

## PPS Terms and Conditions v4.2 - 26 October 2011

These terms and conditions cover your use of PPS and our provision of support for PPS. Making payment in respect of the PPS software licence or lease, or payment for a PPS support contract indicates acceptance of these terms and conditions. We have tried our best to make these clear and easy to read and where possible have avoided using legal terms and jargon.

### Some Definitions

The defined words here in quotes may be used in lower, upper or capitalised case in this document.

“Us” or “Our” or “we” refers to Rushcliff Ltd and any of our appointed agents.

“You” or “Your” refers to you and your organisation and staff as the client paying for or using PPS and our support services.

“PPS” is Private Practice Software as developed and produced by Rushcliff Ltd.

### PPS Online

If you use PPS online (where we host your PPS system on one of our servers) then the terms and conditions in this section apply to you.

#### 1. Provision of service

- 1.1. PPS Online is a fully hosted PPS System accessible via the internet. The software and database is housed in a secure “data centre”. Such centres are commonly used by large organisations in the public and private sector as a means of housing software and data for fast secure universal access via the internet.
- 1.2. The PPS Online service is provided by, set up, managed and maintained by us (Rushcliff Ltd) and our appointed agents: Gravity Services Ltd. For the purposes of these terms and conditions Rushcliff Ltd and Gravity Services Ltd. are collectively defined in the definitions above.
- 1.3. The server used in the data centre is leased exclusively by us. The software and database is set up in a secure account on the server specific to you. There is no access to the account by anyone except the you and us in the capacity of the customer’s “system administrator”. Data centre staff and other individuals outside our organisation do not have access to your data.
- 1.4. Access to the PPS is provided by a Remote Desktop Connection and an online account. Each user is allocated a login and password to the online account. Once you successfully log in, you are then presented with the PPS software login screen, where you then enter your PPS-specific login and password. This provides two levels of security for access to your data. The remote desktop connection software is provided by Microsoft™ (and other organisations) and is available on most desktop and hand-held platforms. On some platforms you may be required to purchase the remote desktop connection software.
- 1.5. Each login to the online account is specific to each user. If you disclose your password to another user, and they use this to access the online account whilst you are already logged in, then the other user will

immediately take over your session and log you out. This can provide a security risk as they will automatically be logged in to PPS using your PPS login. We therefore require that you do not share your online login details.

- 1.6. In setting up your account we will endeavour to configure your printers and scanners to work seamlessly with PPS. Whilst most modern printers and scanner will be compatible, there is no guarantee that your make and model of printer or scanner will be compatible for use. You are responsible for providing a compatible printer and scanner.
  - 1.7. All data stored in your PPS online database is owned by you. You can back up the database to your local disk, or request us to provide a backup for you (which we may charge a small fee for). Regular daily backups are made of your data to removable media and to another server housed in another data centre.
  - 1.8. PPS Online servers use RAID disk technology. This mirrors all hard disk activity and is an essential part of providing an uninterrupted service.
  - 1.9. PPS-Online does require an internet connection in order to access the database. Our target for availability of the database is 99.9% up-time (except for scheduled maintenance where you will be notified in advance and normally takes place outside normal office hours). If you have problems with your own local internet connection, then this will affect your access to the database. In the event of your local internet connection not being available, we do recommend that you have provision in place for alternative access to the on-line server.
2. Software Lease contract
- 2.1. This contract is between you and us. We set up your access to PPS online for you and provide you with the login details. once you have paid your first monthly payment then this indicates your acceptance of our terms and conditions.
  - 2.2. You will pay a monthly fee for the user logins you require and services you use. This will be agreed with you in advance. You will be informed of your login details once you have paid your first monthly fee. Payment of the monthly fee will renew your PPS licence and allow you to log in to PPS for a further month.
  - 2.3. The monthly fee is normally payable by credit card or debit card. We will set up a recurring monthly transaction and take the payment each month automatically on the nominated date.
  - 2.4. If you fail to make payment, or your automated payment fails, we will inform you to allow you the option to make payment by alternative means. There is a three week grace period during which this payment must be made. If payment is not made during the grace period then your login to PPS will be suspended until such time as payment is made, or the contract cancelled.
  - 2.5. You must give a minimum of one month notice to cancel the contract. In the event of cancellation of the contract, the contract will terminate at the end of the current calendar month. For example; if a contract is cancelled on the 15<sup>th</sup> but the monthly payment is taken on the 15<sup>th</sup> or over then that final payment will be taken. If the monthly payment is taken on the 14<sup>th</sup> or before then no further payment will be taken.
  - 2.6. We have the right to terminate your contract if you have breached any of our terms and conditions.

