdiction; and
	e) any other trademark any member of the Pacbyte may develop or register or permit to be developed or registered with respect to the Intellectual Property;
Update	means updates, fixes or other relatively minor modifications to the Software which are applied through the Licensor's update process.
Usage	means new versions of the Software that may use a distinct installation and may require an additional Licence Key, commonly referred to as a "full version" or "dot" release.
Use	with respect to the Intellectual Property or any part of it, use, copy, reproduce, provide, sell, transfer, dispose of, Encumber, supply or make available to or in favour of any Person (directly or indirectly); and
Works	all inventions, designs, drawings, plans, software, hardware, reports, documents, systems, improvements and other materials in which copyright subsists.

1.2. **Interpretation.** In these Licence Terms:

(a) headings are for convenience only and do not affect interpretation;

and unless the context requires otherwise:

(b) words denoting the singular number include the plural and vice versa;

(c) words denoting any gender include any other gender;

(a) a reference to any Party includes that Party's executors, administrators, successors and permitted assigns, including any Person taking by way of novation;

(b) a reference to any document (including these Licence Terms) is to that document as varied, novated, ratified or replaced from time to time;

(c) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;

(d) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of these Licence Terms;

(e) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(f) mentioning anything after "include", "includes" or "including" does not limit what else might be included;

(g) if any day appointed or specified by these Licence Terms for the payment of any money or doing of anything falls on a day which is not a Business Day, the day so appointed or specified will be deemed to be the next Business Day;

(h) a reference to a month is a reference to a calendar month;

(i) a reference to writing includes any means of producing words in a tangible and permanently visible form; and

(j) where reference is made to an Event of Default continuing, it means that the Event of Default has occurred and has not been remedied to the satisfaction of the Party entitled to rely on that Event of Default to take any action or waived by that Party in writing.

2. LICENCE

2.1. **Licence Grant.** On the terms and conditions of these Licence Terms, the Licensor hereby grants to the User this Licence which is a non-exclusive, non-sublicensable, non-transferable and revocable licence to use the Intellectual Property:

(a) in the Territory; and

(b) for the Term.

2.2. **Restrictions.** Except as otherwise expressly permitted in this Agreement, you will not:

(a) reproduce, modify, adapt or create derivative works of any part of the Software;

(b) rent, lease, distribute, sell, sublicense, transfer, or provide access to the Software to a third party;

(c) use the Software for the benefit of any third party;

(d)   incorporate the Software into a product or service you provide to a third party;

(e)   interfere with any license key mechanism in the Software or otherwise circumvent mechanisms in the Software intended to limit your use;

(f)   reverse engineer, disassemble, decompile, translate, or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs to the Software, except to the extent expressly permitted by applicable law (and then only upon advance notice to us);

(g)   remove or obscure any proprietary or other notices contained in the Software;

(h)   use the Software for competitive analysis or to build competitive products;

(i)   publicly disseminate information regarding the performance of the Software;

(j)   export, directly or indirectly, of any information, Intellectual Property or any of the Software Products to any country prohibited by the laws of the United States, Australia or United Kingdom or for which those Governments, entities or any agency thereof at the time of export requires an export licence or other government approval or

(k)   encourage or assist any third party to do any of the foregoing.

2.3.   Licence Key. The Software may only be activated by delivery of a Licence Key, which Licence Keys may be designed to allow use of the Software in compliance with the scope of the Licence granted and termination of the Licence for non-compliance with the applicable Licence. Further, the Software may contain a metering or instrumentation capable of verifying license entitlement and transmitting reports or statistics on the Software usage to the Licensor or a third party engaged by the Licensor to collect any such reports or statistics.

2.4.   Increased Scope of Use. During the Term, a User may increase its Scope of Use (e.g., adding Authorized Users, licenses, copies or instances) by placing a new Order or, if made available by Pacbyte, directly through the applicable Software. Any increases to your Scope of Use will be subject to additional fees, as set forth in the applicable Order.

2.5.   Support and Maintenance. During the period for which you have paid the applicable Support and Maintenance fee, the Licensor (or its authorised agents) will provide Support and Maintenance Services for the Software in accordance with the Pacbyte Support Policy and the Enterprise Support and Services Policy (if applicable). Support and Maintenance for Software includes access to New Releases, if and when available, and any references to "Software" in this Agreement include New Releases.

