

# Clarinox

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## **SOFTWARE LICENCE AGREEMENT**

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Table of Contents

1    DEFINITIONS ..... 3

2    LICENCE GRANT AND RESTRICTIONS ..... 5

3    DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY ..... 7

4    EXTENTS ..... 8

5    PROTECTION ..... 8

6    CONFIDENTIALITY ..... 8

7    TERM ..... 9

8    TERMINATION ..... 9

9    GENERAL ..... 11

10   JURISDICTION AND DISPUTE RESOLUTION ..... 12

11   COMPLIANCE WITH LAWS ..... 12

THIS CLARINOX LICENCE AGREEMENT dated                      day of                      2024

**BETWEEN**      **CLARINOX TECHNOLOGIES PTY LTD (ACN: 062 954 170) of Suite 28, 296 Bay Road, Cheltenham, Victoria, 3192, Australia ("Clarinox")**

**AND**              **The Licensee named and described in Item 1 of Schedule A to this agreement ("the Licensee")**

**(together "the Parties")**

**(hereinafter in a singular context "Party")**

This contract is a standard form contract. Any changes or amendments necessary to record the agreement of the parties must be made by way of Special Conditions within Schedule C. The signing of this agreement is deemed acceptance of the following terms inclusive of such changes or amendments within Schedule C. In the absence of signing this agreement the payment and/or use of the Clarinox Product is deemed as agreement on the standard terms without change.

## RECITALS

- A.        The Licensee desires to obtain the rights and license to use the Clarinox Products for the purpose of embedding in the Licensee Product.
- B.        The Licensee acknowledges that the Clarinox Products are licensed and not sold.

## OPERATIVE PART

### 1 DEFINITIONS

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- 1.1      "Affiliate" means any entity that directly or indirectly controls, or is controlled by, a party. For the purpose of this definition, the word "control" shall mean the direct or indirect ownership of more than fifty percent (50%) of the outstanding voting stock of the entity.
  - 1.2      "Agreement" shall mean this Clarinox License Agreement, as may be renewed and/or amended from time to time, in conjunction with the Schedules which may be included within this document, or may be included as separate documents.
  - 1.3      "Clarinox Products" means one or more of the products produced by Clarinox including, but not limited to, software, hardware, software components, source code, example code, build scripts, documentation, programs, images, firmware, libraries, associated media, any printed materials, any "online" or electronic documentation as set out in Schedule A and all derivatives and byproducts of the aforementioned items.
  - 1.4      "Deliverables" shall mean the items to be delivered to the Licensee, unless specified in Schedule A, the delivery shall be via the electronic transmission methods standardly used by Clarinox.

- 1.5 “Development” means the construction by Licensee of a unit that is a preliminary to the design to be mass produced by Licensee in Production. The outcome of the Licensee development includes, but is not limited to, prototype, proof-of-concept (POC), demonstration device, and/or concept unit/s. The tasks performed within Development may include design, integration, testing, certification and demonstration. Development phase is the period of time in which the Licensee Product Development occurs.
- 1.6 “Development License” is the right for Licensee to use the Clarinox Product for the Licensee Product Development, but not the Production, of the Licensee Product.
- 1.7 “Development Phase fees” mean the fees applicable to the Licensee Product Development phase, which would typically include NRE fee and Development License fee, as set out in Schedule B.
- 1.8 “Documentation” means user manuals, training materials, product descriptions and specifications, technical manuals, license agreements, supporting materials and other information relating to products or services offered by Clarinox, whether distributed in print, electronic, CD-ROM or video format.
- 1.9 “Enhancements” means any modification, improvement or addition to the Clarinox Products that has the effect of enhancing the value, quality, efficiency, or effectiveness of the Clarinox Products.
- 1.10 “Errors” mean issue, failure, bugs, or malfunction in the Clarinox Products that occur under Clarinox envisaged usage scenarios. Bug or Bugs is the commonly used terminology of similar meaning. Debug refers to the removal of bugs or errors.
- 1.11 “Force Majeure” means occurrences beyond the control of the Parties, including but not limited to acts of the government authorities, acts of God, fire, flood, explosion, riots, war, rebellion, insurrection, sabotage and non-cooperation of third parties.
- 1.12 “Hardware” means the tangible Clarinox products, if applicable, acquired by Licensee.
- 1.13 “Intellectual Property” means, in any and all jurisdictions throughout the world, all inventions, patents (including renewals and extensions), statutory invention registrations, mask works, trademarks, circuit layouts, trade dress, copyrights, industrial design, mechanical design, confidential information, trade secrets, Knowhow, designs, prototypes, for any and all of the foregoing.
- 1.14 “Intellectual Property Rights” means any copyright (including future copyright), any rights in relation to inventions (including patent rights), registered and unregistered trademarks, registered and unregistered designs and circuit layouts and any other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields, and includes any rights in and to applications to register such rights and renewals and extensions of such rights and any derivatives or byproducts of Clarinox Products.
- 1.15 “Knowhow” means proprietary information, processes, techniques, or methodologies in respect of the technical design, development, manufacture and operation of the Clarinox Products, the rights to which are vested in Clarinox.

