



# DigitalRune Software License Agreement

---

November 18, 2010, Version 2.0

**Important! Read carefully:** The DigitalRune Software License Agreement (hereinafter, this Agreement) is a legal agreement. By downloading, installing, or otherwise using the Software, you (Licensee as defined below) become a party of this Agreement and you agree to be bound by all terms and conditions of this Agreement.

**If you do not agree to the terms and conditions of this License, do not download, install or use the Software.**

## 1. Parties

- (a) "Licensee" means individual or a legal entity specified in the License Certificate (as defined below), exercising rights under and complying with all of the terms of this Agreement.
- (b) "Licensor" means Garstenauer Information Technology OG, having its principal place of business at Weingartenstraße 35, 4452 Ternberg, Austria.

## 2. Definitions

- (a) "Software" means the software program and libraries provided by the Licensor, including its documentation and associated media, any third party software that is either integrated with or made part of the software program or libraries, and any modification, correction, enhancement, deletion or substitution (collectively, upgrades) that may be supplied by the Licensor.
- (b) "Authorized User" means i) if the Licensee is an individual, solely Licensee; ii) if the Licensee is a legal entity, a single employee or a single other temporary worker authorized by the Licensee to use the Software while performing duties within the scope of their employment or assignment.
- (c) "License Certificate" means evidence of a license provided by the Licensor to the Licensee in electronic or printed form (for example, an appropriate invoice or purchase confirmation).
- (d) "License Key" means a unique key-code that enables Authorized Users to use the Software. Only the Licensor and/or its representatives are permitted to produce License Keys for the Software.

## 3. Ownership

- (a) The Software is the property of the Licensor. The Software is licensed for use, not sold. Title and copyrights to the Software, in whole and in part, all copies thereof, and all modifications, enhancements, derivatives and other alterations of the Software regardless of who made any modifications, if any, are and will remain, the sole and exclusive property of the Licensor.
- (b) The Software is protected by copyright and other intellectual property rights. All rights to patents, copyrights, or any other intellectual property rights shall remain with the Licensor, or their respective owner.

## 4. Grant of License

The Licensor hereby grants to the Licensee a non-exclusive, non-transferable license to use the Software on the following terms.

## 5. Permitted Uses

The Licensee may:

- (a) install the version of the Software specified in the License Certificate(s), and use the Software in conjunction with the maximum number of Authorized Users which has been specified in the corresponding License Certificate(s);
- (b) use the Software on more than one computer, provided that it is used by the same Authorized Users, and
- (c) make one additional copy of the Software for backup purposes.

## 6. Prohibited Uses

The Licensee may not:

- (a) sell, give, lend, rent, lease, sublicense or otherwise transfer the Software, or any portions of the Software (except as set forth in Paragraph 6 (c) and Paragraph 11 herein) to anyone without the prior written permission of the Licensor;
- (b) decompile, disassemble, modify, translate or otherwise reverse engineer the Software to discover any source code or underlying algorithms of the Software;
- (c) transfer the Software to another Authorized User if the maximum number of Authorized Users is exceeded, unless a current Authorized User ceases using the Software, removes the Software installations, and that such transfer does not occur within thirty (30) calendar days from the previous transfer of that Software, or
- (d) share the same License Key between different Authorized Users if the License Key was issued "per user" or "per developer".

## 7. Restricted Use during Evaluation Period

- (a) Subject to the terms of this Agreement, the Licensee is granted the right to use the Software for evaluation purposes free of charge for a period of thirty (30) days from the date of the first use of the Software (the "Evaluation Period").
- (b) The Licensee's use of the Software during the Evaluation Period shall be limited to the internal evaluation of the Software for the sole purpose of determining whether the Software meets the Licensee's requirements and whether the Licensee desires to continue the use of the Software.
- (c) Upon expiration of the Evaluation Period, the Licensee must purchase a license for perpetual use of the Software or cease using the Software.

## 8. Non-Commercial Licenses and Indie Licenses

The Licensor may offer discounted versions for non-commercial use of the Software (hereafter, "Non-Commercial Licenses") or for individuals and small companies (hereafter, "Indie Licenses").

Following limitations apply to Non-Commercial Licenses:

- (a) The Licensee must be a "Non-Commercial Entity". The term "Non-Commercial Entity" is limited to the following:
  - individual users who use the Software for personal use (such as hobby, recreational, or educational purposes),
  - students, faculty members, researchers, administrators, support staff, and employees of a university when acting in this capacity,
  - university or other educational institutes, and
  - non-profit organizations (such as public libraries, charities, and other organizations created for the promotion of social welfare).
- (b) The Software must not be used for commercial purposes. For the avoidance of doubt, the following are considered examples of commercial uses of the Software:
  - use at or for a commercial enterprise;
  - use for financial gain, personal or otherwise;
  - use by government agencies;
  - use at home or while traveling for work for which You will be paid;
  - use in connection with a professional service for which you are compensated;
  - bundling or integrating the Software with any commercial product.

Following limitations apply to Indie Licenses:

- (c) The gross revenue of the Licensee may not exceed 50,000 € (Euro) per year.

- (d) The Licensee is self-publishing without the involvement or financial support of a third-party publisher. The Licensee may distribute products using a website or a digital distribution service, like Xbox LIVE Indie Games, Windows Phone Marketplace, Steam or a similar service.