- 2.7. We have the right to terminate the contract if we suspect that you are using PPS in conjunction with or in support of any illegal activity.
- 2.8. Your monthly fee also includes your PPS Support contract. This allows you access to our dedicated support desk and also entitles you to PPS software updates via new releases. You are also therefore bound by the PPS Support Terms and Conditions detailed in this document.
- 2.9. We will provide a minimum of three months' notice of any increase in monthly costs.

## The PPS Software

These are the terms and conditions for you using our software.

### 3. Patents Designs and Copyright

- 3.1. We (and our suppliers) retain all proprietary interests and rights in and over our own products and systems and all trade secrets, patent rights, and ideas in relation thereto remain the exclusive property of us and our suppliers.
- 3.2. You will not be responsible for any and all actions or claims arising out of any actual or alleged infringement of any patent, copyright or trade secrets in respect of your use of PPS.

### 4. Disclaimer and limit of liability

- 4.1. The PPS software and associated documentation supplied by us is supplied "as-is". We do not warrant any claims made by directors, employees or any agents as to performance, functionality or reliability of PPS or associated documentation.
- 4.2. We (as Rushcliff Ltd, its directors, employees or agents) shall have no liability or responsibility to the you or any other person or entity with respect to any liability, loss, or damage caused, or alleged to be caused, directly or indirectly by any software supplied by us. You (as the user or the purchaser of the software licence) assumes the entire cost of any incidental or consequential damages resulting from the use of the software or associated documentation.

### 5. Software Registration

- 5.1. The software includes a "Demonstration" database and a "Live" database. The live database can only be accessed if PPS is "registered".
- 5.2. When you either a) purchase the PPS licence or b) enter into a lease agreement (such as PPS online) then you will be provided with a registration key. This is a file which resides within your PPS database. When a valid copy of this file exists in your PPS database then your PPS system is "registered".
- 5.3. The registration file can only be used on ONE PPS database. You are not allowed to copy this key and use it on another PPS database. For example if you own two clinics you MUST purchase or lease TWO PPS systems.
- 5.4. If you lease PPS (for example PPS online) then your registration key will be automatically renewed each month. If the contract is terminated or you fail to make payment then your registration key will not be renewed and you will not be able to log in to the PPS "live" database after the expiration of the registration key.

- 5.5. If you purchase PPS then your registration key will never expire. You cannot purchase PPS to use on our online servers, only your own PC / Network / Server.

## 6. Software Functionality

- 6.1. PPS provides functionality in accordance with the description of the software on our web site including software release notes and help documentation.
- 6.2. We make changes and additions to the functionality, and introduce new features from time to time through the release of new versions of the software. These are documented in release notes.
- 6.3. If you do not want to use the new features then you should not update the PPS software to the new release version.
- 6.4. You can stop new updates by informing us and we will switch this option off on your details on our central registration database.

## 7. New releases of PPS

- 7.1. You are entitled to update PPS to a new release version provided that you have a valid current support contract with us, or you use PPS online.
- 7.2. New releases of PPS are downloaded and installed via a menu option within the PPS software.

## 8. Add-On PPS Software

- 8.1. If you have commissioned us to develop and supply additional PPS functionality in the form of additional modules, menu options or reports, then this additional software is provided under the same terms and conditions as the main PPS software.

# PPS Support

These are the terms and conditions for us providing support to you. These apply if: a) you have valid current support contract with us, b) you are using PPS online, or are leasing the PPS software on a monthly basis, c) you have paid a one-off fee for support for a specific issue.

