## **SDK LICENSE AGREEMENT**

PLEASE SCROLL DOWN AND READ ALL OF THE FOLLOWING TERMS AND CONDITIONS CAREFULLY BEFORE DOWNLOADING OR USING THE SDK.

THIS SDK LICENSE AGREEMENT ("AGREEMENT") IS A LEGAL AGREEMENT BETWEEN YOU ("YOU" OR "YOUR") AND HTC CORPORATION, A TAIWAN CORPORATION, WITH OFFICES LOCATED AT NO. 88, SECTION 3, ZHONGXING ROAD, XINDIAN DISTRICT, NEW TAIPEI CITY 231, TAIWAN ("HTC").

IN ORDER TO USE THE SDK, YOU MUST FIRST AGREE TO THIS AGREEMENT BY CLICKING TO ACCEPT WHERE THIS OPTION IS MADE AVAILABLE TO YOU. BY CLICKING YOUR ACCEPTANCE OR BY DOWNLOADING, USING OR COPYING ANY PART OF THE SDK OR USING ANY RELATED HTC SOFTWARE OR SERVICES, YOU ARE (I) AGREEING ON YOUR OWN BEHALF AND/OR ON BEHALF OF YOUR EMPLOYER TO THE TERMS AND CONDITIONS STATED BELOW AND (II) REPRESENTING AND WARRANTING THAT YOU ARE OF LEGAL AGE AND OTHERWISE COMPETENT TO BE CONTRACTUALLY BOUND BY THIS AGREEMENT. IF YOU AGREE TO BE BOUND BY THIS AGREEMENT ON BEHALF OF YOUR EMPLOYER, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL LEGAL AUTHORITY TO BIND YOUR EMPLOYER TO THIS AGREEMENT. IF YOU DO NOT HAVE THE REQUISITE LEGAL AUTHORITY OR CANNOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT DOWNLOAD, ACCESS OR USE THE SDK OR ANY RELATED HTC SOFTWARE OR SERVICES.

1. BACKGROUND AND PURPOSE. This Agreement governs Your access to and use of the SDK(s) and all associated application programming interfaces, media, printed or electronic documentation, updates and related support, including but not limited to, header files, libraries, simulators and software, whether source code or object code (collectively, the "SDK").

## 2. LICENSE GRANTS

- License. During the term of this Agreement and conditioned upon Your full compliance with all of this Agreement's terms and conditions and all SDK and API requirements, specifications, and documentation provided by HTC to You, HTC grants to You the following personal, non-transferable, non-exclusive, non-sublicenseable, revocable licenses to reproduce, install, and use the SDK solely to develop, test, and promote one or more of Your software programs (each an "Application") and provide You and/or end users access to HTC services, programs, and/or features through Your Application, in each case, as contemplated by the documentation for the applicable SDK. If the SDK includes any libraries, sample code, or other materials that HTC makes available specifically for incorporation in Your Application (as indicated by the applicable documentation), You may incorporate those materials in Your Application and reproduce and distribute those SDK materials as incorporated in Your Application. You may also modify any such sample source code (if any is provided) to the extent necessary to incorporate it into Your Application. You may use the SDK only in connection with the HTC services, programs, and/or features for which they are made available, unless the documentation for the applicable SDK authorizes broader use.
- b) No Obligation. You agree that HTC may restrict and nothing in this Agreement requires HTC to enable You or any of Your Applications to access, interact with, or retrieve or publish content to any HTC servers or devices. HTC may, as a condition of providing or enabling access to, interaction with, and/or retrieval or publication of content to HTC servers and

devices, require You to execute other agreements with additional commercial terms.

