Flax Engine End-User License Agreement

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Please read this End-User License Agreement ("Agreement") carefully before clicking the "I Agree" button, downloading, or using Flax Engine ("Application") or related content.

By clicking the "I Agree" button, downloading or using the Application, you are agreeing to be bound by the terms and conditions of this Agreement. If you do not agree to the terms of this Agreement, do not click on the "I Agree" button and do not download or use the Application.

If you are separately licensed under a Custom License, certain terms of this Agreement do not apply to your Custom Products. Those terms are described below in Section 17.

Additionally, certain words or phrases are defined to have certain meanings when used in this Agreement. Those words and phrases are defined below in Section 16.

1. License

Flax grants you a non-exclusive, non-transferable, non-sublicensable license to download, install, and use the Application in accordance with the terms of this Agreement (the "License").

The License becomes effective on the date you accept this Agreement or download the Engine Code or any Content. The License does not grant you any title or ownership in the Licensed Technology.

(A) Allowed forms of Distribution and Sublicensing

You may only Distribute the Licensed Technology as follows:

a. Distribution to end users - You may Distribute the Licensed Technology incorporated in object code format only as an inseparable part of a Product to end users who are subject to an end user license agreement that explicitly disclaims any representations, warranties, conditions, and liabilities related to the Licensed Technology. The Product may not contain any Paid Content Distributed in uncooked source format or any Engine Tools.

b. Distribution to other licensees - You may Distribute Engine Code (including as modified by you under the License) in Source Code or object code format, or any Content, to an Engine Licensee who has rights under its license to the same Version of the Engine Code or Content that you are Distributing.

Any public Distribution (i.e., intended for Engine Licensees generally) that includes Engine Tools (including as modified by you under the License) must take place either through the Store (e.g., for distributing a Product's modding tool or editor to end users) or through a fork of Flax's GitHub Network (e.g., for distributing source code).

c. Distributions to employees and contractors - You also may Distribute Content (other than Paid Plug-ins) to an Engine Licensee who is your employee or your contractor who does not have rights under their license to the same Content, but only to permit that Engine Licensee to utilize that Content in good faith to develop a Product on your behalf for Distribution by you under the License, and not for the purpose of Content pooling or any other Distribution or sublicensing of Content that is not permitted under this Agreement. Recipients of such a Distribution have a limited license to use, reproduce, display, perform, and modify that Content to develop your Product as outlined above, and for no other purpose.

d. Distribution of Paid Plug-ins - You may Distribute Paid Plug-ins to each of your Paid Plug-in Users so that they may use those Paid Plug-ins on your behalf under the License.

e. Distribution and sublicensing of Samples - You may Distribute or sublicense Samples (including as modified by you under the License) in Source Code or object code format to any third party. However, the rights in this Section 1(e) do not expand or modify your limited Distribution and sublicensing rights for Engine Code and Content (including as modified by you under the License) that are not Samples.

You are permitted to post snippets of Engine Code, up to 30 lines of code in length, online in public forums for the sole purpose of discussing the content of the snippet, or distribute such snippets in connection with supporting patches and plug-ins for the Licensed Technology, so long as it is not for the purpose of enabling non-Engine Licensees to use or modify any Engine Code, or to aggregate, recombine, or reconstruct any larger portion of the Engine Code.

You may not sublicense the Licensed Technology in Source Code format. You may not sublicense the Licensed Technology in object code format, or any Content, except to grant end users the ability to use or to permit your publishers and distributors to market and Distribute, a Product that you Distribute as permitted in Section 1(a) above. This paragraph does not limit your rights to Distribute and sublicense Samples.

When you generate revenue from a Product or Distribute it to end users, you must provide Flax with advance notification at www.flaxengine.com/release, including the name of the Product, the format of distribution, and the distribution channel(s).

(B) Flax-Only Content

For Flax-Only Content, you may exercise your rights under the License only if and to the extent that the Flax-Only Content is utilized in combination with the Engine Code. For example, you may not develop or Distribute a Product that consists of or contains Flax-Only Content but does not contain and require the Engine Code (including as modified by you under the License) for its use. The Flax-Only Content is subject to all of the terms of this Agreement that apply to Content, as well as the additional limitations described in this paragraph. All references in this paragraph to Flax-Only Content include modified versions thereof made by you under the License.