- 1.16 “Licensee Product”, the single product developed by the Licensee for which the Clarinox Product license was obtained with the intention to use as a component of the Licensee Product. The Licensee Product is identified in Schedule A. The license provided for a single Licensee Product is referred to as a “Single Product License”.
- 1.17 “Licensee Product Family” means the closely related set of products developed by the Licensee for which the Clarinox Product license was obtained, so closely related that the Clarinox Product can be used without change. The Clarinox product can be used across all members of the family upon payment of the “Product Family License” fee, identified in Schedule A when appropriate. The license provided for a Licensee Product Family is referred to as a “Product Family License”.
- 1.18 “N.R.E” means Non Recurring Engineering and includes tasks of a one-off nature, as distinguished from engineering tasks of a recurring nature such as maintenance.
- 1.19 “Open Source Software” shall mean any software subject to an open source license.
- 1.20 “Related Materials” means any material, including diagrams, schematics, software documentation, manuals, specifications, instructions and other materials, in any medium, related to the Clarinox Products supplied by Clarinox at any time.
- 1.21 “Production” means the producing of multiple Licensee Product for the purpose of selling, or transferring for items of value, to the Licensee customers.
- 1.22 “Production License” is the right to use the Clarinox Product for the Production of the Licensee Product.
- 1.23 “Production Phase fee” mean the fees applicable to the Licensee Product Production as set out in Schedule B.
- 1.24 “Royalty” means the production volume based payments made by the Licensee to Clarinox for the ongoing use of a Clarinox Product for Production, the terms and conditions of which are set out in Schedule B.
- 1.25 “Source Code” means the human readable code which documents the Software, including all related compilers, entities, listings, test suites, build scripts, libraries, design documentation and technical documentation.
- 1.26 “Software” means any and all computer programs produced, created, developed, or provided by Clarinox, including, but not limited to, protocol stacks, frameworks, components, drivers, firmware upgrades, or modifications thereto.
- 1.27 “Third Party” means any person or legal entity which is not Licensee, nor Clarinox, nor an Affiliate of either party.

## 2 LICENCE GRANT AND RESTRICTIONS

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- 2.1 Clarinox hereby grants a non-exclusive and non-transferable right and license to the Licensee:
- a) to use the Clarinox Products outlined in Schedule A for embedding into the Licensee Product;
  - b) to receive upgrades, updates, enhancements, bug fixes, patches or bypasses relevant to the Clarinox Products during the term of this agreement.
  - c) to reproduce copies of the Related Materials for the Licensee's own use and for actions arising out of or in connection with exercising its rights under this Agreement provided;
    - i. the Licensee must affix to such copies of the Related Materials a legend identifying the Related Materials as the property of Clarinox; and
    - ii. maintain accurate and up-to-date records of the number of all copies of the Related Materials.
- 2.2 If the Licensee Product is manufactured for sale to the Licensee's customers, then the Licensee's customers can use the Licensee Product without need for individual license of the Clarinox Product component that forms a part of the Licensee Product.
- 2.3 The Licensee's Affiliates may use the Clarinox Products, Related materials and Documentation without Clarinox's written consent provided that such use by the Affiliates is necessary to enable the Licensee to exercise its rights under this Agreement.
- 2.4 The rights and license granted to the Licensee in Clauses 2.1 to 2.3 herein is subject to:
- i. the terms and conditions of this agreement; and
  - ii. payment of the fees by the Licensee to Clarinox as and when they fall due as specified in Schedule B.
- 2.5 The Licensee shall not have any right to distribute copies or electronically transfer the Clarinox Products to any Third Party other than the right granted in Clauses 2.1 to 2.3 herein.
- 2.6 Payment of the Development License Fee provides the right to embed the Clarinox Products into the Licensee Product in Development.
- 2.7 Payment of both the Development Phase Fee and the Production Phase Fee provide the right to embed the Clarinox Products into the Licensee Products for Development and Production.
- 2.8 Under no circumstances is there a right to sublicense the license.
- 2.9 The Licensee shall not use the Clarinox Intellectual Property to create, develop or sell a product of a similar nature to the Clarinox Product.
- 2.10 The Parties shall not merge, statically link or combine the other party's code with any Open Source Software or other Third Party software ("other software") that would subject the Parties code to the terms and conditions of the other software.