9. If you have purchased the PPS licence then you have the option to purchase an annual support contract with us. If you use PPS Online or if you lease the PPS software on a monthly basis then this includes your PPS support contract.
10. Support is provided by telephone and e-mail. This can include our support staff logging on to your PC screen (with your permission) provided that the you have the correct software available.
11. Our support team are available between 09:30 and 17:30 Monday through Friday except for UK bank holidays.
12. Out of hours – We do not offer out of hours cover unless we have previously agreed this with you in writing. If you use PPS Online and you are unable to connect to our online server, then you can notify us via e-mail, [alert@rushcliff.com](mailto:alert@rushcliff.com), and we will endeavour to promptly address the issue. There are no contractual timescales for this service. This e-mail address is for connection issues only and not for routine support calls.
13. Very occasionally our support desk may be manned using “emergency cover only” in order for us to carry out training or other company business. Where this is the case we will inform you in advance via e-mail.
14. Support Services included

- 14.1. Clarification of system documentation (such as user manuals, technical notes and software bulletins).
  - 14.2. Responses to questions relating to "how to use" PPS.
  - 14.3. Responses to questions relating to "how to configure" PPS to suit your requirements.
  - 14.4. Access to programmers and system developers for problem definition.
  - 14.5. Advice how to deal with disaster recovery of your database.
  - 14.6. General informal advice about hardware and networking.
15. Support services not included
- 15.1. Configuration of, or advice about your hardware or network or any other non-PPS software.
  - 15.2. Visits by us to your place of work.
  - 15.3. Installation or re-installation of the PPS software at your request.
  - 15.4. Corrections to faults identified in PPS other than corrections made through normal new releases of the software.
  - 15.5. Correction to malfunctions in PPS caused by your hardware, hardware configuration or your actions.
  - 15.6. Assistance with any PPS matters where we consider that you are using PPS for illegal or illicit purposes.
16. Our aim is to answer all incoming support telephone calls. Where we are unable to do this due to busy periods on the support desk, then you should leave a voicemail and one of our team will return your call.
17. Our support team use call logging software. If you leave a voicemail, then the call is logged at the time the voicemail is transcribed and you will receive a call back. All calls are returned in strict order. You may elect to nominate a convenient time that we can return your call and we will do our best to call back at the requested time.
18. Warranty and Limit of Liability
- 18.1. We will ensure that support services are provided by competent personnel. All our support staff are trained and closely supervised.
  - 18.2. We will not be responsible for any claims for direct, indirect or consequential losses arising from our actions in providing support to you.
19. Your responsibilities
- 19.1. To ensure that PPS is installed on suitable hardware and operating system software, and that the hardware (and network where appropriate) has sufficient capacity to run the software effectively.
  - 19.2. To ensure that all peripheral equipment that PPS will use such as printers and scanners is installed and maintained correctly.
  - 19.3. To have your staff properly trained in the use of PPS.
20. If we provide support to you outside the scope of our normal support services provision, we may charge you extra for this.

## General

These are some general terms and conditions that apply to all of our small print pages, and to all software and support services that we provide.

### 21. Security and Confidentiality

- 21.1. All our staff work under a signed confidentiality agreement which includes provision for our staff having access to client (your) data.
- 21.2. As a company we are registered with the Data Protection Act and operate strictly under its guidelines. Our registration number is Z2243568.
- 21.3. Where we host your data via PPS Online, your data stored in PPS is protected by two levels of log-in. Only our support staff will have access to your data for support and system administration purposes.
- 21.4. Where we host your data via PPS Online, data will be displayed on your local screen via an encrypted connection to the server.
- 21.5. We guarantee that where we have access to your data we will only use your data as far as is necessary to carry out any work relating to the implementation, installation or support of PPS.
- 21.6. We undertake not to disclose the contents of your database or the data therein to any third party unless we are required to do so by law, or it is necessary to do so in order to perform any agreed work and then only with the express written permission of the owner of the database.
- 21.7. Any printed examples of your data produced in the course of any support involvement will be destroyed on completion.
- 21.8. We are competent to ensure the safe keeping of the data while it is in our possession and all necessary steps will be taken to ensure that the terms of this undertaking are adhered to.
- 21.9. Each PPS Online Server is housed in a UK-based data centre. These establishments are set up and operated with high security levels in place including physical access to the building and internal parts of the building and access to computers and data stored. The staff at the data centre do not have access to your database information.

