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Certain words or phrases are defined to have certain meanings when used in this Agreement. Those words and phrases are defined below in Section 25.

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b. <u>Distribution to other licensees</u> - You may Distribute Engine Code licensed to you under this Agreement (including as modified by you under the License) in Source Code or object code format, or any Asset provided to you without additional charge

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Under the License, the User may use the Licensed Technology for as long as you comply with this Agreement. If you are a legal entity, references to "you" in this agreement also apply to the User in all cases. You are responsible for the User's compliance with this Agreement.

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At the time of activation of the License, you will also select a non-refundable subscription fee (the "**Subscription Fee**"). You agree to pay the Subscription Fee for each Subscription Period in advance unless you or Epic have previously cancelled your Subscription.

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4. Royalty

You agree to pay Epic a royalty equal to 5% of all worldwide gross revenue actually attributable to each Product, regardless of whether such revenue is received by you or any other person or legal entity, as follows:

    a. Gross revenue resulting from any and all sales of a Product to end users through any and all media, including but not limited to digital and retail;

    b. Gross revenue resulting from any and all in-app purchases, downloadable content, microtransactions, subscriptions, or redemption of virtual currency, either within a Product or made externally but which directly affect the operation of the Product;

    c. Gross revenue from any Kickstarter or other crowdfunding campaign which is directly associated with Product access or in-Product benefit (*e.g.*, in a multi-tiered campaign, if an amount is established in an early tier solely for Product access, your royalty obligation will apply to that amount for each backer with the same access, but not on additional amounts in higher tiers based on ancillary benefits);

d. Your revenue from in-app advertising and affiliate programs;

e. Revenue from advance payments for a Product (from a publisher or otherwise); and

f. Revenue in any other form actually attributable to a Product (unless excluded below).

However, no royalty is owed on the following forms of revenue:

1. The first $3,000.00 in gross revenue for each Product per calendar quarter;

2. Revenue from a Product which is only Distributed to Engine Licensees;

3. Revenue from linear media which is Distributed in a form that does not contain the Licensed Technology (*e.g.*, broadcast or streamed video files, cartoons, or movies);

4. Revenue from ancillary products which are not software and which do not contain embedded information (such as QR codes) which affects the operation of the Product (*e.g.*, comic books, soundtracks, apparel);

5. Financial winnings generated by awards for the Product;

6. Revenue from interactive amusement park rides or coin-operated arcade games which use the Licensed Technology; and

7. Consulting fees or work-for-hire fees which are non-recoupable for services performed using the Licensed Technology (*e.g.*, an architect-created walkthrough simulation or a contractor-developed in-house training simulator).

The royalty is based on gross revenue from end users, regardless of whether you sell your Product to end users directly, self-publish via App Store, or work with a publisher. The following simplified example illustrates the application of the royalty to gross sales: if your Product earns $10 on the App Store, Apple may pay you $7 (having deducted 30% as a distribution fee), but your royalty to Epic would still be 5% of $10 (or $0.50).

Royalties that you pay on an advance payment of revenue for a Product that is recoupable by the payer, such as a publisher, may be credited against future royalty payments that you incur under this Agreement for that Product.

Within 45 days after the end of each calendar quarter in which a Product earns revenue outside of the above-listed royalty exclusions, you will pay to Epic the full amount of the royalty due for such quarter and send Epic a royalty report on a per Product basis. Detailed information on royalty reporting and payment can be found at unrealengine.com/release.

The royalty will be payable under this Agreement with respect to each Product for as long as any Engine Code (including as modified by you under the License) or Assets incorporated in the Product are protected under copyright or other applicable intellectual property law.

5. Payments

Epic reserves the right to charge a 2% late fee, per calendar quarter (compounding), for any amounts unpaid after the required due date.

You are responsible for all taxes on all payments required to be made by you under this Agreement (other than taxes that Epic is obligated to pay on its income, which are Epic's responsibility). If you are required by a government agency to reduce your payment to Epic for any reason, you are required to provide sufficient documentation to Epic supporting such withholding. For questions about withholding taxes or taxes in general, please go to unrealengine.com/contact.

