

C4 Engine License Agreement

PARTIES

1. Terathon Software LLC ("**Terathon**"), a California limited liability company.
2. An individual natural person ("**Licensee**") who enters into this agreement by paying the license fee required herein with the intention of licensing software technology from Terathon.

RECITALS

1. Terathon has developed, and continues to develop, a software product named "**C4 Engine**" that performs numerous functions related to computer game development, computer graphics, and virtual simulation.
2. The Licensee wishes to use the C4 Engine within the development of its own software products, and said software products may be commercially exploited.

Therefore, in consideration of the mutual terms and conditions below, the adequacy of which consideration is hereby accepted and acknowledged, the parties agree as follows.

TERMS AND CONDITIONS

1. Definitions and Interpretation

1.1. Definitions. In this agreement:

- (A) "**Source Code**" means the collection of human-readable text files, in whole or in part, containing instructions and data belonging to a computer program.
- (B) "**Object Code**" means the binary information, comprising program instructions and data, generated through the process of compiling and linking the Source Code.
- (C) "**Documentation**" means the operating manuals, technical specifications, and all other related literature supplied by Terathon.
- (D) "**Licensed Materials**" means the components of the C4 Engine, or any subset thereof, including Source Code, Object Code, associated software tools, demo programs, examples, and Documentation.

1.2. Interpretation. In this agreement, unless otherwise stated:

- (A) Headings are included only for organizational purposes and do not affect the interpretation of this agreement.
- (B) The words "including", "such as", "in particular", "for example", and similar expressions shall not be interpreted as words of limitation.
- (C) Words used in the singular shall be deemed to include the plural where the context so permits and vice-versa.

- (D) No rule of construction, including the doctrine of *contra proferentem*, shall be applied to the disadvantage of a party in the interpretation of this agreement.
- (E) If there is any inconsistency between parts of this agreement, the part listed later will prevail, to the extent of the inconsistency, over the part listed earlier.

2. Software License

- 2.1. License Grant.** Terathon hereby grants the Licensee a perpetual, worldwide, royalty-free, non-exclusive license to use, reproduce, implement, integrate, and modify the Licensed Materials inside the Licensee's own software products. Said license rights are granted under copyright and also, solely to the extent necessary to exercise such rights, under patent and any other applicable intellectual property rights.
- 2.2. Restrictions.** The rights granted herein are expressly restricted to the direct creation and distribution by the Licensee of derived software products. In particular:
 - (A) No software product distributed to a third party by the Licensee is permitted to contain Source Code belonging to the C4 Engine in either its original or modified form.
 - (B) If the Licensee distributes a software product incorporating the Licensed Materials to a third party, then said third party must be bound by a license agreement that prohibits the creation and further distribution of any derived software products containing the Licensed Materials.
 - (C) The Licensee is not permitted to distribute a software product incorporating the Licensed Materials to a third party if said software product, in whole or in part, is essentially a wrapper that is capable of providing access to the functionality of the C4 Engine to a further derived software product.
 - (D) The Licensee is not permitted to (a) extract one or more components of the C4 Engine to be used separately from the bulk of the C4 Engine or (b) modify the C4 Engine to such an extent that the bulk of the C4 Engine is essentially deleted and only one or a small number of components remain. In particular, the Licensee may not extract components composing the product known as the "Slug Library" and use said components in a product that does not require the bulk of the C4 Engine in order to function.
 - (E) The Licensee is not permitted to modify the C4 Engine for the purposes of enabling it to run on platforms other than desktop computers running Microsoft Windows, a process known as "porting" to other platforms.
- 2.3. Materials.** Upon the full execution of this agreement and payment of the required licensing fee by the Licensee, Terathon agrees to deliver the most recently released version of the Licensed Materials to the Licensee by means of electronic download.
- 2.4. Updates.** Terathon agrees to make available to the Licensee any newly released versions of the C4 Engine that become generally available for licensing. The particular dates on which new versions are released are determined solely by Terathon.
- 2.5. Technical Support.** Terathon is not required to provide technical support to the Licensee under this agreement. If Terathon, at its own discretion, chooses to provide technical support in response to particular inquiries, such action will not create an obligation to provide support in response to future inquiries.

3. Fees

- 3.1. License Fee.** The Licensee agrees to pay Terathon a one-time, non-refundable fee of one hundred dollars (US \$100.00) for the rights granted under this agreement.
- 3.2. Taxes.** The Licensee is responsible for paying any taxes arising through this agreement that are attributable to the Licensee under applicable law.