2.6.   Attribution. In any use of the Software, you must not remove, obscure, or alter in any way the following attribution to Pacbyte on all user interfaces to the Software*: "Powered by Pacbyte,"* which must in every case include a hyperlink to http://www. http://www.pacbyte.com/, and which must be in the same format as delivered in the Software.

2.7.   System Requirements. You are solely responsible for ensuring that your systems meet the hardware, software and any other applicable system requirements for the Software as specified in the Documentation. Pacbyte will have no obligations or responsibility under this Agreement for issues caused by your use of any third-party hardware or software not provided by Pacbyte.

3. LICENCE FEES

3.1. Licence Fees. The Licensor has agreed to supply the Software to the User at no cost for Term in consideration for the Users' promises contained in the Agreement. If the User wishes to extend use of the Software beyond the Term, the User agrees that it will pay all fees in accordance with any future Order that may be entered into between the User and the Licensor for the use of the Software.

(a) Unless otherwise specified in the Order, the User will pay all amounts at the time the Order is placed. Other than as expressly set forth in clause 8.1 (Indemnity by User), clause 8.2 (Indemnity by Licensor), clause 8.3 (Limited Warranty) and clause 8.4 (Limit of Liability), all amounts are non-refundable, non-cancellable and non-creditable. In making payments, the User acknowledges that it is not relying on future availability of the Software beyond the current Term or any Upgrades or feature enhancements;

(b) If the User adds Authorised Users, Servers and Devices during the Term, the Licensor will charge the User for the increased number of Authorised Users, Servers and Devices pursuant to the then-currently applicable rates in the next billing cycle. The User agrees that the Licensor may bill for renewals, additional users, additional servers and unpaid fees, as applicable.

(c) If the User purchases Software through an approved Distributor or Reseller, the User owes payment to the Distributor or Reseller as agreed between the User and the Reseller, but the User acknowledges that the Licensor may terminate the User's rights to use the Software if the Licensor does not receive the corresponding payment from the Distributor or Reseller.

3.2 Taxes. The User shall pay, taxes of any and all kind, including but not limited to, sales, use, excise, value added tax, goods and services tax, or import or export (or similar tax or duties), levied upon delivery of the Software. If applicable law requires the User to withhold any income taxes levied on payments to be made pursuant to this Agreement ("**Withholding Tax**") the User shall increase such payment to the Licensor so that, after deduction for Withholding Tax, the Licensor receives payments as if no Withholding Tax had been deducted. Notwithstanding the foregoing, the User may have obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed. In that case, the User will have the right to provide to the Licensor any such exemption information, and the Licensor will use reasonable efforts to provide such invoicing documents as may enable the User to obtain a refund or credit f for the amount so paid from any relevant revenue authority if such a refund or credit is available.

4. USER UNDERTAKINGS

4.1. Title

(a) The User acknowledges:

(i) that the Licensor is the owner of all intellectual property (including Intellectual Property Rights and common law rights) in the Intellectual Property and neither the User nor any third party has or will acquire, any right, title or interest (including goodwill) in or to the Intellectual Property;

(ii) (the Licensor's legal and beneficial interests in the Intellectual Property and the validity of its registration as the registered owner of the Intellectual Property (to the extent that the Intellectual Property is registered or capable of registration);

(iii) that the Licensor has a fundamental interest in maintaining its goodwill and reputation in the Intellectual Property; and

(iv) the Licensor gives no representation or warranty (except as specified in Clause 8.3 (Limited Warranty), express or implied, with respect to the functionality, performance, accuracy, completeness or fitness for purpose of the Software or any of the Intellectual Property.

(b) The User undertakes that the User will not, and will not assist any other Person (whether directly or indirectly) to:

(i) take any action that would or might invalidate, challenge, prejudice or put in dispute the Licensor's right, title or interest in and to the Intellectual Property and the Intellectual Property Rights; or

(ii) support an application to remove, adversely affect or amend any registration of any part of the Intellectual Property or the Intellectual Property Rights.

