



SOFTWARE END-USER LICENCE AGREEMENT

Ver. 19.01.01

IMPORTANT

YOU MUST READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY BEFORE USING THIS SOFTWARE

This End User Licence Agreement (or "EULA") is a legal agreement between the person, company or organisation that has licensed this software ("You", "Licensee") and pacITware Pty Ltd ("PW"). By using this Software, the Licensee accepts the Software and agrees to become bound by the terms of this EULA and the Privacy Collection Statement. If You do not agree to be bound by these terms or the Privacy Collection Statement, or do not have the authority to bind Licensee to these terms, then **DO NOT USE THE SOFTWARE** and return to PW for a full refund

1. DEFINITIONS

- 1.1. **"Accredited Implementer"** means a user that has been assessed, by PW, as competent to perform a PW implementation;
- 1.2. **"DM" or "Data Model"** means:
 1. the software and scripts that form part of the Software and which are used to generate a pacITware database;
 2. the design or logical model for the pacITware database; and
 3. the sum or collection of pacITware databases that have been generated from the scripts.
- 1.3. **"Connection Licence"** means a licence that is required for any user of Licensee to access a Data Model;
- 1.4. **"Databases"** means the databases that are created as a consequence of the Licensee running the DM database generation scripts and populating the resulting database(s) using a Connection Licence;
- 1.5. **"Product" or "Client side Software Products"** means any of pacITware supplied or installation application product.
- 1.6. **"Confidential Information"** means the confidential information of PW which relates to the subject matter of this EULA and includes information relating to:
 1. the design, specification and content of the Software;
 2. the Documentation;
 3. the personnel, policies or business strategies of PW;
 4. the terms upon which the Software is being supplied and installed pursuant to this EULA; and excludes any information that:
 - (a) is independently developed by Licensee;
 - (b) is or becomes publicly available without breach of this EULA;
 - (c) is rightfully received from a third party without obligation of confidence; or
 - (d) is released for disclosure by the owner of the information with its written consent.
- 1.7. **"Documentation"** means all printed and digital materials, including but not limited to, online help, user documentation, training documentation, or technical information and briefings supplied under this EULA.
- 1.8. **"Expiry Date"** means the date at which a Lease Licence expires
- 1.9. **"Intellectual Property Rights"** means statutory and other proprietary rights in respect of trademarks, designs, patents, circuit layouts, copyrights, confidential information, know-how and all other rights with respect to intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organization of July 1967 as amended.
- 1.10. **"Lease Licence"** has the meaning given to that term in clause 2.4.
- 1.11. **"Licence Key"** means a unique key without which the Software will not run. A Licence Key may be implemented in software or via a Hardware Key. If implemented in software the key ties the Software to the specific machine or node.
- 1.12. **"Named User Licence"** means a specified "named user" is licenced to use Software. The Named User Licence permits the named user to access Software from any computer of Licensee.
- 1.13. **"Node-Locked Licence"** means a licence to use Software on a specified machine or "node". A Node-Locked licence is enforced by a Licence Key.
- 1.14. **"Privacy Collection Statement"** means the privacy collection statement provided at the end of this EULA.

- 1.15. **"Quotation"** means any quotation provided by PW for the purchase of the Software covered by this EULA.
- 1.16. **"Software"** means any one of the PW software products or websites, either individually or collectively, including but not limited to Clientside Software Products, components, plug-ins, workflows, scripts, objects and programs delivered on any media or downloaded over the Internet, including but not limited to, alpha, beta, pre-release, restricted versions or final commercial release provided in object or executable code format(s), inclusive of backups, updates, service packs or sample code supplied under this EULA.
- 1.17. **"Standard Licence"** has the meaning given to that term in clause 2.2.
- 1.18. **"Trial Licence"** has the meaning given to that term in clause 2.3.

