

Version
5 March 2020

License Terms

For Packhunt.io



Article 1. Definitions

1.1 Throughout the Agreement the following capitalized terms will have the meaning assigned below:

Additional Term	The additional one-month terms after expiration of the Initial Term, as described in Article 7.1;
Agreement	the Offer, including these License Terms;
(Client) Application	the Client specific Configurations and Parametric Models that will use the Packhunt.io Platform for the purposes specified in the Offer;
Client	the Party identified as such on the Offer;
Client Input	Any and all information provided by Client for the Parametric Model and the Process;
Configuration	the creation of a configuration (or modification in case of an existing Configuration) of the Process(es) and user interface layout(s);
Configuration Fee	the Fee due by Client for the Configuration;
Credits	the usage points used by the Packhunt.io Platform to calculate the Client's use of the Packhunt.io Platform;
Error	the Packhunt.io Platform not, or not fully, performing according to the Agreement;
Fee	an amount that Client is obligated to pay under the Agreement;
Initial Term	the period beginning on the Effective Date specified in the Offer;
IP-Rights	any rights of intellectual property, including but not limited to copyrights, trademarks and service marks, patents, sui generis database rights, domain names, rights to knowhow and all related rights;
License	the license specified in Article 4;
License Terms	these License Terms;
Maintenance	the service described in Article 6, consisting of providing a remedy for an Error;
Modelling	the creation of a Parametric Model (or modification in case of an existing Parametric Model);
Offer	the document labeled as such, which, when signed by both Parties, together with these License Terms constitute the Agreement;
Packhunt.io Asset	A reusable asset for the Application, such as an image or texture for a surface, usually in file format uploaded to the Platform;
Packhunt.io Platform	the platform identified in the Offer, which allows the Client Application to use the Parametric Model(s) and Process(es) configured for the Client;
Parametric Model	the model based on Client input, that is used by the Application to generate the desired output;
Party	White Lioness or Client;

Process	the process model based on Client input, that is used by the Client Application to drive e.g. sales or logistical workflows and/or processes;
Service	the service consisting of White Lioness allowing the Client and his Users to access the Application on the Packhunt.io Platform remotely;
Service Desk	White Lioness' help desk for the Packhunt.io Platform;
Support	the service described in Article 6, consisting of providing access to the Service Desk;
Term	the Initial Term plus any Additional Terms, as defined in Article 7;
User	any person using the Client Application;
VAT	Turnover tax (Dutch: BTW);
White Lioness	White Lioness technologies B.V., a limited liability company under the laws of The Netherlands, having its registered office at (1013 CN) Amsterdam at the Van Diemenstraat 118;
White Lioness IP	IP-Rights that White Lioness or its licensors developed, or acquired from a third party, including without limitation the IP-Rights in and to Products;
Work	the assignment to be performed by White Lioness for a Client pursuant to the Agreement consisting of Configuration and Modeling;
Working Day	Monday through Friday, except for Dutch national or religious holidays;
Working Hours	09:00h until 18:00h on a Working Day;

Article 2. Applicability

- 2.1 These license terms apply to all Offers and agreements between Client and White Lioness relating to the use of the Service. In the event of a conflict between the Offer and these License Terms, the Offer will prevail.
- 2.2 Additions to or derivations from these terms and conditions shall only apply where agreed upon in writing between the Parties.
- 2.3 The applicability of any of the Client's purchasing or other conditions is expressly rejected.
- 2.4 White Lioness is entitled to amend the License Terms. An amendment to these License Terms shall come into force at the indicated date of commencement and in the absence of such date, at the moment when Client has been informed of the amendment. The amended License Terms shall be sent to Client in a timely manner.
- 2.5 The Packhunt.io Platform may include or incorporate third-party software components, which will, if applicable, be specified in the Offer or which have been selected by the Client. Client agrees that the relevant third party terms and conditions, will apply, in addition to these License Terms. Client acknowledges and agrees that White Lioness is not responsible nor liable for any such third party software components.

Article 3. Offers

- 3.1 All offers and other statements issued by White Lioness are not binding until a written agreement has been concluded between the Parties on the matter of the offer and/or statements or at the moment when Work is commenced, except where specified explicitly otherwise in writing by White Lioness.
- 3.2 All offers issued by White Lioness are valid for two weeks as of the date of the offer, unless otherwise explicitly stated in the offer.
- 3.3 The Client shall guarantee the accuracy and completeness of the information that it submits to White Lioness and on which White Lioness bases its offer. The Client shall at all times exercise the greatest possible care to ensure that the requirements that White Lioness services must meet are accurate and comprehensive. Measurements and information stated in drawings, pictures, catalogues, websites, quotations, advertising material, standard sheets etc. shall not have a binding effect on White Lioness, except where explicitly specified otherwise by White Lioness.