#### 3. LICENSE LIMITATIONS

- a) <u>General Restrictions</u>. The licenses granted in Section 2 are conditioned upon Your compliance with the following limitations. You are not permitted to:
  - (i) modify any component of the SDK (other than sample source code described in Section 2);
  - (ii) work around any technical limitations in the SDK or to use the SDK in an attempt to, or in conjunction with any device, program or service designed to, circumvent technical measures employed to control access to, or the rights in, a content, file, or other work;
  - (iii) reverse engineer, decompile, decipher, translate, disassemble or otherwise attempt to access source code of the SDK (other than sample source code described in Section 2), except and only to the extent that applicable law expressly permits, despite this limitation;
  - (iv) publish, rent, lease, lend, sell, sublicense, distribute, transfer, disclose, or otherwise provide the SDK or any application that uses the SDK to any third party, except as expressly permitted herein;
  - (v) remove or alter any proprietary notices or labels on or in the SDK, including any copyright, trademark or patent notice in the sample code or redistributable code;
  - (vi) use the SDK in connection with the development or transmission of any virus or malicious code;
  - (vii) use the SDK to infringe the rights of HTC, its affiliates, or any third party, or in any way that does not comply with all applicable laws;
  - (viii) use the SDK (including the creation of any of Your Applications) in any way that interferes with, disrupts, damages, or accesses in an unauthorized manner the servers, networks, or other properties or services of HTC or any third party;
  - (ix) create or enable others to create any application that could disable, hack or otherwise interfere with any authentication, content protection, digital signing, digital rights management, security or verification mechanisms or disable, override, or otherwise interfere with any device, system or software;
  - (x) authorize use of Your Applications if such Applications use location-based services for real time route guidance for emergency or life-saving purposes; or
  - (xi) make any use of the SDK in any manner not permitted by this Agreement.
- b) <u>Distribution Requirements</u>. The licenses to redistribute the SDK as set forth in Section 2 are granted upon Your compliance with the following limitations and requirements:
  - You will not use the SDK with any software or other materials that are subject to licenses or restrictions (e.g. open source licenses) that, when combined with the SDK, would require You or HTC to disclose, license, distribute, or otherwise make all or any part of the SDK to anyone else;
  - (ii) You will distribute the sample source code only in object code form as part of Your Applications;
  - (iii) You will not permit any third party to distribute the sample source code, except that You may permit further redistribution of the sample source code solely in conjunction with, and as part of, Your Applications.
- 4. SECURITY. You are solely responsible for Your Applications and End User Data You may collect. You will maintain a high level of security and integrity for Your Applications in order to prevent unauthorized use of any End User Data and any of the features and functionality of HTC products and services, including access by viruses, worms, or any device, feature, code, or instruction that damages, deletes, disables, impairs, prevents or interrupts the use of any HTC device or service. You will immediately notify HTC if You know of or suspect any breach of security or potential vulnerability of Your Application or any End User Data that could lead to a

breach of this Section and will remedy the breach or potential vulnerability within 24 hours.