22. Insolvency - If a petition to wind up your business is presented to a court or you or your organisation calls a meeting of creditors or passes a resolution for voluntary winding-up (otherwise than for the purpose of reconstruction or amalgamation whilst insolvent), or a receiver or other similar officer of any of your assets is appointed then we shall have the right to cancel any uncompleted part of these terms and payments for deliveries already made shall immediately become due.

23. Force Majeure - Neither party shall be liable for failure to perform its obligations under these terms and conditions if such failure results from circumstances beyond the party's control

24. Termination - Either party shall have the right to terminate the binding of these terms and conditions if the other party is in material breach of any terms and does not rectify such breach within 30 days of receipt of notification thereof in writing, from the injured party. Termination shall not affect any other rights of the injured party.

25. Law - Unless otherwise agreed in writing, these terms and conditions shall be construed and interpreted in accordance with the laws of England.
26. Entire Agreement - The parties agree that these terms and conditions represent the entire agreement between the parties relating to the purchase or lease of PPS and the provision of PPS Support, and that no statements or representations made by either party have been relied upon by other in agreeing to enter into Contract.
27. Prices and Payments
  - 27.1. All our prices are quoted exclusive of Value Added Tax which is payable in accordance with current legislation.
  - 27.2. We will give you a minimum of three months' notice of any price increases.
  - 27.3. We reserve the right to charge an administration fee for any failed or late payments in respect of bank transfers or credit/debit card payments.

## Acceptable Use Policy

This part of our terms and conditions describes the acceptable use of PPS Online and The PPS Software. It is designed to make sure that you do not use PPS for illegal or prohibited use. This applies particularly to using PPS Online and The PPS Software for sending mailshots via E-Mail or using our network and servers for such purpose.

The Acceptable Use Policy (AUP) is designed to protect us, you and the Internet community in general from irresponsible or, in some cases, illegal activities. The Policy is a non-exclusive list of the actions and use of PPS Online and The PPS Software that are prohibited

### 28. Prohibited Uses of PPS Online and The PPS Software:

- 28.1. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorisation, and material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws.
- 28.2. Transmission, distribution or storage of any material that may cause us to come into disrepute or which could be considered immoral even if of a legal nature.
- 28.3. Provision of internet access, VPN or tunnelling of traffic from unidentified users, or in a manner which user details cannot be disclosed to us.
- 28.4. Sending Unsolicited Bulk Email ("UBE", "spam"). The sending of any form of Unsolicited Bulk Email through the PPS Online servers is prohibited. Likewise, the sending of UBE from another service provider advertising a web site, email address or utilizing any resource hosted on our servers, is prohibited. Your PPS Online accounts or services may not be used to solicit customers from, or collect replies to, messages sent from another Internet Service Provider where those messages violate this Policy or that of the other provider.
- 28.5. Running Unconfirmed Mailing Lists. Subscribing email addresses to any mailing list without the express and verifiable permission of the email address owner is prohibited. All mailing lists run by you must be Closed-loop ("Confirmed Opt-in"). The subscription confirmation message received

from each address owner must be kept on file for the duration of the existence of the mailing list. Purchasing lists of email addresses from 3rd parties for mailing to from PPS Online is prohibited.

- 28.6. Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this AUP or the AUP of any other Internet Service Provider, which includes, but is not limited to, the facilitation of the means to send Unsolicited Bulk Email, initiation of pinging, flooding, mail-bombing or denial of service attacks.
- 28.7. Operating an account on behalf of, or in connection with, or reselling any service to, persons or firms listed in the Spamhaus Register of Known Spam Operations (ROKSO) database at [www.spamhaus.org/rokso](http://www.spamhaus.org/rokso).
- 28.8. Unauthorised attempts by a user to gain access to any account or computer resource not belonging to that user (e.g., "cracking").
- 28.9. Obtaining or attempting to obtain service by any means or device with intent to avoid payment.
- 28.10. Unauthorised access, alteration, destruction, or any attempt thereof, of any information of any of our customers or end-users by any means or device.
- 28.11. Knowingly engaging in any activities designed to harass, or that will cause a denial-of-service (e.g., synchronised number sequence attacks) to any other user whether on our network or on another provider's network.
- 28.12. Using our Services to interfere with the use of our servers or network by other customers or authorised users.

