

COHERENT LABS
SOFTWARE DEVELOPER KIT TRIAL LICENSE AGREEMENT

This Software Developer Kid License Agreement (“**Agreement**”) is an agreement between you and Coherent Labs (“**Licensor**”) and governs your use of our SDK (defined below) as a licensee.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE, BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT AND/OR PURCHASING, DOWNLOADING, INSTALLING OR OTHERWISE USING THE SOFTWARE MADE AVAILABLE BY COHERENT LABS THROUGH THIS WEB SITE, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THE TERMS OF THIS AGREEMENT AND THE TERMS “LICENSEE”, “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT, YOU MUST NOT ACCEPT THIS AGREEMENT AND YOU MAY NOT USE THE SDK.

1. GRANT OF LICENSE.

1.1 **License Grant.** Subject to the terms and conditions of this Agreement, Licensor grants to Licensee a limited, non-exclusive license to install and use the SDK solely for evaluation purposes during an evaluation period of thirty (30) days from the date on which the SDK is provided to you by Licensor (the “**Evaluation Period**”). In addition, Licensor will track Licensee’s use of the SDK on the computer on which Licensee installs and uses the SDK by requiring one-time activation by submitting email entered by the developer and unique machine identifier.

“**SDK**” means the libraries, software code in object code only, and documentation, which are specified as “selected” by Licensee in Exhibit A, attached hereto and excludes Third Party Code (defined in Section 1.3).

1.2 **Restriction on Use.** Licensee (i) will not copy or modify the SDK, in whole or in part, (ii) will not lease, lend, sublicense or rent the SDK, use the SDK to provide service bureau, time sharing, rental, application services provider, hosting or other computer services to third parties, or otherwise make the functionality of the SDK available to third parties in any manner, and (iii) is expressly prohibited from using the SDK for any development and/or commercial purposes, including, but not limited to, for the creation of any consumer games or applications. Licensee acknowledges that the SDK constitutes and contains trade secrets of Licensor and its licensors, and, in order to protect such trade secrets and other interests that Licensor and its licensors may have in the SDK, Licensee agrees not to disassemble, decompile or reverse engineer the SDK nor permit any third party to do so, except to the extent such restrictions are prohibited by law. Licensor reserves all rights in and to the SDK that are not expressly granted to Licensee under this Agreement.

1.3 **Third Party Software.** Licensee acknowledges and agrees that the SDK contains some third party code which Licensor will identify for Licensee in advance of delivery of the SDK to Licensee (“**Third Party Code**”) and Licensee is responsible for reviewing and agreeing to applicable terms and conditions governing use of such Third Party Code. Licensor is not responsible for securing and will not secure any applicable rights and permissions for Licensee to use such Third Party Code and Licensor disclaims any and all liability relating to Licensee’s use of such Third Party Code. Licensee’s use of the Third Party Code is at Licensee’s sole risk. Up to date list of Third Party Code with according licenses is located at <http://coherent-labs.com/opensource/>.

1.4 **Delivery.** Promptly after the Effective Date, Licensor will supply to Licensee a copy of the SDK as downloadable file in object code format.

2. TERM AND TERMINATION.

2.1 **Term.** The term of this Agreement will commence on the Effective Date and will remain in effect only during the Evaluation Period.

2.2 **Termination.** Licensors may terminate this Agreement immediately upon written notice to Licensee, for a material breach of this Agreement.

2.3 **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Licensee and its designated users will immediately cease all use of the SDK and will immediately return all copies of the SDK to Licensors.

3. OWNERSHIP.

3.1 **Acknowledgment of Licensors' Rights.** Licensee acknowledges that Licensors is the developer and owner of all rights to the SDK, including, without limitation, all copyright, trade secret, patent, trademark and other intellectual property rights therein and relating thereto and Licensee has no rights therein except the limited license granted by this Agreement. Licensors has the exclusive right to take whatever action it deems appropriate in its sole discretion to enforce any of its rights in the SDK against third parties.

3.2 **Copyright Notices and Credits.** Licensee will not alter, obscure or remove any copyright notice or other designation of Licensors' intellectual property rights regarding the SDK and will reproduce such notices and designations on all media that it uses for the storage of the SDK and relating to its use of the SDK, as applicable.

