KINECT 4 UNREAL PROJECT LICENSE TERMS

These license terms are an agreement between you and Opaque Multimedia, a private limited liability corporation. By downloading and using the Kinect 4 Unreal software (K4U), you agree to be bound by these terms. If you do not or cannot agree to these terms, do not download or use the software. Certain words or phrases are defined to have certain meanings when used in this Agreement. Those words and phrases are defined in Section 6.

1.  FREE USE

    (a)  K4U (without access to source code) is free to use for educational purposes.

    (b)  K4U (without access to source code) is free for projects with a total budget under $75,000 USD.

2.  RESTRICTIONS

    (a)  If your project is designed to facilitate any gambling-related activities, this agreement does not apply to you. You must contact Opaque Multimedia for separate license terms.

    (b)  If your project is designed to facilitate the operation of nuclear facilities, aircraft navigation or aircraft communication systems, or for military use, this agreement does not apply to you. You must contact Opaque Multimedia for separate license terms.

    (c)  If your license includes access to K4U source code, this source code is not to be redistributed, shown or otherwise communicated, wholly or partially, outside of your project.

3.  LICENSE GRANT

    (a)  Opaque Multimedia grants you a non-exclusive License for you to use Kinect 4 Unreal in any Unreal Engine project. The rights that Opaque Multimedia grants you under the License are subject to the terms of this agreement, and you may only make use of the License if you comply with all applicable terms.

    (b)  This License grants an unlimited number of developers access to the plugin for the purposes of developing the project.

    (c)  K4U is an Unreal Engine 4 plugin. These license terms do not replace or modify any of the license terms for your use of Unreal Engine 4.

    (d)  K4U requires the Kinect 2 sensor and associated Windows drivers to run. These license terms do not replace any of the license terms for your use of the Kinect 2 sensor or the Kinect for Windows SDK or drivers.

4.  LICENSE MODEL & FEES

    (a)  This license is provided for a onetime fee of $1,500 USD for use by an unlimited number of people on a single project.

**(b)** For an additional $1,000 USD your license can include access to the K4U source code.

**(c)** When using K4U, a credit line is required in either documentation, or 'on screen' format (if possible). It should contain at least the words 'Kinect 4 Unreal' and 'Opaque Multimedia'.

5. OWNERSHIP

**(a)** Opaque Multimedia owns and retains all title, ownership rights, and intellectual property rights associated with the K4U plugin.

**(b)** You own all rights in the project you develop using this agreement.

**(c)** If your license includes source code access, you retain rights to use any individual changes made to source code.

6. SUPPORT

**(a)** Opaque Multimedia has no obligations to provide support for K4U unless an appropriate Support Plan has been purchased.

7. FEEDBACK & MEDIA

**(a)** If you provide Opaque Multimedia with any Feedback, you hereby grant Opaque Multimedia 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 Feedback for all current and future methods and forms of exploitation in any country, with appropriate attribution and credit.

**(b)** If you make any Media associated with your Installation Project available to Opaque Multimedia, you hereby grant Opaque Multimedia 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 Media for all current and future methods and forms of exploitation in any country, with appropriate attribution and credit.

**(c)** You understand and agree that Opaque Multimedia is not required to make any use of any Feedback or Media that you provide.

**(d)** You represent and warrant that you have sufficient rights in any Feedback or Media that you provide to Opaque Multimedia to grant Opaque Multimedia and other affected parties the rights described above. This includes but is not limited to intellectual property rights and other proprietary or personal rights.

**(e)** You may use the K4U logo(s) in association with your Application Project, so long as no endorsement is implied. If possible, any use of the K4U logo(s) must be accompanied by the text "Kinect 4 Unreal is an Opaque Multimedia product. This application is not endorsed by or associated with Opaque Multimedia."

8.  TERMINATION

    **(a) Termination by You**. You may terminate this agreement by

        (i)   destroying all K4U material and other materials and information provided by Opaque Multimedia in association with this agreement, including any deployments, inventory product or planned deployments or activities associated with the Application Project that uses such material,

        (ii)  providing written notice and, where requested, suitable evidence, of said destruction to Opaque Multimedia

    **(b) Termination by Opaque Multimedia**. Opaque Multimedia may terminate this agreement by providing written notice to you 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. Without limiting the foregoing, your failure to make any payment due under this agreement or breach of any restriction under this agreement constitutes a material breach of this agreement. You must then carry out the activities described under clause 8(a) of this agreement.

9.  LIMITATION OF LIABILITY, INDEMNITY

    **(a)** K4U and all other materials and information provided by Opaque Multimedia in association with this agreement are provided on an "as is" and "as available" basis, "with all faults" and without warranty of any kind. Opaque Multimedia and its affiliates disclaim all warranties, conditions, common law duties, and representations (express, implied, oral, and written) with respect to K4U and all other materials and information provided by Opaque Multimedia in association with this agreement, including without limitation all express, implied, and statutory warranties and conditions of any kind, such as title, non-interference with your enjoyment, authority, non-infringement, merchantability, fitness or suitability for any purpose (whether or not Opaque Multimedia knows or has reason to know of any such purpose), system integration, accuracy or completeness, results, reasonable care, workmanlike effort, lack of negligence, and lack of viruses, whether alleged to arise under law, by reason of custom or usage in the trade, or by course of dealing. Without limiting the generality of the foregoing, Opaque Multimedia and its affiliates make no warranty that:

        (i)   K4U and all other materials and information provided by Opaque Multimedia in association with this agreement will operate properly or as intended or represented,

        (ii)  that K4U and all other materials and information provided by Opaque Multimedia in association with this agreement will meet your requirements,

        (iii) that the operation of K4U and all other materials and information provided by Opaque Multimedia in association with this agreement will be uninterrupted, bug free, or error free in any or all circumstances,

(iv) that any defects in K4U and all other materials and information provided by Opaque Multimedia in association with this agreement can or will be corrected.