(C) Non-Compatible Licenses

You may not combine, Distribute, or otherwise use the Licensed Technology with any code or other content that is covered by a license that would directly or indirectly require that all or part of the

Licensed Technology be governed under any terms other than those of this Agreement ("Non-Compatible License"). Code or content under the following licenses, for example, are prohibited: GNU General Public License (GPL), Lesser GPL (LGPL) (unless you are merely dynamically linking a shared library), or Creative Commons Attribution-ShareAlike License. Code or content under the following licenses, for example, are allowed: BSD License, MIT License, Microsoft Public License, or Apache License. You may not sublicense the Licensed Technology under a Non-Compatible License.

(D) General Restrictions

You may not engage in any activity with respect to the Licensed Technology, including as incorporated into a Product, (1) in violation of any applicable law or regulation; (2) in which the Licensed Technology is rented or leased; (3) that misappropriates any of Flax's other products or services; (4) 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.

2. Restrictions

You agree not to, and you will not permit others to license, sell, rent, lease, assign, distribute, transmit, host, outsource, disclose, or otherwise commercially exploit the Application or make the Application available to any third party.

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.

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.

For Paid Plug-ins, in addition, to use by a single User, each Paid Plug-in User with respect to whom you have paid the associated fee may store the Paid Plug-in on any of the Paid Plug-in User's computers and may use the Paid Plug-in on your behalf under the License, but the Paid Plug-in cannot be otherwise shared with others except through a permitted Distribution as described above. You are responsible for each Paid Plug-in User's compliance with this Agreement.

If you are an Academic Institution, your use is not limited to a single User for any Licensed Technology other than Paid Content. Instead, you may store that Licensed Technology on any of your computers, and you may allow all users of those computers to use that Licensed Technology under the License. However, those users are not authorized under your License to Distribute or sublicense the Licensed Technology (including as incorporated in a Product). For that, they must obtain a License of their own.

3. Royalty

You agree to pay Flax a royalty equal to 4% 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 that 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);

   f. Revenue in any other form actually attributable to a Product including in the form of streaming, subscription, or other Product delivery service (unless excluded below).

However, no royalty is owed on the following forms of revenue:

   1. The first $250,000 in gross revenue for each Product per calendar quarter;

   2. 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);

   3. Revenue from a Product that solely relies on the Licensed Technology for the production of non-interactive linear media (e.g., broadcast or streamed video files, cartoons, or movies) and which is Distributed in a form that does not contain the Licensed Technology or, in order to deliver, rely on servers running the Licensed Technology;

   4. Revenue from a Product that is only Distributed to Engine Licensees (such as through the Store);

   5. Revenue from ancillary products which are not software and which do not contain embedded information (such as QR codes) that affects the operation of the Product (e.g., comic books, soundtracks, apparel);

   6. Financial winnings generated by awards for the Product;

7. Revenue from donations for a Product that are not tied to Product access or in-Product benefits; and

8. Revenue from interactive amusement park rides which use the Licensed Technology.

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 Steam 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 $100 in the store, a store owner may pay you $70 (as an example having deducted 30% as a distribution fee), but your royalty to Flax would still be 4% of $100 (or $4).

Royalties that you pay on 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. This means, for example, if the publisher pays you $1,000,000 in advance payments (directly into Product development), the royalty to Flax would be $30,000 (4% of the value above the first $250,000 per calendar quarter). Later, once the Product generates revenue this advance payment is recoupable from the future royalties. For instance, if this Product earns $1,500,000, the royalty would be $20,000 instead of $50,000 due to recouped advance payment.

Royalties must be reported and paid on a per-Product basis. The $250,000 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 Flax the full amount of the royalty due for that quarter and send Flax a royalty report on a per Product basis. Detailed information on royalty reporting and payment can be found at www.flaxengine.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 the copyright or other applicable intellectual property law.

4. Payments

Flax reserves the right to charge a 10% late fee, per calendar quarter (compounding), for any amounts unpaid after the required due date.