6. Records and Audits

You agree to keep accurate books and records related to your development, manufacture, Distribution, and sale of Products and revenue. Epic may conduct reasonable audits of your records. Audits will be conducted during business hours on reasonable prior notice to you. Epic will bear the costs of audits unless the results show a shortfall in payments in excess of 5% during the period audited, in which case you will be responsible for the cost of the audit.

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You understand and agree that Epic is not required to make any use of any Feedback or Submission that you provide. You agree that if Epic makes use of your Feedback or Submission, Epic is not required to credit or compensate you for your contribution.

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Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, the liability of Epic, its licensors, its and their affiliates, and any of Epic's service providers shall be limited to the full extent permitted by law.

15. Indemnity

You agree to indemnify, pay the defense costs of, and hold Epic, its licensors, its and their affiliates, and its and their employees, officers, directors, agents, contractors and other representatives harmless from all claims, demands, actions, losses, liabilities, and expenses (including attorneys' fees, costs, and expert witnesses' fees) that arise from or in connection with (a) any claim that, if true, would constitute a breach by you of this Agreement or negligence by you, (b) any claim brought by any third party to whom you Distribute or sublicense the Licensed Technology in violation of this Agreement (including without limitation any claim that the Licensed Technology infringes a patent), (c) any claim that any Product or any other matter you created, or your exercise of the Epic Licenses, infringes any third party's intellectual property rights and other proprietary or personal rights (except to the extent of any claim that your authorized use of unmodified Engine Code or Assets originally provided to you by Epic under this Agreement infringes any United States patent, trademark or copyright), or (d) any federal, state, or foreign civil or criminal actions related to any Product. You agree to reimburse Epic on demand for any defense costs incurred by Epic and any payments made or loss suffered by Epic, whether in a court judgment or settlement, based on any matter covered by this Section 15.

If you are prohibited by law from entering into the indemnification obligation above, then you assume, to the extent permitted by law, all liability for all claims, demands, actions, losses, liabilities, and expenses (including attorneys' fees, costs and expert witnesses' fees) that are the stated subject matter of the indemnification obligation above.

16. Export Restrictions

You agree to comply with all applicable federal and foreign laws, regulations and rules, and complete any required undertakings (including obtaining any necessary export license or other governmental approval), prior to accessing, exporting, re-exporting, or releasing any Licensed Technology.

17. Term and Termination

A. Term of the License. This Agreement will continue in effect unless terminated as described below.

B. Termination by Epic. Epic may terminate the Agreement by providing written notice if you materially breach any provision of this Agreement and the breach is not curable or, if it is curable, you fail to cure the breach within thirty (30) days of notice of the breach from Epic. Without limiting the foregoing, your failure to make any payment due under this Agreement or breach of any restriction under the Epic Licenses constitutes a material breach of this Agreement.

C. Termination for Patent Action. The Agreement will terminate automatically as of the date you commence any claim that the Licensed Technology infringes a patent, or otherwise support any claim by a third party that the Licensed Technology infringes a patent.

D. Effect of Termination. Upon any termination, the Epic Licenses will automatically terminate, you may no longer exercise any of the rights granted to you by the Epic Licenses, and you must destroy all copies of the Licensed Technology in your possession and cease distributing any Products developed under this Agreement. Within 30 days of termination, unless otherwise agreed by Epic, you must destroy all Products in your inventory.

E. No Refunds

All payments, fees and royalties are non-refundable under all circumstances, regardless of whether or not this Agreement has been terminated.

F. Surviving Provisions

Sections 4-6, 8-10, 13-15, 17-19, and 23-26 will survive termination of this Agreement.

18. Governing Law and Jurisdiction

You agree that this Agreement will be deemed to have been made and executed in the State of North Carolina, U.S.A., and any dispute will be resolved in accordance with the laws of North Carolina, excluding that body of law related to choice of laws, and of the United States of America. Any action or proceeding brought to enforce the terms of this Agreement or to adjudicate any dispute must be brought in the Superior Court of Wake County, State of North Carolina or the United States District Court for the Eastern District of North Carolina. You agree to the exclusive jurisdiction and venue of these courts. You waive any claim of inconvenient forum and any right to a jury trial. The Convention on Contracts for the International Sale of Goods will not apply. Any law or regulation which provides that the language of a contract shall be construed against the drafter will not apply to this Agreement.

