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1. License Grant

△ DEFENDANTIA	United States District Court Northern District of California
	Case No. <u>4:20-cv-05640-YGR</u>
	Case Title <u>Epic Games, Inc. v. Apple, Inc.</u>
	Exhibit No. <u>DX-4022</u>
	Date Entered _____
	Susan Y. Soong, Clerk _____ By: _____ Deputy Clerk

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You may not engage in any activity with respect to the Licensed Technology, including as incorporated into a Product, (1) for any gambling-related activities or Products (as defined by law in the jurisdiction of use); (2) for operation of nuclear facilities, aircraft navigation, aircraft communication systems or air traffic control machines, or for military use in connection with live combat; (3) in violation of any applicable law or regulation; (4) in which the Licensed Technology is rented or leased; (5) that misappropriates any of Epic’s other products or services; (6) in support of a claim by you or any third party that the Licensed Technology infringes a patent. You also may not sell or grant a security interest in the Licensed Technology.

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You are solely responsible for the Robo Recall Mods you make available, and you covenant that your Robo Recall Mods will not violate Oculus’ content policies applicable to developers.

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The Licensed Technology is licensed to you for use by a single User (other than Paid Plug-ins, which may also be used by your Paid Plug-in Users as described below). The User may store the Licensed Technology on any of the User’s computers, but the Licensed Technology cannot be shared with others (including any other employees or agents) except through a permitted Distribution as described above.

In order to access and download the Engine Code and Content, you must set up an Account. You may not share or allow others to use your Account. You are responsible for the security of your

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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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You agree to pay Epic a royalty equal to 5% of all worldwide gross revenue actually attributable to each Product, regardless of whether that 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, sale, transfer, or exchange of content created by end users for use with a Product, 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. The first \$5,000,000.00 in gross revenue for each Product from the Oculus Store;
3. 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);
4. Revenue from an Unrestricted Product, including for clarity, revenue from a Product which

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5. Revenue from a Product which is only Distributed to Engine Licensees (such as through the Marketplace);
6. 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);
7. Financial winnings generated by awards for the Product;
8. Revenue from donations for a Product which are not tied to Product access or in-Product benefits;
9. Revenue from interactive amusement park rides which use the Licensed Technology; and
10. Revenue collected from an end-user buyer of in-game items or other in-game content for your Product which is sold by an end-user seller and which is actually paid to the end-user seller and is not retained by you or any other party.

The royalty is based on gross revenue from end users, regardless of whether you sell your Product to end users directly, self-publish via the App Store or any similar 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.

Royalties must be reported and paid on a per-Product basis. The \$3,000 per Product per calendar quarter royalty exemption may not be aggregated across multiple Products.

Within 45 days after the end of each calendar quarter in which a Product earns revenue outside of the above-listed royalty exclusions, you must pay to Epic the full amount of the royalty due for that 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 or Content (including as modified by you under the License) incorporated in or used to make the Product are protected under copyright or other applicable intellectual property law.

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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 the withholding. For questions about withholding taxes or taxes in general, please go to unrealengine.com/contact.

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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 those states or jurisdictions, the foregoing limitations of liability shall apply only to the full extent permitted by law.

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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 (including, without limitation, any Distribution or sublicensing of the Licensed Technology in violation 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

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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 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, re-exporting, or releasing the Licensed Technology. 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).

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 (other than Unrestricted Products). Within 30 days of termination, unless otherwise agreed by Epic, you must destroy all Products in your inventory (other than Unrestricted Products).

E. No Refunds

Except to the extent required by law, 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 5-7, 9-11, 13-15, 17-19, and 23-27 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.

20. U.S. Government End Users

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

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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 log in to your Account, access the Marketplace, or download additional Content or new Versions. You are not required to accept the amended Agreement. However, in order to continue accessing your Account or the Marketplace or to download or use additional Content or new Versions, you must accept the amended Agreement. By logging in to your Account, using the Marketplace, or downloading or using additional Content or a new Version, you hereby agree to be bound by the amended Agreement then most recently issued by Epic. If you do not accept the amended Agreement, you may not log in to your Account, access the Marketplace, download or use additional Content, or download or use any new Version that is made available by Epic contemporaneously with or after the issuance of that amended Agreement (but this will not terminate your License for the 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 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, Content, and Contributions. Third Party Software assignment and transfer is governed by the

terms of the applicable licenses.

25. Definitions

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

“Academic Institution” means any educational institution such as, but not limited to, a university, college, or high school, as well as libraries.