(c) The User agrees that:

(i) any and all goodwill in the Intellectual Property arising as a result of the User's Use under this Licence inures to the Licensor's benefit exclusively;

(ii) upon expiry or termination of this Licence and any rights granted under this Licence, the Licensor will not be obliged to make any payment to the User attributable to any goodwill associated with the User's Use of the Intellectual Property; and

(iii) any and all enhancements to or accretions in value of the Intellectual Property arising as a result of Use of this Licence vest in the Licensor.

4.2. Compliance. The User agrees to provide the Licensor or its authorised representative with the Information requested by the Licensor for the purpose of making a reasonable assessment of whether the Intellectual Property is being Used and applied in accordance with these Licence Terms.

4.3. Notice to Licensor. Upon becoming aware, the User will promptly notify the Licensor:

(a) of any Event of Default and the steps taken to remedy or prevent it (whether or not it is a defaulting Party);

(b) if any representation or warranty made in this Licence proves to have been incorrect or misleading in any material respect when made;

(c) of any litigation, arbitration, Tax claim, dispute or administrative proceeding to which it is a party or affecting the User or any of the User's property the adverse determination of which could have a Material Adverse Effect;

(d) of any proposal by any Governmental Agency to acquire compulsorily the whole or a substantial part of the User's property; and

(e) of the appointment of a Person under any legislation to investigate all or any part of its affairs.

4.4. No Use. Except in accordance with these Licence Terms or with the prior written consent of the Licensor, the User must not Use all or any part of the Intellectual Property.

4.5. Compliance with laws

(a) Unless expressly permitted by these Licence Terms, the User agrees not to do any of the acts identified in the Commonwealth of Australia Consolidated Acts, including, without limitation:

    (i) section 26(1) of the *Trade Marks Act* 1995 (Cth);

    (ii) section 13 of the *Patents Act* 1990 (Cth);

    (iii) section 13 of the *Copyright Act* 1968 (Cth);

    (iv) section 10 of the *Designs Act* 2003 (Cth),

or any comparable legislation in force in the Territory in relation to any of the Intellectual Property.

(b) The User, must use the Intellectual Property in compliance with all applicable laws, including local laws in the Territory and any place the Intellectual Property is Used or in which the User's Software is, or is intended to be used.

5. CONFIDENTIALITY

(a) **Restrictions:** Except as permitted by these Licence Terms, the Recipient will not, and will procure that its Representatives will not: i) disclose Information, or permit Information to be disclosed, to any Person; or Use Information for any purpose or in any way which is detrimental to, or in competition with, the Provider or any Affiliate of the Provider.

(b) **Permitted disclosure**: i) Subject to (ii) below, the Recipient may disclose Information to such of its Representatives, but only to such extent, as is reasonably necessary to enable those Persons in the course of their duties to implement or perform the transactions contemplated by this Licence; ii) Prior to receipt by each such Representative of any Information, the Recipient will ensure that all of its Representatives are aware of the confidentiality of the Information, the existence and terms of this clause 5 (Confidentiality) and comply with the provisions of this clause 5 (Confidentiality) as if they were party to this Licence. The Recipient agrees to be responsible for any act or omission of its Representatives constituting a breach of this clause 5 and acknowledges that the Provider will be entitled to all remedies available to it at law or in equity as if the breach was caused by the Recipient.

(c) **Exceptions:** Neither clause 5(a) nor 5(b) applies to any Information which: i) already is, or becomes, public knowledge other than as a result of a breach of this clause 5 (Confidentiality) by the Recipient or a Representative of the Recipient; or ii) is independently acquired or developed by the Recipient without the benefit or use of Information; or iii) is lawfully received by the Recipient from a third party not owing any obligation of confidentiality to the Provider or a Representative of the Provider.

(d) **Compulsory disclosure:** The Recipient may, so long as the Recipient complies with clause 5(e), disclose Information if, but only to the extent that, the Recipient is required to do so by applicable law or the requirements of any Governmental Agency.

