

## **PENSANDO MASTER SOFTWARE LICENSE AGREEMENT**

This Master Software License and Services Agreement ("**Agreement**") is entered into between Pensando, Inc. ("**Pensando**") and the customer named below ("**Customer**") effective as of the date on which the first Order hereunder is executed ("**Effective Date**").

**By accessing, using, installing, implementing, provisioning, or otherwise exploiting the Device or the Software, you are agreeing to be bound by the terms and conditions of this Agreement. IF YOU DO NOT AGREE, YOU MAY NOT USE THE SOFTWARE OR THE DEVICES, AND MUST IMMEDIATELY NOTIFY THE SELLER AND RETURN ALL SOFTWARE AND DEVICES IN NEW, UNUSED CONDITION.**

### **1. Definitions.**

1.1 "**Device**" means a Pensando hardware device, consisting of a custom Pensando ASIC (the "ASIC") implemented on a circuit board together with custom circuitry, which is designed to be implemented in third party networking hardware ("OEM Hardware") devices through a supported standard interface bus.

1.2 "**Device Software**" means the Pensando firmware that is installed on and runs directly on the host Device (including Pensando driver software designed to support the operation of the Device on a particular host operating system), together with any Updates thereto.

1.3 "**Documentation**" means any applicable user guides, documentation, wikis, or other similar resources made available by or on behalf of Pensando (including through its website) with respect to the installation, configuration, management, and use of the Software and Devices.

1.4 "**Fees**" means the Fees due and payable for the use of the Software, as specified in the applicable Order.

1.5 "**Management Software**" means Pensando's proprietary device and policy management software designed to enable the provisioning and management of the Devices, and reporting with respect thereto, together with any Updates thereto.

1.6 "**OEM**" means a third party whose networking hardware device the Devices have been preinstalled on, and through which Customer purchases Devices and Software licenses, if any.

1.7 "**Order**" means a binding order pursuant to which Customer purchases Devices (either installed on OEM hardware, or directly from Pensando or an authorized reseller or distributor) and/or software licenses, and which specifies applicable license term ("License Term"), license allotments, support plan subscription terms (the "Support Term"), Fees, and other applicable details. Unless specified otherwise in the applicable Order, license Terms are 3 years.

1.8 "**Software**" means, collectively, the Device Software and the Management Software.

1.9 "**Updates**" means updates to the Software provided to the Customer hereunder, such as bug fixes, security patches, and similar changes to the Software. For the avoidance of doubt, major version upgrades are not provided as Updates, and require a separate purchase.

### **2. LICENSE**

2.1 **License Grant.** Subject to Customer's ongoing compliance with this Agreement and any applicable Order (including additional terms, such as restrictions on the number of seats or users, license keys, or other applicable limitations), including the timely payment of all applicable Fees, Pensando hereby grants to Customer a personal, non-exclusive, non-transferable, non-sublicensable, license during the applicable license Term, (i) to install the Management Software in binary executable form in a network environment owned or controlled by Customer, and for Customer's authorized employees to use the Software as installed for the sole purpose of provisioning, managing, and obtaining reporting information relating to, Devices running in authorized OEM Hardware, (ii) to use the Device Software for its intended purpose as pre-installed in binary executable form on the Devices in OEM Hardware installed in networks owned or controlled by Customer, and (iii) access and use and the associated Documentation internally solely in connection with its otherwise permitted use of the Software and Devices.

2.2 **Third Party Software.** The Software may be provided with certain open source software and other third party software components ("**Third Party Materials**"). Notwithstanding anything to the contrary set forth herein, the agreements listed online at **www.pensando.io** will govern Customer's use of such materials, and the limitations and restrictions set forth in this Agreement shall not apply if and to the extent such limitations and restrictions are impermissible pursuant to the applicable license terms applicable to such Third Party Materials.

2.3 **Restrictions.** Customer shall not, directly or indirectly, and shall not authorize any person, to the maximum extent permitted by applicable law or third party license, to (i) decompile, disassemble, reverse engineer or attempt to reconstruct or discover any source code, algorithms, architecture or other elements of; (ii) uninstall any Device Software from any Device or install any Device Software on any hardware other than the Device on which it was preinstalled and validly purchased by Customer, (iii) translate, adapt, or modify; (iv) write or develop any program based upon; (v) use for benchmarking or 'service bureau' purposes; (vi) sell, sublicense, transfer, or otherwise assign or grant to third party any rights in; (vii) allow access to unauthorized persons to; or (ix) otherwise use except as expressly permitted hereunder and as provided in any applicable Documentation, in each case of (i) - (ix), the Software, Documentation, and Pensando's Confidential Information, as applicable (collectively, "**Technology**").