(v) that K4U can or will in any way make up for or correct any deficiencies or lack of function in the Unreal Engine, the Kinect sensor or the Kinect for Windows SDK or driver.

**(b)** This clause will apply to the maximum extent permitted by applicable law.

**(c)** To the maximum extent permitted by applicable law, neither Opaque Multimedia, its licensors, nor its or their affiliates, shall be liable in any way for loss or damage of any kind resulting from the use or inability to use K4U and all other materials and information provided by Opaque Multimedia in association with this agreement or otherwise in connection with this agreement, including but not limited to loss of goodwill, work stoppage, computer failure or malfunction, or any and all other commercial damages or losses.

**(d)** To the maximum extent permitted by applicable law, in no event will Opaque Multimedia, its licensors, nor its or their affiliates, be liable for any loss of profits or any indirect, incidental, consequential, special, punitive, or exemplary damages, or any other damages arising out of or in connection K4U and all other materials and information provided by Opaque Multimedia in association with this agreement or otherwise in connection with this agreement, even in the event of Opaque Multimedia or its affiliates' fault, tort (including negligence), strict liability, indemnity, product liability, breach of contract, breach of warranty, or otherwise and even if Opaque Multimedia or its affiliates have been advised of the possibility of such damages.

**(e)** These limitations and exclusions regarding damages apply even if any remedy fails to provide adequate compensation. Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, the liability of Opaque Multimedia, its licensors, its and their affiliates, shall be limited to the full extent permitted by law.

**(f)** You agree to indemnify, pay the defence costs of, and hold Opaque Multimedia, 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:

(i) any claim that, if true, would constitute a breach by you or any third party affiliated with you of this agreement or negligence by you,

(ii) any claim that your Installation Project or any other matter you created under of in association with this agreement, infringes any third party's intellectual property rights and other proprietary or personal rights, or

(iii) any federal, state, or foreign civil or criminal actions related to your Installation Project or any other matter you created under of in association with this agreement.

**(g)** You agree to reimburse Opaque Multimedia on demand for any defence costs incurred by Opaque Multimedia and any payments made or loss suffered by Opaque Multimedia, whether in a court judgment or settlement, based on any matter covered by this Section 9.

**(h)** 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 in clause 9(f).

## 10. NOTIFICATIONS

**(a)** You hereby authorize Opaque Multimedia to notify others, including, but not limited to, suppliers, distributors, customers, investors, partners, and other business associates of Opaque Multimedia of the terms of this agreement and each party's rights and obligations in it.

## 11. CHOICE OF LAW, ATTORNEY'S FEES, EQUITABLE RELEIF

**(a)** **Choice of Law.** The laws of the State of Victoria, Australia govern this agreement (without giving effect to its conflicts of law principles).

**(b)** **Attorneys' Fees.** If either party employs attorneys to enforce any rights arising out of or relating to this agreement, the losing party shall reimburse the prevailing party for its reasonable attorneys' fees and costs, except as defined in this agreement.

**(c)** **Equitable Relief, Injunctive Relief.** Your breach of this agreement may cause irreparable harm to Opaque Multimedia and monetary damages may not be a sufficient remedy. If violation of this agreement, Opaque Multimedia may, without waiving any other rights or remedies and without posting a bond or other security, seek an injunction, specific performance, or other equitable remedy, and may pursue other legal remedies.

## 12. AMENDMENTS.

**(a)** No amendment to this agreement will be effective unless it is in writing and signed by both parties or their authorised representatives.

## 13. SEVERABILITY.

**(a)** If any provision in this agreement is, for any reason, held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability will not affect any other provisions of this agreement, but this agreement will be construed as if the invalid, illegal, or unenforceable provisions had never been contained in this agreement, unless the deletion of those provisions would result in such a material change that would cause completion of the transactions contemplated by this agreement to be unreasonable.

14. NOTICES.

**(a) Writing; Permitted Delivery Methods.** Each party giving or making any notice, request, demand, or other communication required or permitted by this agreement shall give that notice in writing and use one of the following types of delivery, each of which is a writing for purposes of this agreement: personal delivery, mail (registered or certified mail, postage prepaid, return-receipt requested), nationally recognized overnight courier (fees prepaid) or email.

**(b) Addresses.** A party shall address notices under this section to a party at the following addresses:

**To:** Opaque Multimedia**:**

    Street Address: **101/672 Glenferrie Rd**

    Suburb:  **HAWTHORN**

    State: **VIC**      Postcode: **3122**

    Email: **contact@opaquemultimedia.com**

Notices to You will be sent to the most appropriate available email address

15. WAIVER.

**(a)** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this agreement will be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, and no waiver will constitute a continuing waiver, unless the writing so specifies.

16. NECESSARY ACTS; FURTHER ASSURANCES.

**(a)** You, Opaque Multimedia, and Opaque Multimedia's officers and directors shall use all reasonable efforts to take, or cause to be taken, all actions necessary or desirable to consummate and make effective the transactions this agreement contemplates or to evidence or carry out the intent and purposes of this agreement.