## 29. Your Responsibility

- 29.1. By using PPS Online, or The PPS Software you agree to ensure that you abide by this Policy. Any complaints that we receive about you will be dealt with seriously. If violation of these terms has taken place we reserve the right to terminate your use of The PPS Software or PPS Online.

## PPS Online Backup Service

If you use our online backup facility then this section applies to you:

### 30. Provision of Service

- 30.1. PPS Online Backup is a fully hosted back-up facility stored on our servers. A copy of your database is housed in a secure "data centre". Such centres are commonly used by large organisations in the public and private sector as a means of housing software and data.
- 30.2. The servers used in these data centres are leased exclusively by us. There is no access to the account by anyone except us should the need arise for you to restore your database with a backup. Data centre staff and other individuals outside our organisation do not have access to your data.
- 30.3. Your backup database is synchronised via the internet every few minutes with your database in the clinic using PPS Sync Server.

- 30.4. All data stored on your back-up is owned by you. Regular daily backups are made of your backup database to removable media and to another server housed in another secure data centre.
- 30.5. At the time of commencement, your database size will be subject to an assessment by a member of our support team. We will then be able to provide an accurate quote based on the size of your data.
- 30.6. Our set price for online back-up is limited to 3 GB in size. If your database should grow in size over time you may be subject to additional charges for the amount of data syncing to our servers. You will be notified of this increase one-week prior to your monthly payment being taken.

### 31. Disclaimer

- 31.1. In the event that you should wish to restore it is advised that you contact us immediately. Failure to do will not warrant any fault on our behalf including but not limited to, loss of income or revenue, loss of business, loss of profits or contracts, loss of anticipated savings, loss of data, destruction of data, or waste of management or office time.
- 31.2. Our experienced Support team will put every effort into restoring your data to its last stable state; we will not assume any liability for the integrity of the data stored in your back-up.
- 31.3. Data backups will only be restored to registered PPS databases.

### 32. Your Responsibilities

- 32.1. To allow for continuous back-ups to be made of your database, it is important that you ensure your internet connection is maintained correctly and the synchronisation process (PPS sync Server) is running. We will install and set up PPS Sync Server for you but we are not responsible for ensuring that it is running correctly on your system. We take no liability for the failure of our synchronisation service where your internet connection is at fault or you are not running PPS Sync Server correctly.
- 32.2. To ensure that PPS is installed on suitable hardware and operating system software, and that the hardware (and network where appropriate) has sufficient capacity to run the software effectively.

### 33. Contract

- 33.1. This contract is between you and us. Once you have paid your first monthly payment then this indicates your acceptance of our terms and conditions.
- 33.2. You will pay a monthly fee for the back-up facility. This will be agreed with you in advance.
- 33.3. If you fail to make payment, or your automated payment fails, we will inform you to allow you the option to make payment by alternative means. There is a three week grace period during which this payment must be made. If payment is not made during the grace period then your facility will be suspended until such time as payment is made, or the contract cancelled. An additional setup payment may also be incurred if the grace period expires before payment.
- 33.4. If a restore is required during the grace period then all outstanding payments must be made prior to processing the restore.
- 33.5. The monthly fee is normally payable by credit card or debit card. We will set up a recurring monthly transaction and take the payment each month automatically on the nominated date.

### 34. Cancellation of Contract

- 34.1. We have the right to terminate your contract if you have breached any of our terms and conditions.
- 34.2. You must give a minimum of one month notice to cancel the contract. In the event of cancellation of the contract, the contract will terminate at the end of the current calendar month. For example; if a contract is cancelled on the 15<sup>th</sup> but the monthly payment is taken on the 15<sup>th</sup> or over then that final payment will be taken. If the monthly payment is taken on the 14<sup>th</sup> or before then no further payment will be taken.
- 34.3. In the event of termination of the contract, the final backup will be taken on the last day of the month of termination. This backup will be available to you for a further 30 days.
- 34.4. If you are continuing to use PPS after the termination of this contract then you will be obliged to make alternative backups in accordance with the Data Protection Act.