

IT IS HEREBY AGREED BETWEEN

(1) **Palintest Ltd**, a company registered in England, Palintest House, Kingsway, Team Valley, Gateshead, Tyne and Wear, NE11 0NS, UK registered with the company number 1204118 (referred to in this Contract as **We, Our and Us**); and

(1) **You**, the applicant for the creation of an **Palintest Connect Account** for the subscription of Services set out below, (you are referred to in this Contract as **You and Your**).

1. ABOUT US

1.1 **Our Company details.** Our main trading address is Palintest House, Kingsway, Team Valley, Gateshead, Tyne and Wear, NE11 0NS, UK. Our VAT number is 178 8236 20 and We operate the Website (as defined below).

1.2 **Contacting Us.** To contact Us, email Our customer service team at CustomerSupport@PalintestConnect.com. How formal notice is given in any matter under the Contract is set out in clause 18.

2. DEFINITIONS

2.1 **Account Data:** means all information and materials posted, generated or uploaded onto the Palintest Connect system by you or anyone on your behalf (including, without limitation, where you instruct us to do the same) but excluding Customer Data.

2.2 **Customer Data:** means all information and data relating to any Customer on your Palintest Connect Account, which you upload, input or generate in relation to that Customer, including (without limitation), any configuration or log data, or any data relating to videos and images and any data relating to any events or configurations made on Palintest devices.

2.3 **Corporate Customer:** means any customers to whom you provide Customer Services relating to the Palintest Connect System and Services who contract with you as a corporate entity;

2.4 **Individual Customer:** means any customers to whom you provide Customer Services relating to the Palintest Connect System and Services who contract with you in a personal capacity;

2.5 **Customer:** means your Corporate Customers and Individual Customers;

2.6 **Authorised User:** Your employees, agents and independent contractors who are authorised by You to have access to Your Palintest Connect Account and use the Services, Documentation and the Deliverables.

- 2.7 **Palintest Connect Account:** Your account on the Website created by Us in the event that We accept Your application in accordance with clause 4.3, provided You have a valid Monthly Subscription, Your Account grants You access to Our Services, Documentation and Deliverables.
- 2.8 **Deliverables:** the information and documents supplied by Us to You as part of the Services.
- 2.9 **Documentation:** the documents made available to You whether online or otherwise including information found on <http://palintestconnect.com> or such other web address notified by Us to You, from time to time which sets out the Fees, Subscription Fees, the description of the Services and the instructions for the Services.
- 2.10 **Fees:** the fees (other than Subscription Fees), for Services stated in the Documentation.
- 2.11 **Monthly Subscription:** the monthly subscription purchased by You pursuant to the terms of this Contract (as defined below), entitling You to one Subscription License to be used by Authorised Users. A valid monthly subscription is required in order to access Your Palintest Connect Account and use the Services, Deliverables and Documentation in accordance with this Contract.
- 2.12 **Business Day:** a day other than a Saturday, Sunday or an public holiday in England when banks in London are open for business.
- 2.13 **Normal Business Hours:** 8:00am to 5:00pm local time, each Business Day.
- 2.14 **Planned Maintenance.** Is the maintenance carried out during the maintenance window of [09:00am to 17:00pm](#) UK time [on Sunday each week](#).
- 2.15 **Unscheduled Maintenance.** Is maintenance performed outside Normal Business Hours, provided that We have used reasonable endeavours to give You at least 24 hours notice in advance.
- 2.16 **Services:** The software application provided by Us to You as a subscription service under this Contract through <http://palintestconnect.com/> stated on the Website notified to You by Us from time to time, as more particularly described in the Documentation.
- 2.17 **Software:** the software applications provided by Us as part of the Services.

