

INDEPENDENT DEVELOPER LICENSE AGREEMENT
RakNet Networking Engine

THIS INDEPENDENT DEVELOPER LICENSE AGREEMENT is between Jenkins Software, LLC, a California limited liability company whose address is 3151 Airway Avenue, Building K 105, Costa Mesa, CA 92626 ("Jenkins"), and _____, a _____ [corporation] whose address is _____ ("Licensee"). The effective date of this Agreement is _____. Jenkins and Licensee agree as follows:

1. Definitions

- 1.1. *Agreement* – means this license agreement, any amendments to it, and all attachments that are incorporated herein by reference.
- 1.2. *Confidential Information* – means the proprietary and confidential information of the Disclosing Party that is disclosed to the Receiving Party under this Agreement. When Jenkins is the Disclosing Party, "Confidential Information" includes the Licensed Software, the Documentation, and any other confidential and proprietary information delivered by Jenkins to Licensee in the course of this Agreement. Notwithstanding the foregoing, "Confidential Information" does not include any material that (a) the Receiving Party rightfully possessed without any obligation of confidentiality prior to receiving it from the Disclosing Party, (b) the Receiving Party independently developed without reference to the Confidential Information, or (c) is or becomes generally available to the public, other than in breach of this Agreement.
- 1.3. *Disclosing Party* – means either Jenkins or Licensee, as applicable, when it is disclosing its Confidential Information to the other party under this Agreement.
- 1.4. *Distribution Platform* – means electronic distribution to an end user via the worldwide internet without any physical medium of delivery and without regard to other aspects of the distribution device environment.
- 1.5. *Documentation* – means the written specifications for use of the Licensed Software delivered to Licensee in connection with the Licensed Software.
- 1.6. *Effective Date* – means the date referenced as the effective date of this Agreement in the introductory paragraph, above.
- 1.7. *EULA Provisions* – means the contractual provisions included in Exhibit B. The EULA Provisions are intended for inclusion in Licensee's license agreement with end users of the Licensee Application.
- 1.8. *Gross Revenues* – means all amounts actually received by or credited to Licensee, directly or indirectly, in connection with the development, licensing, distribution, sublicensing, sale, or other exploitation of the Licensee Application. The term "Gross Revenues" includes all development funding provided by third parties, including advances against royalties, engagement fees, etc.
- 1.9. *Jenkins* – has the meaning provided above.
- 1.10. *Licensed Software* – means Jenkins' *RakNet™* multiplayer game networking software engine in the format delivered to Licensee under this Agreement and in the version specified in Exhibit A. The term "Licensed Software" also includes any Updates delivered to Licensee under this Agreement.
- 1.11. *Licensee* – has the meaning provided above.
- 1.12. *Licensee Application(s)* – means the entertainment software application(s) that are developed by Licensee during the Term utilizing the Licensed Software, as authorized and described in Exhibit A. The term "Licensee Application" includes any updates or additional content provided by Licensee to an end user of the original Licensee Application without charge, but does not include any sequel, add-on, or expansion pack (i.e., any related application that can be executed on a stand-alone basis or any other content that is provided to an end user of the original Licensee Application for an additional charge).
- 1.13. *New Release* – means a subsequent version release of the Licensed Software bearing a new first numeral or other similar identifier, such as, but not limited to, version 4.0 or 5.0.

- 1.14. *Preliminary Software* – means any pre-production (i.e., “alpha” or “beta”) release of any software.
- 1.15. *Receiving Party* – means either Jenkins or Licensee, as applicable, when it is receiving the other party’s Confidential Information under this Agreement.
- 1.16. *Term* – means the period beginning on the Effective Date and continuing until this Agreement is terminated as set forth in Section 7.
- 1.17. *Territory* – means the entire world.
- 1.18. *Update* – means all upgrades, revisions, patches, enhancements, fixes, modifications, or maintenance releases of the Licensed Software that are not New Releases.