You are responsible for all taxes on all payments required to be made by you under this Agreement (other than taxes that Flax is obligated to pay on its income, which are Flax's responsibility). If you are required by a government agency to reduce your payment to Flax for any reason, you are required to provide sufficient documentation to Flax supporting the withholding. For questions about withholding taxes or taxes in general, please go to www.flaxengine.com/contact.

5. Feedback and Contributions

If you provide Flax with any Feedback, Flax is free to use the Feedback however it chooses. If you make any Contribution available to Flax, you hereby assign to Flax all right, title, and interest (including all copyright, patent, and other intellectual property rights) in that Contribution for all

current and future methods and forms of exploitation in any country. If any of those rights are not effectively assigned under applicable law, you hereby grant Flax a non-exclusive, fully-paid, irrevocable, transferable, sublicensable license to reproduce, distribute, publicly perform, publicly display, make, use, have made, sell, offer to sell, import, modify and make derivative works based on, and otherwise exploit that Contribution for all current and future methods and forms of exploitation in any country. If any of those rights may not be assigned or licensed under applicable law (such as moral and other personal rights), you hereby waive and agree not to assert all of those rights. However, you may continue to freely use any Feedback that you provide to Flax, and you may continue to use, in any manner consistent with the License, any Contribution that you make available to Flax.

You understand and agree that Flax is not required to make any use of any Feedback or Contribution that you provide. You agree that if Flax makes use of your Feedback or Contribution, Flax is not required to credit or compensate you for your contribution.

You represent and warrant that you have sufficient rights in any Feedback or Contribution that you provide to Flax to grant Flax and other affected parties the rights described above. This includes but is not limited to intellectual property rights and other proprietary or personal rights.

6. Proprietary Notices and Attribution

You agree to retain and reproduce in all copies of the Licensed Technology the copyright, trademark, and other proprietary notices and disclaimers of Flax and third parties as they appear in the Engine Code and the Content.

You agree to place the following notices in the credits for any Product (replacing xxxx with the current year):

"[Product name] uses the Flax Engine"
"Flax Engine, Copyright 2012 – xxxx, Wojciech Figat. All rights reserved."

No other license or right in the Flax Trademarks is granted under this Agreement. All use of the Flax Trademarks will inure to the sole benefit of Flax. You agree not to engage in any activity that could tarnish, dilute, or affect the validity or enforceability of the Flax Trademarks or cause consumer confusion, or diminish any goodwill relating to any Flax Trademarks. If you wish to make further use of the Flax Trademarks, please go to www.flaxengine.com/branding.

Flax may use your trademarks, service marks, trade names, and logos used with any Product, as well as publicly released screenshots and video content from the Product, in connection with Flax's marketing, advertisement, and promotion of the Flax Engine in any and all media without restriction.

7. Hardware and Usage Data

You acknowledge that, as a default setting, the Engine Code will collect and send to Flax anonymous hardware and basic usage data from end users of Engine Tools. This functionality is used by Flax to improve the Engine Code. You may modify the Engine Tools settings under the License to turn off that functionality.

8. Indemnity

Engine Code or Content (including as modified by you under the License) incorporated in or used to make the Product are protected under the copyright or other applicable intellectual property law. Flax does not have any support obligations with respect to the Licensed Technology under this Agreement. Support resources may be obtained at www.flaxengine.com/faq.

9. Governing Law and Jurisdiction

You agree that this Agreement will be deemed to have been made and executed in Poland, and any dispute will be resolved in accordance with the laws of Poland. Any action or proceeding brought to enforce the terms of this Agreement or to adjudicate any dispute must be brought in the Polish District Court. You agree to the exclusive jurisdiction and venue of these courts. You waive any claim of the 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.

10. 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.

11. Independent Contractor

You and Flax 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.

12. Support

Engine Code or Content (including as modified by you under the License) incorporated in or used to make the Product are protected under the copyright or other applicable intellectual property law. Flax does not have any support obligations with respect to the Licensed Technology under this Agreement. Support resources may be obtained at www.flaxengine.com/faq.