2. GRANT OF LICENCE

- 2.1. The Quotation provided by PW to You will specify the category of licence being provided to You with the terms as contained in this clause 2.
- 2.2. **Grant of Standard Licence** - PW grants to Licensee a time-based, exclusive, non-assignable, non-transferable licence to use the Software and Documentation for Licensee's internal use only in accordance with the terms and conditions set out in the Schedule and otherwise subject to the provisions of this EULA provided that You adopt any new version of the Software in the time allowed under clause 4.1(10).
- 2.3. **Trial Licence** - Licensee's rights and obligations under a Trial Licence are the same as those for a Standard Licence except that the licence expires after 28 days and is subject to the restrictions imposed under clause 4.2 of this EULA.
- 2.4. **Lease Licence** - Licensee's rights and obligations under a Lease Licence are the same as those for a Standard Licence except that the licence expires on the Expiry Date or after 1 year if no Expiry Date is specified and is subject to the restrictions imposed under clause 4.3 of this EULA.
- 2.5. The amount of the licence fees payable for any Software by Licensee will be communicated by PW to Licensee prior to this EULA being entered into between PW and Licensee and as specified in the Quotation. Licensee is not entitled to exercise any of its rights under this EULA until such licence fees are paid to PW.

3. LICENCE ACTIVATION

The Software is activated through a Licence Key designed to prevent unlicensed or illegal use of the Software or use of the Software in breach of this EULA. You agree PW may use these technological measures to prevent such use and you agree to follow any requirements of PW regarding such technological measures. You may also need to reactivate the Software if you modify your computer hardware, or install the Software on another computer or node. The absence of technological restrictions does not affect your requirement to comply with this EULA.

4. LICENCE RESTRICTIONS

- 4.1. **General Restrictions**
 1. Licensee may not sub-license, lease, rent or lend the Software or Documentation.
 2. Licensee may install and store copies of Software onto electronic storage device(s).
 3. The number of Software licences in use by Licensee at any given time shall not exceed the total number of Software licences granted by PW to Licensee in accordance with records maintained by PW.

4. Licensee may make one copy of the Software and Documentation for archival purposes during the term of this EULA. Additionally, Licensee may make routine computer backups. Any redundant installation shall remain dormant while the primary installation is operational.
5. Licensee must not transfer or assign any licence granted to Licensee under this EULA to any third party, without the prior written consent of PW, which may be withheld in PW' sole discretion. If PW gives such written consent, the transferee or assignee of the licence must execute an undertaking to PW to comply with the terms of this EULA as though it was Licensee, Licensee must pay the applicable transfer fee and Licensee must not retain any copies of either the Documentation or the Software.
6. You are required to complete a licence transfer request form available from licencing@pacITware.com and submit such form duly completed to PW.
7. Licensee shall not make any attempt to circumvent the licence requirements or restrictions set out in this EULA or technological measure(s) such as the Licence Manager that control access to or use of the Software and Documentation.
8. A Licensee who has been granted a Node-Locked Licence for Software:
 - a. must only use the Software on the applicable specified machine on which the Licensee has activated the Software using the Licence Key issued by PW;
 - b. if wishing to move the Node-Locked Licence between machines, must first de-activate its licence to the Software on the specified machine before re-activating the Software on another machine;
 - c. must not, in any circumstances, concurrently use or operate separate instances of the Software on different machines; and
 - d. must not disclose the Licence Key to any other person nor permit or allow any person other than the Licensee to use or activate an instance of the Software.
9. Licensee shall not remove or obscure any PW patent, copyright, trademark or proprietary rights notices contained in or fixed to the Software or Documentation.
10. After a reasonable transition period for updating to the most current version of the Software, Licensee shall cease using all prior version(s) of the Software and the licence granted with respect to the prior version will automatically terminate.
11. Software Hosting – the hosting of Software for use by third parties is not permitted under the terms of this EULA. Third parties wishing to host Software are required to enter into a separate agreement with PW.
12. Embedding of the PW application programming interface into a 3rd party software product is not permitted under the terms of this EULA. Organisations wishing to embed PW software into their applications are required to enter into a separate developer's agreement with PW.
13. Licensee shall not reverse assemble or reverse compile or directly or indirectly allow or cause a third party to reverse assemble or reverse compile the whole or any part of the Software.
14. No Use for Competitive Purposes - Licensee expressly affirms that Licensee is not currently and has no intention to use the Software to work on the

development, testing, support, marketing, pricing, or any other function or feature of a software product that is directly or indirectly competitive with the Software without the written consent of PW. Any such action will be considered a material breach of this Agreement and PW may terminate this EULA immediately by notice in writing to Licensee. Upon termination of this EULA, Licensee shall be obliged to immediately return or destroy all Software in all forms and to immediately notify PW in writing that such actions have been taken.