4. Representations and Warranties

4.1. Proprietary Rights. Terathon represents and warrants that:

- (A) Terathon has the power and authority to grant the rights in this agreement to the Licensee and to deliver the Licensed Materials.
- (B) The Licensed Materials do not knowingly infringe, misappropriate, or otherwise violate any copyright, trademark, patent, trade secret, or other intellectual property right of any third party.

5. Ownership and Attribution

5.1. Ownership. Except for the license granted under this agreement, all right, title, and interest in and to the Licensed Materials vests solely and exclusively in Terathon. The Licensee owns all right, title, and interest in and to any modifications that it makes to the Licensed Materials under this agreement, excluding the underlying Licensed Materials.

5.2. Attribution. Any product containing the Licensed Materials distributed by the Licensee must display proper attribution through all of the following means:

- (A) In any and all credits listings for the product, whether displayed by the product, published electronically, or published in printed form, the C4 Engine must be identified as the engine technology upon which the product is based. Such identification must be no less prominent than the most prominent credit given to any other person or organization.
- (B) The C4 Engine logo must be displayed upon each application startup by either (a) playing the C4 Engine logo movie included with the Licensed Materials in its entirety at the full size of the application's window or (b) displaying the vector graphics C4 Engine logo with animated gear included with the Licensed Materials for no less than three seconds centered in the application's window at a size occupying at least 20% of the width of the application's window. At any time after the C4 Engine logo movie has begun playing or the vector graphics C4 Engine logo display time has begun, the application may permit the user to interrupt the movie or display of the logo by activating a button or key on any input device for the purpose of skipping the remainder of the time that the logo would be displayed during that single instance of application startup.

5.3. Proprietary Notices. The Licensee shall not remove or alter any notices of copyright, trademark, patent, confidentiality, or authorship appearing in the Licensed Materials.

6. Confidentiality

6.1. Confidential Information. "Confidential Information" means any written information in any form, and all copies, extracts, and summaries, that is identified as confidential no later than the time of disclosure. The party disclosing Confidential Information is referred to as the

“Discloser”, and the party receiving Confidential Information is referred to as the “Recipient”. Confidential Information does not include information that, in the absence of any obligation of confidentiality, (a) becomes part of the public domain, (b) was independently acquired or developed by the Recipient, or (c) was in the Recipient’s possession prior to its disclosure by the Discloser.

- 6.2. Feedback and Suggestions.** Any feedback, suggestions, or ideas (collectively “Feedback”) that the Licensee provides to Terathon concerning the Licensed Materials shall not constitute Confidential Information. Nothing in this agreement restricts Terathon’s right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback without compensating or crediting the Licensee. The Licensee hereby grants Terathon a perpetual, irrevocable right and license to use and incorporate Feedback in any way.
- 6.3. Duty of Confidentiality.** Each Recipient agrees to use the same measures to protect a Discloser’s Confidential Information from unauthorized use and disclosure as it uses to protect its own confidential information, but in no event less than a reasonable degree of care. No Recipient may, through any means, disclose to a third party any Confidential Information without the express written permission of the Discloser. No Recipient shall use a Discloser’s Confidential Information for any purpose other than as expressly allowed by this agreement.
- 6.4. Injunctive Relief.** Each party acknowledges that the unauthorized disclosure of Confidential Information, whether intentional or accidental, may result in significant and irreparable damages to the Discloser, and that it may be difficult to assign a monetary value to such damages. Therefore, in the event of a breach of this section, the Discloser shall be entitled, without waiving any other rights or remedies, to seek such injunction or equitable relief as may be deemed proper by a court of competent jurisdiction.

7. General Terms

- 7.1. DISCLAIMER.** EXCEPT AS OTHERWISE STATED HEREIN, (A) THE LICENSED MATERIALS ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND; (B) TERATHON MAKES NO WARRANTY REGARDING THE LICENSED MATERIALS, EXPRESS OR IMPLIED; AND (C) TERATHON EXPRESSLY DISCLAIMS AND THE LICENSEE HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.
- 7.2. Limitation of Liability.** With the exception of the indemnity and confidentiality terms of this agreement, or in the case of willful misconduct or gross negligence, Terathon shall not be liable for any indirect, consequential, exemplary, incidental, or punitive damages, including lost profits and lost data, under this agreement regardless of the form of action, whether in contract or in tort, including negligence, regardless of whether Terathon has been advised of the possibility of such damages in advance or whether such damages are reasonably foreseeable.
- 7.3. Limitation of Damages.** The liability of Terathon for any reason and for any cause of action whatsoever, whether in contract or in tort, including negligence, or otherwise in connection with this agreement or the Licensed Materials shall be limited to the amount of the license fee paid by the Licensee to Terathon under this agreement.
- 7.4. Indemnification.** Each party to this agreement shall indemnify, defend, and hold harmless the other party, including its subsidiaries, parents, affiliates, directors, officers, employees, and