Article 4. License

- 4.1 As long as the Client has paid all Fees and is not in breach of the Agreement, White Lioness hereby grants to Client the right to use the Service according to the terms and conditions stated in the Agreement, for the duration of the Agreement.
- 4.2 Client accepts that the Packhunt.io Platform contains only the functionalities that he finds at the moment (on an 'as is' basis).
- 4.3 If computer, data or telecommunications facilities are used during the execution of the agreement or otherwise, White Lioness shall be entitled to assign access or identification codes to the Client. White Lioness shall always be entitled to change the access or identification codes assigned to Client. Client shall treat the access and identification codes as confidential and with due care and shall only disclose these codes to authorized members of staff. White Lioness shall under no circumstances be liable for any damage or costs arising from the use or misuse of access or identification codes, except where misuse was possible as a result of an act or omission on the part of White Lioness.
- 4.4 Under no circumstances shall Client remove or circumvent technical provisions intended to protect the Packhunt.io Platform, or arrange for this to be carried out.
- 4.5 Upon request, Client shall immediately lend its full cooperation to any investigations to be conducted by or on behalf of White Lioness in relation to the Client's compliance with the agreed restrictions on use. At the first request of White Lioness, Client shall grant White Lioness access to its buildings and systems. White Lioness shall maintain the confidentiality of all company information to be regarded as confidential that White Lioness obtains from or on the premises of Client within the context of this type of investigation, in so far as this information does not relate to the use of the software itself.

Article 5. Application Configuration

- 5.1 Provided Client has paid the applicable Configuration and/or Modelling Fee, White Lioness will perform the Work agreed upon in the Offer based on the input provided by Client.
- 5.2 Optionally, the Client can provide the Parametric Model(s) to White Lioness for direct upload as long as these are compatible with the current Packhunt.io functionality. White Lioness cannot be held liable for any damage resulting from nonfunctional models in this case, nor will White Lioness be held liable for damages caused by errors in the Client input for the Parametric Model(s) or the Process(es).
- 5.3 After the Configuration, Client will test the Client Application to see whether the Parametric Model(s), the Process(es), the Client Application and the Packhunt.io Platform are accepted by Client. The acceptance test will ascertain whether the Client Application, the Parametric Model(s), the Process(es) and the Packhunt.io Platform are in line with the functionalities offered to Client in the Offer. After acceptance, White Lioness will bear no risk in connection with and will not be liable for any damages resulting from flaws in the Parametric Model(s) and/or Process(es).
- 5.4 When the Client believes the Client Application is not in line with the functionalities offered in the Offer, Client's only remedy is to request that White Lioness re-perform the offered services, in such a way that the Client Application is in line with the offered functionalities.

Article 6. Maintenance and Support

- 6.1 As long as Client has paid all Fees and is not in breach of this Agreement, White Lioness will provide Maintenance and Support to Client, under the terms and conditions as set forth in the Agreement.
- 6.2 Under White Lioness' Support obligations, White Lioness will ensure that Client has access to the Service Desk during Working Hours to assist in the use of the Packhunt.io Platform.
- 6.3 Under White Lioness' Maintenance obligations, White Lioness will ensure that White Lioness will respond to a notification of an Error within one Working Day. White Lioness will render best efforts to provide a remedy for the Error as soon as possible. The remedy to be provided may consist of providing a workaround for the Error.
- 6.4 Outside Working Hours Client can notify White Lioness of an Error by sending an email to support@packhunt.io.

Article 7. Term and Termination

- 7.1 This Agreement will begin on the Effective Date and will continue for the Initial Term. This Agreement will continue for any number of additional one-month terms (each an Additional Term) unless at least 1 month prior to the conclusion of then-current term the Client notifies White Lioness in writing of its intent to terminate this Agreement at the end of such term or at least 3 months in case White Lioness notifies the client in writing of its intent to terminate this Agreement at the end of such term.
- 7.2 Either Party may terminate this Agreement immediately upon written notice to the other Party if:
 - a. the other Party ceases to carry on its business;
 - b. the other Party breaches any material provision of this Agreement, and such breach continues uncured for 30 days (seven days for breach of any payment obligation) after written notice of this breach;
 - c. a receiver or similar officer is appointed for the other Party and is not discharged within 30 days;
 - d. the other Party becomes insolvent, admits in writing to its inability to pay debts as they mature, is adjudicated bankrupt, or makes assignment for the benefits of its creditors; or
 - e. any proceeding under bankruptcy, or insolvency laws is commenced by or against the other Party and is not dismissed within 30 days.
- 7.3 After termination for whatever reason, Client will stop using the Service.

