



R3D SOFTWARE DEVELOPER'S KIT LICENSE AGREEMENT

PLEASE READ THIS RED R3D SDK LICENSE AGREEMENT ("AGREEMENT") CAREFULLY BEFORE USING THE RED R3D SDK SOFTWARE. BY USING THE RED R3D SDK SOFTWARE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT USE THE RED R3D SDK SOFTWARE. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, CLICK "DISAGREE".

This Agreement is made and entered into as the electronic acceptance click (CLICK AGREE), by and between RED.COM, Inc. ("RED"), a Washington corporation with its principal place of business at 34 Parker, Irvine, CA and the user of the RED R3D SDK Software ("Company") after the electronic acceptance click.

WHEREAS, Company is or may be desirous of using the software developer's kit to develop applications for RED Products, and RED may be desirous of having Company provide applications to end users;

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

- 1.1 "Developer," "You," and "Your" refer to the Company.
- 1.2 "Developer Programs" means compiled code generated using the Software, or any part thereof, designed to function with RED Products.
- 1.3 "Documentation" means explanatory materials supplied with the Software.
- 1.4 "End User License Agreement" means an end user license agreement that provides a: (a) limited, nonexclusive right to use the subject Developer Program with no further right to reproduce (except for archival and/or backup copies permitted by law) and/or distribute the subject Developer Program; (b) prohibition against distributing, selling, sublicensing, renting, loaning or leasing the subject Developer Program; (c) prohibition against reverse engineering, decompiling, disassembling or otherwise attempting to discover the source code and/or file formats of the subject Developer Program that is substantially similar to that set forth in Section 3 below; (d) statement that, if Your customer requires any Other RED Software in order to use the Developer Program, (i) Your customer must obtain such Other RED Software via a valid license, and (ii) Your customer's use of such Other RED Software must be in accordance with the terms and conditions of the end user license agreement that accompanies such Other RED Software; (e) statement that You and Your suppliers retain all right, title and interest in the subject Developer Program that is substantially similar to that set forth as Section 5 below, (f) statement that Your suppliers disclaim all warranties, conditions, representations or terms with respect to the subject Developer Program substantially similar to the disclaimer set forth as Section 7 below, and (g) limit of liability substantially similar to that set forth as Section 8 below for the benefit of Your suppliers.
- 1.5 "Header File Information" means any header files (including but not limited to *.h files) supplied in connection with the Software, including without limitation any related information detailing contents of header files.
- 1.6 "Other RED Software" means all versions of RED software and firmware.
- 1.7 "RED" means RED.COM, INC, a Washington corporation,



34 Parker, Irvine, California 92618.

- 1.8 “RED Products” means R3D files and any other file types supported by the Software.
- 1.9 “Redistributable Software” means (a) the redistributable dynamic library binaries, which may only be distributed in original form and only as component of Your Developer Programs, and (b) the redistributable LUTs, which may only be distributed in original form and only as a component of Your Developer Programs.
- 1.10 “Sample Code” means sample software in source code format designated in the Documentation as “Sample Code” and/or “Snippets.”
- 1.11 “Software” means all of the contents of the files, disk(s), CD-ROM(s) or other media with which this Agreement is provided, including but not limited to (i) Sample Code; (ii) Header File Information; (iii) Documentation, (iv) Software Tools, (v) Static Library, (vi) Redistributable Software; and (vii) any upgrades, modified versions, updates, and/or additions thereto, if any, provided to You by RED.
- 1.12 “Software Tools” means developer tools (including but not limited to plug-ins and compiled samples) supplied with the Software, the selection of which may change from time to time at RED’s sole discretion.
- 1.13 “Static Library” means static library binaries.
- 1.14 “Use”, “Used” or “Using” means to access, install, download, copy or otherwise benefit from using the Software.

2. LICENSE

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Any modified or merged portion of the Sample Code is subject to this Agreement. You may make a limited number of copies of the Documentation to be used by Your employees or consultants for internal development purposes only and not for general business purposes or for distribution by any means, and such employees or consultants shall be subject to this Agreement. You are responsible and liable for the miss-use of the Sample Code by Your employees and consultants. RED is under no obligation to provide



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3.1 General Restrictions. Except for the limited distribution rights as provided in Section 2 above with respect to Sample Code, You may not distribute, share, disclose, sell, sublicense, rent, loan, or lease the Software, Other RED Software, and/or any part thereof to any third party. You also agree not to add or delete any program files that would modify the functionality and/or appearance of Other RED Software and/or any part thereof.

You agree not to reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software, RED file formats, RED Products, RED protocols, Other RED Software and/or any part thereof.

