

**TANGIBLE PLAY, INC.  
SDK LICENSE AGREEMENT**

This document contains the agreement (the “**Agreement**”) between you and Tangible Play, Inc. doing business as Osmo (“**Osmo**”) governing your use of the Osmo SDK (as defined below).

Upon selecting the “Yes” button on the Osmo SDK Beta Developer Program web page in response to the question “Do you agree to Beta SDK Terms and Conditions?” and then downloading the SDK Build, you (“**Developer**”) agree to this Agreement either for yourself or on behalf of your employer or another entity. The Agreement is made and entered into as of the date upon which you download the SDK Build (the “**Effective Date**”).

In consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**1. DEFINITIONS**

**1.1** “**Applications**” means the interactive software applications built by Developer using the Osmo SDK.

**1.2** “**Confidential Information**” means any information that is designated in writing to be confidential or proprietary, or if given orally, is designated at the time of disclosure as being disclosed as confidential or proprietary. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in the public domain at the time of the disclosure or becomes available to the public thereafter without restriction, and not as a result of the act or omission of the receiving party; (ii) is rightfully obtained by the receiving party from a third party without restriction as to disclosure; (iii) is shown by written record to be lawfully in the possession of the receiving party at the time of the disclosure, (iv) is approved for release by written authorization of the disclosing party; (v) is developed independently by the receiving party without use of the disclosing party’s Confidential Information; (vi) is required to be disclosed by the receiving party pursuant to law or legally enforceable order of court or judicial body. Notwithstanding the foregoing, Developer acknowledges that any Source Code in the Osmo SDK is the Confidential Information of Osmo.

**1.3** “**Osmo SDK**” means: (a) the Osmo technology software development kit, including without limitation all supporting documentation and tools; and (b) any error corrections and/or future version(s) thereof, delivered by Osmo to Developer under this Agreement, which may include Object Code and Source Code.

**1.4** “**Intellectual Property Rights**” means any patent rights, copyrights, trade secrets, trade names, service marks, moral rights, know-how and any other similar rights or intangible assets recognized under any laws or international conventions, and in any country or jurisdiction in the world, as intellectual creations to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations or reissues of the foregoing now or hereafter in force.

**1.5** “**Object Code**” means machine-executable computer software code in binary form.

**1.6 “Source Code”** means computer software (including any related documentation, comments and annotations) in human-readable, high-level language form which, when compiled or assembled, becomes Object Code.

## **2. SOFTWARE LICENSE**

**2.1 Product Development License.** Subject to the terms of this Agreement, Osmo hereby grants to Developer a personal, nonexclusive, worldwide, nontransferable, nonsublicensable, nonassignable, terminable license and right to use the Osmo SDK (in Source Code and Object Code form) solely to (i) create, use and test Applications and (ii) evaluate the Osmo SDK for the purpose of considering further partnership opportunities between Osmo and the Developer.

**2.2 Restrictions.** The license granted in Section 2.1 hereof with respect to the Osmo SDK shall be subject to the following restrictions:

(i) Developer shall not make, reproduce, publicly display, publicly perform, or distribute the Applications for any purpose, other than as specifically contemplated in Section 2.1.

(ii) Developer shall not modify, sell, rent, transfer, resell for profit, or distribute the Osmo SDK or any part thereof;

(iii) Developer shall not use the Osmo SDK for any purpose other than to create, use, and test Applications; and

(iv) Developer shall use the Osmo SDK only in accordance with the SDK Program Guidelines posted at <http://developer.playosmo.com/>.

**2.3 Ownership of Technology.** Osmo shall retain all right, title, and interest to the Osmo SDK and all Intellectual Property Rights therein (the “**Osmo Property**”). All rights not expressly granted herein are reserved by Osmo. Developer shall retain all right, title, and interest to those elements of any Applications written or produced by Developer; provided, however, that nothing in this Agreement, including this Section 2.3, shall be deemed to transfer, grant or assign any right, title and interest to the Osmo Property or any other intellectual property of Osmo, irrespective of whether any portion of the Osmo Property is incorporated in an Application, other than the licenses specifically granted under Section 2.1 hereof.

**2.4 Risk of Use.** Developer acknowledges and agrees that Developer’s use, modification and/or implementation of the Osmo SDK or the Applications will be at Developer’s own risk and account. Developer agrees to indemnify, defend and hold Osmo, its affiliates and staff harmless from and against any and all liability and costs, including reasonable attorneys’ fees incurred by said parties, in connection with or arising out of (a) Developer’s use, modification and/or implementation of the Osmo SDK or the Applications, or (b) any breach of violation of the terms and conditions of this Agreement.

**2.5 Osmo’s Development Rights.** Developer acknowledges that Osmo is currently developing or may develop technologies and products in the future that have or may have design and/or functionality similar to Applications that Developer may develop based on his or her license herein.

Nothing in this Agreement shall impair, limit or curtail Osmo's right to continue with its development, maintenance and/or distribution of its technology or products. Developer agrees that Developer shall not assert in any way any patent owned by Developer arising out of or in connection with the Osmo SDK or modifications made thereto against Osmo, its subsidiaries or affiliates, or their customers, direct or indirect, agents and contractors for the manufacture, use, import, licensing, offer for sale, or sale of any Osmo products.

### **3. BUG REPORTING & SUPPORT**

**3.1 Reporting/Feedback.** Developer will use reasonable efforts to report to Osmo any software bug or other error in the Osmo SDK discovered by Developer (or its agents). Osmo will be free to use and implement any feedback or suggestions that Developer gives to Osmo regarding the Osmo SDK ("**Feedback**") without any restriction or obligation to Developer, including without limitation feedback or suggestions regarding any software bug (or error) or regarding potential features or functions for the Osmo SDK. Developer hereby assigns and agrees to assign to Osmo all right, title and interest Developer may have to such Feedback.