Article 8. Fees and Payments

- 8.1 Monthly Fees are calculated on the number of Credits used by the Application in a time period of one month, as described in the Offer.
- 8.2 After the Initial Term, White Lioness may increase the monthly Fees by no more than 5% per year.
- 8.3 All mentioned prices and rates are exclusive of travel costs, travel time, and other business expenses, such as lodging, parking, except if explicitly agreed otherwise in writing in the agreement.
- 8.4 If White Lioness has carried out work or performed other services that fall outside of the content or scope of the agreed work and/or services at request or with the prior consent of Client, such work or services shall be paid for by Client in accordance with the agreed rates. If no rates have been agreed, White Lioness's standard rates shall apply. White Lioness shall under no circumstances be obliged to comply with such a request, and where it does comply, it may require Client to enter into separate written agreement for this purpose.
- 8.5 All Fees due by Client will be paid within a period of 14 days after the invoice date. Client will reimburse White Lioness for all costs of collecting any past due accounts, including attorneys' fees. Furthermore, White Lioness will be entitled to suspend the Service in case of late payment.
- 8.6 Upon request by Client, White Lioness will accept Client's standard-form purchase order and reference it on invoices. Terms and conditions other than payment amount contained in any purchase order will have no force or effect.
- 8.7 When the Client Application in a single month uses five times more credits than specified in the Offer, White Lioness may, at its sole discretion, temporarily suspend the Service. In that case White Lioness will contact Client as soon as possible to ascertain whether the Service should be resumed.
- 8.8 All prices are excluding VAT and other government taxes.

Article 9. IP-Rights

- 9.1 White Lioness and, as applicable, its licensors will retain all right, title, and interest in and to all White Lioness IP, including any Parametric Model and Configuration developed by White Lioness and any pre-existing Assets. This Agreement does not grant Client any ownership rights in any White Lioness IP or other IP related to the Packhunt.io Platform.
- 9.2 Client will indemnify and hold harmless White Lioness for all damages and costs related to a third party claim that an Asset provided by Client, the Application, or anything else provided by Client infringes on said third party's (IP)-right.
- 9.3 Any use of any IP of White Lioness or of others shall not affect White Lioness's right or option to carry out works, use and/or to exploit the components, general principles, ideas, designs, algorithms, documentation, work, programming languages, protocols, standards and suchlike that form the basis of the development, configuration or modelling work for other purposes without any restrictions, on its own behalf or on behalf of a third party.

Article 10. Client Obligations

- 10.1 Client will refrain from using the Service to infringe on any third party's (IP-)rights and from using the Service unlawfully in any other way.
- 10.2 Client will indemnify White Lioness and hold White Lioness harmless from all costs, expenses and damages arising from any third-party claim that either (i) the (Client's use of the) Client Application or (ii) a User's use of the Client Application infringes any third party's (IP-)rights (each: "a Claim"), provided that White Lioness will give Client prompt notice of the Claim, allows Client sole control of the defense of the Claim and of all negotiations for its settlement or compromise, and cooperates in all reasonable ways with the Client's defense or settlement of the Claim.
- 10.3 Client agrees that no contractual relationship will exist between White Lioness and the end-user of the Client Application. Such a relationship only exists between the Client and his end-user, and will be the Client's sole responsibility.

Article 11. Guarantees

- 11.1 The Service and the Platform are provided "as is". White Lioness does not warrant that the Service is without flaws or will operate without interruption, or that White Lioness will be able to correct any flaw within any specified period of time.
- 11.2 White Lioness will provide the Configuration, Maintenance and Support in a professional and workmanlike manner to standards generally accepted in the industry. Client's exclusive remedy for breach of this obligation will be to require White Lioness to re-perform the Configuration, Maintenance and Support in accordance with the obligation.
- 11.3 White Lioness warrants that to the best of its knowledge the Packhunt.io Platform does not contain any viruses, trojans, logic bombs or other harmful computer code.
- 11.4 White Lioness hereby disclaims all warranties, whether expressed, implied, statutory or otherwise, with respect to any products or services provided hereunder, including but not limited to any implied warranties of merchantability, non-infringement or fitness for a particular purpose.