(e) **Prior notification:** The Recipient will, unless prevented by law from doing so, before disclosing Information pursuant to clause 5(d): i) give to the Provider the maximum notice reasonably practicable in the circumstances, specifying the requirement under which the Recipient is required to disclose Information and the precise Information which the Recipient is required to disclose; ii) use its best endeavours to oppose or restrict disclosure, or to make disclosure on terms which will preserve as far as possible the

confidentiality of the Information; iii) take such steps as will permit the Provider to have a reasonable opportunity to oppose or to restrict such disclosure by lawful means; and iv) give all reasonable assistance and co-operation which the Provider considers necessary to prevent or minimise the disclosure of the Information.

(f) **Return or destruction:** Upon the termination or completion of the transactions contemplated by this Licence the Recipient will, promptly on request by the Provider, return to the Provider all Information in the possession or control of the Recipient and Representatives of the Recipient, or, if the Provider so agrees, destroy all such Information (and the Provider will so agree in the case of Information described in paragraph (b) of the definition of "Information").

(g) **Exceptions:** Clause 5(f) will not apply to any Information to the extent that: i) such Information forms part of the board minutes, board committee minutes, investment committee minutes, credit committee papers or investment committee papers of the Recipient or a Representative of the Recipient; ii) the Recipient or a Representative of the Recipient is required by law to retain a copy of the Information; and iii) such Information is archived pursuant to any auto-archiving procedures of the Recipient.

(h) **Copying:** The Recipient may not copy or reproduce Information except to the extent absolutely necessary to enable the Recipient and its Representatives to implement or perform the transactions contemplated by this Licence.

(i) **Ownership:** The Information always remains the property of the Provider. This Licence does not give the Recipient any right, title or interest in the Information.

(j) **Undertakings and acknowledgements:** The Recipient agrees that: i) it will not assert any rights in respect of, nor contest the Provider's ownership of, Information; ii) it will take all reasonable steps to protect the Information and keep it secure from unauthorised Persons; iii) it will co-operate with the Provider in any action it reasonably takes to protect the Information; iv) it will inform the Provider immediately if it becomes aware or suspects there has been a breach of the obligations in this clause 5 or an unauthorised disclosure of Information by a Representative of the Recipient; v) the Provider has no obligation to disclose Information to the Recipient and the Provider has an absolute discretion as to the Information which the Provider chooses to disclose; and vi) other than as expressly set out in these Licence Terms, the Provider makes no warranty or representation as to the accuracy, adequacy, or completeness of any Information, or as to the materiality of any Information in the context of the transactions contemplated by this Licence and has no responsibility or liability in any way to the Recipient or any of its Representatives in relation to the use of or reliance on the Information.

(k) **Equitable remedies:** The Recipient acknowledges that, in the event of any alleged breach of this clause 5 (Confidentiality) by the Recipient or any Representative of the Recipient, damages may not be an adequate remedy and the Provider will be entitled to seek equitable relief (including an injunction) in addition to damages. In any proceeding brought by the Provider seeking equitable relief for a breach of this clause 5, neither the Recipient nor any Representative of the Recipient may claim that the breach is one which may not or ought not to be the subject of equitable relief.

(l) **Indemnity:** The Recipient will indemnify and hold the Provider harmless against all losses, claims, costs, demands, liabilities and expenses which may be suffered, sustained or incurred by the Provider directly or indirectly as a result of or in respect of: i) the failure by the Recipient to observe or comply with any of the terms of this clause 5 (Confidentiality) for any reason; ii) any unauthorised disclosure of Information by the

Recipient's Representatives; or iii) any liability of the Provider to the Recipient's Representatives in relation to the Information.

(m) **Continuation:** The Recipient's obligations under this Licence concerning protection and Use of Information continue after termination of this Licence and are enforceable by the Provider, including by way of injunction.

6. INTELLECTUAL PROPERTY RIGHTS

6.1. Licensor's Intellectual Property Rights

(a) The User acknowledges and agrees that, other than the User's Software, all existing Intellectual Property Rights, title and interest in all Works created or developed by any Party or its Representatives (whether alone or with others) in connection with that Party's implementation or performance of the transactions contemplated by this Licence are vested in the Licensor (or an assignee approved by the shareholders of the Licensor) and comprise part of the Intellectual Property. Simultaneously with their creation or development, all future Intellectual Property Rights, title and interest in all such Works will vest in the Licensor and comprise part of the Intellectual Property. The User agrees to: i) immediately disclose to the Licensor all such Works on creation or development; and ii) execute and perform, or procure the execution or performance of, all documents and all acts and things required or desirable to secure any Intellectual Property rights of the Licensor without any remuneration or compensation.