13. Severability

If any provision of this Agreement is held to be unenforceable or invalid, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

14. Amendments to this Agreement

Flax reserves the right, to modify this Agreement a maximum of once per calendar quarter. You are not required to accept the amended Agreement, and this Agreement will continue to govern your

use of any Licensed Technology you already have access to. However, if we make changes to this Agreement, you will not be allowed to access certain Flax services or download the Licensed Technology unless you have accepted the amended Agreement.

If you are during the development of a Product and this Agreement was modified you can opt-out from accepting the amended Agreement and continue using Version of Licensed Technology prior to amendment under terms in this Agreement.

15. Notices

Where this Agreement calls for a notice from Flax, including written notice, Flax 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). Flax's notices to you will be effective when they are sent to that email address.

16. 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.

"Content" means any code, artwork, or other content that Flax makes available to you for use with the Engine Code. For clarity, Content includes but is not limited to Paid Content and Flax-Only Content.

"Contribution" means any code, whether in Source Code format or object code format, or any other information or content, that you make available to Flax by any means (e.g., via submissions to forums, Flax's Discord channel, or Flax's GitHub Network, or through email or otherwise). However, code, information, or content that you only make available to Flax as part of a Store Submission, and any Modified Engine Tools Package that you provide to Flax 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 Flax, does not constitute a Contribution.

"Custom License" means any agreement between you and Flax, or any sublicensor authorized by Flax, other than this Agreement or any amendment to this Agreement, under which you are granted a license to use the Flax Engine to develop one or more product(s).

"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 Flax Engine, including any future Versions, as made available to you by Flax under this Agreement, and any object code compiled from that Source Code.

"Engine Licensee" means a third party who is separately licensed by Flax to use the Engine Code

and Content.

"Engine Tools" means (a) editors and other tools included in the Engine Code; and (b) other software that may be used to develop standalone products based on the Licensed Technology.

"Flax" means Flax Engine owned and represented by Wojciech Figat.

"Flax Trademarks" means the trademarks, service marks, trade names and logos associated with Flax, Flax's games and other intellectual property.

"Samples" means the Engine Code and Content made available by Flax in the Content folder in the install directory or in the Flax Samples projects available through Github. Some of these examples may be available to the public via Flax's Github Network as a part of the Flax learning resources.

"Feedback" means any feedback or suggestions that you provide to Flax regarding the Licensed Technology or the Store.

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

"Store" means the Flax Engine digital marketplace or other Flax Engine learning resource maintained by Flax or its affiliates, through which, among other things, Flax 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 Flax for Distribution, and (b) any code, artwork, or other content that you provide to Flax for Distribution for use with the modified Engine Tools.

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

"Paid Plug-in" means any Paid Content which includes 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.

"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 Flax displays links in the Store and that is designated in the Store as content licensed directly from the third party content provider.

"Third Party Software" means third party software components included in the Engine Code.

"Flax-Only Content" means Content that is designated in the Store as usable only in conjunction with the Engine Code.

"Flax Engine" means the proprietary computer software program known as the Flax Engine and any updates or upgrades to the program made available by Flax.

"User" means an individual user who downloaded the Engine Code, Content, or any other content from the Store. 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 Flax 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.

17. Custom Licenses

Custom Licenses are not modified or otherwise affected by this Agreement. For Custom Products, the terms of your applicable Custom License will govern all matters (including royalties, notifications, Feedback, Contributions, trademarks, service marks, trade names, logos, screenshots, and video content related to those Custom Products) related to your use of the code, artwork, and content that are licensed to you under that Custom License, instead of the terms of this Agreement.

You may exercise your rights in Paid Content under this License in connection with Custom Products that are developed and Distributed under your Custom License as if they were Products developed and Distributed under the License. However, your exercise of those rights in connection with Custom Products is governed by and subject to the terms of this Agreement, including without limitation all obligations and limitations that apply to use of Paid Content in connection with Products, as well as all disclaimers, limitations of liability, and indemnification rights of Flax, whether related to Paid Content, Products, or otherwise. Despite this, no royalty is owed under this Agreement on Custom Products, but royalties may be owed on Custom Products under the terms of a Custom License.

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

18. Contact Information

If you have any questions about this Agreement, please contact via www.flaxengine.com/contact.