



MERCUNA EVALUATION LICENCE TERMS AND CONDITIONS

OUR TERMS

These are the terms and conditions for Mercuna Developments Limited (the “**Company**” / “**we**” / “**us**”) on which we provide our Software as defined below to you (the “**Recipient**” / “**you**”) for the purposes of evaluation. We are a limited liability company incorporated in Scotland under company number SC545088 and with our registered office at CodeBase, 3 Lady Lawson Street, Edinburgh, EH3 9DR.

You will be asked to accept these terms and conditions before downloading our Software. If you do not accept these terms and conditions please do not download or use our Software.

Your acceptance of these terms and conditions creates a binding legal agreement between us for the licence of our Software to you for evaluation purposes (the “**Agreement**”).

1. DEFINITIONS

The definitions in this clause apply in the Agreement.

Commencement Date: the date when the Agreement is created by your acceptance of these terms and conditions.

Demo Game: means a prototype, demonstration or beta computer game which is developed by the Recipient and which makes use of the Software.

Evaluation Period: means the period of 6 months from the Commencement Date.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

Software: the Mercuna middleware as (binaries / source code) for the (Windows / Linux / etc) platforms, and any subsequent version of the Software provided by the Company during the Evaluation Period.



Source Code: means any source code of the Software which is made available to the Recipient under the Agreement.

2. COMMENCEMENT AND DURATION

The Agreement shall be effective from the Commencement Date and, subject to clause 8, shall continue until expiry of the Evaluation Period.

3. LICENCE

- 3.1. The Company grants the Recipient a non-transferable, non-exclusive and royalty-free licence to use the Software during the Evaluation Period solely for internal, non-commercial evaluation and research and development purposes including the development of a Demo Game, but for no other purpose whatsoever.
- 3.2. The Recipient shall be entitled to give private demonstrations of a Demo Game to third parties, but shall not be entitled to distribute a Demo Game to any third party unless the prior written consent of the Company has been obtained.
- 3.3. The Recipient shall be entitled to create and distribute videos of a Demo Game to both third parties and end users and to make them publicly available.
- 3.4. The Recipient acknowledges and agrees that the Software will, or may, automatically "time out" (that is to say, cease to operate) at the end of the Evaluation Period if the Recipient has not at that time entered into a full licence for the Software with the Company.

4. CONFIDENTIALITY AND PUBLICITY

- 4.1. Each party shall, during the term of the Agreement and thereafter, keep confidential and not disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any and all information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party. However this restriction shall not apply to information which is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of the Agreement, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.
- 4.2. No party shall make, or permit any person to make, any public announcement



concerning the Agreement without the prior written consent of the other party.

- 4.3. No branding (for instance the Mercuna name and logo) relating to the Company or Software may be used by the Recipient in any medium, including but not limited to their Demo Game, social media, their marketing, or in communication with customers, without the prior written consent of the Company.

5. WARRANTIES

- 5.1. The Recipient acknowledges that the Software is being provided on an 'as is' basis. The Company does not warrant that the use of the Software will be uninterrupted or error-free.
- 5.2. Other than expressly stated in the Agreement, all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Agreement in relation to the Software, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

6. LIABILITY AND INDEMNITY

- 6.1. If the Recipient is a consumer the Company is responsible to the Recipient for foreseeable loss and damage caused by the Company. If the Company fails to comply with its obligations under the Agreement, it is responsible for loss or damage you suffer that is a foreseeable result of this failure, but the Company is not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the Agreement was made, both the Company and the Recipient knew it might happen.
- 6.2. If you are a business user, then to the extent permitted by law the Company shall have no liability of any kind to the Recipient in relation to the use of the Software, or otherwise arising under the Agreement. In particular, the Company shall have no liability for any data loss or data corruption.
- 6.3. In the event that the Company is found liable to the Recipient for any reason, the sums payable to the Recipient in respect of such liability shall not in any circumstances exceed £500.
- 6.4. The exclusions in clauses 6.1, 6.2 and 6.3 shall apply to the fullest extent permissible at law, but the Company does not exclude liability for:
 - a) death or personal injury caused by the negligence of the Company;



- b) fraud or fraudulent misrepresentation; or
- c) any other liability which may not be excluded by law.

7. INTELLECTUAL PROPERTY

- 7.1. The Recipient acknowledges that all Intellectual Property Rights in the Software and any related documentation provided by the Company under the Agreement belong and shall belong to the Company, and the Recipient shall have no rights in or to the Software other than the right to use it in accordance with the terms of the Agreement.
- 7.2. The Intellectual Property Rights in any code created or developed by the Recipient in relation to the Source Code and which is made available to the Company will be owned by the Company. All such Intellectual Property Rights are now assigned by the Recipient to the Company by way of present assignation of future rights, and are automatically deemed included in the grant of licence at clause 3 above.
- 7.3. The Intellectual Property Rights in any code created or developed by the Recipient in relation to the Source Code but which is not made available to the Company shall remain owned by the Recipient.
- 7.4. The Recipient shall sign such documents as may reasonably be requested by the Company in order to confirm ownership of the Intellectual Property Rights referred to in clause 7.2 above in the Company.

8. TERMINATION

- 8.1. The Agreement (including the licence granted under clause 3) may be terminated immediately by the Company giving written notice if the Recipient is in breach of any of its obligations under the Agreement.
- 8.2. The Company shall also be entitled to terminate the Agreement with immediate effect on giving written notice to the Recipient in the event of a claim that the use of the Software infringes any third party Intellectual Property Rights.
- 8.3. Upon termination or expiry of the Agreement, except where parties have entered or are in the process of entering into a commercial licence in relation to the Software, the Recipient shall immediately destroy all copies of all or part of the Software in its possession, custody or control that it is reasonably practicable to do so and certify to the Company that it has done so.



9. GENERAL

- 9.1. No variation of the Agreement shall be effective unless it is in writing and signed by or on behalf of both parties.
- 9.2. The Agreement contains the whole agreement between the parties relating to its subject matter and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter.
- 9.3. The Recipient shall not be entitled to assign, novate or otherwise transfer any of its rights or obligations under the Agreement unless the prior written consent of the Company has been obtained.
- 9.4. Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 9.5. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

10. GOVERNING LAW

- 10.1. The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Scotland.
- 10.2. The parties agree that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).