- 2.18 **You:** means You, or Your Authorised Users.
- 2.19 **Your Data:** the data inputted by You, Authorised Users, or Us on Your behalf for the purpose of using the Services or facilitating Your use of the Services. The GDPR (and any legislation implemented in connection with the GDPR), the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any replacement legislation coming into effect from time
- 2.20 **PC Application:** this is the PC application for configuration of Palintest devices and pairing of account data with the Website.
- 2.21 **Website:** this is the web application we operate which can be found at <http://palintestconnect.com/>.
- 2.22 **Subscription Fees:** the monthly fees You pay Us for Your Monthly Subscription.
- 2.23 **Subscription License:** means, the non-exclusive, non-transferable, right, without the right to grant sub-licences, to permit the approved Authorised Users to use the Services and the Documentation for the duration of this Contract.
- 2.24 **The Payment Date:** the date, in or around 30 days from the Commencement Date.
- 2.25 **Data Protection Legislation:** The GDPR (and any legislation implemented in connection with the GDPR), the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any replacement legislation coming into effect from time
- 2.26 **GDPR:** the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.
- 2.27 **Intellectual Property Rights:** any and all intellectual property rights of any nature anywhere in the world whether registered, registrable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, source code, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature;
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3. OUR CONTRACT WITH YOU

- 3.1 **Our contract.** These terms and conditions are for the Services provided to You by Us (the **Contract**). The Contract applies to the exclusion of any other terms that You seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. These contract regulates the relationship between Palintest Limited and you in relation to your use of the Palintest Connect System.
- 3.2 **The Palintest Connect System** is our cloud-based service, which enables you to manage water quality data and build management solutions via a remote connection to the cloud via our PC application and Website (or by any other method we may make available in the future, including via a browser or Apps for tablet and smartphone).
- 3.3 **Entire agreement.** This Contract is the entire agreement between Us and You in relation to its subject matter. You acknowledge that You have not relied on any statement, promise or representation or assurance or warranty that is not set out in the Contract.
- 3.4 **Access.** You may access the Palintest Connect System and our basic Services free of charge. We offer paid membership tiers, which include access to other functionality and Services. Please note that certain Services and functionality are only available with paid membership tiers. Please refer to our Website for further details on the membership options available to you.
- 3.5 We may offer you additional products and services in the future. Additional products and services may be subject to separate terms and conditions and Fees, which we will make available to you separately, where applicable.
- 3.6 We may change any of our Terms at any time without prior notice to you. Where we change any of our Terms, we will inform your Installer Administrators at login and will require your Installer Administrators to accept the revised Terms before accessing the Palintest Connect System. We may also inform you of changes to our Terms via email to your Installer Administrators.
- 3.7 We recommend that you print a copy of these Terms for your future reference.

4. SUBSCRIBING TO OUR SERVICES

- 4.1 **Applying for a Palintest Connect Account.** To create Your Palintest Connect Account and subscribe to Our Services, You must submit an online application form, following the onscreen prompts on the Website. Each application form submitted by You is a separate offer by You to subscribe to the Services subject to this Contract.
- 4.2 **Correcting input errors.** The application form allows You to check and amend any errors before submitting Your application. Please check carefully the information provided on Your application form before submitting it. You are responsible for ensuring that any and all information requested by Us on the application form is complete and accurate.
- 4.3 **Acceptance of your Application:** Acceptance of Your application takes place when You have submitted Your application form and we have confirmed through an onscreen message of acceptance that your Palintest Connect Account has been created. From this date the Contract between You and Us will come into existence (the **Commencement Date**). The Contract will relate only to those Services specified in the Documentation.

5. YOUR PALINTEST CONNECT SUBSCRIPTION

- 5.1 Subject to Your compliance with this Contract We grant You a Subscription License subject to payment in accordance with clause 8, a Monthly Subscription for the Initial Subscription Period and subsequent Renewal Periods. The number of Authorised Users entitled to access Your Palintest Connect Account is one.
- 5.2 Your Subscription License will expire when this Contract is terminated in accordance with clause 15.
- 5.3 In relation to the Authorised Users, You undertake that:
- (a) the number of Authorised Users that You authorise to access Your Palintest Connect Account and use the Services, Deliverables and the Documentation shall not exceed the number stated in clause 5.1;
 - (b) each Authorised User shall keep a secure password for his use of the Services and Documentation and that each Authorised User shall keep his password confidential;

5.4 You shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation except, in the case of Deliverables as required to fulfil contractual commitments to Your Clients; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services, Deliverables and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Services, Documentation and/or Deliverables to provide services to third parties for any person other than Your Clients; or
- (d) subject to clause 3.3 (entire agreement), license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, Documentation and/or Deliverables available to any third party except the Authorised Users, Clients; or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services, Documentation and/or Deliverables, other than as provided in accordance with this Contract.