Article 12. Limitations Of Liability

- 12.1 White Lioness's liability for breach of the Agreement, tort or based on any other theory of liability is limited to reimbursing direct damages.
- 12.2 Direct damage is limited to: any damage that is the immediate consequence of the essential failure. For the purpose of this Article 12, the term "direct damage" includes only the following:
 - a. damage to property;
 - b. all reasonable costs to mitigate the direct damage;
 - c. reasonable legal costs, incurred by Client as a consequence of the failure;
- 12.3 White Lioness will have no liability to client for any indirect, incidental, special, consequential or punitive damages, however caused or on any theory of liability, arising out of this agreement, including but not limited to loss of anticipated profits, even if White Lioness has been advised of the possibility of such damages.
- 12.4 White Lioness's aggregate liability for direct damages will not exceed the monthly Fees paid by Client to White Lioness over the 6 months preceding the damage incurring event.
- 12.5 White Lioness does not guarantee that the Packhunt.io Platform does not infringe on the IP-Rights of third parties. As such, White Lioness will not be liable towards the Client in case of infringement of third party IP-Rights.
- 12.6 In no case will White Lioness' aggregate liability for direct damages exceed the amount actually paid by White Lioness' company insurance in connection with the damage incurring event.

Article 13. Privacy

- 13.1 If and in so far as the Client Application processes personal data as defined in Article 4 (2) of the General Data Protection Regulation (GDPR), White Lioness, as processor of such personal data, will, upon Client's request, enter into a separate processor agreement with Client with regard to this processing of personal data on the Packhunt.io Platform.
- 13.2 Client will indemnify and hold White Lioness harmless for all damages and costs related to a third party claim that his or her personal data have been processed unlawfully by Client's use of the Packhunt.io Platform.

Article 14. Confidentiality

- 14.1 Each Party will protect the other Party's Confidential Information by (i) using it only for the purposes of this Agreement, (ii) disclosing it only to the Party's personnel strictly on a need-to-know basis and not to any third party and (iii) taking at least such measures as it takes to protect its own confidential information of like kind, and in any event a reasonable level of care.
- 14.2 The obligations set forth in the preceding article will not apply in the event, and only to the extent, that the Confidential Information is (i) already in the receiving Party's possession without obligation of confidentiality, (ii) obtained from a third party without obligation of confidentiality, (iii) independently developed by the receiving Party, (iv) disclosed by the other Party to a third party without obligation of confidentiality, or (v) required to be disclosed by applicable law or governmental order, in which case the receiving Party will, as promptly as possible and before making the disclosure, notify the other Party of its intention to make the disclosure.

Article 15. Force Majeure

- 15.1 Neither of the Parties shall be obliged to meet any obligations, including any guarantee obligation agreed between the Parties, if it is prevented from doing so as a result of force majeure. Force majeure shall include: (i) a situation of force majeure encountered by White Lioness's own suppliers, (ii) failure by secondary suppliers engaged by White Lioness on Client's instructions to duly meet their obligations, (iii) the defectiveness of items, hardware, software or materials provided by third parties that White Lioness has been instructed to use by Client, (iv) government measures, (v) electricity failure, (vi) faults affecting the internet, computer network or telecommunication facilities, (vii) war, (viii) workload, (ix) strike action, (x) general transport problems and (xi) the unavailability of one or more member of the staff.
- 15.2 If a situation of force majeure lasts for longer than ninety days, either of the Parties shall be entitled to terminate the agreement in writing. The services already performed on the basis of the agreement shall in this case be settled on a pro rata basis, and the Parties shall not owe one another any other amounts.

Article 16. General Provisions

- 16.1 The Agreement will be governed by the laws of The Netherlands. Any and all disputes connected to the Agreement will be brought exclusively before the competent court in Amsterdam.
- 16.2 If any provision in this Agreement is found invalid or unenforceable, then the meaning of such provision will be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it will be severed from the remainder of this Agreement, which will remain in full force and effect.
- 16.3 Any (delivery) dates or terms are merely indicative and do not constitute fatal terms, unless otherwise agreed upon in writing.
- 16.4 Either Party may assign this Agreement to a successor in interest (or its equivalent) of all or substantially all of its relevant assets or outstanding stock, whether by sale, merger, or otherwise, and (b) White Lioness may assign this Agreement to any wholly- or majority-owned subsidiary. White Lioness may delegate any of its obligations hereunder but will remain responsible for performing those obligations.
- 16.5 Notwithstanding anything else in this Agreement, and except for any obligation to pay money, no default, delay or failure to perform on the part of either Party will be considered a breach of this Agreement if such default, delay, or failure to perform is shown to be due to causes beyond reasonable control of the Party charged with such performance, including, but not limited to, causes such as strikes, data center outages, lockouts or other labor disputes, riots, civil disturbances, actions or inactions of governmental authorities or suppliers, epidemics, war, embargos, severe weather, fire, earthquakes, nuclear disasters, or default of a common carrier.
- 16.6 All articles intended by their nature to survive the Agreement will survive termination of the Agreement for whatever cause.
- 16.7 This Agreement contains the entire understanding of the parties regarding its subject matter and there are no commitments, agreements, or understandings between the parties regarding that subject matter other than those expressly set forth herein.