2. License Grant; Restrictions on Use; Obligations

- 2.1. Jenkins grants Licensee only a nonexclusive, non-transferable, limited license to use the Licensed Software during the Term, as follows:
 - 2.1.1. Licensee may embed the Licensed Software, in whole or in part, in the Licensee Application(s);
 - 2.1.2. Licensee may use and modify the Licensed Software as needed for the development, support, and maintenance of the Licensee Application(s);
 - 2.1.3. Licensee may make copies of the Licensed Software as reasonably needed in order to exercise the licenses granted herein, provided that Jenkins’ original copyright notice is included on any such copy; and
 - 2.1.4. Licensee may distribute the Licensee Application(s) within the Territory, only via the Distribution Platform and only in a compiled executable form.
- 2.2. Licensee shall not use the Licensed Software except as specifically authorized in Section 2.1, above. Without limiting the general nature of this restriction, if the Licensed Software (or any portion of it) is licensed in object code form, Licensee shall not decompile, reverse engineer, disassemble, or attempt to derive the source code of such object code material.
- 2.3. Licensee shall ensure that the any end-user license agreement that authorizes an end user to use the Licensee Application will include the EULA Provisions.
- 2.4. Licensee shall cause the “splash screen”, packaging, and documentation of the Licensee Application to display the “RakNet” logo in the form provided or approved by Jenkins. Licensee shall cause the “credits screen”, packaging, and documentation of the Licensee Application to include the following copyright notice: “Portions of this software Copyright © 20__ Jenkins Software, LLC. All rights reserved. Used under license.” The date of the copyright notice will be the date of the copyright notices incorporated in the Licensed Software as delivered to Licensee hereunder. Licensee shall ensure that the notices and displays specified in this Section 2.4 will be no less prominent than those of other middleware producers whose products are used in the Licensee Application.
- 2.5. The parties shall prepare and issue joint press releases publicizing the use of the Licensed Software in the Licensee Application. The text of each such release will be subject to the approval of the parties, which approval shall not be unreasonably withheld, delayed, or conditioned. The first such release will announce the relationship of the parties under this Agreement and will be issued no later than thirty (30) days following the Effective Date. Jenkins is authorized to incorporate the Licensee-approved text of any such joint press release, in whole or in part, in subsequent press releases to be issued by Jenkins from time to time at Jenkins’ discretion.
- 2.6. In addition, Licensee hereby gives permission to Jenkins to use Licensee’s name and logo in any listing of Jenkins’ customers in advertising, press releases, marketing, bid documents, or similar materials, and on Jenkins’ website.

- 2.7. Jenkins shall provide Licensee with the support services described in Exhibit C during the period specified in Exhibit A and for any renewal period, if applicable.

3. License Fees

- 3.1. Licensee shall pay to Jenkins the license fee specified in Exhibit A on the due date(s) specified therein. Notwithstanding section 7.1, this Agreement will automatically terminate without any further notice or other action if payment in full is not received on or before such date(s).
- 3.2. Licensee shall be solely responsible for any sales, use, value-added, or similar tax that may arise in connection with the licenses granted in this Agreement or any services provided hereunder. Licensee shall promptly pay any such amounts when due. Licensee shall indemnify Jenkins from any amounts paid in connection with Licensee's breach of the foregoing covenant.
- 3.3. Licensee understands that the license fee specified in Exhibit A is significantly less than the license fee Jenkins' charges for a full commercial license for the Licensed Software. The purpose of this reduced license fee is to facilitate independent developers' development and distribution of their products to a limited market. Accordingly, this Agreement will terminate without any further notice or other action on the date Gross Revenues exceeds \$100,000. In such a case, if Licensee wishes to continue to develop, distribute, or support the Licensee Application (to the extent it incorporates the Licensed Software) then Licensee shall enter into a full commercial license for the Licensed Software, subject to Jenkins' usual terms and conditions for such full commercial license, including license fees.
- 3.4. Licensee will certify in writing the aggregate Gross Revenues to date upon Jenkins' request. Licensee agrees to allow a representative of Jenkins, at Jenkins' sole expense, to review the accounting records of Licensee at Licensee's premises to verify accurate accounting for and reporting of Gross Revenues. Any such review will be permitted during business hours within ten (10) days of Jenkins' written request for such review.
- 3.5. Without limiting any other remedy provided in this Agreement, amounts not paid when due hereunder are subject to late charges equal to one and one-half percent (1.5%) per month or, if less, the maximum amount permitted under law. Licensee shall reimburse Jenkins for all expenses, including attorneys' fees and costs, associated with collecting any delinquent or dishonored payments.