5.5 You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, Documentation and/or the Deliverables and, in the event of any such unauthorised access or use, promptly notify Us.

5.6 The rights provided under this clause are granted to You, and shall not be considered granted to any of Your subsidiary or holding company(s).

6. OUR SERVICES

- 6.1 We shall provide the Services and make available the Documentation to You subject to the provisions of this Contract.
- 6.2 We shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for Planned Maintenance and Unscheduled Maintenance.
- 6.3 **Descriptions and illustrations.** Any descriptions or illustrations on the Website are published for the sole purpose of giving an approximate idea of the Services described in them. They will not form part of the Contract or have any contractual force.
- 6.4 **Compliance with specification.** Subject to Our right to amend the specification (see clause 6.5), We will supply the Services to You in accordance with the specification for the Services appearing on the Website, at Commencement Date in all material respects.
- 6.5 **Changes to specification.** We reserve the right to amend the specification of the Services if required by any applicable statutory or regulatory requirement or if the amendment will not materially affect the nature or quality of the Services in a materially detrimental way and We will notify You in advance of any such event.
- 6.6 **Reasonable care and skill.** We warrant to You that the Services will be provided using reasonable care and skill.
- 6.7 **Time for performance.** We will use all reasonable endeavours to meet any performance dates We agree with You in writing, but any such dates are estimates only and failure to perform the Services by such dates will not give You the right to terminate the Contract.

7. YOUR OBLIGATIONS

7.1 It is Your responsibility to ensure that:

- (a) the information supplied to Us complete and accurate;
- (b) You co-operate with Us in all matters relating to the Contract;
- (c) You provide Us with such information and materials We may reasonably require in order to supply You with the Services, and ensure that such information is complete and accurate in all material respects;
- (d) You obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

8. PAYMENT OF FEES

8.1 You may access the Palintest Connect System and our basic Services free of charge. We offer paid membership tiers, which includes access to other functionality and Services from time to time.

8.2 Please note that certain Services and functionality are only available with paid membership tiers. Please refer to our Website for further details on the membership options available to you.

8.3 Where you have a paid membership tier and/or we provide you with other paid Services, you shall pay us the Fees.

8.4 All sums payable under these Terms are exclusive of VAT and other sales taxes, which we shall be entitled to add to the Fees and for which you will be responsible.

8.5 If you fail to make any payment of the Fees due to us by the due date for payment, then, you shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue Fees.

8.6 We reserve the right to increase the Fees and/or the Subscription Fee on an annual basis with the effect from the anniversary of the Commencement date.

9. HOW TO PAY

- 9.1 Payment for the Subscription Fees and Fees are paid by direct debit. Your designated bank account will be charged automatically each month.
- 9.2 We will take payment for the Subscription Fees on the Payment Date, until the Contract is cancelled or terminated in accordance with clause 15.
- 9.3 If You decide to purchase Additional Users or Services (for which a Fee is payable) or both, We will take payment from You on the next Payment Date.
- 9.4 We will send You an electronic invoice within five Business Days of the beginning of the month following payment.
- 9.5 You must pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9.6 We may also, without liability to You, disable Your password, account and access to all or part of the Services and We shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid.

10. COMPLAINTS

If a problem arises or You are dissatisfied with the Services, You can email Us at the following address complaints@PalintestConnect.com

11. INTELLECTUAL PROPERTY RIGHTS

All intellectual property rights in or arising out of or in connection with the Services (other than intellectual property rights in any of Your Data provided by You), will be owned by Us.