“Account” means a user account with a unique ID and associated password selected by you, which enables you to download the Engine Code and Content under the License.

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“Contribution” 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). However, code, information, or content that you only make available to Epic as part of a Marketplace Submission at unrealengine.com/marketplace/submissions, and any Modified Engine Tools Package that you provide to Epic for Distribution, do not constitute Contributions. In addition, mere use of code or content with the Licensed Technology, without making that code or content available to Epic, does not constitute a Contribution.

“Custom License” means any agreement between you and Epic, or any sublicensee authorized by Epic, other than this Agreement or any amendment to this Agreement, under which you are granted a license to use the Unreal® Engine to develop one or more product(s), other than the Unreal® Studio EULA.

“Custom Product” means a product developed pursuant to a Custom License.

“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 Content.

“Engine Tools” means (a) editors and other tools included in the Engine Code; (b) any code and modules in either the Developer or Editor folders, including in object code format, whether statically or dynamically linked; and (c) other software that may be used to develop standalone products based on the Licensed Technology.

“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 Responsabilité 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 Platz 3, 6039 Root, Switzerland.

“Epic Licenses” means the License, the Unreal Tournament License, and the Robo Recall Mod Support 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.

“Examples” means the Engine Code and Content 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 or the Marketplace.

“Licensed Technology” means any or all of the Engine Code and the Content, including as modified by you under the License.

“Marketplace” means the Unreal® Engine digital marketplace or other Unreal® Engine learning resource maintained by Epic or its affiliates, through which, among other things, Epic makes certain Content and Engine Code available for use under the License.

“Modified Engine Tools Package” means (a) Engine Tools, as modified by you under the License, that you provide to Epic for Distribution, and (b) any code, artwork, or other content that you provide to Epic for Distribution for use with the modified Engine Tools.

“Paid Content” means Content made available to you through the Marketplace for an additional fee, including but not limited to Paid Plug-ins.

“Paid Plug-in” means any Paid Content which includes a C++ code plug-in.

“Paid Plug-in User” means, for a particular Paid Plug-in, your individual employee or contractor for whom you have purchased the right to have your License include their use.

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

“Robo Recall Content” means any code, artwork, or other content from, directly or indirectly, the Robo Recall Mod Kit available under the Modding tab of the Epic Games product launcher.

“Robo Recall Mods” means any game mod that utilizes, incorporates, or is based on any Robo Recall Content (including as modified by you under the Robo Recall Mod Support License).

“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).

“Third Party Licensor Content” means third party content to which Epic displays links in the Marketplace and that is designated in the Marketplace as content licensed directly from the third party content provider.

“Third Party Software” means third party software components included in the Engine Code. For avoidance of doubt, software in the following directory - /Engine/Extras/ThirdPartyNotUE/ - is not Third Party Software under this Agreement and is not distributed under this Agreement.

“UE-Only Content” means Content that is designated in the Marketplace as usable only in conjunction with 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® Studio EULA” means the Unreal® Studio End User License Agreement (as available at <https://www.unrealengine.com/studio/eula>).

“Unreal® Studio Product” means a product developed pursuant to the Unreal® Studio EULA.

“Unreal Tournament Code Contribution” means any Unreal Tournament Contribution that consists of code but does not include any Unreal Tournament Content (including as modified by you under the Unreal Tournament License) or other content.

“Unreal Tournament Content” means any code, artwork, or other content from, directly or indirectly, the GitHub UnrealEngine Network folder located at /UnrealTournament/Source or /UnrealTournament/Content/RestrictedAssets.

“Unreal Tournament Content Contribution” means any Unreal Tournament Contribution that includes information or content other than code.

“Unreal Tournament Contribution” means any Contribution that utilizes, incorporates, or is based on any Unreal Tournament Content (including as modified by you under the Unreal Tournament License).

“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 UGC” means original code, artwork, or other content that you create for use with the Unreal Tournament video game that is being developed in the Unreal Tournament Project.

“User” means an individual user who uses a valid Account to access the Engine Code, Content, Robo Recall Content, and the Marketplace. 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 or Content 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. Custom Licenses

Neither Custom Licenses nor the Unreal® Studio EULA are not modified or otherwise affected by this

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As used in this Agreement, the defined term "Product" does not include Custom Products or Unreal® Studio Products, and except as described above, the terms of this Agreement applicable to Products do not apply to Custom Products or Unreal® Studio Products.

27. 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.

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.



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