

PIXELGLOW SOFTWARE LICENSE

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 - i. any parts of the Licensed Software made available by Pixelglow for license under the Reciprocal Public License and any modification or derivation of them may be distributed under the terms of that license; or
 - ii. with the written consent of Pixelglow which may be granted or withheld on such terms and conditions as Pixelglow thinks fit in its absolute discretion;
 - b. the costs associated with the modifications or alterations or the costs arising out of the investigation of the effects of proposed modifications or alterations will be borne solely by the Customer;
 - c. the Customer must provide to Pixelglow every calendar quarter during the continuance of this agreement a schedule listing all software which the Customer has developed as a modification or derivation from the Licensed Software; and
 - d. the Customer will fully indemnify Pixelglow against all liability which may be incurred by Pixelglow if such modifications or alterations infringe any Intellectual Property Rights of a third person or otherwise cause Pixelglow to suffer loss, damages or expense.
- 4.2 *Ownership of Modifications.* The Licensed Software as modified or altered remains the property of Pixelglow in all

respects, whether modified by the Customer, Pixelglow or a third party and whether or not authorized pursuant to this agreement, provided only that Pixelglow does not claim rights in compiled software independently written by the Customer with which the Licensed Software is linked or merged.

5. Export Restrictions.

The Customer will not carry or transmit the Licensed Software or any component of it into any country if to do so would infringe any law relating to controls on the export of munitions that may be applicable under Australian or United States law. Without limitation, at the date of this agreement such countries may include Afghanistan, Cuba, Iran, Iraq, Libya, North Korea, Sudan, Serbia/Montenegro and Syria.

6. Support

6.1 *Availability of Support.* Pixelglow or its agents will provide support services relating to the installation and configuration of the Licensed Software at such times and on such other terms and conditions as Pixelglow may reasonably determine periodically.

6.2 *Maintenance.* Pixelglow or its agents may perform such services as Pixelglow considers reasonable to ensure the Licensed Software remains in substantial conformity with the specifications set out in its documentation. Such support will, at the sole option of Pixelglow, take the form of:

- a. telephone or email advice;
- b. supply of a modified copy of the Licensed Software; and
- c. on-site attendance followed by such advice, programming or re-configuration as Pixelglow considers necessary (for which additional charges may be levied to the Customer at Pixelglow's discretion);

all of which may at Pixelglow's option incur an additional charge to the Customer to be agreed with the Customer at that time.

6.3 *Customer to Report Defects.* If the Customer considers that the Licensed Software requires error correction or program modification, the Customer will give Pixelglow a documented example of the defect or error which it alleges prevents conformity of the Licensed Software with its specifications. The Customer will, if so requested by Pixelglow, give Pixelglow a listing of output and any other data which Pixelglow requires in order to reproduce operating conditions similar to those present when any alleged defect or error in the Licensed Software was discovered.

7. Updates and New Releases

7.1 *Provision of Updates and New Releases.* Pixelglow will supply the Customer with any updates and new releases of the Licensed Software as they become available, for a period to be determined by Pixelglow upon receipt of the license fee, provided that Pixelglow is not required to produce any such updates or new releases except at its discretion.

8. Sub-Contracts

Pixelglow may sub-contract for the performance of this agreement or any part of this agreement or engage individuals on a sub-contract or consultancy basis, whether or not operating under a corporate structure, to assist in the provision of services pursuant to this agreement.

9. Entire Agreement

This agreement constitutes the entire agreement between the parties and supersedes all prior representations, agreements, statements and understanding, whether verbal or in writing.

10. Implied Terms

Any condition or warranty which would otherwise be implied in this agreement, including without limitation the warranties of merchantable quality, fitness for purpose and non-infringement of intellectual property rights, is hereby excluded to the extent permitted by law. If the full exclusion of any condition or warranty is not permitted by law, the liability of Pixelglow for any breach of such condition or warranty will be limited, at the option of Pixelglow, to one or more of the following:

- a. if the breach relates to goods:
 - i. the replacement of the goods or the supply of the equivalent goods;
 - ii. the repair of such goods;
 - iii. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - iv. the payment of the cost of having the goods repaired; and
- b. if the breach relates to services:
 - i. the supplying of the services again; or
 - ii. the payment of the cost of having the services supplied again.

