

E-PoC Software & Service Licence Agreement



ENTEL UK LTD (“**ENTEL**”) is willing to licence its E-PoC software and provide its E-PoC services and any accompanying documentation to you only on the condition that you accept all the terms in this Licence Agreement (“**Licence Agreement**”).

IMPORTANT: PLEASE READ THE FOLLOWING TERMS AND CONDITIONS BEFORE DOWNLOADING AND USING THE SOFTWARE AND/OR SERVICES.

BY DOWNLOADING THIS SOFTWARE AND/OR USING THE SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, ENTEL IS NOT WILLING TO LICENCE THE SOFTWARE AND/OR SERVICES TO YOU.

1. DEFINITIONS

1.1 Except to the extent expressly provided otherwise, in this Agreement:

“**E-PoC**” means ENTEL’s Push-to-Talk Over Cellular service, software and equipment including SIM cards and data.

“**Annual Licence Fee**” means the annual fee payable under this Licence Agreement as amended from time to time.

“**Critical Update**” means an update to the Software that is required to fix a major fault in the Software and/or allow the Software to continue to operate normally and includes all Recommended Updates not currently installed in the Software.

“**Data Protection Legislation**” means all applicable data protection and privacy legislation in force from time to time in the UK and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

“**EEA**” means the European Economic Area.

“**Intellectual Property Rights**” means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these “intellectual property rights” include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs).

“**Recommended Update**” means an update to the Software that is required to fix a minor fault or to add new features to the Software and Services.

“**Software**” means ENTEL’s Software for the provision of its E-PoC Services.

“**Services**” means E-PoC and Cellular Data Services.

“**Terminal**” any device that requires a licence to connect to ENTEL’s E-PoC Service including, but not limited to, radios, Smartphones & PC’s.

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2. GRANT OF LICENCE

- 2.1 ENTEL grants you a non-exclusive, non-assignable and non-transferable licence (without the right to sublicense) to use the Software and Services subject to the payment of an Annual Licence Fee and the Conditions of Use set forth in Section 3 and the terms and conditions of this Licence Agreement.
- 2.2 Each licence allows you to access the Services on one Terminal concurrently. If you need to use the Services on more than one Terminal at the same time, you will need to purchase additional licences to equal the number of Terminals to be used concurrently.

3. CONDITIONS OF USE

- 3.1 Any use of the Software and Services outside of the conditions set forth in this Licence Agreement is strictly prohibited and will be deemed a breach of this Licence Agreement.
- 3.2 You shall comply with all regulatory requirements and relevant laws in relation to the exercise of your rights and performance of your obligations under this Licence Agreement.
- 3.3 You shall notify immediately if a Terminal and/or SIM Card is lost, stolen, damaged, destroyed or is being used, or is likely to be used, in a manner that breaks the terms of this Licence Agreement.
- 3.4 If a Terminal and/or SIM Card is lost, stolen, damaged, destroyed you are responsible for all charges that are incurred up until the time and date that you notify that such Terminal and/or SIM Card is lost, stolen, damaged, or destroyed.
- 3.5 Only you, your employees or agents may use the Software and Services. You will take all necessary steps to ensure that your employees and agents abide by the terms of this Licence Agreement.
- 3.6 You pay the Annual Licence Fee and any other charges incurred while using the Software and Services.
- 3.7 ENTEL operates a fair use policy for its data charges based on a typical usage average of less than 500mb, per terminal, per calendar month. You will be charged for any data usage that is deemed by ENTEL to be outside its fair use policy at the rate at the time the data was used.
- 3.8 You will be charged for any additional costs ENTEL incurs in delivering the Services as a result of any failure by you to meet your obligations.
- 3.9 You will use the Software and Services:
 - (i) only for your business purposes in connection with your legal use of ENTEL products that are compatible with the Software and Services;
 - (ii) only as described in the Software and Services; and
 - (iii) in strict accordance with this Agreement.
- 3.10 Unless agreed in writing by ENTEL, you shall only use ENTEL's Software and Services for the provision of ENTEL's E-PoC service. Unauthorised use including, but not limited to, the SIM card and its data will incur additional fees and may lead to termination of this Licence Agreement by ENTEL without liability.
- 3.11 Entel, from time to time, will issue software updates to ensure continued compatibility with its servers, improve performance, fix bugs and add features etc. If you choose not to receive or apply these updates you may experience issues or even a loss of the service. Any work by Entel to correct these issues will incur a fee in line with the time, effort, materials and any third party services required to address your specific issues.

