

CAT Plus End User Licence Agreement and Disclaimer

DISCLAIMER

Pen CS Pty Ltd (PCS) consults with health professionals and reasonable care is taken to ensure that the collection and representation of data using PCS CAT Plus software is accurate at the date of creation. Health professionals must rely on their own expertise, sound medical judgement and inquiries taking into account the individual circumstances of each patient when providing medical advice or treatment based on data presented using PCS CAT Plus software. PCS disclaims all liability (including for negligence) for any loss, damage or injury resulting from reliance on or use of any information from the PCS CAT Plus software.

END USER LICENCE AGREEMENT (EULA)

DEFINITIONS

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Authentication Details: A username and password for a User Account which is required for the End User to activate and operate a specific copy of the Software.

Distributary Organisation: an organisation that purchased the Software on behalf of the End User and distributes to the End User

Documentation: as set out within the PCS website www.pencs.com.au and also includes any PCS Marketing Materials.

End User: general practitioners, General Practice staff and allied health professionals who have entered into an EULA with PCS.

End User Agreement or **EULA:** an agreement between PCS and an End User that grants the End User a licence to use the Software.

End User Data: data read by the Software from any End User practice management system including patient demographic data, patient diagnoses, medications, allergies, diagnostic reports and Medicare item numbers.

Insolvency Event: in respect of a party means:

- (a) the party ceases to (or is unable to) pay its creditors (or any class of them) in the ordinary course of business, or announces its intention to do so;
- (b) a receiver, receiver and manager, administrator, liquidator or similar officer is appointed to the party or any of its assets;
- (c) the party enters into, or resolves to, enter into, a scheme or arrangement, compromise or composition with any class of creditors;
- (d) a resolution is passed or an application to a Court is taken for the winding up, dissolution, official management or administration of the party;
- (e) any liquidator, receiver or manager enters into possession of any of the assets of the party;

- (f) a mortgagee, chargee or other holder of security, by itself or by or through an agent, enters into possession of all or any part of the assets of the party;
- (g) the party applies for, consents to, or acquiesces in the appointment of a trustee or receiver in respect of the party or any of its property;
- (h) except to reconstruct or amalgamate while solvent on terms approved by the other party, the party enters into or resolves to enter into a scheme of arrangement, compromise or reconstruction with its creditors (or any class of them) or with its members (or any class of them) or proposes a reorganisation, re-arrangement, moratorium or other administration of the party's affairs; or
- (i) anything having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Installation Services: installation of the Software on an End User computer.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

Object Code: software code expressed in machine-readable form.

Out-of-scope Services: any services provided by PCS in connection with any apparent problem regarding the Software reasonably determined by PCS not to have been caused by a Fault, but rather by an External Cause or such other cause outside PCS's control (including any investigational work resulting in such a determination).

Personal Information: has the meaning given in the *Privacy Act 1988* (Cth) and also includes Health Information.

PCS: Pen CS Pty Ltd

PCS Marketing Material: marketing tools and materials developed by PCS and supplied to the End User from time to time for the promotion of the Software.

Services: the Installation Services, Support Services, Training Services, Portal Services and any other services provided by PCS under this Agreement.

Software: CAT4, Topbar, PAT CAT

Source Code: means software code expressed in human readable form, which when compiled, assembled, interpreted or translated becomes Object Code.

Support Services: Help Desk Support and Higher-level Support for the latest version or release of the Software made available by PCS, excluding any Out-of-scope Services.

Term: as specified in the Commercial Details, commencing on the Commencement Date, and any Renewal Term.

Training Services: any training services that PCS provides to the End Users from time to time.

User Account: a unique account set up on the Software for use by a specific End User on a specific computer of that End User.

- 1.2 **Holding company** and **subsidiary** have the meanings given to those terms in the *Corporations Act 2001 (Cth)*.
- 1.3 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.4 Unless the context otherwise requires:
 - (a) words in the singular shall include the plural and in the plural shall include the singular;
 - (b) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
 - (c) a reference to one gender shall include a reference to the other genders; and
 - (d) the words '**such as**', '**including**', '**particularly**' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation.
- 1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.6 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.7 The Schedules and the Portal Terms of Use form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules and the Portal Terms of Use.
- 1.8 A provision of this Agreement shall not be construed against a party merely because the party or its solicitors prepared the provision.

MINIMUM TERMS AND CONDITIONS

1. The End User acknowledges that all Intellectual Property Rights in the Software throughout the world belong to PCS, that rights in the Software are licensed (not sold) to the End User, and that the End User has no rights in, or to, the Software other than the right to use them in accordance with the terms of the EULA.
2. The End User acknowledges that it has no right to have access to the Software in source code form.
3. The End User acknowledges that the integrity of the Software is protected by technical protection measures (**TPMs**) so that the Intellectual Property Rights, including copyright, in the Software are not misappropriated. The End User must not attempt in any way to remove or circumvent any such TPM, nor to apply, manufacture for sale, hire, import, distribute, sell, nor let, offer, advertise or have in its possession for private or commercial purposes, any means whose sole intended purpose is to facilitate the unauthorised removal or circumvention of such TPM.