4. Warranties; Remedies

- 4.1. DISCLAIMER – THE LICENSED SOFTWARE IS LICENSED "AS IS" AND JENKINS HEREBY DISCLAIMS ANY AND ALL WARRANTIES (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THE LICENSED SOFTWARE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT JENKINS KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. LICENSEE ACKNOWLEDGES THAT IT HAS RELIED ON NO SUCH WARRANTIES IN ENTERING INTO THIS AGREEMENT. NO VERBAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY JENKINS OR ITS AGENTS, REPRESENTATIVES, OR EMPLOYEES WILL CREATE OR EXPAND ANY WARRANTY. THE FOREGOING DISCLAIMERS OF WARRANTY CONSTITUTE AN ESSENTIAL PART OF THIS LICENSE.

4.2. Licensee's Warranties; Remedies

- 4.2.1. Licensee represents and warrants (a) that it has the power and authority to enter into this Agreement and to fully perform its obligations hereunder; (b) that this Agreement has been executed by its duly authorized representative; (c) that it is under no contractual or other legal obligation that would interfere in any way with the full, prompt, and complete performance of its obligations pursuant to this Agreement; and (d) that it is (and covenants that at all relevant times it shall be) licensed by the proprietor of each relevant third-party console platform as a developer and/or distributor (as applicable) of products for such console platform, if such authorization is required by such proprietor.
- 4.2.2. Licensee shall indemnify, defend, and hold Jenkins harmless against any third-party claims relating to the Licensee Application(s), other than claims predicated upon the Licensed Software.
- 4.2.3. To be entitled to indemnification under Section 4.2.2, Jenkins shall (a) promptly notify Licensee of the existence of the claim (whether or not litigation or other proceeding has been filed or served); and (b) permit Licensee to have the sole right to control the defense and/or settlement of such claim, so long as no such settlement admits to any wrongdoing by Jenkins or requires Jenkins to undertake any obligation. No delay in the part of Jenkins in notifying Licensee as set forth above will relieve Licensee of any obligations hereunder unless (and then solely to the extent) Licensee is actually prejudiced as a result thereof. Jenkins will have the right to participate in the defense of the claim with separate counsel of its own choice at its own expense.

5. Exclusions; Limitations

- 5.1. IN NO EVENT WILL JENKINS BE LIABLE TO LICENSEE (OR ANY THIRD PARTY CLAIMING THROUGH LICENSEE) FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS) ARISING OUT OF THE PERFORMANCE, NON-PERFORMANCE, OR BREACH OF THIS AGREEMENT, OR ARISING OUT OF OR IN ANY WAY RELATED TO THE USE, INABILITY TO USE, POSSESSION, LICENSE, DELIVERY, INSTALLATION, OPERATION, MAINTENANCE, OR SUPPORT OF THE LICENSED SOFTWARE, WHETHER SUCH CLAIM ARISES IN TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE, EVEN IF JENKINS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 5.2. The maximum aggregate liability of Jenkins for any damages, losses, or injuries to Licensee, or any third party claiming through Licensee, shall not exceed an amount equal to the license fees actually received by Jenkins from Licensee under this Agreement or, if greater, \$10.00.
- 5.3. In the event any remedy set forth in this Agreement is determined to be ineffective or to have failed of its essential purpose, all limitations of liability and exclusions of damages set forth herein shall nevertheless remain in effect. The limitations of liability and exclusions of damages set forth in this Section 5 shall apply to the fullest extent permitted by applicable law.

6. Confidential Information; Proprietary Rights

- 6.1. Except as otherwise required by law or permitted in this Agreement, the Receiving Party shall (a) hold the Disclosing Party's Confidential Information in strict confidence and not disclose it to any third party without the prior written consent of the Disclosing Party; (b) not use the Disclosing Party's Confidential Information other than for the limited purposes set forth in this Agreement; and (c) employ a standard of care in connection with the handling and storage of the Disclosing Party's Confidential Information that is at least as stringent as that the Receiving Party employs in the handling and storage of its own proprietary and confidential information, but in any event not less than reasonable care.
- 6.2. The Receiving Party may disclose the Disclosing Party's Confidential Information to its employees who reasonably and necessarily require the same to fulfill the purposes of this Agreement, provided that such persons are informed of the obligations imposed by this Agreement and that they are required to treat

such Confidential Information in the same manner. The Receiving Party shall ensure such individuals' compliance with these terms.