4. **INDEMNIFICATION.** Licensee will indemnify, defend and hold Licensors, and its directors, officers, employees, agents, successors and assigns (the "**Licensors Indemnitees**") harmless from and against any and all claims, damages, expenses, costs (including reasonable attorneys' fees) and liabilities (including settlements) brought or asserted by third parties against the Licensors Indemnitees arising out of any use by Licensee of the SDK. Licensors will promptly notify Licensee of any such claim; and Licensors will reasonably cooperate with Licensee in the settlement or defense of such claim. Licensee will keep Licensors informed of, and consult with Licensors in connection with the progress of such litigation or settlement. Licensee will not have any right, without the Licensors Indemnitees' written consent, to settle any such claim unless such settlement includes a full release of the Licensors Indemnitees.

5. CONFIDENTIALITY.

5.1 **Acknowledgment of Licensors' Rights.** Licensee acknowledges and agrees that the SDK contains confidential and proprietary information of Licensors ("**Confidential Information**").

5.2 **Non-Use and Non-Disclosure.** Licensee will use the Confidential Information disclosed to it solely for the purpose of exercising its rights under the limited license granted by this Agreement. Licensee will not divulge to others nor authorize any of its employees or designated users to divulge to others any Confidential Information. Licensee will not disclose the Confidential Information to anyone except to its designated users who have been advised of the confidentiality obligations under this Agreement and have agreed to be bound thereby. Licensee will otherwise protect the Confidential Information to at least the same degree as Licensee protects its own proprietary and confidential materials. Notwithstanding the preceding sentence, the protection required by Licensee under this Section 5 will not be less than reasonable protection.

5.3 **Remedies.** Licensee acknowledges and agrees that disclosure of the Confidential Information of Licensors or use of the SDK by Licensee or its designated users in breach of this Agreement is likely to cause Licensors harm for which damages will not be an adequate remedy, and that Licensors will, therefore, be entitled to temporary, preliminary and permanent injunctive relief to restrain such breach, without prejudice to any other right or remedy.

6. **DISCLAIMER OF WARRANTIES.** LICENSORS MAKES NO WARRANTY OF ANY KIND AND HEREBY DISCLAIMS ANY AND ALL WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY THAT USE OF THE SDK WILL NOT INFRINGE ANY PATENT, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

7. **LIMITATION OF LIABILITY.** LICENSORS'S LIABILITY FOR ANY DAMAGES SUFFERED BY LICENSEE, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY THEORY, IN NEGLIGENCE, OR OTHERWISE, WILL BE LIMITED TO FIFTY DOLLARS (\$50). UNDER NO CIRCUMSTANCES WILL LICENSORS BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) UNDER THIS AGREEMENT, EVEN IF LICENSORS HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. GENERAL.

8.1 Independent Contractors. The relationship of Licensee and Licensor is that of independent contractors, and nothing in this Agreement (a) gives either party the power to direct or control the day-to-day activities of the other, (b) makes the parties partners, joint ventures, co-owners, or participants in any joint undertaking, or (c) allows either party to create or assume any obligation on behalf of the other.

8.2 Assignment. This Agreement binds and inures to the benefit of each party's permitted successors and assigns. Licensee may not assign this Agreement, in whole or in part, by operation of law or otherwise, without Licensor's prior written consent. Any attempt to assign this Agreement other than in accordance with this provision is null and void. Licensor may freely assign this Agreement without Licensee's consent.

8.3 Notices. All notices will be sent by first class mail, postage prepaid, by courier or other personal delivery, or by email, to the parties at the addresses specified in the heading of this Agreement or to such other address as a party designates in writing to the other party.

8.4 Governing Law. This Agreement is governed by and enforced under the laws of the United States and State of California, but excluding its conflict of law provisions that would require the application of the laws of any other jurisdiction and the parties consent to the jurisdiction of the state and federal courts in San Francisco, California.

8.5 No Waiver. The waiver of any particular breach or default or any delay in exercising any rights is not a waiver of any subsequent breach or default, and no waiver is effective unless in writing and signed by the waiving party.

8.6 Severability. If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible consistent with the original intent of the parties, and the other provisions of this Agreement will remain in force.

8.7 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together constitute a single instrument.

8.8 Entire Agreement. This Agreement and its Exhibits represent the entire agreement between the parties and supersedes all prior and contemporaneous agreements and understandings (oral and written) with respect to the matters covered by this Agreement. Neither party has entered into this Agreement based on representations other than those contained in this Agreement. This Agreement may be modified or amended only by a written agreement signed, whether digitally or manually, by both parties.