

LICENSE FOR SOFTWARE THAT IS NOT GENERALLY AVAILABLE

THIS AGREEMENT is made on the _____

Between: March Hare Pty Ltd

Of: 38 Warringulla Avenue, Elvina Bay, NSW 2105, AUSTRALIA

Hereinafter referred to as "March Hare"

And:

Of: _____

hereinafter referred to as "the Licensee".

Notice: The Software that is made available through this license agreement is not generally available software. It has not undergone complete testing and may contain errors. It may not function properly and is subject to change or withdrawal at any time. No support or maintenance is provided with the Software. The licensee is advised not install this software if they are not accustomed to using experimental software.

The Software licensed under this agreement is made available without charge in the experimental stage in order to allow the licensee to evaluate and test the Software in its developmental stage. We encourage the licensee's feedback and suggestions.

RECITALS:

- A. March Hare and the Licensee wish to enter into discussions for the purpose of evaluating and testing software that is not generally available supplied by March Hare.
- B. The parties wish to ensure that any information given by one party to the other during any discussions will be kept confidential by the other party.
- C. The functionality of the software will remain the property of March Hare, whether or not that functionality was determined before or after the date of this agreement.
- D. March Hare will retain all rights to the functionality of the software.
- E. The licensee may not develop a competitive product for resale for a period of 24 months from the date of this agreement.

1. OPERATIVE PROVISIONS:
INTERPRETATION

The following words have these meanings in this agreement unless the contrary intention appears:

Approved Purpose

Means the evaluation and testing by the licensee of software that is not generally available supplied by March Hare.

Confidential Information

Means information relating to the conduct of the either March Hare's or the licensee's business disclosed by either March Hare or the licensee or any of its representatives whether orally or in writing or by any electronic and/or magnetic medium by which the said information may be transmitted, viewed or stored and, including but not limited to information relating to existing or proposed products and services, business plans and marketing plans, software, and software not generally available.

Software

Means software not generally available provided by March Hare to the licensee.

2. RECIPROCAL DISCLOSURE

- 2.1 The licensee gives the undertakings and warranties in this agreement in consideration for March Hare disclosing March Hare's confidential information.
- 2.2 March Hare gives the undertakings and warranties in this agreement in consideration for the licensee disclosing the licensee's confidential information.
- 2.3 Nothing in this agreement obliges either the licensee or March Hare to disclose any particular information to each other. Each party has an absolute discretion as to the information it chooses to disclose.

3. OBLIGATIONS OF CONFIDENCE

The licensee's Obligations:

- 3.1 The licensee agrees:
 - (a) to take all action necessary to maintain the confidential nature of March Hare's confidential information; and
 - (b) not to disclose any of March Hare's Confidential Information to any person other than its officers, employees, agents or advisers who need March Hare's confidential information for the approved purpose, without the prior consent of March Hare; and
 - (c) not to use or reproduce any of March Hare's confidential information other than for the Approved Purpose.
- 3.2 The licensee agrees to ensure that none of its officers, employees, agents and advisers do any act, matter or thing which, if done by the licensee, would constitute a breach of this agreement.
- 3.3 Upon written request by March Hare, the licensee will inform March Hare of the names of all officers, employees, agents or advisers who have access to March Hare's confidential information and arrange for them to execute a confidentiality undertaking containing the same obligations imposed by this agreement.
- 3.4 The obligations imposed on the licensee by this clause does not apply to information that:
 - (a) is in or becomes part of the public domain other than through breach of this agreement; or
 - (b) The licensee can prove by contemporaneous written documentation was already known to it at the time of disclosure by March Hare or its representatives; or
 - (c) The licensee acquires from a third party entitled to disclose it.

March Hare's Obligations:

3.5 March Hare agrees:

- (a) to take all action necessary to maintain the confidential nature of the licensee's confidential information; and
- (b) not to disclose any of the licensee's confidential information to any person other than its officers, employees, agents or advisers who need the licensee's confidential information for the approved purpose, without the prior consent of the licensee; and
- (c) not to use or reproduce any of the licensee's confidential information other than for the approved purpose.

3.6 March Hare agrees to ensure that none of its officers, employees, agents and advisers do any act, matter or thing which, if done by March Hare, would constitute a breach of this agreement.