- 2.11 Clarinox reserves the right and the Licensee acknowledges that Clarinox may amend, modify or change the Clarinox Product at any time. For avoidance of doubt however this does not oblige the Licensee to adopt any specific change nor relieve Clarinox from maintaining the version utilized by the Licensee for a period that is commercially reasonable and appropriate for the Licensee.
- 2.12 Clarinox may cease production of the Clarinox Product after first giving six months written notice to the Licensee of its intention to cease production.
- 2.13 In the event Clarinox ceases production for any reason other than the action taken by, or in relation to, the Licensee, the Licensee may obtain source codes for the Clarinox Products relevant to the Licensee Products for the fee set out in Item 6 of Schedule B.
- 2.14 The Licensee may report perceived Errors to Clarinox. Clarinox will evaluate and, if Clarinox conditions are met, Clarinox shall promptly correct the Error by means of upgrade, update, enhancement, future version, bug fix, patch, bypass or what other steps are necessary as determined to be appropriate by Clarinox at its sole discretion. The Clarinox conditions that shall apply to this clause are as follows
- (a) the error is reproducible
  - (b) adequate information, including ClariFi information, is provided by Licensee to Clarinox
  - (c) the error is non-trivial in nature and adversely impacts the performance of the Licensee Product
  - (d) there are no overdue fees outstanding
- 2.15 Clarinox shall retain all right title and interest in the Clarinox Products including all Intellectual Property of Clarinox and the Licensee acknowledges that it does not acquire any rights in the Clarinox Products or its Intellectual Property other than those specified in this Agreement.
- 2.16 The Licensee must pay for all the taxes, duties and customs for which it is liable to pay.

### **3 DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

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- 3.1 Except for the obligations of Clarinox in Section 2.14, Clarinox, nor any designated suppliers, agents or representatives, makes any representation or warranty of any kind with respect to the accuracy, usefulness, novelty, validity, scope or enforceability of the Clarinox Products.
- 3.2 The Parties both acknowledge that:
- a) the nature of software is such that no claim of Bug or Error free can be made for any software;
  - b) they will make all reasonable and necessary endeavors to resolve a Bug or Error;
  - c) the Licensees shall provide all necessary and relevant information to assist Clarinox technical support personnel;

- d) if it is determined that the cause of the Bug or Error is due to the Clarinox Code, Clarinox shall endeavor to address the issues as is necessary in the circumstances.

3.3 Clarinox may refuse to provide services and products to the Licensee as stipulated in this agreement if the Licensee has failed to make a payment to Clarinox as set out in Items 4 and/or 5 and/or 6 as applicable of Schedule B of this agreement.

3.4 Not Clarinox or any designated suppliers, agents or representatives shall be liable for any indirect, special, incidental or consequential damages or loss (including damages for loss of business, loss of profits, or the like), arising out of this agreement whether based on breach of contract, tort (including negligence), strict liability, product liability or otherwise, even if Clarinox or its designated suppliers, agents or representatives have been advised of the possibility of such damages. In any case, the entire liability of Clarinox under any provision of this agreement shall not exceed in the aggregate the sum of the fees paid by the Licensee for the license. Limitation of liability may not exist in some jurisdictions so the above limitations may not apply. Clarinox is not responsible for any liability arising out of content or product provided by the Licensee or a third party.