2.4 Reservation of Rights. As between Pensando and Customer, Pensando hereby retains all rights, title and interest, including all intellectual property rights, in and to the Technology, which are licensed and not sold. As a condition of the licenses granted herein, Customer must retain all copyright and other attribution legends on all copies of the Technology. Pensando and its affiliates hereby retain all rights, and in any event, Customer hereby grants them a nonexclusive, worldwide, unlimited, irrevocable, perpetual, paid-up right, (i) to exploit without restriction all feedback, suggestions, or improvements provided by or on behalf of Customer regarding the Technology or otherwise; and (ii) with respect to any information related to Customer's use of and interaction with the Technology, which may include log data and an identification of Customer's devices, systems, application software and peripherals (collectively, "Usage Data") received by Pensando in any capacity hereunder, whether provided directly by Customer or necessary to the provision of support or Professional Services to use, analyze, compile, and otherwise exploit such Usage Data to provide, support, enhance and otherwise facilitate the development and improvement of the Technology and any other Pensando products and services now or hereafter developed, provided that the foregoing is not a license to disclose Usage Data in raw, disaggregated, or non-deidentified form, or to identify Customer as the source of any Usage Data or conclusions drawn in whole or in part from the Usage Data.

### 3. SUPPORT; PROFESSIONAL SERVICES

3.1 Support. Support for the Devices and Software is provided to Customer pursuant to a separate support subscription agreement.

3.2 Professional Services. Pensando may, from time to time, agree to perform certain professional services set forth on a separate, mutually executed written services order ("Professional Services"), in which case Pensando will use commercially reasonable efforts to provide such Professional Services, subject to Customer's timely payment of applicable fees, which, unless otherwise mutually agreed in writing in the applicable order, will be billed on a time and materials basis at Pensando's then-current rates (the "Services Fees"). Pensando will own all right, title and interest, including all intellectual property rights, in and to any work product developed in the course of the Professional Services, provided that any modification, enhancement, or improvement to the Software deliverable arising out of such Professional Services shall be deemed included within the scope of the applicable licenses herein. Nothing in this Agreement shall be understood to prevent Pensando from developing similar work product for other customers. Customer shall provide Pensando with the operating environment, materials, personnel and access (including, if applicable, remote access) to Customer systems and premises as reasonably requested by Pensando to provide the services.

### 4. FEES; PAYMENT

4.1 Fees. Customer will pay Pensando or its designee (as may be provided in the applicable Order) the non-refundable and non-recoupable Fees identified in the Order, and shall pay Pensando directly for any applicable Services Fees Generally,

4.2 Payment Terms. Unless otherwise set forth on an Order, Fees are due and payable up front, and Services Fees are invoiced monthly as incurred. Invoices are due and payable in United States dollars within 30 days after the invoice date, without deduction or setoff. Interest accrues from the due date at the lesser rate of 1.5% per month or the highest rate allowed by law.

4.3 Taxes. Fees and Services Fees are exclusive of taxes, and Customer is solely responsible for paying all applicable federal, state, local, sales, use, value added, excise, or other taxes, fees, or duties arising out of this Agreement or the transactions contemplated by this Agreement (other than taxes based on Pensando's net income), and will indemnify Pensando for all expenses incurred as a result of Customer's failure to timely pay thereof.

### 5. TERM AND TERMINATION

5.1 Term. This Agreement will start on the Effective Date and, unless terminated earlier in accordance with this Agreement, will continue until the end of the longer of the applicable License Term. Renewal terms for licenses and support shall be in accordance with the applicable Order.

5.2 Termination. Pensando may terminate this Agreement by written notice if any of the following occurs: (i) Customer fails to pay within no more than 10 days after written notice of nonpayment any amounts owed Pensando; (ii) except as set forth in (i), Customer is in material breach of this Agreement, which is not cured within 30 days after written notice of such breach; (iii) Customer ceases to operate or files for bankruptcy or similar protection; or (iv) if Customer initiates any claim that the Technology, or any portion thereof, infringes any of Customer's intellectual property rights.

5.3 Effect of Termination. Upon the effective date of expiration or termination of this Agreement for any reason then all outstanding payment obligations of Customer become due and payable immediately, and each party must promptly return or certify to the destruction of all tangible embodiments of the other party's Confidential Information (including deleting all instances of the Technology from Customer systems). The licenses to Device Software survive termination or expiration, but solely with respect to the version of the Device Software being used on the effective date of termination (including all Updates thereto received pursuant to an active support subscription), but the license to the Management Software does not survive any termination or expiration of this Agreement. The following provisions will survive the expiration or termination of this Agreement for any reason: Sections 2.3 (Restrictions), 2.4 (Ownership), 4 (Fees; Payment), 5.3 (Effect of Termination), 6 (Confidentiality), 7 (Indemnification), 8 (Limitation of Liability), and 9 (General).