(b) The User consents (for the benefit of the Licensor) to any and all acts or omissions (whether occurring before or after this consent is given) in relation to all Works, other than the User's Software, made or to be made by the User or the User's Representatives in the course of the User's implementation or performance of the transactions contemplated by this Licence which might otherwise infringe the Moral Rights of the Licensor or its Representatives in any or all of those Works.

(c) The User warrants that it has given this consent and undertaking genuinely, and without being subjected to any duress by the Licensor or any other Person, and without relying on any representations other than those expressly set out in these Licence Terms.

6.2. User's Intellectual Property Rights. The Licensor acknowledges and agrees that all existing Intellectual Property Rights, title and interest in all Works created or developed by the User or Representatives (whether alone or with others) in connection with that Party's implementation or performance of the transactions contemplated by this Licence which comprise any part of the User's Software are vested in the User and comprise part of the User's Intellectual Property Rights. Simultaneously with their creation or development, all future Intellectual Property Rights, title and interest in all such Works will vest in the User and comprise part of the Intellectual Property Rights of the User.

The User agrees that this clause relates solely to the User's Software and nothing in this clause will have the effect of giving the User title to or any interest in any of the Intellectual Property.

7. INFRINGEMENT

(a) The User undertakes to do all things reasonably necessary for the protection of the Intellectual Property against deregistration or infringement. If any legal action is necessary to protect the Intellectual Property or the Intellectual Property Rights, the Licensor will undertake that legal action at its expense but in the name of the User if appropriate.

(b) In the event that:

   (i)   The User receives notice of any infringement or threatened infringement of any of the Intellectual Property or any common law passing off by reason of imitations or otherwise; or

   (ii) any third party claims that any use of the Intellectual Property is liable to cause deception or confusion to the public;

the User must promptly notify the Licensor, giving full particulars, and provide all information and assistance required by the Licensor in the event that the Licensor commences or defends proceedings in relation to any claims or infringements. Any such proceedings will be under the control and at the expense of the Licensor.

(c) In the event that the Licensor does not commence or defend proceedings in relation to claims or infringements of the Intellectual Property within 2 months of receiving notification of them from the User, the User may institute proceedings in its own name as if it were the Licensor and the Licensor is not liable for any cost unless it takes part in the proceedings.

(d) At the request and expense of the Licensor, the User must provide all and any information concerning the User's use of each Trade Mark and must give co-operation and assistance to the Licensor in any dispute, litigation or settlement in relation to a Trade Mark.

8. INDEMNITY, LIMITED WARRANTY AND LIMIT OF LIABILITY

8.1. Indemnity by User. The User releases and indemnifies, and will keep indemnified, each Indemnified Person from and against all:

(a) Claims which may be brought, commenced, prosecuted or claimed against any Indemnified Person or in which any Indemnified Person may be involved;

(b) Claims or Actions arising; and

(c) all loss (including indirect loss, loss of profits or consequential loss), costs (including legal costs on a full indemnity basis), damages, or liability (whether in tort (including negligence), contract breach or statutory duty, equity or otherwise) which any Indemnified Person may suffer or incur,

in consequence of or relating to the Use of the Intellectual Property by the User, except to the extent such claims or loss are caused by the negligence of the Licensor.

8.2. Indemnity by Licensor. The Licensor indemnifies, and will keep indemnified, the User from and against all:

(a)   claims, demands, actions, proceedings, prosecutions which may be brought, commenced or prosecuted or claimed against the User or in which the User may be involved; and

(b)   all loss (excluding indirect loss or consequential loss), costs (including legal costs on a full indemnity basis), damages, or liability (whether in tort (including negligence), contract breach or statutory duty, equity or otherwise) which the User may suffer or incur,

arising in connection with the granting of the Licence or the User's Use of the Intellectual Property in accordance with this Agreement.

