

## NewTek's NDI™ Software Development Kit (SDK) License Agreement

Please read this document carefully before proceeding. You (the undersigned Licensee) hereby agree to the terms of this NDI Software Development Kit (SDK) License Agreement (the "License") in order to use the SDK. NewTek, Inc. ("NewTek") agrees to license you certain rights as set forth herein under these terms.

### 1. Definitions

- "SDK" means the entire NewTek NDI™ Software Development Kit, including those portions pertaining to the Specific SDK, provided to you pursuant to this License, including any source code, compiled executables or libraries, and all documentation provided to you to assist you in building tools that use the NDI™ Software for data transfer over a local network.
- "Products" means your software product(s) and/or service(s) that you develop or that are developed on your behalf through the use of the SDK and that are designed to be, and/or are, used, sold and/or distributed to work closely with other NewTek Products or Third Party Video Products.
- "NewTek Products" refers to NewTek's video line of products distributed by NewTek and any upgrades.
- "SDK Documentation" refers to the documentation included with the Software Development Kit including that portion pertaining to the Specific SDK.
- "Specific SDK" refers to the specific SDK for which you intend to use the NewTek SDK and this license (for example: NDI™ Send, NDI™ Receive, NDI™ Find, or other SDK's that are available from time to time. These are examples only and NewTek may add or subtract to this list at its discretion, and you agree to use them only in accordance with this Agreement), and includes the documentation relating to it.
- "Third Party Video Products" refers to products of third parties developed by or for them also using the NewTek NDI™ Software Development Kit in any way.

### 2. License

- Pursuant to the terms, conditions and requirements of this License and the SDK Documentation, you are hereby granted a nonexclusive royalty-free license to use the sample code, object code and documentation included in the SDK for the sole purpose of developing Products using the Specific SDK, and to distribute, only in accordance with the SDK Documentation requirements, object code included in the SDK solely as used by such Products (your Product and compiled sample code referred to as the "Bundled Product").
- This is a License only, and no employment, joint venture, partnership, or other business venture is created by this License.
- The SDK and the Specific SDK may not be distributed. This is not a license to create derivative works of any NewTek software or technology.
- You agree to comply with the steps outlined in the SDK Documentation, including the SDK manual for the Specific SDK. Different obligations and restrictions may be imposed by NewTek with respect to different Specific SDK's. NewTek will not agree to sponsor your Product or show affiliation; however NewTek shall have the right to test the Product, and if it does not work or operate to NewTek's satisfaction, NewTek may terminate this license. Notwithstanding that NewTek may test the Product, it does not warrant the test; it is for NewTek's benefit, and you agree not to promote in your Product marketing or elsewhere any results or that NewTek has tested the Product.
- You acknowledge that information provided to NewTek to induce NewTek to enter into this license with you about your experience in the industry, sales, distribution, SDK experience or otherwise, whether such information is provided to NewTek verbally or in writing, is true.

### 3. Restrictions and Confidentiality.

- The disclosure to you of the SDK and all NewTek Confidential Information shall not be disclosed to any third party or used in violation of the confidentiality terms of this agreement. Confidential Information includes the SDK and all specifications, source code, example code, tools and documentation provided within the SDK, and any support thereof. You agree not to disclose any portion thereof to third parties or commercialize the same for yours or others benefit in any way. You will not make or distribute copies of the SDK, or other Confidential Information or electronically transfer the SDK to any individual within your business or company who does not need to know or view the SDK, and under no circumstances shall you disclose it, or any part of it, to **any or company**, or any other individual not employed directly by the business or company you represent, without express written permission of NewTek.