### **4. CONFIDENTIALITY**

Each party shall keep the other party's Confidential Information in confidence and shall not disclose such Confidential Information to any other party without the other party's express written consent, nor use the other party's Confidential Information other than for the purposes of this Agreement or except as expressly permitted herein. Notwithstanding the foregoing, a party may disclose the Confidential Information of the other party where it is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided however, that such party shall provide prompt notice thereof to the provider of such Confidential Information to enable the provider an opportunity to seek a protective order or otherwise prevent such disclosure.

### **5. TERM AND TERMINATION**

**5.1 Effective Date.** This Agreement will commence upon the Effective Date and continue in perpetuity unless terminated pursuant to Section 5.2.

**5.2 Termination.** Either party may terminate this Agreement effective upon written notice to the other party.

**5.3 Effect of Termination.** Upon termination, this Agreement and any and all rights granted to Developer terminate without prejudice to any rights or claims Osmo may have, and all rights hereunder revert to and will be vested in Osmo. Section 1, and Sections 3-8 will survive any termination. Upon termination, Developer will promptly return any and all copies of the Osmo SDK to Osmo and Developer shall immediately discontinue use of the Osmo SDK, the Applications and Osmo's Confidential Information. Upon request, Developer shall certify in writing to Osmo that all copies, extracts or derivatives of the Osmo SDK, the Applications and Confidential Information, in whole or in part, in any form, have either been returned to Osmo or destroyed in accordance with Osmo's specific instructions.

### **6. WARRANTIES**

**6.1     By Developer.** Developer warrants and represents to Osmo that: (a) Developer has the legal capacity and authority to enter into this Agreement; and (b) Developer will comply with all applicable laws, regulations, ordinances and statutes, relating to its performance under this Agreement.

**6.2     By Osmo.** Osmo warrants and represents to Developer that: (a) Osmo has the legal capacity and authority to enter into this Agreement; and (b) Osmo will comply with all applicable laws, regulations, ordinances and statutes, relating to its performance under this Agreement.

**6.3     WARRANTY DISCLAIMER.** OSMO PROVIDES NO OTHER WARRANTIES OR DUTIES, AND DISCLAIMS ANY AND ALL OTHER IMPLIED WARRANTIES AND DUTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF NON-INFRINGEMENT, QUITE TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY DUTY OF WORKMANLIKE CONDUCT OR LACK OF NEGLIGENCE. OSMO PROVIDES NO WARRANTY THAT ANY FUTURE VERSION OF THE OSMO SDK PROVIDED TO DEVELOPER UNDER THIS AGREEMENT WILL BE COMPATIBLE WITH PAST VERSIONS OF THE OSMO SDK OR ANY MODIFICATIONS TO IT CREATED BY DEVELOPER UNDER THIS AGREEMENT. THE OSMO SDK IS PROVIDED TO DEVELOPER FREE OF CHARGE, AND ON AN “AS IS” BASIS AND “WITH ALL FAULTS”, WITHOUT ANY WARRANTY OF ANY KIND FROM OSMO. DEVELOPER ASSUMES ALL RISKS THAT THE OSMO SDK IS SUITABLE OR ACCURATE FOR DEVELOPER’S NEEDS AND DEVELOPER’S USE OF THE SDK IS AT DEVELOPER’S OWN DISCRETION AND RISK.

## **7.       EXCLUSION OF CERTAIN DAMAGES AND LIMITATIONS ON LIABILITY**

EXCEPT IN CONNECTION WITH ANY BREACH OF SECTIONS 2 OR 3, UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER OR NOT THE PARTY RECEIVES NOTICE OF ANY SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES COULD HAVE BEEN FORESEEN.

## **8.       GENERAL**

**8.1     Notices.** Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be delivered in person, by electronic mail, or sent by overnight air courier, in each case properly posted to the appropriate address set forth in the introduction paragraph to this Agreement. Either party may change its address for notice by notice to the other party given in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person or by electronic mail, or one (1) day after delivery to an overnight air courier service.

**8.2     Assignment.** Neither party may assign or otherwise transfer this Agreement nor any rights under this Agreement, without the prior written consent of the other party, except in the event of a merger or consolidation of such party or a sale of all or substantially all of such party’s assets to which this Agreement relates. Any assignment in violation of this Section 8.2 shall be void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

**8.3 Governing Law; Jurisdiction and Attorney's Fees.** This Agreement shall be governed, construed and enforced in accordance with the laws of the state of California, without reference to conflict of law principles. Any dispute arising out of this Agreement shall be adjudicated in the applicable federal or California state court in Santa Clara County, California.

**8.4 Severability.** In the event that any provision of this Agreement conflicts with governing law or if any provision is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, (i) such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and (ii) the remaining terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect. This Agreement has been negotiated by the parties and their respective counsel and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party.

**8.5 No Waiver.** The failure of either party to enforce at any time any of the provisions of this Agreement shall not be deemed to be a waiver of the right of either party thereafter to enforce any such provisions. No waiver, amendment or variation to this Agreement shall be valid unless in writing and signed by both parties.

**8.6 Force Majeure.** Nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, earthquake, governmental acts or orders or restrictions, failure of suppliers, interruption of power supplies or power outage, act of God, network failure, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

**8.7 Export Restrictions.** Developer acknowledges that the Osmo SDK is subject to the export control laws and regulations of the United States, and any amendments thereof. Developer confirms that it will not transfer, deal with, export or re-export such Osmo SDK, directly or indirectly, except in compliance therewith.

**8.8 Entire Agreement.** This Agreement constitutes the entire, final, complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes all previous agreements, intentions, or representations, oral or written, relating to such subject matter. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party.



