

PBCS LICENCE Terms & Conditions

BACKGROUND

- A. The Licensor is the distributor of the Product being a web-based system for analysing performance based communications and surveillance systems in accordance with ICAO standards and recommended practices.
- B. Access to and use of the Product by the Licensee is subject to these terms and conditions, including any other website terms referenced herein (such as the privacy statement on the Licensor's PBCS webpage).
- C. By indicating acceptance of these terms & conditions and/or accessing the Product through Licensor's PBCS webpage the Licensee has agreed to be legally bound by these terms and conditions.

AGREEMENT

1. DEFINITIONS AND INTERPRETATION

- 1.1 **Definitions:** In this Agreement, unless the context otherwise requires:

"Agreement" means these terms and conditions and including any other website terms referenced herein (such as the privacy statement on the Licensor's PBCS webpage).

"Commencement Date" means the date specified on which your application to enrol is accepted, and payment is received in full.

"Initial Term" means the period selected by Licensee in the Licensor's PBCS webpage, unless agreed otherwise in writing.

"Intellectual Property Right" means all industrial and intellectual property rights (whether protectable by statute, at common law or in equity) as may exist anywhere in the world, including any right attaching to copyright, trade and business names, design, trade marks, patents, trade secrets, inventions, know-how or confidential or other proprietary information.

"Licence Fee" means the applicable licence fee stated on the Licensor's PBCS webpage payable by the Licensee during the Initial Term.

"Licensee" means the person licensed under this Agreement to use the Product in accordance with these terms and conditions.

"Licensor" means Airways International Limited.

"Product" means a web-based system for analysing FANS1/A performance based communications and surveillance data and related materials as more particularly described on our webpage, and any other materials, information or documentation provided to the Licensee by the Licensor in relation to that system, including all modifications, adaptations, updates and developments to that system.

"Purpose" means the purpose of using the Product's capability for Licensee's internal business purposes for the Initial Term.

- 1.2 **Interpretation:** In this Agreement, unless the context otherwise requires:

- (a) any reference to a party to this Agreement shall include the successors and permitted assigns of such party or parties;
- (b) clause headings are inserted for convenience only and shall be ignored in construing and interpreting this Agreement;
- (c) the plural includes the singular and vice versa;
- (d) an obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (e) the word "including" and similar words do not imply any limitation;
- (f) a reference to dollars or \$ is a reference to New Zealand currency;
- (g) references to a "person" includes references to an individual, company, corporation, partnership, firm, joint venture, association, trust, organisation, governmental or other

regulatory body or authority or other entity in each case whether or not having separate legal personalities; and

- (h) the Background is an integral part of the Agreement.

2. TERM

- 2.1 **Term:** Subject to clause 8, this Agreement commences on the Commencement Date and shall continue for the Initial Term. The Initial Term may be extended by written agreement of the parties. Please contact us to discuss.

3. LICENCE OF THE PRODUCT

- 3.1 **Use:** Subject to the terms of this Agreement: and in consideration of the mutual benefits and advantages under this Agreement, (the sufficiency of which is acknowledged), the Licensor grants to the Licensee a non-exclusive, non-transferrable, revocable, limited licence to use the Product for the Purpose for the Initial Term

- 3.2 **Limitations:** The Licensee:
- (a) has no right, and must not purport or attempt, to sub-license or otherwise make available all or any part of the Product to any other person; and
 - (b) must not copy, reproduce, modify, translate or vary the Product by any means or in any form without the Licensor's prior written consent.

- 3.3 **The Licensor's ownership:** All Intellectual Property Rights and other rights in and to the Product, including all modifications, adaptations, updates and developments of the Product, are and will remain the property of the Licensor or the Licensor's suppliers and licensors (as the case may be) as those rights arise. The Licensee agrees that it will do all things, including signing any documentation, necessary to give effect to this clause 3.3.

- 3.4 **The Licensee to share results of the Product's performance:** Either during or as soon as possible after the expiry of the Initial Term, the Licensee shall provide the Licensor with details of the Product's performance.

