Software Beta License Agreement

Haiku Systems Inc.

This Software Beta License Agreement ("Agreement") is entered into as of __09/04/2019_____ (the "Effective Date") between Haiku Systems Inc, a Delaware corporation with offices at 1235 Florida St. San Francisco ("Licensor"), and __Babalola Tobi_____ ("Licensee").

1. **Software Definition.** The term "Software" shall mean all computer programs and related documentation listed on Exhibit A to this Agreement.

2. **Beta Testing.** Licensee and Licensor acknowledge and agree that the Software is an beta test version that may contain bugs, defects and errors and that the Software is not expected to function fully upon installation. Licensee and Licensor further acknowledge and agree that the Software is being supplied to Licensee without charge in exchange for Licensee's evaluation of the Software.

3. **Limited License.**

   (a) **Grant of License.** Licensor grants Licensee (exercisable by Licensee's authorized employees on Licensee's behalf if Licensee is a business entity) a royalty-free, nonexclusive, nontransferable, revocable license to use the Software (without any right to sublicense) solely for Licensee's evaluation or internal business purposes, subject to all terms and conditions set forth in this Agreement. Any continuation of the license after the end of such term will be on terms and conditions to be agreed by Licensor and Licensee, at their respective options and discretion.

   (b) **License Restrictions**. Licensee agrees that it (and, if Licensee is a business entity, its authorized employees) shall not, and shall not permit any third party to: (i) use the Software except to the extent permitted in Section 3(a); (ii) modify or create any derivative work of any part of the Software; (iii) permit any parent, subsidiaries, affiliated entities or third parties to use the Software; (iv) market, sell, license, sublicense, distribute, publish, display, reproduce, rent, lease, loan, assign or otherwise transfer to a third party the Software or any copy thereof, in whole or in part; or (v) use the Software for third-party training, commercial time-sharing or service bureau use.

   (c) **Term of License.** The license granted by this Agreement shall expire 90 days following the Effective Date, unless earlier terminated by either party.

   (d) **Termination.** Licensee may terminate the license granted by this Agreement by providing written notice to Licensor stating the effective date of the termination. Licensor may terminate the license granted by this Agreement at any time by providing five (5) business days' prior written notice to Licensee stating the effective date of the termination.

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(e) **Deletion of Software.** As soon as practicable following any termination or expiration of this Agreement (and in no event more than ten (10) business days thereafter), Licensee agrees to delete all copies of the Software from all computer systems under Licensee's control. Upon request by Licensor, Licensee will certify in writing to Licensee's compliance with this Section 3(e).

(f) **Survival of Terms.** The provisions of Sections 3 (b), 3(e), 3(f), 5, 7, 8, 9, 10, 11 and 12 will survive any termination or expiration of this Agreement.

4. **Licensee's Obligations.** Licensee agrees at Licensee's sole discretion to provide Licensor with periodic data and reports reasonably requested by Licensor, including but not limited to (i) a description of the results of Licensee's use and evaluation of the Software, including any defects found in the Software and any information necessary for Licensor to evaluate such defects, and (ii) any recommendations by Licensee for changes or modifications to the Software.

5. **Right of Licensor to Use Licensee's Evaluation and Data.** Licensee agrees that Licensor shall have the right to use, in any manner and for any purpose, any information gained as a result of Licensee's use and evaluation of the Software. Such information shall include but not be limited to changes, modifications, corrections and improvements to the Software made by Licensor at Licensee's suggestion. Licensor shall have the right to use, at its sole discretion, all such information, including (but not limited to) use by incorporation of such information into computer programs and documentation for assignment, license, or other transfer to third parties, without any duty to account to Licensee.

6. **No Obligation to Support Software.** Licensor shall have no obligation to correct any bugs, defects or errors in the Software or to otherwise support or maintain the Software.

7. **Ownership of Software.** Licensee agrees that Licensor owns all rights, title and interest, including but not limited to copyright, patent, trade secret, and all other intellectual property rights, in the Software and any changes, modifications or corrections to the Software made by Licensor. If Licensee is ever held or deemed to be the owner of any copyright or other intellectual property rights in the Software or any changes, modifications or corrections to the Software made by Licensor, then Licensee hereby irrevocably assigns to Licensor all such rights, title and interest and agrees to execute all documents necessary to implement and confirm the letter and intent of this Section. If Licensee provides Licensor with any suggestions, ideas, feedback, error identifications or other information related to the Software or Licensee's use and evaluation of the Software ("Feedback"), Licensee hereby assigns to Licensor all right, title and interest in and to all Feedback, including all intellectual property rights therein, and agrees to assist Licensor in perfecting such rights and obtaining assignments of such rights from all individuals involved in generating the Feedback.