**Comment [A1]:** Is this correct ?

- You will not modify, sell, rent, transfer, resell for profit, distribute, or create derivative works based upon the SDK or any part thereof other than as set forth herein, and you will not allow independent contractors to create derivative works or otherwise have access to the SDK without the express written permission of NewTek, and then only if such contractors sign a license acceptable to NewTek, at its discretion, however, you may use the SDK to create your own program for the primary purpose of making it or your Product compatible with the NDI™ network APIS, a NewTek product, or for other purposes expressly set forth by you in advance in writing and agreed to in writing by NewTek. Once approved by NewTek after completion, derivative works no longer refers to your product created from the SDK, and you may create and revise your product using the SDK, and sell, rent, transfer, resell for profit and distribute, so long as it is for the Principal objective for which you were provided the SDK and it otherwise complies with this agreement it otherwise complies with this agreement. Notwithstanding anything to the contrary herein, no intellectual property claim, whether in patent, trademark, copyright, or otherwise, is made by NewTek in or to your product as it exists unmodified by the use of the SDK or incorporation of any SDK code.
- You will not export or re-export, directly or indirectly, the SDK into any country prohibited by the United States Export Administration Act and the regulations thereunder.
- Any direct or indirect distribution of your Product or any Bundled Products by you that include your Product, shall be under the terms of a license agreement containing terms that: (i) prohibit any modifications to the SDK or any part thereof, (ii) prohibit any reverse engineering, disassembly or recompilation of the the SDK or any part thereof, or any protocols used in the SDK, and further prohibit any attempt to do so; (iii) disclaim any and all warranties on behalf of NewTek and each of its licensors, (iv) disclaim, to the extent permitted by applicable law, liability of NewTek and/or its licensors for any damages, whether direct, indirect, incidental or consequential, arising from the use of the Product or Bundled Products, (v) require the user to comply fully with all relevant export laws and regulations of the United States to assure that the Bundled Products or any part thereof is not exported, directly or indirectly, in violation of United States law, and (vi) include the appropriate copyright notice showing NewTek, Inc. as copyright owner;
- You agree not to use the SDK for any unlawful propose or in any way to cause injury, harm or damage to NewTek, Inc., or its products, trademarks, reputation and/or goodwill, or use information provided pursuant to the SDK, to interfere with NewTek in the commercialization of NewTek products.
- You agree to use NewTek trademarks (NewTek trademarks include but are not limited to NDI™, NewTek™, TriCaster™, and LightWave™), only in accordance with applicable policies of NewTek for such trademark usage by software developers in effect from time to time, which policy may be amended at any time with or without notice. NewTek's trademarks shall not be utilized within the Product itself, or on the Product packaging or promotion, or on websites, except to identify that the Product is compatible with NewTek's pertinent Video product, and in all cases where NewTek trademarks are utilized, special and clear notations shall be provided that the marks are NewTek trademarks. Your product is not a product of NewTek and no promotion, packaging, or use of NewTek trademarks shall suggest sponsorship by NewTek of your Products, except where specifically authorized by NewTek in writing. Any distribution of your product in a fraudulent manner, or in any other manner or method that violates any civil or criminal laws shall constitute a default under this agreement and result in immediate revocation of any right to utilize NewTek's marks.
- NewTek owns or has licensed copyright rights to the SDK. To the extent any of the SDK is incorporated into your Product, you agree to include all applicable copyright notices, along with yours, indicating NewTek's copyright rights as applicable and as requested by NewTek.
- You agree that by using the SDK, or any portion or part of the NDI™ Software, in your Products, that you shall not at any time during the term create, use or distribute Products utilizing the NDI™ SDK that are not interoperable with, or have significantly degraded performance of functionality when working with, NewTek Products or Third Party Video Products that are created with or utilize in whole or in part the SDK.
- You agree to not to reverse engineer, disassemble or recompile the SDK or any part thereof, or attempt to do so.
- You agree not to use the SDK, or cause the SDK to be used, for any purpose that it was not designed for, and in particular, you agree not to use the SDK for any purpose but for the precise purposes as expressly identified to NewTek in writing that is the basis of the SDK and this license, and you agree you will not attempt to do any of the foregoing, or encourage third parties to do so.

#### 4. Software Defect Reporting

If you find software defects in the SDK, you agree to report them to NewTek in accordance with the SDK documentation or in such other manner as NewTek directs in writing. NewTek will evaluate and, at its sole discretion, may address them in a future revision of the SDK. NewTek does not warrant the SDK to be free of defects.

