



User Terms of Service

**Pervasive Telemetry Pty Limited
atf Pertel Unit Trust**

ABN 90 042 341 785

User Terms of Service

Effective: 27 April 2017

These User Terms of Service (the “User Terms”) govern your access and use of our remote monitoring and telemetry field devices, and hosted data server platform, and online software based graphical reporting and productivity tools (the “Services”). Please read these User Terms carefully. Even though you are logging into an existing service, these User Terms apply to you – the prospective user reading these words.

These Terms of Service

1 These “User Terms” are Legally Binding

These User Terms are a legally binding contract between You and Us. As part of these User Terms, you agree to comply with the most recent version of our Acceptable Use Policy, which is incorporated by reference into these User Terms. If you access or use the Services, or continue accessing or using the Services after being notified of a change to the User Terms or the Acceptable Use Policy, you confirm that you have read, understand and agree to be bound by the User Terms and the Acceptable Use Policy. “We”, “our” and “us” currently refers to Pervasive Telemetry Pty Ltd as trustee for Pertel Unit Trust ABN 90 042 341 785 hereinafter referred to as “Pervasive Telemetry”

Customer’s Choices and Instructions

2 You are an Authorised User on a System Controlled by a “Customer”

An organisation, business, legal person, or other third party that we refer to in these User Terms as “Customer” has invited you to access a System and associated Services (i.e., a unique internet domain where a user or group of users may access the Services). If you are accessing your employer’s System, for example, Customer is your employer. If you are accessing a System where your customer, supplier, client or other party (our Customer) created login/access credentials for you, our Customer is authorising you to access certain parts of their System and Services.

3 What This Means for You—and for Us

Customer has separately agreed to our Customer Terms of Service or entered into a written agreement with us (in either case, the “Contract”) that permits Customer to have access to a System and Services which enables Customer to then grant you and others access (each invitee granted access to the Services, including you, is an “Authorised User”). The Contract contains our commitment to deliver the Services to Customer, who may then invite Authorised Users to have access. When an Authorised User (including, you) submits to, or observes content or information from, the Services, such as messages or files or graphs or reports (“Customer Data”), you acknowledge and agree that the Customer Data is owned by Customer and the Contract provides Customer with many choices and control over that Customer Data. For example, Customer may provision or deprovision access to the Services, manage permissions, retention and export settings, transfer or assign Users, and these choices and instructions may result in the access, use, disclosure, modification or deletion of certain or all Customer Data. Please refer to Customer as to how you should properly access and use the System and Services.

4 The Relationship Between You, Customer and Us

As between us and customer, you agree that it is solely Customer’s responsibility to

- (a) inform Authorised Users of any relevant customer policies and practices and any settings that may impact the processing of customer data;
- (b) obtain any rights, permissions or consents from authorised users that are necessary for the lawful use of customer data and the operation of the services; and
- (c) respond to and resolve any dispute with an authorised user relating to or based on customer data, the services or customer’s failure to fulfill these obligations.

We make no representations or warranties of any kind, whether express or implied, to you relating to the services, which are provided to you on an “as is” and “as available” basis.

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

5 Your Must Follow the Rules

To help ensure a safe and productive work environment, all Authorised Users must comply with our Acceptable Use Policy and in addition with that of the Customer (if there is one), and remain vigilant in reporting inappropriate behavior or content to Customer and us.

6 Your Access Rights are at Customer’s Unfettered Discretion (and Ours)

These User Terms remain effective until Customer’s access rights for you expires or terminates, or your access to the Services has been terminated by Customer or by us. Please contact Customer if you at any time or for any reason wish to terminate your account, including due to a disagreement with any updates to these User Terms or the Acceptable Use Policy.

7 Privacy Policy

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

Representations Disclaimers and Indemnifications

8 Limitation of Liability

If we believe there is a violation of the Contract, User Terms, the Acceptable Use Policy, or any of our other policies that can simply be remedied by Customer taking action, we will, in most cases, ask Customer to take action rather than intervene. We may directly step in and take what we determine to be appropriate action (including disabling your access rights) if Customer does not take appropriate action or we believe there is a credible risk of harm to us, the Services, Authorised Users, or any third parties.

You acknowledge you are using the Services for Customer's appropriate purposes or in service of or in cooperation with Customer.

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

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

To the extent permitted by law, total liability of you to us or us to you for loss that is not for any reason, other than willful maliciousness, covered by or excluded or limited by this clause is limited in aggregate for any and all claims to one hundred (100) Australian Dollars.

The foregoing disclaimers do not limit either Party's right to seek and obtain equitable relief.

9 Survival

The sections titled "The Relationship Between You, Customer and Us", "Limitation of Liability", and "Survival", as well as all of the provisions under the general heading "General Provisions," will survive any termination or expiration of the User Terms.

General Provisions

10 Email Messages

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

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

Notices under the Contract will be delivered solely to Customer in accordance with the terms of that agreement.

11 Privacy Policy

Please review our Privacy Policy on our website for more information on how we collect and use data relating to the System and Services.

12 Modifications

As our business evolves, we may change these User Terms or the Acceptable Use Policy.

If we make a material change to the User Terms or the Acceptable Use Policy, we will provide you with reasonable notice prior to the change taking effect displaying some form or notification via the Services. You can review the most current version of the User Terms and the policies referenced in these User Terms at any time by visiting our website. Any material revisions to these User Terms will become effective on the date set forth in our notice, and all other changes will become effective on the date we publish the change. If you access or use the Services after the effective date of any changes, that use will constitute your acceptance of the revised terms and conditions.

13 Waiver

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

14 Severability

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

15 Assignment

You may not assign or delegate any of your rights or obligations under these User Terms including the Acceptable Use Policy, whether by operation of law or otherwise, without the prior written consent of us (not to be unreasonably withheld).

We may assign these User Terms in their entirety (including all terms and conditions incorporated herein by reference), without your consent, to a corporate affiliate or in connection with a merger, acquisition, corporate reorganisation, or sale of all or substantially all of our assets.

16 Governing Law

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

Unless our rights are in danger of material adverse infringement, we prefer to first attempt a resolution of any dispute with you promptly by mutual negotiation in good faith. However, we reserve all rights to seek immediate legal injunction or proceedings.

Each party hereby consents and submits to the exclusive jurisdiction of such courts. In any action or proceeding to enforce rights under the User Terms, the prevailing party will be entitled to recover its reasonable costs and legal fees.

17 Entire Agreement

The User Terms, including any terms incorporated by reference into the User Terms, if applicable, constitute the entire agreement between the parties and supersedes all prior and contemporaneous agreements proposals or representations, written or oral, concerning its subject matter. To the extent of any conflict or inconsistency between the provisions in these User Terms and any other pages referenced in these User Terms, the terms of these User Terms will first prevail; provided, however, that if there is a conflict or inconsistency between the Contract and the User Terms, the terms of the Contract will first prevail, followed by the provisions in these User Terms, and then followed by the pages referenced in these User Terms (e.g., the Privacy Policy). Customer will be responsible for notifying Authorised Users of those conflicts or inconsistencies and until such time the terms set forth herein will be binding.

18 Contacting Pervasive Telemetry

Pervasive Telemetry Pty Ltd
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