8. **Confidentiality.** Licensee acknowledges that the Software contains valuable trade secrets and confidential information owned by Licensor, including but not limited to the Software's source code, the development status of the Software, the functionality of the Software, the appearance, content and flow of the Software's user interface, and the content of the Software's documentation. During the period this Agreement is in effect and at all times after its termination or expiration, Licensee shall maintain the confidentiality of this information (and all other confidential or proprietary information of Licensor provided to Licensee), including information related to Licensee's evaluation and characterization of the Software (including Feedback), and shall not sell, license, sublicense, publish, display, distribute, disclose

or otherwise make available this information to any third party nor use such information except as expressly authorized by this Agreement. Licensee agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of Licensor's confidential information in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Such measures shall include, but not be limited to, the highest degree of care that Licensee utilizes to protect its own confidential information of a similar nature, which shall be no less than reasonable care. Licensee shall only disclose confidential information of Licensor to its employees on a need to know basis and only if such employees have executed written agreements restricting use or disclosure of confidential information that are at least as restrictive as Licensee's obligations under this Section 8. If Licensee is a business entity, Licensee shall not disclose any such information concerning the Software to persons not an employee of Licensee without Licensor's prior written consent. Licensee agrees that it will take appropriate action by instruction, agreement or otherwise with Licensee's employees to satisfy its obligations under this Agreement with respect to use, protection and security of Licensor's confidential information. Licensee agrees to immediately notify Licensor of the unauthorized disclosure or use of the Software or any confidential information of Licensor and to assist Licensor in remedying such unauthorized use or disclosure. It is further understood and agreed that money damages would not be a sufficient remedy for any breach of Licensee's obligations under this Section 8 by Licensee, its employees or agents. In the event of any such breach or threat thereof, Licensor shall be entitled to seek equitable relief without the necessity of proving actual damages or posting any bond, in addition to any other rights or remedies provided by law.

9. **Warranties and Limitations.**

    (a) **Warranties By Each Party.** Each party represents and warrants to the other party that:

        (i)   such party has full corporate or individual right, power and authority to enter into this Agreement and to perform the acts required of it hereunder;

        (ii)   the execution of this Agreement by such party, and the performance by such party of its obligations and duties hereunder do not and will not violate any agreement to which such party is a party or by which it is otherwise bound;

        (iii)   when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms; and

        (iv)   such party acknowledges that the other party makes no representations, warranties, or agreements related to the subject matter of this Agreement that are not expressly provided for in this Agreement.

    (b) **Acknowledgment by Licensee; Disclaimer of Other Warranties.** Licensee and Licensor agree that the Software is provided "AS IS" and that Licensor makes no warranty as to the Software. Licensee acknowledges and agrees that: (i) the Software is not an official product that has been commercially released for sale by Licensor; (ii) the Software may not be in final form and may contain errors, design flaws or other problems; (iii) the Software is not expected to function fully or adequately upon installation, and it is expected and anticipated that further testing, modification and development will be necessary to make the Software functional; (iv) it may not be possible to make the Software functional; (v) use of the Software may result in unexpected results, loss of data, project delays or other unpredictable damage or loss to Licensee;

and (vi) Licensor is under no obligation to release and/or offer for sale the commercial versions of the Software, and Licensor has the right to unilaterally abandon development of the Software at any time and without any obligation or liability to Licensee. LICENSOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE RELATED TO THE SOFTWARE, ITS USE OR ANY INABILITY TO USE IT, THE RESULTS OF ITS USE AND THIS AGREEMENT.

10. **Limitation of Liability.** IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY DAMAGES, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), INCLUDING BUT NOT LIMITED TO DIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INCIDENTAL AND INDIRECT DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE, THE RESULTS OF USE, OR THE INABILITY TO USE THE SOFTWARE, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LICENSOR WILL NOT BE LIABLE FOR ANY LOST PROFITS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR FOR ANY CLAIM OR DEMAND AGAINST LICENSEE BY ANY OTHER PARTY. LICENSEE AGREES THAT IT SHALL HAVE THE SOLE RESPONSIBILITY FOR PROTECTING ITS DATA, BY PERIODIC BACKUP OR OTHERWISE, USED IN CONNECTION WITH THE SOFTWARE.

11. **No Assignment.** Licensee shall not assign or otherwise transfer this Agreement or any rights or obligations hereunder, in whole or in part, whether by operation of law or otherwise, without Licensor's prior written consent. Any purported transfer, assignment or delegation without such prior written consent will be null and void and of no force or effect. Licensor shall have the right to assign this Agreement to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise.