The Licensee agrees to either i) upgrade to a standard license of the Software, or ii) cease using the Software and completely remove the Software from its computers and archives when one of these conditions for Non-Commercial Licenses or Indie Licenses is exceeded. The Licensee agrees to comply within three (3) weeks from the date when one of the conditions is exceeded.

## **9. License Fees and Payments**

The Licensee will pay to the Licensor the license fee and other charges and expenses as set forth in an appropriate invoice or other purchase documentation.

## **10. Source Code**

Provided that the Licensee has purchased a license to the source code, the Licensee may make modifications, enhancements, derivative works and/or extensions to that licensed source code provided to the Licensee under the following terms:

- (a) While the Licensor does not claim any ownership rights in applications, frameworks or components developed using the Software, in the event the Licensee develops any modifications, enhancements, derivative works, and/or extensions to the licensed source code, either independently or jointly with Licensor, such modifications, enhancements, derivative works, and/or extensions and all rights associated therewith will be the exclusive property of Licensor.
- (b) The Licensee may not distribute the Licensor's source code, or any modification, enhancement, derivative works, and/or extension thereto, in source code form.
- (c) The licensed source code is only provided to Authorized Users. Under no circumstances may any portion of the source code be distributed, disclosed or otherwise made available to any third party without the express, prior written consent of the Licensor.
- (d) Under no circumstances may the source code be used, in whole or in part, as the basis for creating a product that provides substantially the same functionality as or competes with the Software.
- (e) The Licensee may not modify or delete, in whole or part, any copyright, trade secret, proprietary, confidential or other notice from the source code.
- (f) THE LICENSEE UNDERSTANDS AND ACKNOWLEDGES THAT SOURCE CODE IS LICENSED AS IS; AND THAT THE LICENSOR DOES NOT PROVIDE ANY TECHNICAL SUPPORT FOR SOURCE CODE.

## **11. Redistributable Components**

The Licensor grants to the Licensee the non-exclusive, royalty-free right to reproduce and distribute those portions of the Software which are identified in the documentation as "redistributable components" (the "Redistributables"), if any, under the following terms:

- (a) The Licensee distributes the Redistributables in object code form only in conjunction with and as part of its software application product which adds significant and primary functionality, and is NOT a product that provides substantially the same functionality as or competes with the Software.
- (b) The Licensee must include a valid copyright notice with that software product.
- (c) The Licensee agrees to indemnify, hold harmless, and defend the Licensor from and against any and all liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees) arising from or related to any claim, action, proceeding or allegation that arises or results, either directly or indirectly, from the use and distribution of any of the Licensee's software products or components.

## **12. Support**

The Licensor will endeavor to provide service/support via email and/or the web site <http://www.digitalrune.com/> (for example, using an internet forum) but is not obliged to offer such support.

### 13. Upgrades

Upgrades to new versions of the Software are optional and may be provided by Licensor either for free or at an additional charge pursuant to the upgrade terms set forth by Licensor on its web site at <http://www.digitalrune.com/> or in a separate agreement between the Licensee and the Licensor (if applicable). Upon upgrading to a new version of the Software, the Authorized User must cease using the previous version, and also ensure that it is not used by anybody else.

### 14. Confidentiality

The Software and any License Keys are confidential and proprietary information of the Licensor. The Licensee agrees to take adequate steps to protect the Software and any License Keys, if any, from unauthorized disclosure or use. The Licensee will not disclose the Software, in source code or object code form, to any third party, except as otherwise provided herein.

### 15. Limited Warranty

- (a) If the Licensee has paid a license fee for the Software, then the Licensor warrants that the Software will perform substantially in accordance with the accompanying materials for a period of thirty (30) days from the date of receipt. The Licensor does not warrant that the Software will be error-free.
- (b) The Licensor's entire liability, in contract, tort or otherwise, and the Licensee's exclusive remedy, shall be, at the Licensor's option, either i) return of the purchase price paid, or ii) repair or replacement of the defective Software. This limited warranty is void if failure of the Software has resulted from accident, abuse, or misapplication. Any replacement Software will be warranted for the remainder of the original thirty (30) day period.
- (c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF ACCURACY, COMPLETENESS, PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT WITH REGARD TO THE SOFTWARE.

### 16. Limitation of Liabilities

The Licensor's liability, whether in contract, tort, or otherwise, arising out of the Licensee's use of, or in connection with, the Software, or otherwise under this Agreement, shall not exceed the amount of the license fee paid by the Licensee to the Licensor. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE LICENSOR BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF THE LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### 17. Termination

This Agreement will terminate immediately without notice from the Licensor if the Licensee fails to comply with any of the terms and conditions hereof. Upon termination of this Agreement, the Licensee must delete the Software from its computers and archives.

### 18. Applicable Law

This Agreement shall be construed pursuant to the laws of the Republic of Austria. The courts of Austria shall have exclusive jurisdiction.

### 19. General

- (a) The Licensor reserves the right at any time to cease the support of the Software and to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the Software.
- (b) Titles are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. If any term or provision of this Agreement should be determined by any competent

authority to be invalid, unlawful or unenforceable to any extent, such term or provision or part shall to that extent be deemed not to form part of this license, but the validity of the remainder of this Agreement shall not be affected.

- (c) This Agreement may only be modified in writing signed by both the Licensee and the Licensor.