

SOFTWARE LICENSE AGREEMENT

This Agreement is dated _____.

BETWEEN:

Pegasus Labs Pty Ltd (ABN 40629731611) of 100 Harris Street, Sydney, New South Wales, 2009
(**Licensor**); and

_____ (_____) of _____ (**Licensee**)

RECITALS:

A. The Licensor owns certain computer software.

B. The Licensor has agreed to grant to the Licensee a non-exclusive licence to use that computer software and its associated documentation on the terms and conditions set out in this Agreement.

OPERATIVE PROVISIONS:

1. Definitions and interpretation

In this Agreement, unless the context indicates the contrary:

Commencement Date means _____.

Confidential Information means all information provided by one party to the other in connection with this Agreement where such information is identified as confidential at the time of its disclosure or ought reasonably be considered confidential based on its content, nature or the manner of its disclosure, but excluding:

- (a) information that enters the public domain or is disclosed to a party by a third party, other than through a breach of this Agreement; and
- (b) information developed independently by a party.

Documentation means any and all proprietary documentation made available to the Licensee by the Licensor for use with the Licensed Software, including any documentation available online.

Fees means the fees calculated in accordance with Schedule 2.

Force Majeure Event means any event beyond the control of the relevant party.

"VAT" means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

Intellectual Property Rights means all intellectual property rights, including all

copyright, patents, trade marks, design rights, trade secrets, domain names, know how and other rights of a similar nature, whether registrable or not and whether registered or not, and any applications for registration or rights to make such an application.

Licensed Software means the software set out in Schedule 1 owned by the Licensor and delivered to the Licensee by the Licensor pursuant to this Agreement.

Moral Rights has the meaning given under the Copyright Act 1968 (Cth) and includes any similar rights existing in other countries.

Term means _____.

Unless the context requires otherwise:

- (a) a reference to a person includes a corporation or any other legal entity;
- (b) the singular includes the plural and vice versa;
- (c) headings are for convenience and do not form part of this Agreement or otherwise affect the interpretation of this Agreement;
- (d) the term "includes" (or any similar term) means "includes without limitation"; and
- (e) a reference to any statute includes references to any subsequently amended, consolidated or re-enacted version of that statute and all delegated legislation or other statutory instruments made under it.

2. Grant of licence

- (a) The Licensor grants to the Licensee a non-exclusive, world-wide, non-transferable licence to use the Licensed Software and the Documentation during the Term, subject to and in accordance with the terms and conditions set out in this Agreement.
- (b) The Licensee shall have the right to allow its employees and contractors ("Authorised Users") to use the Licensed Software and the Documentation on the Licensee's behalf, subject to their compliance with the terms of this Agreement, and the Licensee shall remain liable for any noncompliance by Authorised Users.
- (c) The Licensee must not:
 - (i) use the Licensed Software for any purpose or in any manner other than as set out in paragraph (a);

- (ii) use the Licensed Software in any way that could damage the reputation of the Licensor or the goodwill or other rights associated with the Licensed Software;
- (iii) permit any third party to use the Licensed Software other than as set out in paragraph (b);
- (iv) permit any person to link to any page containing any part of the Licensed Software (including via a hyperlink or RSS feed) without the Licensor's written consent;
- (v) except as expressly permitted by this Agreement, and except to the extent that applicable laws, including the Copyright Act 1968 (Cth), prevent the Licensor restraining the Licensee from doing so:
 - (A) reproduce, make error corrections to or otherwise modify or adapt the Licensed Software or the Documentation or create any derivative works based upon the Software or the Documentation;
 - (B) de-compile, disassemble or otherwise reverse engineer the Licensed Software or permit any third party to do so; or
- (vi) modify or remove any copyright or proprietary notices on the Licensed Software or the Documentation.

3. Delivery and installation

- (a) The Licensor shall deliver the Licensed Software and the Documentation to the Licensee on the Commencement Date.
- (b) If the Licensee reasonably requests, the Licensor will install the Licensed Software on the Licensee's computer equipment at a time agreed between the parties.
- (c) The Licensee must ensure that the computer equipment on which the Licensed Software is to be installed is in good, up to date working order and operating condition when the Licensor commences installation of the Licensed Software.