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4. TERM OF LICENCE

- 4.1 Payment of the Annual Licence Fee or using the Software and Services will constitute your acceptance of the terms and conditions in this Licence Agreement. Your right to use the Software and Services will continue for a term of twelve (12) months or until terminated in accordance with Clause 11.
- 4.2 Unless terminated earlier in accordance with Clause 11, at the expiry of each twelve (12) month term, this Licence Agreement will terminate and you will not be able to use the Software and Services. To continue using the Services you will need to renew this Licence Agreement for a further term of twelve (12) months and pay the Annual Licence Fee.

5. TITLE

- 5.1 Nothing in this Licence Agreement shall give you any right to access or use the source code or constitute any licence of the source code.
- 5.2 Nothing in this Licence Agreement shall assign or transfer any Intellectual Property Rights from ENTEL to you.
- 5.3 If you transfer possession of any copy of the Software to another party outside of the terms of this Licence Agreement, this Licence Agreement is automatically terminated. Title and copyrights to the Software and any copies made by you remain with ENTEL. You will not, and will not permit others to:
 - (i) modify, translate, decompile, bootleg, reverse engineer, disassemble, or extract the inner workings of the Software and/or Services,
 - (ii) copy the look-and-feel or functionality of the Software and/or Services;
 - (iii) remove any proprietary notices, marks, labels, or logos from the Software and/or Services; or
 - (iv) rent or transfer all or some of the Software and/or services to any other party without ENTEL's prior written consent.
- 5.4 Unauthorized copying of the Software, or failure to comply with any of the provisions of this Licence Agreement, will result in automatic termination of this Licence Agreement.
- 5.5 You may not sublicense, assign or transfer the licence or the Software, except as expressly provided in this Licence Agreement. Any attempt to otherwise sublicense, assign or transfer any of the rights, duties or obligations hereunder is null and void.

6. SERVICE AVAILABILITY

- 6.1 ENTEL's E-PoC Service may become temporarily un-available during, but not limited to, upgrades and maintenance. ENTEL will keep any disruption to a minimum and in the event of prolonged disruption you will be transferred to ENTEL's backup service.
- 6.2 You accept that Cellular Network Services relies on the network operators over which ENTEL has no control. ENTEL cannot therefore guarantee availability or quality of Cellular Network Services.
- 6.3 You accept that Wi-Fi connections rely on Wi-Fi networks over which ENTEL has no control. ENTEL cannot therefore guarantee availability or quality of Wi-Fi network services.
- 6.4 ENTEL may suspend the Service:
 - (i) If you have not complied with this Licence Agreement
 - (ii) ENTEL has the right to terminate under Clause 11
 - (iii) In the event of essential maintenance of the Service

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- 6.5 Suspension of the Services shall not affect your obligation to pay any charges which are due during the period of suspension.
- 6.6 Where you are in breach of this Licence Agreement that led to disconnection and ENTEL subsequently agrees to re-connect you, you will be charged a re-connection fee of **£25.00** per Terminal.

7. UPDATES AND CHANGES TO THE SOFTWARE AND SERVICES

- 7.1 ENTEL may, from time to time, issue updates to the Software and Services over-the-air (“OTA”) or through other means. ENTEL will:
 - (i) Issue OTA Critical Updates direct to you which will automatically update the Software in your DN radios;
 - (ii) Issue an alert that a Critical Update is required to be downloaded by you for Smartphones, PCs and other devices; and
 - (iii) Issue an alert when Recommended Updates are available

8. CONFIDENTIALITY

- 8.1 You acknowledge that the Software and Services contains valuable proprietary information and trade secrets and that unauthorized or improper use of the Software and Services will result in irreparable harm to ENTEL for which monetary damages would be inadequate and for which ENTEL will be entitled to immediate injunctive relief.
- 8.2 Accordingly, you will limit access to the Software and Services to those of your employees and agents who need to use the Software and Services for your internal business purposes, and you will take appropriate action with those employees and agents to preserve the confidentiality of the Software and Services, using the same degree of care to avoid unauthorized or improper disclosure as you use for the protection of your own proprietary software, but in no event less than reasonable care.
- 8.2 You will have no obligation to preserve the confidentiality of any proprietary information that:
 - (i) was in the public domain at the time of disclosure;
 - (ii) entered the public domain through no fault of yours;
 - (iii) was given to you free of any obligation to keep it confidential;
 - (iv) is independently developed by you; or
 - (v) is disclosed as required by law provided that you notify ENTEL prior to such disclosure and provide ENTEL with a reasonable opportunity to respond.
- 8.3 When you use the Software and Service, ENTEL may also collect personal information about you. ENTEL will only keep and use this personal information in accordance with its privacy policy.