4. The End User is granted a non-exclusive, non-transferable licence to use the Software and the Documentation for its own internal business only, for the period of the EULA as governed by the licence period that has been purchased. If the EULA is terminated then the EULA shall terminate at the end of the Licence Period.
5. The End User agrees that PCS is not responsible for any non-performance, failure or other aspect of the Software or Documentation;
6. The End User must not transfer, assign, charge or otherwise dispose of its rights or obligations under the EULA. Any purported assignment in breach of this clause is void.
7. The End User may only use the Software in object code form (which shall not include allowing the use of the Software by any person other than End Users' employees and shall only entitle an End User to use the Software on one computer of the End User for each User Account) and must not use the Software except as expressly permitted by the EULA;
8. The End User must not copy the Software or the Documentation, except for back-up purposes and may only use the Software on equipment designated by PCS as compatible with the Software;
9. The End User is not granted any right (whether by licence, ownership or otherwise) in the Software or the Documentation except as stated above in paragraph 4;
10. No Intellectual Property Rights in the Software or the Documentation are transferred to the End User;
11. The End User must not transfer the Software or the Documentation to a third party, share any User Account or Authentication Details with any third party, permit any third party to access the End User's copy of the Software or Documentation, or permit or operate the Software on more than 1 computer using the same User Account or Authentication Details;
12. The End User must not translate, reverse compile, reverse engineer, modify or disassemble the Software (except as may be expressly permitted by the *Copyright Act 1968 (Cth)*);
13. The End User must not make alterations to, or modifications of, the whole or any part of the Software nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs (except as may be expressly permitted by the *Copyright Act 1968 (Cth)*);
14. The End User must supervise and control use of the Software and ensure that the Software is used by its employees and representatives in accordance with the terms of the EULA;
15. The End User must take all necessary steps for PCS to be able to remotely access the End User's computer systems for the purposes of providing Installation Services, Training Services and Support Services, and in order to monitor the End User's compliance with the EULA.
16. The End User agrees and acknowledges that PCS is not responsible for the security of any End User Data. The End User must ensure that the relevant data files for the Software installed on the End User's computer systems are stored in a secure manner so as to prevent unauthorised access and use of End User Data.
17. The End User must obtain all necessary consents for PCS to perform the Services, and for the End User to process End User Data, and must, if any person withdraws his or her consent, promptly notify PCS and configure the Software so that it does not process any of that person's Personal Information.

18. The End User must replace the current version of the Software with any updated or upgraded version or new release that PCS provides immediately on receipt of such version or release;
19. The End User must not remove, alter or destroy any form of copyright notice, proprietary markings or confidential legends placed upon or contained within the Software or Documentation, and shall include such markings and legends on all copies of the Software and Documentation;
20. The End User agrees that the Software and the reports and other information provided by the Software is of a general nature only and does not constitute medical advice or medical opinions of any kind. The End User must independently verify the correctness of the reports and other information provided by the Software before relying thereupon in any respect or providing any advice or services based on any such reports or information.
21. The End User agrees that PCS does not provide medical services or medical opinions of any kind and that any medical or related services provided by the End User to any medical patient are provided by the End User alone and that PCS is not a party to any agreement for the provision of services to any medical patient and is not responsible for the performance of any such agreement.
22. The End User is notified that PCS is a third party beneficiary to the EULA, which contains provisions that relate to the End User's use of the Software. Such provisions are made expressly for the benefit of PCS and are enforceable by PCS and any Distributory Organisation if one exist;
23. PCS shall not be held to any liability whatsoever with respect to any claim of the End User on account of the use or performance of any Software or the Documentation. PCS shall have no obligation to furnish any assistance, information or documentation with respect to the Software or the Documentation, except as otherwise agreed in writing by PCS and any Distributory Organisation if one exist;
24. The End User accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet its individual requirements.
25. The End User must permit PCS and its representatives, at all reasonable times and on reasonable advance notice, to inspect and have access to any premises, and to the computer equipment located there, at which the Software is being kept or used, and any records kept pursuant to the EULA, for the purpose of ensuring that the End User is complying with the terms of the EULA;
26. The End User must not infringe any third party's rights when using the Software, including but not limited to Intellectual Property Rights and rights to privacy;
27. The EULA terminates if the End User breaches any irremediable provision of the EULA or any provision of the EULA capable of remedy and fails to remedy the breach within 7 days of notice requiring it to remedy the breach, if the End User breaches PCS's Intellectual Property Rights, if the End User challenges the validity of PCS's Intellectual Property Rights or if the End User suffers an Insolvency Event.
28. Upon termination of the EULA, all rights granted to the End User under the EULA will automatically and immediately cease, the End User must immediately cease all activities authorised by the EULA, and the Software and the Documentation must be immediately deleted or returned to PCS;

29. The End User's obligations under the EULA shall survive any termination or expiry of this EULA;
30. Any failure by any Distributory Organisation if one exists or PCS at any time during the term of the EULA to insist on strict performance of any of the End User's obligations under the EULA does not constitute a waiver of such rights or remedies and does not relieve the End User from compliance with any such obligations;
31. If there is any inconsistency between the EULA and any other agreement between any Distributory Organisation if one exists and the End User, the EULA takes precedence.
32. The EULA is subject to and shall be construed in accordance with the laws in force in New South Wales.