## 4 EXTENTS

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4.1 Where there are other agreements between the Licensee and Clarinox:

- a) the restrictions imposed by the other agreements shall be additive;
- b) where there is a conflict between agreements, any restrictions in the other agreements shall take precedence over grants made by this agreement, with the specific exception of other agreements granting distribution rights over this software;
- c) where there are treaties and laws applicable to the Licensee that render any provision in this agreement void, unlawful, or otherwise unenforceable, or lessen the extent of that provision, that provision shall be enforced to the maximum extent permissible;

## 5 PROTECTION

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5.1 The Licensee shall not without the written consent of Clarinox disclose or otherwise make available the Clarinox Products, Related Materials and Enhancements (or any copies thereof) to any person except to its, and its Affiliates', employees or consultants whose access is necessary to enable the Licensee to exercise its rights under this Agreement. The Licensee shall take all necessary steps to ensure unauthorized access is not obtained.

## 6 CONFIDENTIALITY

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6.1 Except to the extent expressly authorized in this Agreement, the party shall, protect all Confidential Information of the other party which is identified as confidential at the time of disclosure with a reasonable degree of care, which is at least the degree of care used to protect its own Confidential Information, and shall not use such Confidential Information for purposes other than those contemplated



by this Agreement.

6.2 The Disclosing Party shall retain all right, title and interest to the Disclosing Party's Confidential Information. The Receiving Party shall not reverse-engineer, decompile, or disassemble any software disclosed to it and shall not remove, overprint or deface any notice of copyright or confidentiality, trademark, logo, legend, or other notices of ownership from any originals or copies of confidential information it obtains from the Disclosing Party or from any copies the Disclosing Party is authorized to make.

6.3 Each party will allow the other to prepare general statements, customer/supplier lists, and other similar type documentation subject to such material being compliant to Clause 6.1, 6.2 and 6.4.

6.4 For the purposes of this Agreement, Confidential Information does not include information which:

- a) Is now, or hereafter, through no act or failure to act on the part of the Receiving Party, becomes generally known or available to the public without breach of this Agreement;
- b) Is known to the Receiving Party at the time of disclosure of such information or is developed by the Receiving party independently of such disclosure;
- c) Is hereafter furnished to the Receiving Party by a third party without that third party being in breach directly or indirectly of an obligation to the Disclosing Party to keep the information secret;
- d) Is disclosed as required by statute or judicial decree, or
- e) Is independently developed by the Receiving Party.

## 7 TERM

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7.1 This Agreement becomes effective on the date of signing and shall remain in effect until the cessation of production of the Licensee Product, or until this Agreement is terminated.

## 8 TERMINATION

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8.1 Clarinox may terminate this Agreement with immediately effect if:

- a) It is mutually agreed in writing between the Parties;
- b) Clarinox ceases production of the Clarinox Product;
- c) The Licensee:
  - i. fails to make payment to Clarinox as set out in Items 4 and/or 5 and/or 6 as applicable in Schedule B to this Agreement and such payment is unpaid and in arrears thirty days beyond the due date;
  - ii. assigns this Agreement or any of the rights under this Agreement;

- iii. permits a Third Party to take possession of the Clarinox Products or the Related Materials;
- iv. commits or permits a material breach of any of its covenants or obligations under this agreement and fails to remedy the breach within thirty (30) days after receiving written notice from Clarinox requesting a remedy of the said breach;
- v. becomes bankrupt or insolvent;
- vi. has a receiving order made against it;
- vii. has made an assignment for the benefit of creditors;
- viii. has made an order or resolution for the winding up of the Licensee;
- ix. makes an assignment for the benefit of creditors;
- x. takes the benefit of any statute for the time being in force relating to bankrupt or insolvent debtors.
- xi. Has a majority ownership/control change without the written consent of Clarinox;

8.2 The Licensee agrees and acknowledges that a new agreement may be required if Clarinox releases new Software and such new agreement will be negotiated in good faith between the parties. For clarity, if a new agreement is needed then Clarinox will provide 60 days written notice of termination of this agreement.

### 8.3 Effect of Termination upon this Agreement:

- a) The Licensee's obligations to not reverse engineer, decompile or disassemble, nor to create product using Clarinox Intellectual Property shall continue in addition to the provisions under Sections Disclaimer of Warranties and Limitation of Liability, Protection, Confidentiality, Infringement Litigation, Termination 8.3 (c) and (d), shall survive;
- b) The Licensee's rights under Section 2 shall immediately cease;
- c) The Licensee shall promptly return to Clarinox, or destroy, all of the Related Materials including copies thereof;
- d) The Licensee shall certify in writing to Clarinox within thirty (30) days that, to the best of the Licensee's knowledge, all of the Related Materials including all copies, have been returned to Clarinox or destroyed.