12. **Other Provisions.**

(a) **Amendments and Waivers.** Any term of this Agreement may be amended or waived only with the written consent of the parties. Any amendment or waiver effected in accordance with this Section 12(a) shall be binding upon the parties and their respective successors and assigns.

(b) **Successors and Assigns**. Subject to the provisions of Section 11, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

(c) **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law. The parties hereby agree that all disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of and venue in the federal and state courts within Santa Clara County, California. Licensee hereby consents to the personal and exclusive jurisdiction and venue of these courts.

(d) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which

shall be deemed an original and all of which together shall constitute one instrument.

(e) **Notices.** All notices permitted or required under this Agreement shall be in writing and shall be delivered in person or mailed by first class, registered or certified mail, postage prepaid, or by any nationally reputable overnight courier able to provide a receipt of delivery, to the address of the party specified in this Agreement or such other address as either party may specify in writing. Such notice shall be deemed to have been given upon receipt.

(f) **U.S. Government Restricted Rights.** If the Software is being licensed by the U.S. Government, the Software is commercial computer software and documentation developed exclusively at private expense, and (a) if acquired by or on behalf of a civilian agency, shall be subject to the terms of this computer software license as specified in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors; and (b) if acquired by or on behalf of units of the Department of Defense ("DOD") shall be subject to the terms of this commercial computer software license as specified in 48 C.F.R. 227.7202-2, DOD FAR Supplement and its successors.

(g) **Export Law Assurances.** Licensee understands that the Software is subject to export control laws and regulations. LICENSEE MAY NOT DOWNLOAD OR OTHERWISE EXPORT OR RE-EXPORT THE SOFTWARE OR ANY UNDERLYING INFORMATION OR TECHNOLOGY EXCEPT IN FULL COMPLIANCE WITH ALL UNITED STATES AND OTHER APPLICABLE LAWS AND REGULATIONS, IN PARTICULAR, BUT WITHOUT LIMITATION, UNITED STATES EXPORT CONTROL LAWS. NONE OF THE SOFTWARE OR ANY UNDERLYING INFORMATION OR TECHNOLOGY MAY BE DOWNLOADED OR OTHERWISE EXPORTED OR RE- EXPORTED: (i) INTO (OR TO A NATIONAL OR RESIDENT OF) ANY COUNTRY TO WHICH THE UNITED STATES HAS EMBARGOED GOODS; OR (ii) TO ANYONE ON THE U.S. TREASURY DEPARTMENT'S LIST OF SPECIALLY DESIGNATED NATIONALS OR THE U.S. COMMERCE DEPARTMENT'S LIST OF PROHIBITED COUNTRIES OR DEBARRED OR DENIED PERSONS OR ENTITIES. LICENSEE HEREBY AGREES TO THE FOREGOING AND REPRESENTS AND WARRANTS THAT LICENSEE IS NOT LOCATED IN, UNDER CONTROL OF, OR A NATIONAL OR RESIDENT OF ANY SUCH COUNTRY OR ON ANY SUCH LIST.

(h) **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each party as close as possible to that under the provision rendered unenforceable. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(i) **Entire Agreement.** This Agreement is the product of both of the parties hereto, and constitutes the entire agreement between such parties pertaining to the subject matter hereof, and merges all prior negotiations and drafts of the parties with regard to the transactions contemplated herein. Any and all other written or oral agreements existing between the parties hereto regarding such transactions are expressly canceled.

(j) **Independent Contractor.** Neither party shall, for any purpose, be deemed to be an agent of the other party and the relationship between the parties shall only be that of independent contractors. Neither party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind the other party in any respect whatsoever.
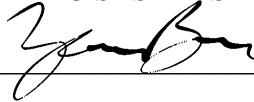
(k) **Advice of Legal Counsel.** Each party acknowledges and represents that, in executing this Agreement, it has had the opportunity to seek advice as to its legal rights from legal counsel and that the person signing on its behalf has read and understood all of the terms and provisions of this Agreement. This Agreement shall not be construed against any party by reason of the drafting or preparation thereof.

(l) **Costs.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

[Signature Page Follows]

The parties have executed this Software Beta License Agreement as of the date first written above.

LICENSOR: HAIKU SYSTEMS INC.

Signature: _____

Name: Zachary Brown

Title: Chief Executive Officer

LICENSEE: Babalola Tobi

Signature: _____

Name: Babalola Tobi

Title: Mr

Diez is a framework for authoring and maintaining design systems and otherwise organizing design concepts and assets in code. It includes a framework for authoring design token components in TypeScript, a compiler for converting those definitions into SDKs for iOS, Android, and Web, a compiler for extracting normalized code definitions from various common design source file formats, and various utilities for developer functionality, including command-line tools and build automation tools.

Diez's canonical source code repository is on GitHub at https://github.com/diez/diez

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