

Pegoda Firmware License Agreement

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6. ESSENTIAL PATENTS. You are solely responsible for obtaining licenses for any relevant Essential Patents for your use in connection with technology that you incorporate into your product (whether as part of the Licensed Software or not).
7. TERM AND TERMINATION. This Agreement will remain in effect unless terminated as provided in this Section 7.

7.1. You may terminate this Agreement immediately upon written notice to Licensor at the address provided below.

7.2. Either party may terminate this Agreement if the other party is in default of any of the terms and conditions of this Agreement, and termination is effective if the defaulting party fails to correct such default within 30 days after written notice thereof by the non-defaulting party to the defaulting party at the address below.

7.3. Notwithstanding the foregoing, Licensor may terminate this Agreement immediately upon written notice if you: breach any of your confidentiality obligations or the license restrictions under this Agreement; become bankrupt, insolvent, or file a petition for bankruptcy or insolvency, make an assignment for the benefit of its creditors; enter proceedings for winding up or dissolution ;are dissolved; or are nationalized or become subject to the expropriation of all or substantially all of its business or assets.

7.4. Upon termination of this Agreement, all licenses granted under Section 2 will expire,.

7.5. After termination of this Agreement by either party and upon Licensor's written request, you will, at your discretion, return to Licensor any confidential information including all copies thereof or furnish to Licensor at the address below, a statement certifying, with respect to the Licensed Software delivered hereunder that the original and all copies, except for archival copies to be used solely for dispute resolution purposes, in whole or in part, in any form, of the Licensed Software have been destroyed.

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13. GOVERNMENT CONTRACT COMPLIANCE.

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13.2. The Licensed Software has been developed at private expense and is a “Commercial Item” as defined in 48 C.F.R. §2.101, consisting of “Commercial Computer Software”, and/or “Commercial Computer Software Documentation,” as such terms are used in 48 C.F.R. §12.212 (or 48 C.F.R. §227.7202, as applicable) and may only be licensed to or shared with U.S. Government end users in object code form as part of, or embedded within, Authorized Systems. Any agreement pursuant to which you share the Licensed Software will include a provision that reiterates the limitations of this document and requires all sub-agreements to similarly contain such limitations.

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14.1. In some cases, Licensor may promote certain Licensed Software for use in safety-related applications. Licensor’s goal is to educate licensees so that they can design their own end-product solutions to meet applicable functional safety standards and requirements. You make the ultimate design decisions regarding your products and are solely responsible for compliance with all legal, regulatory, safety, and security related requirements concerning your products, regardless of any information or support that may be provided by Licensor. Accordingly, you will indemnify and hold Licensor harmless from any claims, liabilities, damages and associated costs and expenses (including attorneys’ fees) that Licensor may incur related to your incorporation of any product in a safety-critical application or system.

14.2. Only Licensed Software that Licensor has specifically designated as “Automotive Qualified” is intended for use in automotive, military, or aerospace applications or environments. If you use Licensed Software that has not been designated as “Automotive Qualified” in an automotive, military, or aerospace application or environment, you do so at your own risk.

14.3. Licensed Software is not intended or authorized for any use in anti-personnel landmines.

15. CHOICE OF LAW; VENUE. This Agreement shall be governed by and construed in accordance with the laws of England and Wales without regard to provisions concerning conflicts of law and subject to the dispute resolution terms set forth in this Section regardless of any conflicting terms in any other agreements between the Licensor and Licensee. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any dispute arising out of or related to this Agreement, including any question regarding the breach,

termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration (LCIA) Rules, which LCIA Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English.

The arbitration award shall be final and binding on the parties and be enforceable in any court of competent jurisdiction. Accordingly, both Licensor and Licensee hereby confirm that they shall treat the performance of this award as an obligation under this Agreement and expressly agree to carry out such arbitral award without delay. The arbitrator shall determine which party shall bear the fees of such arbitration. Nothing in this Section shall be construed or interpreted as a limitation on either Licensor's or Licensee's right under applicable law for injunctive or other equitable relief or to take any action to safeguard its possibility to have recourse on the other party.

Finally, Licensor and Licensee shall maintain the confidential nature of the arbitration proceeding and any awards, including the arbitration hearings, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision.

16. CONFIDENTIAL INFORMATION. Subject to the license grants and restrictions contained herein, you must treat the Licensed Software as confidential information and you agree to retain the Licensed Software in confidence perpetually, with respect to Licensed Software in source code form (human readable), or for a period of five (5) years from the date of termination of this Agreement, with respect to all other parts of the Licensed Software. During this period, you may not disclose any part of the Licensed Software to anyone other than employees, or sub-contractors in accordance with Section 2.3 who have a need to know of the Licensed Software and who have executed written agreements obligating them to protect such Licensed Software to at least the same degree of care as in this Agreement. You agree to use the same degree of care, but no less than a reasonable degree of care, with the Licensed Software as you do with your own confidential information. You may disclose Licensed Software to the extent required by a court or under operation of law or order provided that you notify Licensor of such requirement prior to disclosure, which you only disclose information required, and that you allow Licensor the opportunity to object to such court or other legal body requiring such disclosure.
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18. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between you and Licensor regarding the subject matter of this Agreement, and supersedes all prior communications, negotiations, understandings, agreements or representations, either written or oral, if any. This Agreement may only be amended in written form, signed by you and Licensor.
19. SEVERABILITY. If any provision of this Agreement is held for any reason to be invalid or unenforceable, then the remaining provisions of this Agreement will be unimpaired and, unless a modification or replacement of the invalid or unenforceable provision is further held to deprive you or Licensor of a material benefit, in which case the Agreement will immediately terminate, the invalid or unenforceable provision will be replaced with a provision that is valid and enforceable and that comes closest to the intention underlying the invalid or unenforceable provision.
20. NO WAIVER. The waiver by Licensor of any breach of any provision of this Agreement will not operate or be construed as a waiver of any other or a subsequent breach of the same or a different provision.

21. AUDIT. You will keep full, clear and accurate records with respect to your compliance with the limited license rights granted under this Agreement for three years following expiration or termination of this Agreement. Licensor will have the right, either itself or through an independent certified public accountant to examine and audit, at Licensor's expense, not more than once a year, and during normal business hours, all such records that may bear upon your compliance with the limited license rights granted above. You must make prompt adjustment to compensate for any errors and/or omissions disclosed by such examination or audit.
22. NOTICES. All notices and communications under this Agreement will be made in writing, and will be effective when received at the following addresses:
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24. SUCCESSION AND ASSIGNMENT. This Agreement will be binding upon and inure to the benefit of the parties and their permitted successors and assigns. You may not assign this Agreement, or any part of this Agreement, without the prior written approval of Licensor, which approval will not be unreasonably withheld or delayed. Licensor may assign this Agreement, or any part of this Agreement, in its sole discretion.

APPENDIX A

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