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You agree not to disseminate or in any way disclose the Software (or any portion thereof), or any support communications (if provided) to any person, firm or business except for Your employees who need to know such information and who are bound by a confidentiality obligation consistent with the obligation set forth in this Section 4. Further, You agree to treat the Software (or any portion thereof) and any support communications with the same degree of care as Your own confidential information, but in any event no less than reasonable care. Your obligations under this section with respect to the Software and support communications shall not apply when You can document that such information was (i) in the public domain at or subsequent to the time it was communicated to You by RED through no fault of Yours; or (ii) developed by Your employees or agents independently of and without reference to any information communicated to You by RED.

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6. TERM

This Agreement is effective until terminated. RED has the right to terminate this Agreement immediately if You fail to comply with any term of this Agreement. Upon any such termination, You must (a) return all full and partial copies of the items in the Software immediately to RED and (b) discontinue distribution of any Developer Programs. Sections 1, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14 and 15 shall survive any termination and/or expiration of this Agreement.

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8. LIMITATION OF LIABILITY

IN NO EVENT WILL RED BE LIABLE TO YOU FOR ANY DAMAGES, CLAIMS OR COSTS WHATSOEVER ARISING FROM THIS AGREEMENT AND/OR YOUR USE OF THE SOFTWARE OR ANY COMPONENT THEREOF, INCLUDING WITHOUT LIMITATION ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL DAMAGES, OR ANY LOST PROFITS OR LOST SAVINGS, EVEN IF A RED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGES, CLAIMS OR COSTS OR FOR ANY CLAIM BY ANY THIRD PARTY.

RED'S AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO FIFTY U.S. DOLLARS (\$50.00). Nothing contained in this Agreement limits RED's liability to You in the event of death or personal injury resulting from RED's negligence or for the tort of deceit (fraud).

9. INDEMNIFICATION

You agree to defend, indemnify, and hold RED harmless from and against any claims or lawsuits, including reasonable attorneys' fees, that arise or result from the use or distribution of Developer Programs, provided that RED gives You prompt written notice of any such claim, tenders to You the defense or settlement of such a claim at Your expense, and cooperates with You, at Your expense, in defending or settling such claim.

10. GOVERNMENT REGULATIONS

You agree that any Developer Program that includes Sample Code (i) will include in its license agreement a reference to applicable U.S. Government regulations which control licensing of software and (ii) will not be shipped, transferred, or exported into any country or Used in any manner prohibited by the United



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In addition, if any part of the Software is identified as export controlled items under the Export Laws, You represent and warrant that You are not a citizen, or otherwise located within, an embargoed nation (including without limitation Iran, Iraq, Syria, Sudan, Libya, Cuba, North Korea and Serbia) and that You are not otherwise prohibited under the Export Laws from receiving the Software. All rights to Use the Software are granted on condition that such rights are forfeited if You fail to comply with the terms of this Agreement.

11. GOVERNING LAW & JURISDICTION

This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California. The parties consent to the exclusive jurisdiction of the state courts and U.S. federal courts located in Orange County, California for any dispute arising out of this Agreement, and the parties waive their right to have an action under this Agreement brought or tried elsewhere. This Agreement will not be governed by the conflict of law rules or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The prevailing party in any action under this Agreement shall be entitled to recover its reasonable attorneys' fees in addition to any other damages or other awards ordered by the Court.

12. GOVERNMENT ACQUISITION

You agree that you will not license the Software for acquisition by the U.S. Government, or any contractor thereto without written consent from RED.

13. GENERAL

You may not assign Your rights or obligations granted under this Agreement without the prior written consent of RED. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of RED, its agents, or employees, but only by an instrument in writing signed by an authorized signatory of RED. It is expressly agreed that a breach of Section 3 or 4 of this Agreement will cause irreparable harm to RED and that a remedy at law will be inadequate. Therefore, in addition to any and all remedies available at law, RED will be entitled to seek an injunction or other equitable remedies in all legal proceedings in the event of any threatened or actual violation thereof. When conflicting language exists between this Agreement and any other agreement included in the Software this Agreement shall supersede.

You acknowledge that You have read this Agreement, understand it, and that it is the complete and exclusive statement of Your agreement with RED which supersedes any prior agreement, oral or written, between RED and You with respect to the licensing to You of the Software. No variation of the terms of this Agreement will be enforceable against RED unless RED gives its express consent in a writing signed by an authorized signatory of RED. If any part of this Agreement is found void and unenforceable, it will not affect the validity of the balance of this Agreement, which shall remain valid and enforceable according to its terms.