8.3. **Limited Warranty.** If at any time within the period ending seven (7) days from the earlier of the date that License first pays for or uses the Software, the Software substantially fails to perform the functions described in the Software Documentation made available by the Licensor, the User will notify the Licensor in writing during such warranty period of such alleged nonconformance during. The Licensor will, at its own cost and expense and within thirty (30) days of receipt of such written notification, correct such deficiency. Should the Licensor fail to correct such warranty breach, the User may, as its sole remedy, upon giving the Licensor written notice within five (5) days of such failure to remedy, terminate this Agreement, destroy the copy of the Software in its possession and receive a refund of all the fees paid by User for the Software.

EXCEPT AS SPECIFIED ABOVE, THE SOFTWARE ARE PROVIDED "AS IS", AT USER'S OWN RISK, WITHOUT EXPRESS OR IMPLIED WARRANTY OR CONDITION OF ANY KIND. THE LICENSOR ALSO DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. The Licensor will have no responsibility for any harm to the User's computer system, loss or corruption of data, or other harm that results from User's access to or use of the Software.

8.4. **Limit of Liability.** To the extent permitted under applicable law, in no event will the Licensor including its affiliates, officers, employees, agents, suppliers or licensors be liable for any consequential loss whether in contract, tort, negligence, product liability or otherwise related to the Software, Services or other subject matter hereof.

The Licensor's liability under this Agreement will not, in any event, exceed the fees, if any, paid by the User for the software and services licensed to the User under this Agreement or the Limitation of Liability agreed in the Order, whichever is the lesser. The foregoing limitations shall apply to the maximum extent permitted by applicable law, regardless of whether the Licensor has been advised of the possibility of such damages and regardless of whether any remedy fails of its essential purpose. The User and the Licensor agree that, given the price of the Software and the nature of the circumstances, the preceding limitations are fair and reasonable.

9. TERM AND TERMINATION

9.1. **Term.** The Term of this Licence is specified in the Order and and will commence on the date the User first accesses the Software and shall automatically renew for periods specified in the Order (the Term specified in the Order together with each renewal term, the "Term"), unless either party provides at least ninety (30) days' written notice of its intent to terminate the Agreement prior to the completion of the then current term.

9.2. **Termination for cause.** The Term may be terminated by the Licensor upon notice in the event that the User has breached any of the terms of this Agreement in accordance with clause 9 (Term and Termination).

 By notice to the User, the Licensor may immediately terminate this Licence if:

(a) an Insolvency Event occurs in relation to the User; or

(b) an Event of Default occurs.

9.3. **Termination for convenience.** The User may choose to stop using the Software and terminate this Agreement (including all Orders) at any time for any reason upon written notice to Pacbyte. Upon any such termination (i) you will not be entitled to a refund of any pre-paid fees (including any Additional Services) and (ii) if you have not already paid all

applicable fees for the then-current Term or related services period (as applicable), any such fees that are outstanding will become immediately due and payable.

9.4. **Obligations on termination.** Unless:

(a) The User has obtained a renewal or an extension of this Licence from the Licensor; or

(b) The User has obtained both:

    (i) the consent of the Licensor under clause **Error! Reference source not found.**; and

    (ii) entered into a licence with the Licensor as contemplated by clause **Error! Reference source not found.**,

on termination of this Licence, whether under clause 9.1 the User must, without any requirement for further notice from the Licensor, immediately:

(c) cease to Use the Software and any Intellectual Property for any purpose;

(d) promptly discontinue use of the Software and Intellectual Property and destroy all copies of the Software, the Confidential Information, the Information and related materials in its possession or control and upon request by the Licensor certify to the Licensor as to their destruction.

10. DISPUTE RESOLUTION

(a) Where any dispute arises between the Parties concerning this Agreement, or the circumstances, representations, or conduct giving rise to the Agreement, no Party may commence any court or arbitration proceedings relating to the dispute (other than for injunctive relief) unless that Party has complied with the procedures set out in this Clause 10.

    (i) The Party initiating the dispute (the "**initiating party**") must provide written notice of the dispute to the other Party (the "**respondent party**") and nominate in that notice the initiating party's representative for the negotiations. The respondent party must, within seven (7) days of receipt of the notice, give written notice to the initiating party naming the respondent party's representative for the negotiations. Each representative nominated must have authority to settle or resolve the dispute.