- 5. RESERVATION OF RIGHTS AND OWNERSHIP. HTC, its affiliates and its suppliers own all title, copyright, and other intellectual property rights in the SDK (and any derivative works and enhancements thereof developed by or on behalf of HTC) and reserve all rights not expressly granted to You in this Agreement. You will not challenge HTC's use, ownership of, or rights to the SDK or any other intellectual property of HTC. The SDK (and any derivative works and enhancements thereof developed by or on behalf of HTC) are protected by copyright and other intellectual property laws and treaties. As between HTC and You and except for the SDK or other intellectual property of HTC or its Affiliates contained in any of Your Applications, You own all title, copyright and other intellectual property rights in Your Applications. For the avoidance of doubt, HTC is not the developer of Your Applications.
- 6. **FEEDBACK.** You may (but are not obligated to) provide HTC with comments or other feedback, suggestions, or recommended improvements regarding the SDK or HTC products or services (collectively, "Feedback"). You agree that even if Feedback is designated as confidential, HTC and its designees are free to use, disclose, reproduce, license and otherwise distribute and exploit Feedback as HTC sees fit and without obligation or restriction of any kind on account of intellectual property rights or otherwise.
- 7. SDK UPDATES. You acknowledge that HTC may update or modify the SDK (including APIs and other components of the SDK) and HTC products and services at any time in its sole discretion, and that these updates or modifications may impact the ability of Your Applications to operate and to communicate with HTC products or services. If HTC provides You with an updated version of the SDK, within sixty (60) days of notice of such update, (or such other period designated by HTC), You must cease use of the previous version of the SDK and update any of Your Applications that were built with or utilize the prior SDK or any components of the prior SDK. If you do not update Your Application within the aforementioned time period, HTC may suspend or terminate your use of the SDK, and, if applicable, remove your non-updated Applications from any HTC services or products. If HTC updates or modifies the SDK, You may need to change or update Your Application in order for Your Application to continue to operate.
- 8. SUPPORT. HTC has no obligation to provide or to continue to provide any support for the SDK, Your Applications, or any HTC product or service. You are responsible for providing all support and technical assistance to Your customers and end users regarding use of Your Applications (including any customer or end user issues related to integration of the SDK). HTC is not obligated to provide support or technical assistance to You or any of Your licensees, customers, or end users and You will not represent otherwise. However, if HTC chooses to provide any support services to You, Your use of such services will be governed by then-current HTC policies. With respect to any technical or other information You provide to HTC in connection with the support services, You agree that HTC has an unrestricted right to use such information for its business purposes, including for product support and development.

## 9. CONFIDENTIALITY, END USER DATA, AND FACIAL TRACKING DATA

a) <u>Confidential Information</u>. "Confidential Information" means all non-public information, technology, materials and know-how that HTC designates either as proprietary or confidential or that, by the nature of the information or the circumstances surrounding its disclosure, ought in good faith to be treated as proprietary or confidential, including the terms and conditions of this Agreement. HTC's Confidential Information includes this Agreement and the SDK and all software specifications, technology, programming, materials, guidelines and documentation relating to the SDK. You will use HTC's Confidential Information only for the purposes set forth in this Agreement and will only disclose HTC's Confidential

Information to those employees who have a need to know in order to accomplish those purposes. You will not disclose any of HTC's Confidential Information to any third party without HTC's prior, written consent. You will protect HTC's Confidential Information from unauthorized use, access or disclosure in the same manner that You would use to protect Your own confidential and proprietary information of a similar nature and in any event with no less than a reasonable degree of care. You will not use HTC's name or trademarks in any manner without HTC's prior, written consent. Without limiting the foregoing, You will not describe Yourself or Your Application as being in any way endorsed or approved by HTC.