15. Licensee must not otherwise use, copy or deal with the Software except as expressly provided in this EULA.

4.2. Restrictions that apply to a Trial Licence

Where the Software is licensed under a Trial Licence, Licensee must not:

1. install more than one copy;
2. download under more than one username;
3. alter a drive or system to enable the trial version to run for longer than the trial period;
4. disclose the results of software performance benchmarks obtained using the trial version without the permission of PW;
5. use the trial version for training; or
6. use the trial version for any purpose except determining whether to purchase a Standard Licence or a Lease Licence.

4.3. Restrictions that apply to a Lease Licence

Where the Software is licensed under a Lease Licence, Licensee must not alter a drive or system to enable the Lease version to run for longer than the specified lease term.

5. COMPLIANCE

Licensee agrees that PW or its authorised agent(s) may audit Licensee's use of the Software at Licensee's premises to determine compliance with the terms of this EULA upon providing 14 days prior written notice of such audit. In the event that such audit reveals any use of the Software by Licensee other than in full compliance with the terms of this EULA, Licensee shall reimburse PW for all reasonable expenses related to such audit in addition to any other losses, expenses or liabilities PW may incur as a result of such non-compliance. Nothing in the clause limits any other rights that PW may have with respect to such non-compliance.

6. MAINTENANCE

Maintenance means Software or Documentation updates and access to technical support in accordance with the support policy. Maintenance is purchased annually in advance.

- 6.1. Licensee's rights to maintenance and maintenance fee structure are dependent on the setup and implementation being undertaken by an Accredited Implementer. Licensee's rights to maintenance continues for as long as the maintenance fee is paid up in full, however, PW is only obliged to maintain the latest versions of the Software.
- 6.2. Licensee has the right to updates of the Software and Documentation which are produced by PW from time to time.
- 6.3. Licensee has the right to access and use any secure PW web site resources made available to Licensee for Licensee's internal use only provided that Licensee follows PW' terms of use policy specified therein. All password or controlled access information provided by PW shall be treated by Licensee as PW confidential information.
- 6.4. Licensee can de-commission a licence and maintenance fees are not payable on decommissioned licences during the period of decommissioning. A Licence Key can be re-commissioned by contacting PW. Back-maintenance, being

the maintenance fees for the period from the date when de-commissioning commenced up to and including the date of re-commissioning, will be payable on the re-commissioned licence.

7. OWNERSHIP

Licensee has a limited licence to use the Software and Documentation pursuant to this EULA. Licensee acknowledges there is no transfer of title or ownership to Licensee of the Software or Documentation.