    (ii) If the Parties are unable to resolve the dispute by discussion and negotiation within 14 days of receipt of the written notice from the initiating party, then the Parties must immediately refer the dispute to mediation.

    (iii) The mediation must be conducted in accordance with the procedures adopted by the Australian Commercial Disputes Centre. The mediation must be conducted by a mediator at a fee agreed by the Parties. Failing agreement between the Parties, the mediator shall be selected and the mediator's fee determined by the then President of the Law Society of New South Wales.

(b) Each party must pay its own costs in relation to complying with this Clause 10, except that the costs and expenses of the mediation will be borne by the parties equally.

(c) Unless prevented by the nature of the dispute, the parties will continue to perform this Agreement while attempts are made to resolve the dispute.

11. REPRESENTATIONS AND WARRANTIES

11.1. Representations and warranties. On each day during the Term, each Party represents and warrants (in respect of its own matters only) for the benefit of the other Party:

(a) **status**: it is validly created and existing under the laws of its jurisdiction of incorporation, has the power and authority to own its property and carry on its business as now conducted or contemplated and has the capacity to sue and be sued in its own name;

(b) **power**: it has the power to enter into and observe and perform its respective obligations under this Licence and to carry out the transactions contemplated by this Licence;

(c) **authorisations:** it has taken all necessary action to authorise the entry into and the observance and performance of its respective obligations under this Licence and the carrying out of the transactions contemplated by this Licence;

(d) **documents binding**: this Licence is its valid and binding obligation, enforceable in accordance with its terms subject to laws generally affecting creditor's rights and principles of equity;

(e) **transactions permitted**: its entry into and observance and performance of its obligations under this Licence and the carrying out by it of the transactions contemplated by this Licence do not and will not violate in any respect any provision of:

    (i) any law or regulation or any judgment, ruling, order or decree of any Governmental Agency binding on it;

    (ii) its incorporation bylaws, articles of association or constitution; or

    (iii) any other instrument, arrangement or agreement which is binding upon it or its property;

(f) **Authorisations**: all Authorisations required in connection with the entry into and the observance and performance by it of its obligations under this Licence and the carrying out by it of the transactions contemplated by this Licence, and to ensure the validity and enforceability of this Licence and the transactions contemplated by this Licence, have been obtained and are in full force and effect and there has been no default in the observance and performance of the terms and conditions applicable to any such Authorisation;

(g) **no misrepresentation**: all information provided by or on behalf of it to the other Party in or in connection with this Licence is true in all material respects and is not, by the omission of information or otherwise, misleading;

(h) **no undisclosed agreements**: there are in existence no instruments, arrangements or agreements which have not been disclosed to the other Party which are material in the context of this Licence;

(i) **no trust**: it is not a trustee of any trust or settlement; and

(j) **solvency**: no Insolvency Event has occurred and is continuing in relation to it and it is able to pay its debts as they fall due.

(k) **virus warranty**: Pacbyte further represents and warrants that it will take reasonable commercial efforts to ensure that the Software, in the form and when provided to you, will be free of any viruses, malware, or other harmful code. For any breach of the foregoing warranty, your sole and exclusive remedy, and Pacbyte's sole obligation, is to provide a replacement copy of the Software promptly upon notice.

11.2. Reliance. Each Party acknowledges that the other Party has entered into this Licence in reliance on the representations and warranties made by it in clause 11.1.

11.3. Indemnity. Each Party will indemnify and hold each other harmless against all Claims or Actions, losses, costs, liabilities and expenses (including legal costs on a full indemnity basis) which may be suffered, sustained or incurred directly or indirectly as a result of or in respect of a breach by either party of any of the representations or warranties on its part under clause 11.1.

12. GENERAL

12.1. Notices. Any notice required under this agreement must be in writing and sent to the contact address of the relevant party as listed in the Order or as updated from time to time with a copy sent to the following email address: notices@pacbyte.com. Notices given by email sent before 4pm on a business day are deemed to have been received that day, and otherwise, the next business day. Notices given by post shall be deemed to have been received seven (7) days after dispatch. Any notice must be signed, or if by email, sent, by an officer of the sender or any attorney, solicitor or authorised agent of that Party.