### 6. CONFIDENTIALITY

6.1 Definition. "Confidential Information" means any information Pensando may disclose pursuant to this Agreement that is (i) designated as "confidential," or in some other manner to indicate its confidential nature, or (ii) otherwise would reasonably be expected to be treated in a confidential nature under the circumstances of disclosure or by the nature of the information itself. Without limiting the foregoing, the Technology

and the terms (but not the existence) of this Agreement are Pensando's Confidential Information, but Confidential Information does not include any information which Customer can demonstrate through contemporaneous documentary evidence (a) is or becomes generally known and available to the public through no act or omission; (b) was already in Customer's possession without restriction at the time of disclosure by the Disclosing Party; (c) is lawfully obtained by Customer on a non-confidential basis from a third party who has the express right to make such disclosure; or (d) is independently developed by Customer personnel without use of, or reference to (and by persons who did not have access to), the Confidential Information.

6.2 Limited Use; Maintenance. Customer may not use Confidential Information of the other party for any purpose except to exercise its rights and perform its obligations under this Agreement, or disclose (or permitted to be disclosed), either directly or indirectly, any Pensando Confidential Information, except to employees or contractors of the Receiving Party with a need to know, or to its advisors, or prospective investors or purchasers, each subject to a written obligation of confidentiality. Customer will take reasonable measures to protect the secrecy of, and avoid disclosure and unauthorized use of, the Confidential Information, and will take at least those measures that it takes to protect its own most highly confidential information.

6.3 Compelled Disclosure. If Customer is compelled by law or a court of competent jurisdiction to disclose any Confidential Information, it will promptly notify Pensando in writing and will cooperate in seeking a protective order or other appropriate remedy. If disclosure is ultimately required, Customer will furnish only that portion of Confidential Information that is legally required and will exercise reasonable efforts to obtain assurance that it will receive confidential treatment.

## 7. INDEMNIFICATION

7.1 IP Indemnification. Pensando shall (i) defend, or at its option settle, any claim brought against Customer by a third party to the extent it alleges that the Technology (excluding Third Party Materials) as delivered to Customer and used as authorized in this Agreement infringes any U.S. patent, copyright or trade secret of any third party, and (ii) pay, subject to the limitations set forth in Section 8, any damages awarded in a final judgment, or amounts agreed in a monetary settlement, in any such claim defended by Pensando; provided that Customer provides Pensando (i) prompt written notice of; (ii) sole control over the defense and settlement of; and (iii) all information and assistance reasonably requested by Pensando in connection with the defense or settlement of, any such claim. If any such claim is brought or threatened, Pensando may, at its sole option and expense: (a) procure for Customer the right to continue to use the applicable Technology; (b) modify the Technology to make it non-infringing; (c) replace the Technology with non-infringing technology having substantially similar capabilities; or (d) if none of the foregoing is commercially practicable, terminate this Agreement and/or Customer's license with respect to that portion of the Technology alleged to infringe.

7.2 Limitations. Notwithstanding Section 7.1, Pensando will have no liability to Customer for any claim arising out of or based upon: (i) use of the Technology in combination with software,

products or services not provided by Pensando; (ii) any modification of the Technology not made or authorized in writing by Pensando; (iii) Customer's failure to use the Technology in accordance with this Agreement or Documentation provided by Pensando, or otherwise using the Technology for purposes for which it was not designed or intended; or (iv) use of any specified release of the Software after Pensando implements an Update that would have avoided liability, or notifies Customer that continued use of such release may subject Customer to a claim of infringement and provides a non-infringing replacement.

7.3 LIMITED REMEDY. THE FOREGOING PROVISIONS OF THIS SECTION 7 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF PENSANDO, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY THE TECHNOLOGY OR ANY PART THEREOF.

7.4 Indemnification by Customer. Customer shall (i) defend, or at its option settle, any claim brought against Pensando and its affiliates by a third party relating to (a) any data provided or made available by or on behalf of Customer and (b) Customer's violation of this Agreement (including any use of the Technology other than as permitted in this Agreement), and (ii) pay, subject to the limitations set forth in Section 8, any damages awarded in a final judgment, or amounts agreed in a monetary settlement, in any such claim defended by Customer; provided that Pensando provides Customer (i) prompt written notice of; (ii) sole control over the defense and settlement of; and (iii) all information and assistance reasonably requested by Customer in connection with the defense or settlement of, any such claim.

## 8. DISCLAIMER; LIMITATION OF LIABILITY

8.1 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE TECHNOLOGY, SUPPORT AND PROFESSIONAL SERVICES ARE PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY. PENSANDO HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ARISING FROM COURSE OF DEALING. PENSANDO DOES NOT WARRANT THAT THE TECHNOLOGY WILL BE ERROR-FREE OR WILL WORK WITHOUT INTERRUPTIONS.