19. Class Action Waiver

You agree not to bring or participate in a class or representative action, private attorney general action, or collective arbitration related to the Licensed Technology or this Agreement. You also agree not to seek to combine any action or arbitration related to the Licensed Technology or this Agreement with any other action or arbitration without the consent of all parties to this Agreement and all other actions or arbitrations.

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The Licensed Technology and related documentation are "Commercial Items" (as defined at 48 C.F.R. §2.101), consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation" (as used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable). The Licensed Technology is being licensed to U.S. Government end users only as Commercial Items and with only those rights as are granted to other licensees (other than Academic Institutions) under this Agreement.

21. Independent Contractor

You and Epic are independent contractors and are not the legal representative, agent, joint venturer, partner, or employee of the other. Neither party has any right or authority to assume or create any obligations of any kind or to make any representation or warranty on behalf of the other party.

22. Amendments of this Agreement

Epic may issue an amended Agreement at any time in its discretion by providing notice to you or by providing you with digital access to the amended Agreement when you next access the Engine Code or Assets under your Subscription. You are not required to accept the amended Agreement. However, in order to download or use new Versions, you must accept the amended Agreement. By downloading or using a new Version, you hereby agree to be bound by this Agreement as amended most recently prior to or contemporaneously with the issuance of that particular Version. If you do not accept the amended Agreement, you may not download or use any new Version that is made available by Epic contemporaneously with or after an amended Agreement is issued, and Epic reserves the right to cancel your Subscription (but this will not terminate your License for Licensed Technology that you downloaded prior to the issuance of the amended Agreement). If you are a legal entity, acceptance of an amended Agreement by any of your Users will be binding on you.

23. Notices

Where this Agreement calls for notice from Epic, including written notice, Epic may provide such notice to you at the email address that you provided when you registered for the License (or any updated email address you subsequently provide). Epic's notices to you will be effective when they are sent to that email address.

24. No Assignment

You may not, without the prior written consent of Epic, assign, transfer, charge, or sub-contract all or any of your rights or obligations under this Agreement, and any attempt without that consent will be null and void. You also may not transfer your Account. Epic may at any time assign, transfer, charge, or sub-contract all or any of its rights or obligations under this Agreement. For clarity, you are not prohibited by Epic from assigning or transferring your rights in your Product, other than the Engine Code, Assets, and Submissions. Third Party Software assignment and transfer is governed by the terms of the applicable licenses.

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As used in this Agreement, the following capitalized words have the following meanings:

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"**Account**" means a unique ID and associated password selected by you to access the Engine Code and Assets under the License.

"**Asset**" means any artwork or other content asset that Epic may make available to you for use with the Engine Code, other than any Unreal Tournament Assets.

"**Distribute**" means to provide or otherwise make a copy available, or to make its functionality available on a network.

"**Engine Code**" means the Source Code and object code of the Unreal® Engine, including any future Versions, as made available to you by Epic under this Agreement, and any object code compiled from that Source Code.

"**Engine Licensee**" means a third party who is separately licensed by Epic to use the Engine Code and Assets.

"**Engine Tools**" means editors and other tools included in the Engine Code that may be used to develop products based on the Unreal® Engine.

"**Epic**" means, depending on the location of your primary residence or primary place of business:

   a. Epic Games, Inc., a Maryland Corporation having its principal business offices at Box 254, 2474 Walnut Street, Cary, North Carolina, 27518, U.S.A.; or

   b. Epic Games International S.à r.l., a Luxembourg Société à Responsibilité Limitée, located at Atrium Business Park, 33 rue du Puits Romain, L8070 Bertrange, Grand-Duchy of Luxenbourg, acting through its Swiss branch, having its principal business offices at Lindenstrasse 16, 63412 Baar, Switzerland.

"**Epic Licenses**" means the License and the Unreal Tournament License.

"**Epic Trademarks**" means the trademarks, service marks, trade names and logos associated with Epic, Epic's games and other intellectual property, and the Unreal® Engine.

"**Example Code**" means the Engine Code made available by Epic in the Samples and Templates folders in the install directory or in the Content Examples projects available through the Marketplace.