12. YOUR DATA

- 12.1 **Account Data:** We will treat your Account Data as non-exclusive and non-proprietary. You grant us a non-exclusive, perpetual and royalty free, worldwide licence to use, store, edit, publish, adapt, translate, distribute and copy your Account Data in any existing or future media.
- 12.2 You represent and warrant to us on an ongoing basis that you:
- (a) are the owner or authorised licensee of all your Account Data;
 - (b) have all necessary rights (including, but not limited to, all Intellectual Property Rights) and consents required to upload, input and display your Account Data and to grant us the rights in the Account Data as set out in these Terms; and
 - (c) have obtained all required permissions and consents from any third party whose personal data is included in your Account Data
- 12.3 **Customer Data:** You shall ensure that you have all necessary rights (including, but not limited to, all Intellectual Property Rights) and consents required to upload, input, display and use the Customer Data. You agree and acknowledge that your Customer is the owner of their Customer Data, on the basis that you are acting as a service provider for the Customer in respect of the provision of the Customer Services under your Customer Contract.

13. LIMITATION OF LIABILITY: YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 13.1 Nothing in the Contract limits or excludes Our liability for:
- (a) death or personal injury caused by Our negligence, or the negligence of our employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any other liability that cannot be excluded or limited by English law
- 13.2 You assume sole responsibility of results obtained from the use of the Services, Deliverables and the Documentation, and for conclusions drawn from such use. We shall have no liability against any claim relating to any damage caused by errors or omissions in any information or instructions provided to Us by You in connection with the Services, or any actions taken by Us at Your direction.
- 13.3 The Services, Documentation and Deliverables are provided to You on an "as is" basis and subject to this clause 13.

- 13.4 We will not be liable to You for losses, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, Your Data or information;
 - (f) loss of or damage to goodwill; and
 - (g) any indirect or consequential loss.
- 13.5 Subject to clause 13, Our total liability to You arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will be limited to the equivalent of the sum of Fees and Subscription Fees paid by You during the 12 months period immediately prior to any alleged breach taking place.
- 13.6 Except as expressly stated in the Contract, We do not give any representations, warranties or undertakings in relation to the Services. Any representation, condition or warranty which might be implied or incorporated into this Contract by statute, including without limitation the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982, by common law or otherwise are, to the fullest extent permitted by law, excluded from the Contract.
- 13.7 This clause 13 will survive termination of the Contract.

14. CONFIDENTIALITY

- 14.1 Both parties undertake at any time during the Contract, and for [duration that any of Your Data is retained by Us](#) after termination of the Contract, not to disclose to any person any confidential information concerning one another's business, affairs, customers, clients or suppliers, except as permitted by clause 14.2.
- 14.2 We each may disclose the other's confidential information:
- (a) to such of Our respective employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out Our respective obligations under the Contract. We will each ensure that such employees, officers, representatives, subcontractors or advisers comply with this clause 14; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3 Each of Us may only use the other's confidential information for the purpose of fulfilling Our respective obligations under the Contract.

15. CANCELLATION AND TERMINATION OF THIS CONTRACT

- 15.1 Failure by you to comply with these Terms may result in us taking action against you, including, without limitation, all or any of the following actions:
- (a) immediate, temporary or permanent withdrawal or suspension of your right to use the Palintest Connect System and/or our other Services;
 - (b) immediate, temporary or permanent removal of any Account Data and/or Customer Data uploaded by you to the Palintest Connect System;
 - (c) bringing legal proceedings against you, including to recover our Losses arising out of or in connection with your breach; and/or
 - (d) disclosure of information by us in respect of the breach to law enforcement authorities as we reasonably believe is necessary.