#### 5. Updates

You understand and agree that NewTek may amend, modify, change, and/or cease distribution or production of the SDK at any time. You understand that you are not entitled to receive any upgrades, updates, or future versions of the SDK under this License. NewTek does not warrant or represent that its future updates and revisions will be compatible with your Product, and NewTek does not warrant that its updates and/or revisions will allow your Product to be compatible with or without modifications to your Product.

#### 6. Ownership

Nothing herein is intended to convey to you any patent, trademark, copyright, trade secret or other Intellectual Property owned by NewTek or its Licensors in the SDK or in any NewTek software, hardware, products, trade names, or trademarks. NewTek and its suppliers or licensors shall retain all right, title, and interest to the foregoing Intellectual Property and to the SDK. All rights not expressly granted herein are reserved by NewTek.

#### 7. Indemnity and Limitations

You agree to indemnify and hold NewTek harmless from any third party claim, loss, or damage (including attorney's fees) related to your use, sale or distribution of the SDK. THE SDK IS PROVIDED TO YOU FREE OF CHARGE, AND ON AN "AS IS" BASIS AND "WITH ALL FAULTS", WITHOUT ANY TECHNICAL SUPPORT OR WARRANTY OF ANY KIND FROM NEWTEK. YOU ASSUME ALL RISKS THAT THE SDK IS SUITABLE OR ACCURATE FOR YOUR NEEDS AND YOUR USE OF THE SDK IS AT YOUR OWN DISCRETION AND RISK. NEWTEK AND ITS LICENSORS DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES FOR THE SDK INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALSO, THERE IS NO WARRANTY OF NON-INFRINGEMENT, TITLE OR QUIET ENJOYMENT. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

#### 8. Limitation of Damages

NEITHER NEWTEK NOR ITS SUPPLIERS OR LICENSORS SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSS (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, OR THE LIKE), ARISING OUT OF THIS LICENSE WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE, EVEN IF NEWTEK OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. The limited warranty, exclusive remedies and limited liability set forth above are fundamental elements of the basis of the bargain between NewTek and you. You agree that NewTek would not be able to provide the Software on an economic basis without such limitations. IN NO EVENT WILL NEWTEK BE LIABLE FOR ANY AMOUNT GREATER THAN WHAT YOU ACTUALLY PAID FOR THE SDK.

#### 9. US Government - Restricted Rights

The SDK and accompanying materials are provided with Restricted Rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in this License and as provided in Federal Regulations, as applicable. (Manufacturer: NewTek, Inc., 5131 Beckwith Blvd., San Antonio, TX 78249).

#### 10. Termination

Either party may terminate this License upon thirty (30) days written notice. Either party may also terminate if the other party materially defaults in the performance of any provision of this License, the non-defaulting party gives written notice to the other party of such default, and the defaulting party fails to cure such default within ten (10) days after receipt of such notice. Upon the termination of this License, the rights and licenses granted to you by NewTek pursuant to this License will automatically cease. Nothing herein shall prevent either party from pursuing any injunctive relief at any time if necessary, or seeking any other remedies available in equity. Each party reserves the right to pursue all legal and equitable remedies available. Upon termination, all SDK materials shall be promptly returned to NewTek, and any and all copies stored in electronic or other format shall be deleted and destroyed, and any rights to use NewTek's trademarks is revoked. If this License is terminated for any reason, the provisions of Sections 1, 3, 6, 7, 8, 9, 10, and 11 shall survive such termination.

#### 11. General

Notices given hereunder may be sent to either party at the address below by either overnight mail or by email and are deemed effective when sent. This License shall be governed by the laws of the State of Texas, without regard to its choice of law rules and you agree to jurisdiction therein. This License contains the complete agreement between you and NewTek with respect to the subject matter (SDK) of this License, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. It does not replace any licenses accompanying NewTek products. You may not assign this SDK License.