agents, from and against any and all third-party claims arising from or related to the direct infringement or misappropriation of copyright, patent, or other intellectual property rights in the Licensee's authorized use of the Licensed Materials.

- 7.5. Force Majeure.** Neither party shall be liable for any failure to perform its obligations under this agreement due to circumstances beyond its reasonable control, including natural disaster, terrorism, pandemic, riot, sabotage, labor disputes, war; any acts or omissions of any government, governmental authority, or declarations of governments; transportation delays, power failure, computer failure, telecommunications failure, or electronic mail failure.
- 7.6. Transfer and Sublicensing.** The license provided by this agreement may not be transferred or sublicensed to a third party under any circumstances.
- 7.7. Technology Export.** The Licensee shall not (a) permit any third party to access or use the Licensed Materials in violation of any U.S. law or regulation, or (b) export the Licensed Materials except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, the Licensee shall not permit any third party to access or use the Licensed Materials in, or export the Licensed Materials to, a country subject to a United States embargo.
- 7.8. Termination.** The Licensee is permitted to terminate this agreement at any time. Terathon is permitted to terminate this agreement if the Licensee fails to cure any material breach of this agreement within thirty (30) days of the Licensee's receipt of notice of such breach. In any case, no refund shall be due. In the event of termination, the terminating party must inform the other party of the termination, and the Licensee must destroy all Licensed Materials in its possession. The confidentiality terms of this agreement shall survive termination.
- 7.9. Assignment.** The Licensee may not assign its rights under this agreement without the prior written consent of Terathon. Terathon is permitted to assign this agreement without consent of the Licensee only to its successor in a merger, acquisition, or other change of control, including the sale of its assets, stock, or business to which this agreement relates.
- 7.10. Representations.** Each party hereby represents and warrants that all representations, recitals, statements, and information provided to each other under this agreement are true, correct, and accurate to the best of their knowledge.
- 7.11. Entire Understanding.** This agreement contains the entire understanding between Terathon and the Licensee concerning its subject matter and supersedes all prior oral and written agreements, understandings, commitments, representations, and practices between the parties concerning its subject matter.
- 7.12. Modification.** This agreement may not be modified unless agreed in writing and signed by both Terathon and the Licensee.
- 7.13. Severability.** If any portion of this agreement is found to be invalid, then the narrowest segment possible of that portion shall be held to be excised from this agreement, and the remainder of this agreement will continue in full force and effect. In addition, the court is hereby directed by the parties to modify, amend, change, or add one or more clauses to that portion to make it comply as closely as possible with the parties' intentions without causing invalidity.

7.14. Waiver. Waiver of a breach of this agreement shall not constitute waiver of another breach. Failing to enforce a provision of this agreement shall not constitute a waiver or create an estoppel from enforcing such provision. Any waivers of a provision or breach of this agreement shall not be binding and shall be void unless such waiver is in writing and signed by the party waiving such provision or breach.

7.15. Parties' Relationship. It is agreed that the relationship of the parties is that of licensee and licensor. Nothing herein shall be construed as creating a partnership, joint venture, an employment relationship, or an agency relationship between the parties, or as authorizing either party to act as agent for the other.

7.16. Governing Law and Jurisdiction. This agreement shall be governed by and interpreted under the laws of the State of California, excluding its conflicts-of-law provisions. This agreement is entered into, and performance under this agreement is deemed to be taking place, in Sacramento County, California. Any litigation arising from or relating to this agreement shall be brought exclusively in the jurisdiction and, to the extent permitted by law, in the venue proper for an individual residing in **Sacramento, California**, and the parties agree that any action relating to or arising out of this Agreement shall be instituted and prosecuted only in that jurisdiction and in that venue. The parties hereby expressly waive any right to a change in jurisdiction and any and all objections to such jurisdiction and venue.