12.2. No assignment. The User may not assign or transfer any of its rights or obligations pursuant to this Agreement without the prior written consent of the Licensor.

12.3. Further assurance. Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

12.4. Costs. Each Party will pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this Licence except as otherwise specified in these Licence Terms.

12.5. Force majeure: Neither party is liable to the other for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure, provided that the affected party: a) immediately notifies the other party and provides full information about the Force Majeure; b) uses best efforts to overcome the Force Majeure; and c) continues to perform its obligations to the extent practicable.

12.6. Supervening legislation. All legislation or any Court order which at any time directly or indirectly: a) lessens or otherwise varies or affects in favour of one Party over the other Party any obligation under this Licence; or b) delays or otherwise prevents or prejudicially affects the exercise by one Party rather than the other Party of any right, power, privilege or remedy under this Licence is negated and excluded from this Licence.

12.7. Governing law and jurisdiction. This Licence is governed by and construed in accordance with the laws of New South Wales, Australia. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia and courts of appeal from them. Each Party irrevocably waives any right it may now or in the future have to object to any action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts have no jurisdiction.

12.8. Variations. These Licence Terms may be varied by the Licensor at any time and from time to time with notice given to you by email, through the Software or through our website. Together with notice, we will specify the effective date of the modifications and the User's continued Use or access of the Software after any variation has been made will comprise acceptance by the User of these Licence Terms as varied.

12.9. Waiver. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude (a) its future exercise; or (b) the exercise of any other power or right. The variation or waiver of a provision of this Agreement or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.

12.10. Remedies. The rights provided in these Licence Terms are cumulative and not exclusive of any other rights available in these Licence Terms, any other instrument or at law. This Licence is in addition to and is not prejudiced by or merged in any right a Party now has or may have.

12.11. Severance. If any part of this Agreement is invalid or unenforceable, this Agreement does not include it. The remainder of this Agreement continues in full force.

12.12. Indemnities. Each indemnity in this Licence is a continuing obligation, separate and independent from the other obligations of the Parties and survives termination, performance, completion or expiration of this Licence. It is not necessary for a Party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Licence.

12.13. Counterparts. The Agreement may be signed in counterparts, each of which constitutes an original and all of which constitute the same agreement. A party may enter the Agreement by signing and emailing a counterpart copy to the other party.

12.14. Entire agreement. In relation to the subject matter of this Licence, these Licence Terms and the Documentation, embody the entire understanding of the Parties and constitute the entire terms agreed between the Parties and supersede any prior written or other agreement between the Parties.

12.15. No merger. Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against another party or any other person at any time.

12.16. Consents and approvals. Where this Agreement gives any party a right or power to consent or approve in relation to a matter under this Agreement, that party may withhold any consent or approval or give consent or approval conditionally or unconditionally.

12.17. No reliance. In entering into this Agreement, each party has not relied on any warranty or representation (whether oral or written) in relation to the subject matter of this Agreement not made in this Agreement.

12.18. Publicity Rights. We may identify you as a Pacbyte customer in our promotional materials. We will promptly stop doing so upon your request sent to notices@pacbyte.com.

12.19. Survival of Terms. The following terms shall survive expiration or termination of this Agreement: Clause 1 (Definitions); Clause 2 (Licence); Clause 4 (User Undertakings); Clause 5 (Confidentiality); Clause 6 (Intellectual Property Rights); Clause 7 (Infringement); Clause 8 (Indemnity, Limited Warranty and Limit of Liability); Clause 9 (Term and Termination); Clause 10 (Dispute Resolution); Clause 11 (Representations and Warranties); and Clause 12 (General).

Licensor Liability Cap	To the extent permitted under applicable law, the Licensor's total liability with respect to claims arising from or in connection with Its performance, or observance of its obligations or otherwise under this Agreement or any order, regardless of the form of the action, whether in contract, tort (including negligence), or other legal or equitable theory shall in no circumstances exceed one hundred thousand Australian dollars ($100,000).