- 3.5 **The Licensee's intellectual property:** For clarity, the parties agree that nothing in this Agreement shall affect the Licensee's rights in and title to the Licensee's know-how, intellectual property, methodologies and processes that it has developed:
- (a) prior to the date of this Agreement; or
 - (b) independently without access to or use of the Product.

- 3.6 **The Licensee's responsibilities:** Throughout the term of this Agreement, the Licensee shall be responsible for the following:
- (a) the integrity of its own data that it inputs while using the Product; and
 - (b) the security of its network and connection to the Product.

- 3.7 **Use of the Licensee's data:** The privacy statement on Licensor's website applies to its use of Licensee Data (as amended by this clause). The Licensee acknowledges that the data it uploads into the Product (**Licensee Data**) is useful to aviation industry participants for making improvements in the industry. Accordingly, and notwithstanding the provisions of clause 9.5, the Licensee agrees that the Licensor shall be entitled to make the Licensee Data available to third parties for FANS1/A performance monitoring purposes. The Licensee acknowledges and agrees that the Licensee Data made available to third parties will only have identifiable detail removed if requested by the Licensee in writing. The Licensor will maintain a database of third parties with access to the Licensee Data and will provide the Licensee with the names of those third parties on request.

- 3.8 The Licensee warrants that it has all necessary rights in the Licensee Data as required to give effect to this Agreement (including the use of such data under clause 3.7) and indemnifies the Licenser against all loss or liability the Licenser suffers due to any Licensee breach of the warranty in this clause 3.8.
- 4. PROVISION OF THE PRODUCT**
- 4.1 **Provision by The Licenser:** The Licenser shall, at its own cost, provide the Licensee access to the Product on the Commencement Date.
- 4.2 The Product is accessible at <https://pbcsanalysis.herokuapp.com>. The Licenser will provide the Licensee with a Username and Password to access the Product.
- 5. PAYMENTS DURING THE EXTENDED TERM**
- 5.1 **Payment of Licence Fee:** During the Extended Term, the Licensee shall pay to the Licenser the Licence Fee at the times and in the manner specified in Schedule 1.
- 5.2 **Increase in Licence Fee:** The Licence Fee may be increased by the Licenser every second year upon 30 days' written notice and with effect from the relevant anniversary of the Extended Term commencement date, by an amount not exceeding 10% of the Licence Fee payable during the period immediately preceding the written notice.
- 5.3 **GST:** If payable, GST shall be added to all payments under this Agreement and the Licensee shall pay to the Licenser GST at the applicable rate on all payments payable to the Licenser under this Agreement at the same time such payments are due.
- 5.4 **Interest on overdue monies:** If the Licensee defaults in the payment of any monies payable under this Agreement by the due date for payment, then the Licensee shall pay to the Licenser interest at the rate of 2% above the then overdraft lending rate of the Licenser's bankers on the monies unpaid from the due date for payment until the actual date for payment.
- 5.5 **Withholding tax:** Where the Licensee is required by relevant law to withhold Withholding Tax, the parties agree that the Licensee shall be entitled to withhold an amount of the Licence Fee equivalent to the Withholding Tax. In such case, the Licensee will gross up such payments so that the Licenser receives the full payment as if such deduction was not required to be made. This requirement to "gross up" will not apply if a double taxation treaty exists between the governments of the relevant jurisdictions which enables the Licenser to obtain a tax credit for the Withholding Tax deducted by the Licensee. In such case, before making any such deduction, the Licensee will instead provide the Licenser with a certificate or letter in respect of the amount withheld which will enable the Licenser to obtain a tax credit for the amount withheld from the New Zealand Inland Revenue Department.
- 6. WARRANTIES**
- 6.1 **Power and authority:** Each party warrants to the other that it has full power and authority to enter into and to perform its obligations under this Agreement which when executed will constitute valid and binding obligations on it in accordance with its terms.