3.7 Upon written request by the licensee, March Hare will inform the licensee of the names of all officers, employees, agents or advisers who have access to the licensee's confidential information and arrange for them to execute a confidentiality undertaking containing the same obligations imposed by this agreement.

3.8 The obligations imposed on the licensee by this clause does not apply to information that:

- (a) is in or becomes part of the public domain other than through breach of this agreement; or
- (b) March Hare can prove by contemporaneous written documentation was already known to it at the time of disclosure by the licensee or its representatives; or
- (c) March Hare acquires from a third party entitled to disclose it.

4. RETURN OF CONFIDENTIAL INFORMATION

4.1 The licensee agrees to immediately deliver to March Hare all documents and materials, in any medium, in its possession, power or control which contain or refer to any of March Hare's confidential information (whether or not those documents and materials were created by March Hare) on demand.

4.2 March Hare agrees to immediately deliver to the licensee all documents and materials, in any medium, in its possession, power or control which contain or refer to any of the licensee's Confidential Information (whether or not those documents and materials were created by the licensee) on demand.

5. TERM AND TERMINATION

5.1 This agreement will terminate ninety (90) days after the date on which the licensee receives the Software or upon receipt of a termination letter from March Hare. Upon such termination the licensee will delete or destroy all copies of the software.

6. OWNERSHIP AND LICENSE OF THE SOFTWARE.

- 6.1 The software is owned by March Hare or one of its subsidiaries and is copyrighted and licensed, not sold.
- 6.2 March Hare grants the licensee a non-exclusive, non-transferable license to download the software and use it only for the licensee's personal, non-commercial and lawful end use. Implied licenses are negated.
- 6.3 The licensee may copy the software for backup only. The licensee may not: 1) merge, distribute (for free or for sale) or sublicense the software; 2) reverse assemble, reverse compile, or otherwise translate the software.

7. WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY

- 7.1 March Hare licenses the Software to the licensee on an "as is" basis, without warranty of any kind. March Hare hereby expressly disclaims all warranties or conditions, either express or implied, including, but not limited to, the implied warranties or conditions of merchantability and fitness for a particular purpose. The licensee is solely responsible for determining the appropriateness of using this software and assumes all risks associated with the use of this software, including but not limited to the risks of program errors, damage to or loss of data, programs or equipment, and unavailability or interruption of operations.
- 7.2 March Hare will not be liable for any direct damages or for any special, incidental, or indirect damages or for any economic consequential damages (including lost profits or savings), even if March Hare has been advised of the possibility of such damages. March Hare will not be liable for the loss of, or damage to, your records or data, or any damages claimed by you based on a third party claim.

8. LICENSE RIGHTS

- 8.1 The licensee hereby grant to March Hare an irrevocable license under all intellectual property rights (including copyright) to use, copy, distribute, sublicense, display, perform and prepare derivative works based upon any feedback, including materials, fixes, error corrections, enhancements, suggestions and the like that the licensee provide to March Hare.

9. MISCELLANEOUS

Survival of Obligations

9.1 The obligations in clauses 3 and 4 are continuing obligations that survive the termination of this agreement.

Governing Law and Jurisdiction

9.2 This agreement is governed by the law in force in the state of New South Wales of the commonwealth of Australia and each party submits to the non-exclusive jurisdiction of the courts of New South Wales of the commonwealth of Australia and courts of appeal from them for determining any dispute concerning this agreement or the transactions contemplated by this agreement.

9.3 This Agreement is the only understanding and agreement between March Hare and the licensee regarding the licensee's use of Confidential Information and the licensee's use of the software. It supersedes all other communications, understandings or agreements March Hare and the licensee may have had prior to this Agreement.

9.4 This agreement may be executed in counterparts and shall be deemed executed:

- a) When March Hare has executed one counterpart, even though such counterpart may not have been executed by the licensee, and
 - b) When the licensee has executed one counterpart, even though such counterpart may not have been executed by March Hare, and
- Each counterpart so executed shall be deemed an original.

EXECUTED as an agreement.

SIGNED by.....as authorised representative for March Hare.

Signature.....

By executing this agreement the signatory warrants that the signatory is duly authorised to execute the agreement on behalf of March Hare.

SIGNED by.....as authorised representative for the licensee.

Signature.....

By executing this agreement the signatory warrants that the signatory is duly authorised to execute the agreement on behalf of the licensee.