8.2 Limitation of Liability. EXCEPT WITH RESPECT TO LIABILITY ARISING IN CONNECTION WITH A BREACH OF SECTION 6, CUSTOMER'S BREACH OF SECTION 2.1 OR 2.3, OR AMOUNTS PAYABLE TO A THIRD PARTY IN CONNECTION WITH AN INDEMNIFICATION OBLIGATION, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, TREBLE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE, PROFITS, GOODWILL, DATA OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, WHETHER BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF THE OTHER PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR EACH PARTY'S BREACH OF SECTION 6 OR CUSTOMER'S BREACH OF SECTION 2.1 OR 2.3, EACH PARTY'S TOTAL LIABILITY (INCLUDING ATTORNEYS' FEES) ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE AMOUNT PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE 12-MONTH

PERIOD PRIOR TO THE DATE THE CLAIM AROSE. EXCEPT FOR ANY ACTION BY PENSANDO FOR NON-PAYMENT, NEITHER PARTY MAY BRING ANY ACTION, REGARDLESS OF FORM, ARISING OUT OF THIS AGREEMENT MORE THAN 12 MONTHS AFTER THE DATE THE CLAIM AROSE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY.

## 9. GENERAL PROVISIONS

9.1 Assignment. Neither party may assign this Agreement nor any of its rights or obligations under this Agreement without the prior written consent of the other party, except that Pensando may assign this Agreement without the written consent of Customer as part of a corporate reorganization, upon a change of control, consolidation, merger, reincorporation, sale of all or substantially all of its assets related to this Agreement or a similar transaction or series of transactions. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns. For the avoidance of doubt, any transfer of Devices (whether incorporated within OEM Hardware or otherwise) will void the licenses with respect to any Device Software installed thereon, and the transferee of the applicable Devices shall be required, as a condition of use, to obtain a license from Pensando with respect to the use of such Device Software, to the extent such transferee does not already have such license rights.

9.2 Force Majeure. Except for the obligation to pay money, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation an act of war, terrorism, act of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act, hacker attack, or failure of the Internet. The delayed party shall give the other party notice of such cause and shall use its reasonable commercial efforts to correct such failure or delay in performance.

9.3 Audit Rights. Customer shall maintain complete and accurate records of its use of the Technology during the Term and for 2 years thereafter. Upon 10 days' written notice, and no more than once per calendar year, Customer shall provide Pensando with reasonable access to Customer's premises during normal business hours to conduct an audit of Customer's records and systems to verify compliance with this Agreement, including without limitation, verification regarding any restrictions on use of the Technology and calculation of Fees. Pensando shall bear the costs of any such audit, except that if Customer is found to have violated the terms of this Agreement, in addition to any and all remedies available to Pensando in law or equity, Customer shall reimburse Pensando for all reasonable audit expenses.

9.4 Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without reference to conflict of laws principles. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. All disputes arising out of or related to this Agreement will be subject to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California, and the parties hereby agree and consent to the exclusive jurisdiction and venue of these courts. If either party breaches or threatens to breach the provisions of Sections 2.1, 2.3, or 6, each party agrees that the non-breaching party will have no adequate remedy at law and is therefore entitled to seek immediate injunctive and other equitable relief, without bond and without the necessity of showing actual money damages.

9.5 Miscellaneous. This Agreement (together with the Exhibits, Orders, SOWs hereto) is the sole agreement of the parties concerning the subject matter hereof, and it supersedes all prior agreements and understandings with respect to said subject matter. The following order of precedence shall apply: this Agreement, Order(s), SOW(s). No terms of any purchase order, acknowledgement or other form provided by Customer will modify this Agreement, regardless of any failure of Pensando to object to such terms. Any ambiguity in this Agreement shall be interpreted equitably without regard to which party drafted hereof. This Agreement may only be amended by a writing signed by both parties. This Agreement may be executed in counterparts. The headings in this Agreement are inserted for convenience and are not intended to affect the interpretation of this Agreement. Any required notice shall be given in writing by customary means with receipt confirmed at the address of each party set forth below, or to such other address as either party may substitute by written notice to the other, with an email copy to the emails below. Notices will be deemed to have been given at the time of actual delivery in person, 1 day after delivery to an overnight courier service, or 3 days after deposit in the U.S. mail. The relationship between the parties shall be that of independent contractors. Waiver of any term of this Agreement or forbearance to enforce any term by either party shall not constitute a waiver as to any subsequent breach or failure of the same term or a waiver of any other term of this Agreement. Any provision found to be unlawful, unenforceable or void shall be severed from the remainder of this Agreement, and the Agreement will continue in full force and effect without said provision. Customer agrees to comply with all applicable export control laws and regulations related to its use of the Technology.