8.4 Termination/cancellation of the licenses and rights granted herein to Licensee shall not relieve Licensee from any obligations that occurred on, or prior to, such termination/cancellation, nor obligate Clarinox to refund any monies paid by Licensee hereunder. The Termination/cancellation rights of Clarinox provided herein are in addition to all other rights and remedies available to Clarinox.

8.5 Termination of this Agreement shall not affect the rights of Licensee to continue to use Licensee Product,

provided however, that Licensee has paid, and continues to pay, Clarinox any payments due on such license, including royalty payments if applicable, and such license is in conformance with all terms and conditions of this Agreement. For clarity, termination of this Agreement shall not affect the rights of end users to use Licensee's products where a royalty has already been paid on those products by Licensee.

8.6 Licensee may terminate this Agreement to take effect immediately if:

- a) Clarinox commits or permits a material breach of any of its covenants or obligations under this Agreement and has failed to remedy the said breach within thirty (30) days after being required in writing to do so by Licensee;
- b) Clarinox becomes bankrupt or insolvent, or has a receiving order made against it, or makes an assignment for the benefit of creditors, or an order is made or a resolution is passed for the winding up of Clarinox, or Clarinox takes the benefit of any statute for the time being in force relating to bankrupt or insolvent debtors; or
- c) Licensee provides sixty (60) days advance written notice to Clarinox that Licensee has removed the Clarinox Product from Licensee's Product (not including products where a royalty has already been paid).

## 9 GENERAL

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9.1 Where this agreement provides the Parties to give notice or provide communication to the other Party then such communication shall be in writing and will be deemed to have been received if it is delivered in person or sent by email; alternatively, ten (10) business days after it has been sent by registered mail or courier delivery to the address of the Party outlined in this agreement.

9.2 In the event that any provision of this Agreement is invalid, unenforceable or illegal, then such provision shall be severed from this Agreement and this Agreement shall be read as if such provision were not part of this Agreement.

9.3 Nothing in this Agreement shall be construed as a representation that either party will not independently develop or acquire technologies that are similar to the products of the other party, provided that neither party does so by breaching this Agreement.

9.4 The failure by any of the parties to assert rights arising from any breach of this Agreement or an acceptance of payments shall not be regarded as a waiver of rights. No waiver or toleration implies any continuing or future waivers of rights.

9.5 Each of the parties to this Agreement represents and warrants that it has the capacity and the authority to enter into this Agreement and that this Agreement constitutes a legal, valid and binding obligation of each of them.

9.6 Any delay or failure of performance by the Parties under this Agreement caused by a Force Majeure shall not constitute a default of this agreement.

9.7 If a dispute arises concerning the Agreement, or if a proposed modification of any term of this Agreement cannot be agreed between the parties, the parties shall attempt to resolve the matter as follows:

- a) First, by negotiation;
- b) Second, by mediation by a mutually acceptable mediator; and
- c) If the dispute cannot be resolved otherwise, or if the parties are unable to agree on a mediator, the dispute shall be finally settled in accordance with the rules and laws of the State of Victoria, Australia.

9.8 Headings are used within this document for convenience only and are not intended to influence or interfere with the interpretation of this document should they not be present.

9.9 Each party acknowledges that monetary damages may not be an adequate remedy for any breach or threatened breach of the provisions of this Agreement by the other party and that equitable relief will be sought where the Parties are entitled to do so.

9.10 Language: The original English version of the Agreement may have been translated into other languages. In the event of inconsistency or discrepancy between the English version and any other language version, the English language version shall prevail.

## 10 JURISDICTION AND DISPUTE RESOLUTION

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10.1 This agreement shall be governed by the laws of the State of Victoria, Australia.

10.2 Any dispute arising out of or in connection with this contract, including any questions regarding its existence, validity or termination, shall be referred to, and finally resolved by, arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.

10.3 The seat of the arbitration shall be in Singapore.

10.4 The Tribunal shall consist of one arbitrator.

10.5 The language of the arbitration shall be English.

## 11 COMPLIANCE WITH LAWS

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11.1 Both parties represent and warrant that:

- a) It shall obtain all licenses, permits and approvals required by any government, applicable industry association or other applicable authority;

- b) It will comply with all country, federal, state and local laws, ordinances, codes, regulations, rules, policies and procedures of any government or other competent authority where their Product is to be created, manufactured or sold;
- c) No agent or employee of the Licensee will receive any payment or benefit as a result of any transaction under this agreement.