4. Intellectual Property Rights

- (a) Nothing in this Agreement constitutes a transfer of any Intellectual Property Rights.
- (b) The Licensee:
 - (i) acknowledges that the Licensor owns all Intellectual Property Rights in the Licensed Software; and
 - (ii) will not directly or indirectly do anything that would or might invalidate or put in dispute the Licensor's title in the Licensed Software.

- (c) If any person makes any claim alleging that any of the Licensed Software (or use of any of the Licensed Software) infringes any Intellectual Property Rights or Moral Rights of any person, the Licensee must:
 - (i) promptly notify the Licensor in writing;
 - (ii) not make any admissions or take any action in relation to the claim without the Licensor's written consent;
 - (iii) permit the Licensor control over any and all investigations, negotiations, settlement and dispute resolution proceedings relating to the claim; and
 - (iv) cooperate with, assist and act at all times in accordance with the reasonable instructions of the Licensor in relation to the claim and any consequent investigations, negotiations, settlement and dispute resolution proceedings.

5. Payment

- (a) The Licensee must pay the Licensor the Fees.
- (b) The Licensor shall invoice Licensee for any applicable license fees. If any additional fees are incurred by Licensee pursuant to the terms and conditions of this Agreement, the Licensor shall invoice Licensee for such amounts promptly after the end of each calendar month during which such fees were incurred.
- (c) Each invoice is payable within 30 days of the date of the invoice. If the Licensee has not paid an invoice in full by that date:
 - (i) the Licensee must pay interest on any unpaid amount from that date until the date of payment, to be calculated on a daily basis at a rate of 4% above the base lending rate of Barclays Bank plc accruing on a daily basis and being compounded quarterly until payment is made. Alternatively, the Licensor may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;
 - (ii) and the Licensor may suspend the provision of the Licensed Software and any related services until payment has been made in full.
- (d) Each invoice will detail the applicable fees, the Product(s), Services and/or Support provided and any authorised expenses.

6. VAT

- (a) All amounts payable under this Agreement are expressed exclusive of VAT.

- (b) In respect of any taxable supply, the Licensee must pay to the Licensor an additional amount equal to the prevailing VAT rate, payable at the same time and in the same manner as the Fees, subject to the receipt by the Licensee of a valid tax invoice.

7. Audit

The Licensee must permit the Licensor (or its nominated auditor) to audit the records and premises of the Licensee at any time during the Term and for 3 years following the end of the Term, on at least 5 days written notice, for the purpose of confirming the Licensee's compliance with this Agreement.

8. Warranties

- (a) The Licensor warrants to the Licensee that the Licensed Software will meet the description set out in Schedule 1.
- (b) Each party warrants to the other that it has the right and ability to enter into this Agreement and that this Agreement will be legally binding on it.

9. Liability

- (a) To the full extent permitted by law, the Licensor excludes all liability in respect of loss of data, interruption of business or any consequential or incidental damages.
- (b) To the full extent permitted by law, the Licensor excludes all representations, warranties or terms (whether express or implied) other than those expressly set out in this Agreement.
- (c) The Licensor's total aggregate liability for all claims relating to this Agreement is limited to the Fees payable under this Agreement.
- (d) Either party's liability for any claim relating to this Agreement will be reduced to the extent to which the other party contributed to the damage arising from the claim.
- (e) This Agreement is to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations. If such legislation applies, to the extent possible, the Licensor limits its liability in respect of any claim to, at the Licensor's option:
 - (i) in the case of goods:
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the repair of the goods;

- (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (D) the payment of having the goods repaired; and
- (ii) in the case of services:
 - (A) the supply of the services again; or
 - (B) the payment of the cost of having the services supplied again.

10. Termination

A party may terminate this Agreement by written notice to the other if any of the following events has occurred in respect of the other party:

- (a) a material breach of this Agreement which:
 - (i) is not remediable; or
 - (ii) if capable of remedy, is not remedied by the other party within 14 days of written notice;
- (b) an insolvency event occurs, other than an internal reconstruction with notice to the other party.