11. Exclusions

- 11.1 *Limitation of Liability.* Pixelglow will be under no liability to the Customer in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of goods or services supplied pursuant to this agreement or in respect of a failure or omission on the part of Pixelglow to comply with its obligations under this agreement.
- 11.2 *No Representations.* The Customer acknowledges that to the extent Pixelglow has made any representation which is not otherwise expressly stated in this agreement, the Customer has been provided with an opportunity to independently verify that the accuracy of that representation. Subject to the above, the Customer warrants that it has not relied on any representation made by Pixelglow which has not been stated expressly in this agreement or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by Pixelglow.
- 11.3 *Indemnity.* The Customer will at all times indemnify and hold harmless Pixelglow and its officers, employees and agents from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified where such loss or liability was caused by:
- a. a breach by the Customer of its obligations under this agreement; or
 - b. any willful, unlawful or negligent act or omission of the Customer.

12. Termination

Without limiting the generality of any other clause in this agreement, Pixelglow may terminate this agreement immediately by notice in writing if the Customer is in breach of any term of this agreement and such breach is not remedied within fourteen (14) days of it notifying Pixelglow.

13. Miscellaneous Provisions

- 13.1 *Interpretation.* References to a party to this agreement include the party, his executors, administrators, or permitted assigns (or in the case of a corporation, the party and its successors and assigns or permitted assigns). The word "person" includes a corporation. Words written in the singular will include the plural and vice versa, and the masculine or neuter genders will include every gender. References to statutes will include all statutes, amending, consolidated or replacing them. If two or more parties enter into covenants, obligations or agreements together, those covenants, obligations or agreements will bind them all jointly and severally. The words "in writing" include any communication sent by letter, facsimile or electronic mail.
- 13.2 *Time.* Where under this agreement:
- a. anything is required to be done on the 29th, 30th, or 31st day of a month which does not contain such a date, references to that date will be construed as references to the last day of the month;
 - b. anything falls due to be done on a Saturday, Sunday or gazetted public holiday or a notice is deemed to be served on that date, the next day which is not a Saturday, Sunday or gazetted public holiday will be the date by which that thing falls due or when service is deemed to occur.
- 13.3 *Further Acts.* Each party do whatever further acts and execute whatever further documents as might be required by law or reasonably requested by the other party in order to carry out and effect the intent and purpose of this agreement.
- 13.4 *Governing Law.* The laws of Western Australia govern this agreement. Any dispute arising from this agreement is to be determined by the courts of Western Australia and any court of appeal from a Western Australian court.
- 13.5 *Assignment.* Pixelglow may assign the benefit of this agreement to any related body corporate of Pixelglow as that term is defined in the Corporations Law. The Customer may not assign this agreement without the prior written consent of Pixelglow.
- 13.6 *Waiver Not to Affect Rights.* If Pixelglow fails to enforce its rights under this agreement or to require the customer to comply with any of its obligations under this agreement, this will not prevent Pixelglow enforcing those rights in the future or taking advantage of any remedies that it may as a result of the Customer's breach.
- 13.7 *Variation.* Pixelglow may modify these terms of use at any time, and such modifications shall be effective immediately upon posting of the modified terms of use on Pixelglow's Web site. Accordingly, you agree to review the terms of use periodically, and your continued access or use of the Licensed Software shall be deemed your acceptance of the modified terms of use.
- 13.8 *Severability.* If any provision of this agreement is held invalid, unenforceable or illegal for any reason, the agreement will remain otherwise in full force apart from such provisions which will be deemed deleted.
- 13.9 *Survival of Agreement.* Subject to any provision to the contrary, this agreement will inure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers but will not inure to the benefit of any other persons. The covenants, conditions and provisions of this agreement which are capable of having effect after the expiration of the Agreement will remain in full force and effect following the expiration of the Agreement.
- 13.10 *Notices.* Notices under this agreement may be delivered by hand, mail, facsimile or email to the appropriate address specified by either party to the other in writing. Notice will be deemed given:

- a. in the case of hand delivery, upon written acknowledgment of receipt by an officer or other duly authorized employee, agent or representative of the receiving Party;
- b. in the case of posting, three (3) days after despatch;
- c. in the case of facsimile, upon receipt of transmission if received on a business day or otherwise at the commencement of the first business day following transmission;
- d. in the case of email, at the commencement of the first business day following transmission unless a non-delivery message is received by the sender in the meantime.