Exporter Plugin End User License Agreement

Please read this Agreement carefully. It is a legal document that explains your rights and obligations related to your use of the Exporter Plugin.

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If you are not separately licensed to use this version of the Exporter Plugin, by clicking “I Agree” or by downloading or using all or any part of the Plugin Software (defined below) and/or any related content, you are agreeing to be bound by the terms of this Exporter End User License Agreement (**“Agreement”**).

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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 in this Agreement, including in Section 1 below.

If your primary residence (or primary place of business, if you are a legal entity like a corporation) is in the United States of America, your agreement is with Epic Games, Inc. If it is not in the United States of America, your agreement is with Epic Games International S.a.r.l., acting through its Swiss branch. For clarity, neither the creator nor the licensor of the Original Software (defined below) is a party to this Agreement. Separate license terms may apply to your use of the Original Software and any related services.

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   1. **“Custom License”** means any agreement between you and Epic, or any sublicensor authorized by Epic, under which you are granted a license to use the Unreal® Engine to develop one or more product(s), other than the Unreal® Engine End User License Agreement.
   2. **“Datasmith”** means the proprietary computer software program developed by Epic for use with the Unreal® Engine that is capable of, among other things, accepting data in the Datasmith Intermediate Format, and processing and/or importing such data into the Unreal® Engine.
   3. **“Datasmith Intermediate Format”** means the format used by Datasmith to import data into the Unreal® Engine.
   4. **“Documentation”** means any supporting written materials that Epic may, in its sole discretion, provide to you in connection with your use of the Exporter Plugin.
   5. **“Epic”** means, depending on the location of your primary residence:
      1. 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
      2. 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 Luxembourg, acting through its Swiss branch, having its principal business offices at Lindenstrasse 16, 6340 Baar, Switzerland.
   6. **“Exporter Plugin”** means the proprietary computer software program developed by Epic and delivered or otherwise made available to you under this Agreement in object code form for use as a plugin to the Original Software and/or tools for the Original Software, and which can be used for purposes of converting Original Software Assets into the Datasmith Intermediate Format.
   7. **“Exporter Plugin Webpage”** means https://www.unrealengine.com/datasmith/plugins or, upon notice to you by Epic, any other URL Epic may use in the future.
   8. **“Feedback”** means any information, comments, contributions, or suggestions that you provide to Epic in any manner regarding the Plugin Software.
   9. **“Intellectual Property Rights”** means any or all of the following, and all rights arising out of or association therewith, throughout the world: (i) all patents and applications therefor and all reissues, divisions, renewals, extensions, provisional, continuations, and continuations-in-part thereof, including any design patents, industrial designs, and equivalent or similar statutory rights in inventions (whether patentable or not), software, invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data, and customer lists; (ii) all copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto, including moral rights; and (iii) all trade names, trademarks and service marks, trademark and service mark registrations and applications therefor, trade dress, protectable product configuration, domain names, know-how, logos, and slogans, whether at common law or statutory, and all goodwill associated therewith and/or with the User.
   10. **“Original Software”** means the proprietary 3D modeling, animation, rendering, or other computer software program with which this Exporter Plugin is designated by Epic to be used and that is owned, licensed, and maintained by an entity other than Epic, which entity is not a party to this Agreement.
   11. **“Original Software Asset”** means certain assets, content, or data that is generated in or is otherwise from the Original Software.
   12. **“Plugin Software”** means the Exporter Plugin and any Documentation delivered or otherwise made available to you under this Agreement.
   13. **“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.
   14. **“Unreal® Engine End User License Agreement”** means any Unreal® Engine End User License Agreement entered into by you.
   15. **“User”** means you, or if you are a legal entity, **“user”** means the individual employee(s) or agent(s) through whom you are exercising rights under this Agreement.
   16. **“You”** or **“your”**, 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.
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   2. User owns or has otherwise acquired all necessary legal rights to any Original Software Asset being converted to Datasmith Intermediate Format by the Plugin Software.
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   1. **Term of License:** This Agreement becomes effective on the date you accept this Agreement or download all or any part of the Plugin Software, and will continue in effect unless terminated as described in this Section 4.