8. LIMITED WARRANTY AND DISCLAIMER

- 8.1. PW warrants to Licensee for the period of 28 days from the date of installation of the Software that the Software will operate in substantial conformity with the Documentation.
- 8.2. PW is not liable under the warranty set out in clause 8.1 in the following circumstances:
 1. unless within 28 days of the date of installation of the Software, Licensee returns the defective Software to PW together with a written report specifying in detail the nature and extent of any defect;
 2. if the Software is not installed, used and operated in accordance with the instructions set out in the Documentation;
 3. if the Software is not operated by competent personnel;
 4. if the defect arises from damage occurring to the Software subsequent to its delivery to Licensee.
- 8.3. If a defect is determined by PW to have been caused by a failure of the Software to conform to the warranty set out in clause 8.1, then PW will, at its option in its sole discretion, either replace any defective media, or repair, correct or provide workaround support subject to the support policy of PW, or return the licence fees paid by Licensee for the Software provided Licensee removes and destroys all copies of the Software and Documentation and provides appropriate evidence of such removal and destruction.
- 8.4. PW obligations set out in clause 8.3 are Licensee's sole and exclusive remedies as against PW if the Software does not comply with the warranty provided in this clause 8.1.
- 8.5. Except as expressly stated otherwise in this EULA, the Software is supplied "as is" without warranty of any kind either express or implied, including but not limited to, warranties of merchantability and fitness for a particular purpose. Subject to the warranty given under clause 8.1, the entire risk as to the quality of the Software is assumed by Licensee. Licensee assumes responsibility for the selection of the Software to achieve its intended results and for the end results obtained from the Software and/or its operation.
- 8.6. Neither PW nor any employee or agent of PW is authorised to provide any warranty or representation beyond that expressly specified in this EULA.
- 8.7. Licensee acknowledges that in entering into this EULA it has relied upon its own experience, skill and judgment to evaluate the Software and that it has satisfied itself as to the suitability of the Software to meet its requirements.
- 8.8. All express or implied warranties, statutory or otherwise relating to the Software or this EULA are excluded from this EULA to the extent permitted by law. Nothing in this EULA will exclude, restrict or modify any conditions, warranty, right, remedy or liability implied or imposed by any statute or regulation if they cannot be excluded, restricted or modified. Where legislation implies in the EULA any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of liability under such condition or warranty, the condition or warranty shall be deemed included in this EULA.

However, the liability of PW for any breach of such condition or warranty shall be limited, at the option of PW, to one or more of the following:

1. in the case of services, the supply of the service again, or the payment of the cost of having the services supplied again;
 2. in the case of goods, any one or more of the following:
 - a. the replacement of the goods or the supply of equivalent goods;
 - b. the repair of the goods;
 - c. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - d. the payment of the cost of having the goods repaired.
- 8.9. Except as and to the extent otherwise specifically provided in this EULA, under no circumstances shall PW and its officers, employees, agents or contractors be liable for any loss of profit, indirect, consequential or incidental loss, loss or corruption of data, damage or injury arising from or in connection with this EULA or from any act or omission of PW or its officers, employees, agents or contractors whether arising out of or in connection with the negligence, tort, breach of contract, in equity, statutory duty or otherwise.

9. LIMITATION OF LIABILITY

The aggregate liability of PW to Licensee, whether arising from breach of contract, negligence or any other tort, in equity or otherwise and whether or not Licensee was advised of the possibility of such loss or damage, is limited to an amount equal to the licence fees actually received by PW under this EULA. However, this limitation of liability shall not apply to the extent, and to the extent only, that any legislation or regulation prohibits or restricts limitation of liability for personal injury (including sickness and death) and/or loss or damage to tangible property.

10. INTELLECTUAL PROPERTY INFRINGEMENT INDEMNITY

- 10.1. PW warrants to the best of its knowledge that the use of the Software in accordance with the provisions of this EULA will not infringe the Intellectual Property Rights of any third party.
- 10.2. PW shall not be liable under the warranty set out in clause 10.1 unless Licensee:
 1. notifies PW in writing as soon as practicable of any infringement, suspected infringement or alleged infringement; and
 2. gives PW the option to conduct the defence of such a claim, including negotiations for settlement or compromise prior to the institution of legal proceedings; and
 3. provides PW with reasonable assistance in conducting the defence of such a claim; and
 4. permits PW to modify, alter or substitute the infringing part of the Software, at its expense, to avoid continuing infringement, or authorizes PW to procure for Licensee the authority to continue the use and possession of the infringing Software.
- 10.3. In the event proceedings are brought or threatened by a third party against Licensee alleging that Licensee's use of the Software constitutes an infringement of Intellectual Property Rights, PW may at its own option and at its own expense conduct the defence of such proceedings. Licensee shall provide all necessary cooperation, information and assistance to PW in the conduct of the defence of such proceedings.
- 10.4. PW assumes no liability whatever under this warranty attributable to:

1. the use of the Software in combination with any other products or technologies if the claim of the third party would not have occurred but for such combination;
 2. use of the Software in a manner or for a purpose not reasonably contemplated or not authorised by PW;
 3. modification or alteration of the Software without the prior written consent of PW;
 4. failure by You to comply with any third party terms and conditions referred to in clause 11; or
 5. any transaction entered into by You relating to the Software without PW's prior consent in writing.
- 10.5. The Licensee must indemnify PW against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party alleging such infringement if:
1. the claim arises from an event specified in clause 10.4; or
 2. the ability of PW to defend the claim has been prejudiced by the failure of the Licensee to comply with any requirement of clauses 10.2 or 10.3.