11. Consequences of termination

If this Agreement is terminated or expires for any reason, then, in addition and without prejudice to any other rights or remedies available:

- (a) the parties are immediately released from their obligations under the Agreement except those obligations in clauses 8, 10, 12, and 13 and any other obligations that, by their nature, survive termination;
- (b) each party retains the claims it has against the other;
- (c) the Licensee's right to use the Licensed Software immediately ceases and the licences granted under this Agreement terminate;
- (d) the Licensee must immediately remove all Licensed Software from their IT systems and any other locations where they have installed it; and
- (e) the Licensee must immediately pay all outstanding Fees.

12. Confidentiality

- (a) A party must not, without the prior written consent of the other, use or disclose the other party's Confidential Information unless expressly permitted by this Agreement or required to do so by law or any regulatory authority.

- (b) A party may:
 - (i) use the Confidential Information of the other party solely for the purposes of complying with its obligations and exercising its rights under this Agreement; and
 - (ii) disclose the Confidential Information to its personnel or advisers to the extent necessary for them to know the information for purposes related to this Agreement, but only if reasonable steps are taken to ensure that the confidentiality of the information is retained.
- (c) Each party must implement and maintain effective security measures to prevent unauthorised use and disclosure of the other party's Confidential Information while it is in the receiving party's possession or control.
- (d) Each party must return, or at the other party's option destroy, all Confidential Information of the disclosing party in the receiving party's possession or control, on the earlier of the Licensor's request or on termination of this Agreement for any reason.

13. Notices

- (a) The parties' contact details for notices under this Agreement are as follows, or as otherwise notified by one party to the other from time to time:

Licensor: Pegasus Labs Pty Ltd

Address: 100 Harris Street, Sydney, New South Wales, 2009

Contact number: _____

Licensee: _____

Address: _____

Contact number: _____

- (b) All notices must be in writing and can be given by:
 - (i) hand delivery during normal business hours;
 - (ii) registered post; or
 - (iii) facsimile followed within 2 business days by one of the means listed above.
- (c) A notice is deemed to be given and received:
 - (i) if delivered in accordance with paragraph (b)(i). on the next business day after the day of delivery;

- (ii) if sent in accordance with paragraph (b)(ii). 5 clear business days after the day of posting;
- (iii) if sent in accordance with paragraph (b)(iii). on the next business day after transmission.

14. General

- (a) The Licensee must not assign, sublicense or otherwise deal in any other way with any of its rights under this Agreement without the prior written consent of the Licensor.
- (b) Nothing contained in this Agreement creates any relationship of partnership or agency between the parties.
- (c) If a provision of this Agreement is invalid or unenforceable it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.
- (d) Each party must at its own expense do everything reasonably necessary to give full effect to this Agreement and the events contemplated by it.
- (e) This Agreement (and any documents executed in connection with it) is the entire agreement of the parties about its subject matter and supersedes all other representations, arrangements or agreements. Other than as expressly set out in this Agreement, no party has relied on any representation made by or on behalf of the other.
- (f) This Agreement may be amended only by a document signed by all parties.
- (g) A provision of or a right under this Agreement may not be waived or varied except in writing signed by the person to be bound.
- (h) This Agreement may be executed in counterparts which will be taken together to constitute one document.
- (i) A party will not be responsible for a failure to comply with its obligations under this Agreement to the extent that failure is caused by a Force Majeure Event, provided that the party keeps the other closely informed in such circumstances and uses reasonable endeavours to rectify the situation.
- (j) Without limiting any other right to terminate under this Agreement, if a Force Majeure Event affects a party's performance under this Agreement for more

than thirty (30) consecutive days, the other party may immediately terminate this Agreement by written notice.

- (k) All stamp duties and other government charges in relation to this Agreement must be paid by the Licensee.
- (l) This Agreement is governed by the laws of New South Wales and each party submits to the jurisdiction of the courts of New South Wales.

Executed as an Agreement

Signed for and on behalf of Pegasus Labs Pty
Ltd by its duly authorised representative:

Signature of authorised representative

Name of authorised representative
(please print)

Signed for and on behalf of _____
by its duly authorised representative:

Signature of authorised representative (please
print)

Name of authorised representative
(please print)

SCHEDULE 1

- 1. Licensed Software:

SCHEDULE 2

1. Fees:
