

SOFTWARE LICENCE AGREEMENT (EXECUTABLE - ACADEMIC)

Made on the date specified in the schedule.

BETWEEN **DSTC PTY LTD ACN 052 372 577** of Level 7, General Purpose South (Building 78),
Staff House Road, University of Queensland in the state of Queensland
(‘DSTC’)

AND **THE PARTY SPECIFIED IN THE SCHEDULE**
(‘Licensee’)

BACKGROUND

- A. The Licensee wishes to use the Software for the Permitted Purpose.
- B. DSTC has offered to grant the Licensee a non-transferable and non-exclusive licence to use the Software on the terms of this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS

In this Agreement, unless the contrary intention appears:

‘**Agreement**’ means this agreement for the licensing of the Software;

‘**Business Day**’ means a day other than a Saturday, Sunday or public holiday in the place where an act is to be performed, a notice is received, or a payment is to be made;

‘**Business Hours**’ means from 9.00am to 5.00pm on a Business Day;

‘**Confidential Information**’ means all information, whether or not in a material form, relating to the subject matter of this Agreement, including:

- (a) all data, drawings, specifications, documentation, source or object code relating to the Software;
- (b) the personnel, policies, clientele or business strategies of DSTC; and
- (c) the terms upon which the Software is to be distributed pursuant to this Agreement;

but excluding information to the extent that:

- (d) at the date of this Agreement
 - (i) is rightfully know to, or in the possession or control of, the disclosing party; or
 - (ii) is publicly available; or
- (e) subsequent to the date of this Agreement, is publicly available, otherwise than as a result of a breach of this Agreement;

‘Designated Equipment’ means the computer equipment, designated in the schedule, upon which the Software may be used;

‘Documentation’ means operating manuals and other printed materials referred to in the schedule including users’ manuals, programming manuals, modification manuals, flow charts, drawings and software listings which are designed to assist or supplement the understanding or application of the Software;

‘Force Majeure’ means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation under this Agreement, including, but not limited to:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
- (c) strikes;

‘GST’ has the same meaning as in the GST Act;

‘GST Act’ means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* as amended;

‘Initial Term’ means the period, so specified in the schedule, commencing on the date of execution of this Agreement;

‘Intellectual Property Rights’ means copyright, trade mark, design, patent, semiconductor or circuit layout rights; trade, business or company names; any right to have confidential information kept confidential; other proprietary rights; or any rights to registration of such rights existing anywhere in the world, whether created before, on or after the date of this Agreement;

‘Licence Fee’ means the fee, specified in the schedule, payable by the Licensee to DSTC for the use of the Software for the Initial Term;

‘Licence Renewal Fee’ means the fee, as specified in the schedule and as adjusted from time to time pursuant to clause 12.2, payable by the Licensee to DSTC for the use of the Software for any subsequent term to the Initial Term;

‘Permitted Purpose’ means use of the Software for non-commercial, academic, research purposes only;

‘Site’ means the location, designated in the schedule, for delivery and installation of the Software;

‘Software’ means the computer program/s specified in the schedule consisting of a set of statements or instructions in machine readable medium;

‘Supply’ has the same meaning as in the GST Act;

‘Taxable Supply’ has the same meaning as in the GST Act; and

‘Value’ has the same meaning as in the GST Act.

2. DELIVERY

2.1 DSTC shall deliver the Software to the Licensee within a reasonable time following the date of execution of this Agreement.

2.2 The Licensee shall be solely responsible for the installation of the Software.

3. TERM OF LICENCE

- 3.1 DSTC hereby grants to the Licensee a non-exclusive, non-transferable licence to use the Software for the Permitted Purpose for the Initial Term.
- 3.2 At the sole discretion of DSTC, the licence may be renewed for subsequent terms of similar duration to the Initial Term. The Licensee shall provide at least 30 days notice in writing prior to the expiry of the Initial Term or any subsequent term if it wishes to renew the licence pursuant to this clause.

4. DOCUMENTATION

- 4.1 The Documentation is licensed to the Licensee for the duration of the Agreement.
- 4.2 DSTC shall provide the Licensee with such number of copies of the Documentation as are specified in the schedule.
- 4.3 The Licensee acknowledges that the Documentation contains sufficient information for the adequate use of the Software, except to the extent DSTC has notified the Licensee of any omission or deficiency or of any variation which it considers necessary for the proper use of the Software.
- 4.4 The Licensee shall not copy or reproduce the Documentation except to the extent otherwise authorised by this Agreement.

5. LICENCE CONDITIONS

- 5.1 The Licensee may only use the Software in accordance with the normal operating procedures as notified by DSTC.
- 5.2 The Software may only be used pursuant to this Agreement:
 - (a) by the Licensee;
 - (b) solely for the Permitted Purpose; and
 - (c) at the Site.
- 5.3 Unless specified to the contrary in the schedule, the Software may not be used on equipment other than the Designated Equipment save that at the sole risk of the Licensee it may be used on alternative equipment if:
 - (a) the Designated Equipment is temporarily inoperable due to malfunction, maintenance or change of installation site; or
 - (b) DSTC has otherwise given its consent in writing to such alternate use.
- 5.4 The Licensee shall not manufacture, sell, supply, rent, licence, grant a right to use, market, promote, copy, lease or lend the Software except to the extent otherwise authorised by this Agreement.
- 5.5 In addition to any other remedies available to DSTC under this Agreement or otherwise, any unauthorised use, publication, disclosure or transfer of the Software will entitle DSTC to any available equitable remedy against the Licensee.
- 5.6 Except to the extent specified to the contrary in this Agreement, DSTC shall not be obliged to support the Software, whether by providing advice, training, error-correction, modifications, updates, new releases or enhancements or otherwise.

6. COPYING

- 6.1 Subject to clause 6.2, the Licensee shall not copy or reproduce the Software or the Documentation by any means or in any form without DSTC's prior written consent.
- 6.2 The Licensee may make 1 copy of the Software for the purposes of backup and security. The Licensee must acknowledge any copy of the Software as the property of DSTC. The terms of this Agreement, with the necessary modifications, apply to the said copy.
- 6.3 The Licensee shall ensure any copy of the Software made pursuant to this Agreement bears notice of DSTC's ownership of copyright and a notice stipulating that the Software contains information confidential to DSTC. The Licensee shall comply with any directions of DSTC as to the form or content of such notices.
- 6.4 If requested by DSTC, the Licensee shall issue a notice in a form approved by DSTC to all employees and other authorised users of the Software under its direction or control, advising such persons of the Licensee's obligations under this clause and also advising of the possible civil and criminal consequences of a breach of this clause.

7. MODIFICATIONS

- 7.1 The Licensee shall not modify or alter the Software or merge all or any part of the Software with any other software, without DSTC's written permission.
- 7.2 If the Software is modified or altered by the Licensee with the permission of DSTC pursuant to clause 7.1, the Licensee will fully indemnify DSTC against all liability which may be incurred by DSTC if such modifications or alterations infringe any Intellectual Property Rights of a third person or otherwise cause DSTC to suffer loss, damage or expense.
- 7.3 The Software as modified or altered remains the property of DSTC in all respects, whether modified by the Licensee or a third party and whether or not authorised pursuant to this Agreement. Specifically, the Licensee shall if necessary assign DSTC all Intellectual Property Rights arising out of any modifications to the Software.
- 7.4 This Agreement shall apply to the Software as modified or altered.
- 7.5 The Licensee shall execute such documents and perform such other acts as are necessary in order to give effect to clause 7.3.

8. REVERSE ENGINEERING

The Licensee shall not reverse assemble or reverse compile or directly or indirectly allow or cause a third party to reverse assemble or reverse compile the whole or any part of the Software.

9. INTELLECTUAL PROPERTY RIGHTS

The Licensee acknowledges and agrees that all Intellectual Property Rights in the Software and the Documentation are and remain the sole property of DSTC. The Licensee must not during or at any time after the expiry or termination of this Agreement in any way question or dispute DSTC's ownership of the Intellectual Property Rights in the Software or the Documentation.

10. RESTRICTIONS ON PUBLICATIONS

The Licensee acknowledges that they will comply with any restrictions on publication that are reasonably required by DSTC and/or are required to enable DSTC to comply with its existing contractual obligations, and/or to seek patent protection, including the requirements set out in this Agreement.

11. SECURITY

- 11.1 The Licensee shall be solely responsible for the use, supervision, management and control of the Software and the Documentation.
- 11.2 The Licensee shall ensure that the Software is protected at all times from misuse, damage, destruction or any form of unauthorised use.
- 11.3 The Licensee shall keep accurate records of use, copying and disclosure of the Software. The Licensee shall permit DSTC to inspect such records at any time during Business Hours. If DSTC requests, the Licensee shall furnish to DSTC a copy of all or any part of such records.

12. LICENCE FEE

- 12.1 The Licensee shall pay the Licence Fee and the Licence Renewal Fee (if any) at the rate and in the manner specified in the schedule.
- 12.2 The Licence Renewal Fee may be adjusted throughout the term of this Agreement at the discretion of DSTC.
- 12.3 If the Licensee disputes the whole or any portion of the amount claimed in an invoice submitted by DSTC, the Licensee shall pay the portion of the amount stated in the invoice which is not in dispute and shall notify DSTC in writing (within 7 days of receipt of the invoice) of the reasons for disputing the remainder of the invoice. If it is resolved that some or all of the amount in dispute ought to have properly been paid at the time of the first invoice, then the Licensee shall pay the amount finally resolved together with interest on that amount in accordance with the terms of payment set out in this Agreement.
- 12.4 The Licensee shall pay DSTC interest on any amount due and not paid by the Licensee within the timeframe required by this Agreement at the rate of interest specified in the schedule.
- 12.5 The Licence Fees and the Licence Renewal Fees are exclusive of taxes, duties and charges imposed or levied in Australia or overseas in connection with the supply and installation of the Software. Without limiting the foregoing, the Licensee shall be liable for any new taxes, duties or charges imposed subsequent to the date of execution of this Agreement in respect of the goods and services which are the subject of this Agreement.
- 12.6 If any Supply made by DSTC to the Licensee under this Agreement is a Taxable Supply, then:
 - (a) in relation to any consideration payable by the Licensee to DSTC under this Agreement, DSTC shall be entitled to recover from the Licensee an additional amount on account of GST, such amount to be equal to the amount of DSTC's GST liability in respect of the supply calculated in accordance with the GST Act and on the basis that the consideration otherwise payable under this Agreement is the Value of the Taxable Supply and shall be recoverable at the time when the price is paid; and
 - (b) DSTC and the Licensee acknowledge and agree that each Supply made under this Agreement is made:
 - (i) on a progressive or periodic basis;
 - (ii) for consideration that is provided on a periodic or progressive basis; and
 - (iii) each progressive or periodic component of the Supply is to be treated as a separate Supply.

13. CONFIDENTIALITY

- 13.1 A party shall not, without the prior written approval of the other party, disclose the other party's Confidential Information.
- 13.2 A party shall not be in breach of clause 13.1 in circumstances where it is legally compelled to disclose the other party's Confidential Information.

- 13.3 Each party shall take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this Agreement, do not make public or disclose the other party's Confidential Information.
- 13.4 Notwithstanding any other provision of this clause, DSTC may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.
- 13.5 This clause shall survive the termination of this Agreement.

14. IMPLIED TERMS

- 14.1 Subject to clause 14.2, any condition or warranty which would otherwise be implied in this Agreement is hereby excluded.
- 14.2 Where legislation implies in this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in this Agreement. However, the liability of DSTC for any breach of such condition or warranty shall be limited, at the option of DSTC, to one or more of the following:
- (a) if the breach relates to goods:
 - (i) the replacement of the goods or the supply of 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.

15. LIABILITY OF DSTC

- 15.1 Subject to clause 14.2, DSTC shall be under no liability to the Licensee in respect of any loss or damage, (including consequential loss or damage) which may arise directly or indirectly in respect of the Software or its use or in respect of a failure or omission on the part of DSTC to comply with its obligations under this Agreement.
- 15.2 Subject to clause 15.3, the Licensee warrants that it has not relied on any representation made by DSTC 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 DSTC.
- 15.3 The Licensee acknowledges that to the extent DSTC has made any representation which is not otherwise expressly stated in this Agreement, the Licensee has been provided with an opportunity to independently verify the accuracy of that representation.
- 15.4 The Licensee shall at all times indemnify and hold harmless DSTC and its officers, employees and agents ('those indemnified') from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:
- (a) a breach by the Licensee of its obligations under this Agreement; or
 - (b) any wilful, unlawful or negligent act or omission of the Licensee.

16. LICENSEE ACKNOWLEDGEMENT

The Licensee acknowledges that software in general is not error-free and agrees that the existence of such errors in the Software does not constitute a breach of this Agreement.

17. TERMINATION

17.1 Without limiting the generality of any other clause in this Agreement, DSTC may terminate this Agreement immediately by notice in writing if:

- (a) the Licensee is in breach of any term of this Agreement and such breach is not capable of being remedied or is not remedied within 30 days of notification by DSTC;
- (b) the Licensee for any reason destroys or disposes of or loses custody of the Software;
- (c) the Licensee becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration; or
- (d) the Licensee ceases or threatens to cease conducting its business in the normal manner.

17.2 If notice is given to the Licensee pursuant to clause 17.1, DSTC may, in addition to terminating the Agreement:

- (a) repossess any copies of the Software and Documentation in the possession, custody or control of the Licensee;
- (b) retain any moneys paid;
- (c) be regarded as discharged from any further obligations under this Agreement; and
- (d) pursue any additional or alternative remedies provided by law.

18. FORCE MAJEURE

18.1 Neither party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to Force Majeure.

18.2 If a delay or failure of a party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that party's obligations will be suspended.

18.3 If a delay or failure by a party to perform its obligations due to Force Majeure exceeds 60 days, either party may immediately terminate the Agreement on providing notice in writing to the other party.

18.4 If this Agreement is terminated pursuant to clause 18.3, DSTC shall refund moneys previously paid by the Licensee pursuant to this Agreement for goods or services not provided by DSTC to the Licensee.

19. ENTIRE AGREEMENT

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

20. ASSIGNMENT

20.1 The benefit of this Agreement shall not be assigned by the Licensee without DSTC's written consent.

20.2 DSTC may consent to the assignment of this Agreement by the Licensee subject to such conditions as it chooses to impose.

21. WAIVER

Failure or neglect by either party to enforce at any time any of the provisions of this Agreement is not to be construed nor deemed to be a waiver of that party's rights under this Agreement nor in any way affect the validity of the whole or any part of this Agreement nor prejudice that party's rights to take subsequent action.

22. VARIATION

The provisions of this Agreement, shall not be varied, except by agreement in writing signed by the parties.

23. SURVIVAL OF AGREEMENT

- 23.1 Subject to any provision to the contrary, this Agreement shall enure to the benefit of and be binding upon the parties and their successors, trustees, permitted assigns or receivers but shall not enure to the benefit of any other persons.
- 23.2 The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of the Agreement shall remain in full force and effect following the expiration of the Agreement.

24. SEVERABILITY

If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provisions which shall be deemed deleted.

25. FURTHER ASSURANCES

Each party must do all things and execute all further documents necessary to give full effect to this Agreement and refrain from doing anything that might hinder the performance of this Agreement.

26. GOVERNING LAW AND JURISDICTION

- 26.1 This Agreement is governed by the laws of Queensland and the Commonwealth of Australia.
- 26.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.

27. NOTICES

- 27.1 Notices under this Agreement may be delivered by hand, by mail or by facsimile to the addresses specified in this Agreement.
- 27.2 Notice will be deemed given:
- (a) in the case of hand delivery, upon delivery to the receiving party during Business Hours;
 - (b) in the case of pre-paid post, 2 Business Days after the date of dispatch; and
 - (c) in the case of facsimile:
 - (i) at the time of dispatch, if that dispatch is during Business Hours; or
 - (ii) at 9.00am on the next Business Day following the day of dispatch, if the dispatch is outside Business Hours.

28. COUNTERPARTS

This Agreement may be executed in counterparts by the respective parties, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement, provided that this Agreement shall be of no force and effect until the counterparts are exchanged.

29. INTERPRETATION

In this Agreement, except to the extent the context otherwise requires:

- (a) the singular includes the plural and vice versa and a gender includes other genders;
- (b) a reference to a party is to be construed as a reference to a party to this Agreement;
- (c) a reference to a party to this Agreement or any other document or agreement includes its successors and permitted assigns;
- (d) a reference to an item in the Background, clause, or schedule is a reference to an item in the Background, clause or schedule to this Agreement and references to this Agreement include its schedules;
- (e) where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;
- (f) a reference to a document or agreement including this Agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (g) in the interpretation of this Agreement, headings are to be disregarded;
- (h) references to '\$US', 'dollar', '\$' and to any amount not otherwise designated, is to be construed as a reference to American currency; and
- (i) where a party comprises 2 or more persons, an agreement or obligation to be performed or observed by that party binds those persons jointly and severally and a reference to that party includes a reference to any one or more of those persons.

SCHEDULE
 Agreement details

Licensee:	
Date of Agreement:	
Software:	<i>XML Metadata Editor/Generator Application</i>
Initial Term:	<i>60 days</i>
Designated Equipment:	<i>N/A</i>
Documentation:	
(a) Description:	<i>XMEG SYSTEM DOCUMENTATION</i>
(b) Number of Copies:	<i>1</i>
Licence Fee:	<i>\$0.00</i>
Licence Renewal Fee:	<i>\$0.00</i>
Rate of interest:	<i>\$0.00</i>
Site:	

EXECUTED as an agreement in Queensland.

EXECUTED for and on behalf of)
DSTC PTY LTD ACN 052 372 577 by authority of)
the directors in the presence of:)
)

^ _____
Director

^ _____
Director/Secretary

^ _____
Full name of director

^ _____
Full name of director/secretary

EXECUTED for and on behalf of)
THE PARTY SPECIFIED IN THE SCHEDULE)
by authority of the directors in the presence of:)
)

^ _____
Director

^ _____
Director/Secretary

^ _____
Full name of director

^ _____
Full name of director/secretary