6.3. If the Receiving Party (or an employee of the Receiving Party) becomes legally compelled to make any disclosure of the Disclosing Party's Confidential Information, then the Receiving Party shall (a) unless legally prohibited, provide the Disclosing Party with prompt notice of such compulsion so that the Disclosing Party may seek an appropriate protective order or other remedy; and (b) cooperate with the Disclosing Party to obtain such protective order or remedy. In any event, in the case of any compelled disclosure of the Disclosing Party's Confidential Information the Receiving Party shall take commercially reasonable steps to limit the disclosure to only such portion of the Disclosing Party's Confidential Information that is legally required to be disclosed.

6.4. Licensee acknowledges that Jenkins claims that (a) the Licensed Software is Jenkins' confidential and proprietary product, (b) that it embodies valuable trade secrets, and (c) that Jenkins owns all worldwide intellectual rights in it. Nothing in this Agreement constitutes any transfer of title or ownership with respect to the Licensed Software.

6.5. The Licensor warrants that it is the sole owner of the Licensed Software and that it has the right to grant the license set forth in this Agreement.

8. General Provisions

- 8.1. Licensee agrees that it will comply with all applicable laws (including, without limitation, export control laws and regulations) and contractual obligations in its use of the Licensed Software and its distribution of the Licensee Application(s).
- 8.2. Licensee shall not assign or transfer this Agreement or any of Licensee's rights, duties, or obligations hereunder, and this Agreement may not be involuntarily assigned by Licensee or assigned by operation of law, without the prior written consent of Jenkins, which consent may be granted or withheld by Jenkins in its sole discretion. A change of control of Licensee will be deemed an assignment hereunder for which Jenkins' consent is required. For this purpose, a "change of control" means any transaction other than one in which the individuals having beneficial ownership of a majority of the equity of Licensee immediately before such transaction continue to have beneficial ownership of a majority of the equity of Licensee following such transaction. Any attempted assignment without the consent required hereunder will be null and void.
- 8.3. Jenkins may assign or transfer this Agreement without the consent of Licensee to any entity: (a) that owns more than fifty percent (50%) of Jenkins' capital stock; (b) in which Jenkins owns more than fifty percent (50%) of the issued and outstanding capital stock or voting interest; (c) that is under common control with Jenkins; (d) that acquires all or substantially all of Jenkins' operating assets; or (e) into which Jenkins is merged or reorganized pursuant to any plan of merger or reorganization. Any other assignment or transfer of this Agreement by Jenkins will require the prior consent of Licensee, which consent will not be unreasonably withheld, delayed, or conditioned.
- 8.4. This Agreement is binding upon and will inure to the benefit of each of the parties and their respective legal successors and permitted assigns.
- 8.5. This Agreement shall be construed in accordance with the laws of the State of California, to the exclusion of the laws of any other state or country, and further excluding conflicts of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. No claim arising under this Agreement shall be brought by either party more than two (2) years after such cause of action accrues; provided, however, that claims by Jenkins relating to breaches of Sections 2.2, 2.3, or 6 may be brought until the expiration of the applicable statute of limitations for such claim. The parties irrevocably submit themselves to the exclusive jurisdiction of the state and federal courts located in the State of California for the resolution of any dispute arising out of this Agreement and waive any rights to object to or challenge the appropriateness of said forums. The parties hereby agree to accept service of process pursuant to the notice provisions hereunder and waive any and all objections to venue, jurisdiction, or service of process as provided in this Agreement.
- 8.6. Neither party shall be deemed to be in default if its performance or obligations hereunder are delayed or become impossible or commercially impractical by reason of any act of God, war, fire, earthquake, labor dispute, accident, civil commotion, asteroid strike, epidemic, act of government or government agency or officers, or any other similar cause beyond such party's control; provided, however, that no event or circumstance shall excuse Licensee's absolute duty to timely pay the license fees due hereunder.
- 8.7. Exhibits A, B, and C, attached hereto, are incorporated into and made a part of this Agreement by this reference. This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous agreements. This Agreement shall not be modified, amended, or in any way altered except by an instrument in writing signed by an authorized representative of both parties.
- 8.8. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. This Agreement may be accepted in electronic form (e.g., by an electronic or digital signature or other means of demonstrating assent) or by facsimile.