- End User Data. "End User Data" means information and data generated in connection with an end user's use of Your Application or otherwise exchanged between an end user and You. You will be solely responsible for adequately protecting and securing all End User Data You collect. You will protect the privacy and legal rights of end users. You agree to only collect and use End User Data in accordance with applicable laws, Your terms of use and/or end user license agreement and privacy policy. You shall ensure that each End User receives sufficient notification prior to any collection of End User Data. You must also ensure that each user provides affirmative consent prior to such collection and any use of the data by You or any third party on Your behalf if such consent is required in accordance with the applicable law. You agree to take all steps required and reasonably necessary (including appropriate physical, technical, and organizational measures) to protect such End User Data in Your possession or control against loss and unauthorized or unlawful access, use, modification, disclosure, processing or other misuse. You agree to implement and comply with industry-standard measures with respect to the technical and physical security of such End User Data. You agree to ensure that its collection, use, storage, processing, distribution, or transfer (including cross-border transfers), and Your information technology platforms and systems on which such End User Data is collected, used, stored, processed, distributed, or transferred are at all times compliant with applicable law (including all privacy laws and laws governing data security) and the terms and conditions of Your published use and privacy policies. Your standard of care to comply with Your obligations under the foregoing sentences shall conform to the requirements of applicable laws and industry standard security measures with respect to the sensitivity of the End User Data in Your possession or control. Facial Feature Data. If You collect or use End User Data derived from eye tracking, lip tracking, or other facial tracking technology provided by HTC hereunder ("Facial Feature
- Data"), You represent and warrant that You will comply with the following limitations and restrictions in addition to those above:
  - You must conspicuously disclose via a privacy notice to end users describing Your collection and use of Facial Feature Data, the capabilities and limitations of the technology in terms that end users can understand, and obtain the end user's affirmative consent prior to use of such End User Data.
  - You will not access, collect, or derive, or attempt to access, collect, or derive actual facial image data using the facial tracking technology provided by HTC;
  - (iii) You will not collect or use Facial Feature Data as an identifier for an end user or for identification or authentication purposes;
  - (iv) Your collection and use of Facial Feature Data will at all times be in compliance with HTC's published guidelines and all applicable laws;
  - You may not use any facial tracking technology provided by HTC or Facial Feature Data for profiling or behavioral analysis unless: (a) You are at all times in compliance with the terms of this Section 9, and (b) You provide a mechanism for end users to reject behavioral tracking.
  - (vi) You must not use facial tracking technology provided by HTC or Facial Feature Data for profiling or to unlawfully discriminate under any applicable law against individual consumers or groups of consumers.
  - (vii) You will ensure that any third party who has access to Facial Feature Data directly or

10. TERM AND TERMINATION. The term of this Agreement starts on the date You click to accept it or by downloading, using or copying any part of the SDK or using any related HTC software or services (whichever event occurs first) and shall continue until terminated by either You or HTC as set out below. Either You or HTC may terminate this Agreement with or without cause by giving thirty (30) days prior written notice to the other party. If terminated, (i) all rights and licenses granted hereunder will immediately expire; (ii) You will stop using the SDK and will stop using and distributing Your Applications built with or containing any component of the SDK; (iii) You must immediately destroy all copies of the SDK and HTC Confidential Information in Your possession or control; and (iv) the following Sections of this Agreement will survive: 2(b), 3-6, and 8-17. In addition, HTC may suspend Your license to access and use the SDK or to distribute Your Applications at any time without terminating this Agreement by giving You written notice. Neither party will be liable for any costs, expenses or damages resulting from its suspension or termination of this Agreement as permitted by this Agreement.

# 11. REPRESENTATIONS AND WARRANTIES; DISCLAIMER

- You represent and warrant to HTC that: (i) Your Applications will not infringe any intellectual property or other proprietary right of HTC or any third party or violate any right of or duty owed to any third party (including privacy rights and publicity rights); (ii) Your Applications will not cause any damage to any property, injury, or death; (iii) Your Applications and Your performance under this Agreement (including use of the SDK) do not and will not violate any applicable law, rule, or regulation; and (iv) You will, at all times, fully comply with all the terms, conditions, obligations, and restrictions set forth in this Agreement.
- TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SDK AND ANY SUPPORT SERVICES ARE PROVIDED AS IS, WITH ALL FAULTS, AND AS AVAILABLE. THE ENTIRE RISK IN CONNECTION WITH THE SDK AND ANY SUPPORT SERVICES REMAINS WITH YOU. HTC AND ITS AFFILIATES AND SUPPLIERS HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES, DUTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALSO THERE IS NO WARRANTY OF TITLE; ENJOYMENT; NON-INFRINGEMENT; CORRESPONDENCE DESCRIPTION; LACK OF VIRUSES OR BUGS; ACCURACY OR COMPLETENESS OF RESPONSES OR RESULTS; SUPPORT; THAT THE SDK WILL CONTINUE TO BE PROVIDED, WILL OPERATE, OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE; MEET ANY OF YOUR REQUIREMENTS; OR THAT ANY DEFECTS WILL BE CORRECTED. HTC MAY DISCONTINUE PROVIDING THE SDK AND SUPPORT SERVICES AND MAY CHANGE THEIR NATURE, FEATURES AND FUNCTIONALITY AT ANY TIME. YOUR ACCESS TO AND USE OF THE SDK AND SUPPORT SERVICES ARE AT YOUR OWN RISK AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO COMPUTERS, NETWORKS, AND SYSTEMS AND LOSS OF DATA IN CONNECTION WITH THE SDK OR SUPPORT SERVICES.
- 12. LIMITATION ON AND EXCLUSION OF REMEDIES AND DAMAGES. IN NO EVENT WILL HTC OR ITS AFFILIATES OR SUPPLIERS BE LIABLE FOR, AND YOU CANNOT RECOVER, ANY SPECIAL, INCIDENTAL, PUNITIVE, DIRECT, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING DAMAGES FOR LOST PROFITS, LOST DATA, LOSS OF USE, DAMAGES TO YOUR COMPUTER OR OTHER SYSTEMS, OR LOSS OF GOODWILL, BUSINESS, ANTICIPATED SAVINGS, OR USE, CONFIDENTIAL INFORMATION, OR OTHER INFORMATION, BUSINESS