- 15.2 Without affecting any other rights or remedies available to you, either we may terminate these Terms with immediate effect at any time by giving written notice to you if:
- (a) you fail to make payment for any Services;
 - (b) you fail to provide us with current payment information (as set out in Schedule 1);
 - (c) you breach of any term of this these Terms and such breach is irremediable or (if such breach is remediable) you fail to remedy that breach within a period of thirty (30) days after being notified in writing to do so; or
 - (d) you suffer an Insolvency Event.
- 15.3 Without affecting any other rights or remedies available to us, we may terminate these Terms with immediate effect, if you undergo a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 15.4 Without affecting any other rights or remedies available to the terminating party, either you or we may terminate these Terms at any time by giving the other party not less than three (3) months' notice in writing. Where we terminate for convenience, we will refund the Fees you have already paid for Services after the date of termination on a pro-rata basis. Where you terminate for convenience, you will not be entitled to any refund of Fees.

16. CONSEQUENCES OF TERMINATION

- 16.1 On termination or expiry of these Terms:
- (a) the rights granted to you under these Terms shall cease and you shall cease all activities authorised to you under these Terms;
 - (b) you shall immediately pay us any sums due to us under these Terms;
 - (c) any clauses which expressly or by implication have effect after termination will continue in full force and effect; and
 - (d) the accrued rights, remedies, obligations or liabilities of the parties as at expiry or termination shall not be affected.
- 16.2 Subject to compliance with our obligations under Data Protection Legislation, we shall be entitled to retain Customer Data and Account Data for a reasonable period following termination.

17. EVENTS OUTSIDE OUR CONTROL

- 17.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of Our obligations under the Contract that is caused by any act or event beyond Our reasonable control (**Event Outside Our Control**).
- 17.2 If an Event Outside Our Control takes place that affects the performance of Our obligations under the Contract:
- (a) We will contact You as soon as reasonably possible to notify You; and
 - (b) Our obligations under the Contract will be suspended and the time for performance of Our obligations will be extended for the duration of the Event Outside Our Control. We will arrange a new date for performance of the Services with You after the Event Outside Our Control is over.
- 17.3 You may cancel the Contract affected by an Event Outside Our Control which has continued for more than 20 Business Day. To cancel please contact Us by email. If You opt to cancel We will refund the price You have paid, less the charges reasonably and actually incurred Us by in performing the Services up to the date of the occurrence of the Event Outside Our Control.

18. COMMUNICATIONS BETWEEN US

- 18.1 When We refer to "in writing" in this Contract, this includes email.
- 18.2 Any notice or other communication given by one of Us to the other under or in connection with the Contract must be in writing and be delivered personally, sent by pre-paid first class post or other next Business Day delivery service, or email.
- 18.3 A notice or other communication is deemed to have been received:
- (a) if delivered personally, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting; or
 - (c) if sent by email, at 9.00 am the next Business Day after transmission.
- 18.4 In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee.

18.5 The provisions of this clause will not apply to the service of any proceedings or other documents in any legal action.

19. GENERAL

Assignment and transfer.

(a) We may assign or transfer Our rights and obligations under the Contract to another entity but will always notify You in writing or by posting on this webpage if this happens.

(b) You may only assign or transfer Your rights or Your obligations under the Contract to another person if We agree in writing.

21.2 **Variation.** We reserve the right to amend the Contract from time to time, any material change to the Contract will only have effect We provide You with written notice and option to cancel the service, if You disagree with the changes.

21.3 **Waiver.** If We do not insist that You perform any of Your obligations under the Contract, or if We do not enforce Our rights against You, or if We delay in doing so, that will not mean that We have waived Our rights against You or that You do not have to comply with those obligations. If We do waive any rights, We will only do so in writing, and that will not mean that We will automatically waive any right related to any later default by You.

21.4 **Severance.** Each paragraph of this Contract operates separately. If any court or relevant authority decides that any of them is unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

21.5 **Third party rights.** The Contract is between You and Us. No other person has any rights to enforce any of its terms.

21.6 **Governing law and jurisdiction.** The Contract is governed by English law and We each irrevocably agree to submit all disputes arising out of or in connection with the Contract to the exclusive jurisdiction of the English courts.