- 8.9. Nothing contained herein shall be deemed to create or construed as creating a joint venture or partnership between Jenkins and Licensee. Further, it is not the intent of this Agreement or of the parties to confer a third-party beneficiary right of action upon any third party.
- 8.10. No waiver of any provision of this Agreement or any rights or obligations of either party hereunder shall be effective, except pursuant to a written instrument signed by the party waiving compliance.
- 8.11. In the event that any provision hereof is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms.
- 8.12. Except as otherwise provided herein, all notices required hereunder shall be in writing and shall be given by: (a) personal delivery, in which case notice shall be deemed effective upon receipt; or (b) international overnight courier service, in which case notice shall be deemed effective two (2) business days following deposit with such courier service; or (c) official postal mail, certified or registered, postage prepaid, return receipt requested, in which case notice shall be deemed effective five (5) days following deposit in the official postal mail. The addresses for giving notice shall be the respective addresses first set forth above, or any other address as shall be designated by a party in a written notice to the other party.
- 8.13. Time is of the essence of this Agreement. A late payment of any amount due under this Agreement is a material breach of this Agreement.

[Signature page immediately follows.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

JENKINS SOFTWARE, LLC

[Name of Licensee]

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title:_____

Date:_____

Date:_____

EXHIBIT A

Specific Terms and Conditions

Licensee Information

Company: _____
Address: _____
City, State/Province: _____
Postal Code: _____
Country: _____

Primary Contact: _____
Email: _____
Phone: _____

Marketing Contact: _____
Email: _____
Phone: _____

Jenkins Information:

Sales Rep: _____
Email: _____
Phone: _____

Technical Contact: _____
Email: _____
Phone: _____

Accts. Payable Contact: _____
Email: _____
Phone: _____

Licensee Application

(List or Describe Title)

(Estimated Release Date)

Licensed Software Version:

Support Term: 0 months

Support Start Date: Effective Date

License Fees:

Product Code	Product Description	Qty	Price	Extended
	RakNet Indy License	1	0	0
Grand Total:				0

Payment Schedule: All fees are due in full upon execution

Additional Terms: The following provisions are added to the Agreement by mutual agreement of the parties.

EXHIBIT B

EULA Provisions

Note: Bracketed terms shall be modified by Licensee to conform to terms in the applicable end-user license agreement.

[User] agrees to comply with all requirements imposed upon [Licensee] by third party service providers and licensors, including, without limitation, Jenkins Software LLC.

[User] acknowledges and agrees that he or she is not a third party beneficiary of any agreements between [Licensee] and its third party service providers and licensors, including, without limitation, Jenkins Software LLC.

[User] acknowledges and agrees that Jenkins Software LLC is and shall be a third party beneficiary of this [EULA].

[User] acknowledges and agrees that no claim, action, or demand shall lie against Jenkins Software LLC with respect to any loss, cost, liability, damages, or expense arising out of or related to this [EULA] or the [Game]. For clarity, [User] shall not file any suit or bring any cause of action against Jenkins Software LLC with respect to this [EULA] or the [Game].

[User] acknowledges that Jenkins Software LLC has not made any warranties to [User] with respect to the [Game], that Jenkins Software LLC expressly disclaims implied warranties of merchantability or fitness for a particular purpose, and that Jenkins Software LLC has no obligation to honor any warranties that [Licensee] may provide to [User] in this [EULA] or otherwise.

Neither [User] nor any of [User's] agents or consultants shall assign, sublicense, transfer, reproduce, copy, modify, disassemble, decompile, or otherwise reverse engineer any portion of the RakNet components provided with the [Game].

[User] shall adhere to all applicable laws, regulations and rules relating to the export of technical data and shall not export or re-export any technical data, any products received from [Licensee], or the direct product of such technical data to any proscribed country listed in such applicable laws, regulations and rules unless properly authorized.