- 6.2 **Exclusion of warranties:** The Licenser's warranties are limited to those set out in this Agreement and any implied condition or warranty (including without limitation any warranty as to merchantability, fitness for a particular purpose or under the United Nations Convention on Contracts for the International Sale of Goods (1980, Vienna)) are hereby excluded. Without limiting the foregoing, the Licensee acknowledges and agrees that nothing in this Agreement will make the Licenser liable for any error, omission, defect, deficiency, or nonconformity in the Product. Without limitation, the Licenser does not warrant:
- the accuracy and completeness of the Product;
 - that the Product will meet the requirements of the Licensee;
 - that the Product will be free of errors; or
 - the use of the Product will be uninterrupted.
- 6.3 **Consumer Guarantees Act:** The Licensee agrees and represents that it is acquiring the Product for the purposes of a business and that the Consumer Guarantees Act 1993 shall not apply to the supply of the Product or this Agreement.
- 7. INDEMNITIES AND LIABILITY**
- 7.1 **Licensee indemnity:** The Licensee indemnifies and holds the Licenser and its employees and agents harmless from and against any and all claims, damages, liabilities, costs (including client and solicitor costs and the costs of complying with any order by a Court or other regulatory body) and losses (including losses arising from complying with any order by a Court or other regulatory body) arising out of any breach of this Agreement by the Licensee or its employees or agents.
- 7.2 **Exclusion of consequential loss:** The Licenser shall not be liable to the Licensee in connection with this Agreement for any claim for any loss of profit, loss of revenue or other form of economic loss, or for any form of indirect, consequential or special loss or damage. This limitation of liability applies however liability arises, whether in contract, tort (including for negligence), breach of statutory duty or otherwise.
- 7.3 **Exclusion of liability:** The Licenser will not be liable to the Licensee in any way whatsoever for any claim made by the Licensee or any third party under or in connection with this Agreement, whether the claim is made in contract, tort (including negligence), or otherwise.
- 7.4 **Limitation of liability:** To the fullest extent permitted by law, if, notwithstanding clause 7.3 of this Agreement, the Licenser is held liable under or in connection with this Agreement, the Licenser's aggregate liability shall not, in any event, exceed the Fees paid and payable for the Initial Term.
- 8. TERMINATION**
- 8.1 **Termination by the Licenser for Default:** The Licenser may terminate this Agreement upon the happening of any Event of Default affecting the Licensee.
- 8.2 **Events of Default:** For the purpose of clause 8.1 an Event of Default shall happen if:
- the Licensee breaches clause 3.2;
 - the Licensee commits any material breach of its obligations under this Agreement which substantially reduces the benefit or increases the burden of this Agreement to the Licenser and clause 9.1 (force majeure) does not apply provided however that if any such breach is capable of remedy then the Licenser must first give written notice to the Licensee of any such breach and may only terminate this Agreement if such breach remains unremedied for a period of 14 days from the date of such notice;
 - the Licensee shall have a liquidator appointed or shall pass a resolution for winding up or shall enter into any arrangement or composition with its creditors (other than for the purpose of amalgamating or reconstruction);
 - a distress or execution is levied or issued against any part of the property or assets of the Licensee;
 - a receiver or a statutory manager is appointed in respect of the Licensee's assets or any part thereof;
 - the Licensee shall cease or threaten to cease to carry on its business;
 - an warranty given pursuant to clause 6.1 is breached by the Licensee; or
 - there is any change in the legal or beneficial control of the Licensee. For the purposes of this clause 8.2(h), "control" shall mean the ability of a person to direct the management and/or policies of the Licensee,

whether directly or indirectly, through ownership of voting securities, by contract or otherwise.

8.3 Consequences of Termination: Upon termination of this Agreement in accordance with this clause 8:

- (a) any accrued right or liability of either party shall be unaffected;
- (b) the coming into force or the continuation in force of any provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after such termination shall be unaffected; and
- (c) the Licensee must immediately return or destroy (at the Licensor's option) all copies of the Product in its possession and at its own cost.

