Commercial License Document - PluginGuiMagic

1   Grant and scope of the license

This document is to certify that the user has paid and is therefore allowed to use *PluginGuiMagic*, specifically the module *foleys_gui_magic* working with one developer or one designer in their commercial products.

This license is granted by *Foleys Finest Audio UG (haftungsbeschränkt)* (in the following *Foleys Finest*), the developers and maintainers of *PluginGuiMagic*.

The license is available as subscription, renewing quarterly, twice per year, annually or as perpetual license. As proof serve our sale records.

This license is not transferable without written consent of *Foleys Finest*.

1.1   Non-commercial use

This software may be used in non commercial products free of charge under the terms of the BSD 3-clause license Version 2.0:

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  names of its contributors may be used to endorse or promote products
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1.2   Forks

This software may be forked and redistributed as long as all the following conditions are met:
- The source code must retain the original copyright note as well as the name of the original developers.
- The product must include the limitation of requiring a license from *Foleys Finest* for commercial use.
- You have to mark the modifications to be distinguishable from the original code.
- You must not charge for the modifications you made to the code.

1.3   Commercial Use

Commercial use is providing software using *PluginGuiMagic* for the purpose to sell it or to bundle it to any other product.

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2 Support

2.1 We shall have no obligation to provide support and maintenance services to you. You may participate in our online support forum in accordance with our forum policies in place from time to time. Further support and maintenance services may be offered at our sole discretion, and may be offered as a feature of the licence you purchase.

2.2 You acknowledge and agree that we have no obligation under this agreement to provide new features, minor updates, or new releases of the software.

3 Intellectual Property Rights

3.1 You acknowledge that all intellectual property rights in the module and all copies thereof throughout the world belong to us, that rights in the module are licensed (not sold) to you, and that you have no rights in, or to, the module other than the right to use it in accordance with the terms of this agreement.

3.2 You shall own all modifications you make to the code, and all intellectual property rights therein, that are created and incorporated in the Application, subject to our continuing ownership of the module and all associated intellectual property rights in the module.

4 DISCLAIMER OF WARRANTY

4.1 The software module is provided "as is" without warranty of any kind, including without limitation any warranties that the software will be uninterrupted, error-free or otherwise free from infringement. All other conditions, warranties or other terms whether express or implied, or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, including without limitation warranty of merchantability or fitness for a particular purpose are hereby excluded to the fullest extent permitted by law, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

4.2 You acknowledge that the software has not been developed to meet your individual requirements and that it is therefore your responsibility to ensure that the facilities and functions of the software meet your requirements.

5 LIMITATION OF LIABILITY AND INDEMNIFICATION

5.1 Neither *Foleys Finest* nor its subsidiaries, employees, partners or contractors shall in any circumstances whatsoever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement for any indirect, consequential or special loss or damage, including but not limited to, for:

5.1.1 loss of profits, sales, business, or revenue; business interruption;
5.1.2 loss of anticipated savings;
5.1.3 loss or corruption of content, data or information;
5.1.4 loss of business opportunity, goodwill or reputation;
5.1.5 any indirect or consequential loss or damage; or
5.1.6 any computer failure or malfunction, corruption to or loss of data or files, or any and all other commercial damage or loss.

5.2 Nothing in this Agreement shall limit or exclude our liability for:
5.2.1 death or personal injury resulting from our negligence;
5.2.2 fraud or fraudulent misrepresentation;
5.2.3 any other liability that cannot be excluded or limited by law.

5.3 Subject to clause 5.1 and 5.2, our maximum aggregate liability under or in connection with this agreement whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to the fees paid by you to *Foleys Finest* in the month before the claim arose or $15, whichever is greater.

5.4 You agree to indemnify, defend and hold us and our licensors, partners, affiliates, contractors, officers, directors, employees and agents harmless from any third party claims, liabilities, losses, costs and expenses (including legal expenses) or otherwise arising directly or indirectly from

(i) the Licensee Content or your Applications;
(ii) your use, handling, or operation of the Framework otherwise than in accordance with this Agreement, or
(iii) any violation of applicable laws by you, including without limitation COPPA violations.

5.5 This clause 5 shall survive and shall not be rendered ineffective by the termination or expiry of this Agreement for whatever reason.

6 Term and Termination

6.1 Where you have purchased a perpetual licence, this agreement shall remain in effect in perpetuity for the version originally acquired (and any new features or minor updates acquired under that version) unless terminated by us in advance in accordance with this Agreement.

6.2 Where you have purchased a subscription licence, this agreement shall remain in effect for the minimum commitment and shall renew automatically on the regular term of the subscription, subject to payment of any applicable Fees.

6.3 Where you have purchased a subscription licence and you fail to pay the subscription fee when it falls due then your licence will terminate.

6.4 We may terminate this agreement immediately by written notice to you if you commit a breach of this agreement which you fail to remedy (if remediable) within 14 days after written notice requiring you to do so.

6.5 Upon termination for any reason:

6.5.1 all rights granted to you under this agreement shall cease, including without limitation, the rights to deal with the software incorporated within your product;

6.5.2 you must cease all activities authorized by this agreement, including distribution of your product that incorporates the module;

7 Data, Privacy and Publicity

7.1 We may collect and process information about you and your use of our module, some of which may amount to personal data. Personal data will be collected and processed in accordance with our Privacy Policy.

7.2 You may not use the software in connection with any Application that may be "directed to children" as defined under the Children's Online Privacy Protection Act ("COPPA") unless you fully comply with COPPA and all other similar applicable laws. You are fully liable for, and will defend, hold harmless and indemnify *Foleys Finest* and its affiliates against any and all liability arising from or relating to COPPA in connection with any Application directed to Children.

7.3 To ensure compliance with this Agreement, you agree that within thirty (30) days from the date of our request, you shall provide all pertinent records and information requested in order to verify that your installation and use of any and all Frameworks are in compliance with this agreement, along with a signed verification that all such information is complete and correct. You also agree we may audit applicable records concerning your use of the module during normal business hours upon notice to you, at our cost, except in the event the audit reveals an underpayment or breach of this agreement, you shall be liable for the cost of the audit.

8 Other Important Terms

8.1 We may transfer our rights and obligations under this agreement to another organisation, but this will not affect your rights or our obligations under this agreement.

8.2 You may transfer your rights or your obligations under this agreement to another person or entity provided that you are in full compliance with this agreement and provided that you first contact *Foleys Finest* in writing and follow the required steps for transfer.

8.3 This agreement and any document expressly referred to in it constitutes the entire agreement between you and us. You acknowledge that you have not relied on any statement, promise or representation made

or given by or on behalf of us which is not set out in this agreement or any document expressly referred to in it.

8.4 If we fail to insist that you perform any of your obligations under this Agreement, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.

8.5 Each of the conditions of this agreement operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.

8.6 Governing Law and Jurisdiction.

8.6.1 This licence shall be governed by the laws of Germany without regard to its conflict of law rules and you consent to the exclusive jurisdiction of the courts located in Stuttgart, Germany.

8.6.2 You may have additional rights as a consumer under your local law.

Esslingen am Neckar, September 2020