INTERRUPTION, PERSONAL INJURY, PROPERTY DAMAGE, LOSS OF PRIVACY, FAILURE TO MEET ANY DUTY OF GOOD FAITH OR REASONABLE CARE, NEGLIGENCE, AND ANY OTHER PECUNIARY OR OTHER LOSS) ARISING OUT OF OR IN ANY WAY RELATED TO THE SDK OR SUPPORT SERVICES (IF ANY), OR THIS AGREEMENT, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION OR THE ALLEGED BASIS OF THE CLAIM AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES, OR REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

HTC'S AND ITS AFFILIATES' AND SUPPLIERS' ENTIRE LIABILITY UNDER THIS AGREEMENT AND YOUR EXCLUSIVE REMEDY WILL BE LIMITED TO THE ACTUAL DIRECT DAMAGES YOU INCUR IN REASONABLE RELIANCE ON THE SDK OR THIS AGREEMENT UP TO \$50.00 U.S. DOLLARS.

NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE BROUGHT MORE THAN ONE YEAR AFTER YOU HAVE KNOWLEDGE OF THE OCCURRENCE WHICH GIVES RISE TO THE CAUSE OF ACTION. THE EXISTENCE OF MULTIPLE CLAIMS OR SUITS UNDER OR RELATED TO THIS AGREEMENT, THE SDK OR ANY OF YOUR APPLICATIONS WILL NOT ENLARGE OR EXTEND THE LIMITATION OF MONEY DAMAGES.

#### 13. INDEMNIFICATION

- a) You will indemnify, defend and hold harmless HTC and its affiliates, officers, directors, employees, agents, licensors, suppliers, and contractors from and against any and all damages, liabilities, penalties, interest, fines, losses, costs, and expenses, including reasonable attorneys' fees and costs arising from or relating to: (i) Your Applications or Your use of the SDK, including any claims of infringement of any third party's intellectual property or other proprietary rights or damage to property, bodily injury, or death; (ii) Your negligence or willful misconduct or that of any of Your agents, vendors or contractors; or (iii) Your breach of any term or condition of this Agreement, including but not limited to Your breach of Your representations and warranties under this Agreement.
- b) HTC will give You prompt written notice of any claim subject to indemnification; provided, that HTC's failure to promptly notify You will not affect Your indemnification obligations except to the extent that HTC's delay prejudices Your ability to defend the claim. You may defend any claim with counsel acceptable to HTC and settle it as You deem appropriate; provided that You will not enter into any settlement that adversely affects HTC's rights without HTC's prior written consent. At Your expense, HTC will reasonably cooperate with You in the defense and settlement of any claim subject to indemnification by You. HTC may participate in the defense, any appeals, and settlement with counsel of its own choosing and expense.
- 14. GOVERNING LAW AND VENUE. THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF WASHINGTON, WITHOUT REFERENCE TO RULES GOVERNING CHOICE OF LAWS OR THE U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. YOU HEREBY IRREVOCABLY CONSENT TO AND WAIVE ANY OBJECTION TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE FEDERAL AND STATE COURTS LOCATED AT KING COUNTY, WASHINGTON WITH RESPECT TO ANY CLAIMS, SUITS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
- 15. MODIFICATIONS TO THE AGREEMENT. HTC may make modifications to this