9. MISCELLANEOUS

9.1 Force Majeure: Neither party shall be liable to the other for any delay or non-performance of its obligations under this Agreement or, in the case of the Licensor, for any delay or disruption in the provision of the Product or updates, arising from any cause beyond that party's reasonable control including, without limitation, acts of God or public enemy, national emergencies, insurrection, riot, hostile or warlike action in peace or war, sabotage, government action, acts or omissions of third parties, or industrial disputes PROVIDED THAT if any delay or non-performance caused by a force majeure event continues for a continuous period exceeding 90 days either party may by written notice terminate this Agreement.

9.2 Waivers: A waiver (whether express or implied) by either party of any provision of this Agreement or of any breach or default by the other in performing any provision shall not be effective unless in writing and shall not constitute a continuing waiver and shall not prevent the waiving party from subsequently enforcing any provision of this Agreement not waived nor from acting on any subsequent breach or default of the other party under the provisions of this Agreement.

9.3 Notices:

- (a) **Notice:** Each notice or other communication under this Agreement must be in writing and be made: (1) through the Licensor's webpage; (2) by email to the addressee at the email address specified on the Licensor's webpage; or (3) by email to the email address as otherwise notified in writing, from time to time designated for the purposes of this Agreement by the addressee to the other party.
- (b) **Communication effective:** No communication shall be effective until received. The communication is deemed to be received by the addressee, in the case of email, when such transmission is deemed to have been dispatched in accordance with the Electronic Transactions Act 2002 (NZ).

9.4 Further acts: The Licensee shall sign and deliver any document and undertake any act, matter and thing which is reasonably required or requested by the Licensor to carry out and give effect to the intent and purpose of this Agreement.

9.5 Confidentiality: Any information of a confidential nature made available to a party pursuant to this Agreement (including all documents and information relating to the Product) shall be kept strictly confidential by the recipient party provided that this obligation shall not apply to any information which:

- (a) is in the public domain other than by default of the recipient party;
- (b) is obtained by the recipient party from a bona fide third party having the right to disseminate such information;
- (c) is or had already been independently generated by the recipient party; or
- (d) is required to be disclosed by law or by any Stock Exchange.

The obligations contained in this clause 9.5 shall endure beyond the termination of this Agreement until the confidential information comes into the public domain other than by default of the recipient party.

9.6 Assignment etc:

- (a) Subject to clause 9.6(b), no party shall be entitled to transfer, assign, sublease, sublicense or otherwise part with its interest or any right, obligation or entitlement under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld.
- (b) Either party may assign its interest in this Agreement to any subsidiary or holding company (as those terms are defined in the New Zealand Companies Act 1993) provided that it gives notice to the other party of any such assignment.

9.7 Variation: This Agreement shall not be varied unless such variation is expressly agreed in writing by both parties.

9.8 Governing Law: This Agreement is to be governed by and construed in accordance with New Zealand law and the parties submit to the exclusive jurisdiction of the Courts of New Zealand.

9.9 Privity: This Agreement is not intended to confer any benefit on or create any obligation enforceable at the suit of any person not a party to this Agreement.

9.10 Waiver: No failure, delay or indulgence by any Party in exercising any power or right conferred on that Party by this Agreement shall operate as a waiver of such power or right. Nor shall a single exercise of any such power or right preclude further exercises of that power or right or the exercise of any other power or right under this Agreement.

9.11 Entire Agreement: This Agreement supersedes all previous conditions, understandings, commitments, agreements and representations whatsoever whether oral or written, and constitutes the entire agreement between the parties, relating to the subject matter of this Agreement.

9.12 No Partnership/Agency: Nothing contained in this Agreement is deemed to constitute the parties partners nor, constitute any party the agent or legal representative of another party. No party has authority to act or to assume any obligation or liability on behalf of any other party except as expressly provided in this Agreement.

9.13 Invalidity/Severability: If any one or more provision of this Agreement become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired by it.