11. THIRD PARTY SOFTWARE

The Software may contain third party software which requires notices and/or additional terms and conditions. Such required third party software notices and/or additional terms and conditions are made as part of and incorporated by reference into this EULA. By accepting this EULA, You also agree to accept these additional terms and conditions, if any, set out therein.

THE SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. IN NO EVENT SHALL THE AUTHORS OR COPYRIGHT HOLDERS BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, WHETHER IN AN ACTION OF CONTRACT, TORT OR OTHERWISE, ARISING FROM, OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THE USE OR OTHER DEALINGS IN THE SOFTWARE.

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12. CONFIDENTIALITY AND PRIVACY

- 12.1. Licensee shall not, without the prior written approval of PW, disclose PW Confidential Information.
- 12.2. Licensee shall not be in breach of subclause 12.1 in circumstances where it is legally compelled to disclose PW Confidential Information.
- 12.3. Licensee shall take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this EULA, do not make public or disclose PW Confidential Information.
- 12.4. Licensee consents to the collection and other handling of its Personal Information by PW in accordance with the terms of the Privacy Collection Statement.
- 12.5. This clause shall survive the termination of this EULA.

13. TERMINATION & BREACH

- 13.1. PW may terminate this EULA immediately by notice in writing to Licensee if Licensee is in breach of any term of this EULA and such breach is not remedied within 28 days of its notification by PW or if Licensee becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration.
- 13.2. In the event of termination You must destroy all copies of the Software and Documentation and any component parts of such Software and Documentation.

14. SEVERABILITY

Any provision of this EULA which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of this EULA nor does it affect the validity or enforceability of that provision in any other jurisdiction.

Where a provision is prohibited or unenforceable, PW and Licensee must negotiate in good faith to replace the invalid provision by a provision which is in accordance with the applicable law and which must be as close as possible to the original intent of PW and Licensee and appropriate consequential amendments (if any) will be made to this EULA.

15. GOVERNING LAW

This EULA will be governed by and construed by the laws of Queensland, Australia excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Convention) which shall not apply to this EULA and shall be subject to the exclusive jurisdiction of the courts of the State of Queensland in the Commonwealth of Australia.

16. PRIVACY POLICY STATEMENT

This Privacy Collection Statement explains the purposes for which we collect and handle personal information in connection with your use of our products and services. Please read it carefully as the terms of this Statement, along with the *Privacy Act 1988* (Cth), governs our use of your personal information.

What information do we collect?

We collect the following information when you activate your licenses: IP Address, Host Name, Hard Drive Serial Number, CPU Information, File and Operating System Information, User, Domain and Installed Applications Information.

You acknowledge that we may use computer servers operated by or on behalf of us to collect this information. This information may be linked to the personal information we already hold about you, including your name and contact details. If we do not collect this information, we may not be able to provide you with the level of service and support you expect from us. We may also not be able to determine whether you have a valid right to use our products and services, in which case we may not be able to supply them to you.

What do we use your information for?

We use this information to:

1. facilitate your use of the site;
2. more effectively respond to your customer service requests and support needs;
3. improve our products and services;
4. verify your rights to use our products and services

Do we share your personal information with anyone else?

We do not share, sell, trade, or otherwise transfer your personal information with, or to, anyone else (including overseas entities).

Your Consent

By using our products and services you consent to our collection and other handling of your personal information in accordance with this Privacy Collection Statement.

How can you get more information?

For further information, contact us at privacy@pacitware.com to obtain:

1. how you may access, and correct, personal information we hold about you; and
2. how you may complain about our handling of your personal information, and how we deal with such complaints.