9. WARRANTIES

- 9.1 ENTEL provides the Software and Services “**AS IS**” and to the extent permitted by applicable law, expressly disclaims all warranties of any kind, whether express, implied or in any communication with you.
- 9.2 ENTEL does not warrant that the Software and Services will meet your requirements, or that the operation of the Software and Services will be uninterrupted or error free, or that defects in the software will be corrected.

- 9.3 ENTEL makes no warranty with respect to the correctness, accuracy or reliability of the Software and Services or that the Software and/or Services will be entirely secure.
- 9.4 ENTEL makes no warranty that the Software and Services will be compatible with any other software.
- 9.5 ENTEL has made all reasonable efforts to ensure a high availability of the Services. As per any radio communications / internet-based system the Service may be affected by factors outside of ENTEL's control such as, but not limited to, higher than typical network traffic, radio interference, coverage black spots, network outages etc. You acknowledge that the Services are radio / internet based and ENTEL does not guarantee the Service to be available 100% of the time.
- 9.6 ENTEL has made significant efforts to ensure the security of your communications. You accept that there is a risk that its communications may be unlawfully intercepted, hacked or accessed by those other than the intended recipient. Accordingly, ENTEL does not guarantee communications will be 100% secure.
- 9.7 The foregoing limitations and exclusions apply to the extent permitted by applicable laws in your jurisdiction.

10. LIMITATION OF LIABILITY

- 10.1 To the extent permitted by applicable law, ENTEL shall be held harmless from any and all damages, arising out of the use of or incapability of using the Software, including but not limited to profit loss, business interruption, data/code damage and program error, even though ENTEL had been advised of such possible damages in advance.
- 10.2 The total liability of ENTEL under this Agreement will not exceed the total amount paid by you for the Software and/or Services licenced under this Agreement.
- 10.3 Some jurisdictions do not permit limitations of liability. In such case, claims shall not be waived in accordance with consumer protection laws or other applicable laws.

11. TERMINATION

- 11.1 You may terminate this Licence Agreement at any time.
- 11.2 Unless terminated earlier in accordance with Clause 11.1, at the expiry of each term of twelve (12) months this Licence Agreement will automatically terminate unless renewed by payment of the Annual Licence Fee.
- 11.3 This Licence Agreement will terminate immediately without notice for non-payment of the Annual Licence Fee or any other charges payable under this Licence Agreement.
- 11.4 This Licence Agreement will terminate immediately without notice upon a breach of this Licence Agreement by you.
- 11.5 This Licence Agreement will also terminate without further action or notice by ENTEL if you become bankrupt, go into administrative receiver or receiver appointed, or suffer or file any similar action in consequence of a debt.
- 11.6 Upon termination of this Licence Agreement, no refund of the Annual Licence Fee or other Charges will be due.

12. DATA PROTECTION

- 12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

12.2 The parties recognise for the purposes of this Licence Agreement that they are separate data controllers.

13. GOVERNING LAW

13.1 This Licence Agreement is governed by the laws of the United Kingdom and is subject to the exclusive jurisdiction of the courts of England and Wales.

14. ASSIGNMENT

14.1 This Licence Agreement may not be assigned by you without ENTEL's prior written consent.

15. AMENDMENT

15.1 If any provision of this Licence Agreement is held invalid or unenforceable under applicable law, it shall not affect the validity or enforceability of the remainder of the terms of this Agreement.

15.2 This Licence Agreement may not be amended by you without ENTEL's prior written consent.

16. SURVIVAL OF PROVISIONS

16.1 The parties agree that where the context of any provision indicates an intent that it survives the term of this Licence Agreement, then it will survive.

17. ENTIRE AGREEMENT

17.1 This Licence Agreement contains the parties' entire agreement regarding the use of the Software and/or Services and may be amended only in writing signed by both parties, except that ENTEL may modify this Licence Agreement as necessary to comply with applicable laws.