   2. **Termination by Epic:** Epic may terminate this Agreement, with immediate effect, for any reason or no reason by providing notice to you of such termination.
   3. **Automatic Termination:** Without limiting the generality of the foregoing, this Agreement will terminate automatically if you breach any provision of this Agreement.
   4. **Effect of Termination:** Upon any termination, the rights afforded you under this Agreement will immediately expire. At such time, you may no longer exercise any of the rights granted to you by the License, you must immediately destroy all copies of the Plugin Software in your possession.
   5. **Surviving Provisions:** Sections 1, 2.2, 2.3, 3-6, and 8-16 will survive termination of this Agreement.
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   3. **BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN THOSE STATES OR JURISDICTIONS, THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY ONLY TO THE FULL EXTENT PERMITTED BY LAW.**
6. **Indemnity**
   1. 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: (i) any claim that, if true, would constitute a breach by you of this Agreement or negligence by you, or (ii) any act or omission by you in using the Plugin Software, including but not limited to any claim that an Original Software Asset you converted into the Datasmith Intermediate Format or any matter you created infringes any third party’s Intellectual Property Rights or other proprietary or personal rights (except to the extent any claim that your authorized use of the Plugin Software originally provided to you by Epic under this Agreement infringes any U.S. patent, trademark or copyright). 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 6.
   2. If you are prohibited by law from entering into the indemnification obligation in Section 6.1 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 in Section 6.1.
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8. **Feedback:** If you provide Epic with any Feedback, Epic is free to use the Feedback however it chooses. You understand and agree that Epic is not required to make any use of any Feedback that you provide. You agree that if Epic makes use of your Feedback, Epic is not required to credit or compensate you for your contribution. You represent and warrant that you have sufficient rights in any Feedback that you provide to Epic to grant Epic and other affected parties the rights described above, including but not limited to Intellectual Property Rights and other proprietary or personal rights, and unless otherwise agreed, hereby assign to Epic all such rights in the Feedback.
9. **Privacy:** By downloading or using all or any part of the Plugin Software, you consent to the data collection and usage terms in Epic’s privacy policy, as it may be updated from time to time. The privacy policy is available at https://www.epicgames.com/privacypolicy.
10. **Export Compliance:** You agree to comply with all applicable federal and foreign laws, regulations, and rules, and complete any required undertakings. You will obtain any necessary export license or other governmental approval prior to accessing, downloading, exporting, or re-exporting the Plugin Software. You represent and warrant that you do not appear on any United States list of prohibited or restricted parties (including the Specially Designated Nationals List).
11. **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.
12. **U.S. Government Users:** The Plugin Software constitutes a “Commercial Item” (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 Plugin Software is being licensed to U.S. Government users only as Commercial Items and with only those rights as are granted to other licensees under this Agreement.
13. **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
14. **Notices:** Where this Agreement calls for notice from Epic, Epic may provide notice to you on the Exporter Plugin Webpage, and you agree to periodically monitor the Exporter Plugin Webpage for such notices. In addition, Epic may provide notice to you in any other manner and any other location sufficient to provide you with actual notice. Epic’s notices to you will be effective when they are posted to the Exporter Plugin Webpage and/or otherwise delivered to you (whichever is earlier).
15. **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. 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 otherwise transferring any Intellectual Property Rights you may have in the Original Software Asset (including as converted into the Datasmith Intermediate Format).
16. **Miscellaneous**
    1. **Complete Agreement:** This Agreement and any policies, documents, 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.
    2. **Translations:** 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.
    3. **Severability:** 
       1. 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.
       2. 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.
    4. **No Waiver:** 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.
    5. **Significant and Irreparable Harm:** Breaches of certain sections of this Agreement, including without limitation Section 2, would cause significant and irreparable harm to Epic, the extent of which would be difficult to ascertain. Accordingly, in addition to any other remedies including equitable relief to which Epic may be entitled, in the event of a breach by you of any such sections of this Agreement, Epic shall be entitled to injunctive relief without the posting of bond or other security, in addition to whatever other remedies it may have, at law or in equity, in any court of competent jurisdiction against any acts of non-compliance by you under this Agreement.
    6. **Existing Laws:** 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.