"**Feedback**" means any feedback or suggestions that you provide to Epic regarding the Licensed Technology.

"**Licensed Technology**" means the Engine Code and the Assets, including as modified by you under the License.

"**Product**" means any product developed under this Agreement that combines any Licensed Technology with any other software or content, regardless of how much or little of the Licensed Technology is used.

"**Source Code**" means the human readable form of a software program, including all modules it contains, plus any associated interface definition files, scripts used to control compilation, and installation of an executable (object code).

"**Submission**" means any code, whether in Source Code format or object code format, or any other information or content, that you make available to Epic by any means (*e.g.*, via submissions to forums, wiki, or Epic's GitHub UnrealEngine Network, or through email or otherwise). Mere use of code or content with the Licensed Technology, without making such code or content available to Epic, does not constitute a Submission.

"**Subscription**" means Epic's provision of access, under the License, to future Versions of the Engine Code and future Assets that Epic makes available to the public.

"**Third Party Software**" means third party software components included in the Engine Code.

"**Unreal® Engine**" means the proprietary computer software program known as the Unreal® Engine and any updates or upgrades to the program made available by Epic.

"**Unreal Tournament Asset**" means any artwork or other content asset that Epic may make available to you in the GitHub UnrealEngine Network folder located at /UnrealTournament/Content/RestrictedAssets.

"**Unreal Tournament Project**" means the development project, established on May 8, 2014 and curated by Epic through the GitHub UnrealEngine Network, for the development of a new Unreal Tournament video game.

"**Unreal Tournament Submission**" means any Submission that utilizes, incorporates or is based on any Unreal Tournament Asset (including as modified by you under the Unreal Tournament License).

"**User**" means an individual user who uses a valid Account to access the Engine Code and Assets. If you are an individual, "User" means you. For legal entities, "User" means the individual employee or agent through whom you are exercising rights under this Agreement.

"**Version**" means any updated or upgraded version of the Engine Code that Epic chooses to make available to the public.

"**You,**" "**your**" or "**yourself**", whether or not capitalized in this Agreement, means you as an individual or the legal entity exercising rights under this Agreement through you. For legal entities, "you," "your" and "yourself" include any entity that controls, is controlled by, or is under common control with you, where "control" means the power, direct or indirect, to cause the direction or management of the entity in question, whether by contract or otherwise, or ownership of 50% or more of the outstanding shares or beneficial ownership of the entity in question.

26. Miscellaneous

This Agreement and any document or information referred to in this Agreement constitute the entire agreement between you and Epic relating to the subject matter covered by this Agreement. All other communications, proposals, and representations with respect to the subject matter covered by this Agreement are excluded. However, for clarity, any agreements previously signed by you and Epic regarding the Engine Code or Assets are not modified or otherwise affected by this Agreement, and they will continue in effect in accordance with their terms.

The original of this Agreement is in English; any translations are provided for reference purposes only. You waive any right you may have under the law of your country to have this Agreement written or construed in the language of any other country.

This Agreement describes certain legal rights. You may have other rights under the laws of your jurisdiction. This Agreement does not change your rights under the laws of your jurisdiction if the laws of your jurisdiction do not permit it to do so. Limitations and exclusions of warranties and remedies in this Agreement may not apply to you because your jurisdiction may not allow them in your particular circumstance. In the event that certain provisions of this Agreement are not enforceable in your jurisdiction, those provisions shall be enforceable to the furthest extent possible under applicable law.

Any act by Epic to exercise, or failure or delay in exercise of, any of its rights under this Agreement, at law or in equity will not be deemed a waiver of those or any other rights or remedies available in contract, at law or in equity.

Unless otherwise stated in this Agreement, if any term of this Agreement is held by a court or tribunal of competent jurisdiction to be unenforceable, the term will be enforced to the maximum extent permissible and the remaining terms of this Agreement will remain in full force and effect. You agree that this Agreement does not confer any rights or remedies on any person other than the parties to this Agreement, except as expressly stated.

Epic's obligations are subject to existing laws and legal process, and Epic may comply with law enforcement or regulatory requests or requirements despite any contrary term in this Agreement.