Agreement at any time by posting a notification on the Viveport web site. You should regularly check for notice of any modifications. HTC may, but need not, also notify You of such modifications via email. Modifications will become effective, and will be deemed accepted by You on the date specified in the notice, which will be no sooner than thirty (30) days after the modifications are posted (except modifications required by law which will be effective immediately). If You do not agree with the modifications to the Agreement, You must immediately terminate this Agreement and Your use of the SDK, which will be Your sole and exclusive remedy. You agree that Your continued use of the SDK constitutes Your agreement to the modified terms of this Agreement.

# **16. CONTACT INFORMATION.** Please direct all notices and correspondence to:

HTC Corporation Attn: General Counsel No. 88, Section 3, Zhongxing Road Xindian Dist., New Taipei City 231 Taiwan

with a copy to:

HTC America, Inc. Attn: Legal Department 308 Occidental Avenue South Suite 300 Seattle, Washington 98104 United States

### 17. GENERAL

- a) You will bear all of Your own costs and expenses in connection with the use of the SDK and Your performance under this Agreement.
- b) HTC may use sub-contractors or consultants in connection with the performance of its rights and obligations hereunder, which may include allowing such sub-contractors or consultants to have access or use of Your data, and materials provided hereunder provided that such subcontractors or consultants shall be subject to no less restrictive obligations as those set forth herein.
- c) You are an independent contractor and not an employee, agent, partner, joint venturer, representative, broker or principal of HTC for any purpose.
- d) HTC's failure to act with respect to a breach by You does not waive its rights to act with respect to subsequent or similar breaches. No waiver of any provision of this Agreement will be effective unless it is in a signed writing, and no waiver will constitute a waiver of any other provision(s) or of the same provision on another occasion.
- e) If a court of competent jurisdiction holds any term, covenant or restriction of this Agreement to be illegal, invalid or unenforceable, the remaining terms, covenants and restrictions will remain in full force and effect and will in no way be affected, impaired or invalidated.
- f) You acknowledge and agree that each member of the group of companies of which HTC is the parent shall be third party beneficiaries to this Agreement and that such other companies shall be entitled to directly enforce, and rely upon, any provision of this Agreement that confers a benefit on (or rights in favor of) them. Other than this, no other person or company shall be third party beneficiaries to this Agreement.
- g) YOU MUST COMPLY WITH ALL NATIONAL AND INTERNATIONAL LAWS, RULES AND REGULATIONS THAT APPLY TO YOUR USE OF THE SDK, INCLUDING THE U.S. EXPORT ADMINISTRATION REGULATIONS, AS WELL AS

# END-USER, END-USE, AND DESTINATION RESTRICTIONS ISSUED BY U.S. OR OTHER GOVERNMENTS.

- h) You may not assign any of Your rights or obligations under this Agreement, whether by operation of law or otherwise, without HTC's prior, written consent, except that You may assign all of Your rights and obligations under this Agreement to any corporation or other entity without consent in connection with a merger or the sale of all or substantially all of Your assets, provided You give HTC written notice of any such assignment no later than ten (10) business days before such assignment. Subject to the foregoing limitation, this Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.
- i) This Agreement constitutes the entire agreement between You and HTC with respect to Your use of the SDK and completely replaces any prior agreements between You and HTC in relation to the SDK.