



SOFTWARE DEVELOPMENT KIT LICENSE AGREEMENT

Note: By downloading, installing, or using the SDK, or using the SDK examples, you conclude and agree to the terms of this license agreement (the "Agreement") in a legally binding manner with VMTurbo, Inc., 500 Boylston Street, Boston, Massachusetts 02116 ("VMTurbo"). If you disagree with any of the following terms, then do not use the SDK. In the following, the terms "you" and "Company" shall refer, jointly and severally, to you individually and any organization on whose behalf you act.

- 1. Purpose.** The "SDK" means the VMTurbo software development kit, including any subsequent updates or upgrade made available to you or the Company, and any associated documentation, software code, or other materials made available by VMTurbo to assist you or the Company in developing solution(s) (each a "**Company Product**") that interoperates with VMTurbo product(s). This Agreement applies to any SDK provided by VMTurbo or that includes, displays, or links to this Agreement, and to any updates, supplements or support services for this SDK. Company may only use this SDK to develop a Company Product that interoperates with one or more VMTurbo product(s) and to certify compatibility of Company's Product(s) with VMTurbo's product(s).
- 2. Use Rights.** Subject to your compliance with the terms of this Agreement, you may (i) download, install, and use the SDK on its devices solely to design, develop, and test Company Product(s), (ii) make a reasonable number of copies of the SDK as necessary to develop Company Product(s), provided that you reproduce complete copies of the SDK, including all "read me" files, copyright notices, and other legal notices and terms, and (iii) use, reproduce, modify, and distribute the sample code included in the SDK only as embedded in a Company Product that complies with the technical limitations and the certification requirements set forth in the documentation (the "**Certification Requirements**"). VMTurbo reserves the right to discontinue offering the SDK (or any updates thereto) or to modify the SDK at any time in its sole discretion. Free/open source software components distributed in this SDK are licensed to Company under the terms of the applicable free/open source license agreements. The free/open source software licenses can be found in the open_source_licenses.txt file included in the SDK.
- 3. Restrictions.** Except as set forth above, you may not (1) modify, distribute, sell, lease, rent, lend, or sublicense the SDK (or any copy or portion thereof), (2) pre-install or embed applications created using this SDK on third-party devices, (3) charge users of the Company Product any fee to access or use any VMTurbo offered services from the Company Product, (4) use the SDK to create, design, or develop anything other than Company Product(s), (5) create any alternate connections to the SDK other than through and with the VMTurbo provided API, (6) make any more copies of the SDK than are reasonably necessary for the



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authorized use, (7) modify, create derivative works of, reverse engineer, reverse compile, disassemble the SDK, or otherwise seek to ascertain the source code, except and only to the extent that applicable law expressly permits, despite this limitation (in which case Company shall provide VMTurbo with prior notification and the opportunity to respond), (8) create or attempt to create a product that will understand and interpret the communications and commands between VMTurbo's products, or (9) use the SDK in any manner to (a) circumvent any technical or licensing restrictions of VMTurbo products, (b) upload or otherwise transmit any material containing software viruses or other computer code, files or programs designed to interrupt, destroy, or limit the functionality of any software or hardware, (c) use SDK or any of its features to invade the privacy of any person or otherwise violate any law, including, but not limited to, by usage of GPS functionality, location/tracking services, etc.

4. **License to Marks.** Subject to the Company's compliance with the terms of this Agreement, VMTurbo grants to Company a limited, revocable, non-exclusive, non-sublicensable, non-assignable, non-transferable right and license to display the VMTurbo Marks solely in connection with marketing of Company Product(s) that meet the Certification Requirements in accordance with this Agreement. "**VMTurbo Marks**" means the VMTurbo(R) trademark indicated and any other marks hereafter developed or deployed by VMTurbo. The Company agrees and acknowledges that (i) the VMTurbo Marks, whether or not registered, are the sole property of VMTurbo or its suppliers; (ii) the Company's reproduction of the VMTurbo Marks inures to the benefit of VMTurbo; and (iii) the Company acquires no legal rights in the VMTurbo Marks. The Company agrees that it shall not adopt or use any VMTurbo Marks or any word, company name, mark or design that is similar to or confusing with the VMTurbo Marks. The Company shall not use the VMTurbo Marks in connection with any activity that (a) disparages VMTurbo or its products or services; (b) violates or infringes any intellectual property of VMTurbo; or (c) violates any local, state, federal, country, or international regulation or law.
5. **Feedback; Product Development.** The Company may, from time to time, provide feedback to VMTurbo concerning the functionality and performance of the SDK or VMTurbo products, including identifying potential errors and improvements. VMTurbo may use any feedback the Company provides to VMTurbo to improve or enhance its products and, accordingly, VMTurbo and its affiliates shall have a non-exclusive, perpetual, irrevocable, royalty-free, worldwide right and license to use, reproduce, disclose, sublicense, modify, make, have made, distribute, sell, offer for sale, display, perform, create derivative works, permit distribution and otherwise exploit such feedback without restriction. You acknowledge that VMTurbo may develop technologies and products in the future that have or may have design and/or functionality similar to products that you may develop based on your license herein. Nothing in this agreement shall impair, limit or curtail VMTurbo's right to continue with its development, maintenance and/or distribution of



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VMTurbo's technology or products. You agree that you shall not assert in any way any patent owned by you arising out of or in connection with the SDK or modifications made thereto against VMTurbo, 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 VMTurbo products.

6. **Support.** VMTurbo does not provide technical or other support for the SDK under this Agreement.
7. **Termination.** This Agreement shall continue as long as Company is in compliance with the terms specified herein or until otherwise terminated. Either party may terminate this Agreement upon 30 days' written notice if the other party is in material breach of any term of this Agreement. Company agrees, upon termination, to immediately destroy all copies of the SDK within the Company's possession or control. The following Sections survive any termination of this Agreement: Sections 5, 8, 9, 10, 11.
8. **Ownership.** The SDK is licensed, not sold. VMTurbo reserves all other rights not granted herein. The parties acknowledge that, as between the parties, (a) VMTurbo or its licensors retain complete ownership of all Intellectual Property Rights in and to the SDK and (b) Company or its licensors retain complete ownership of all Intellectual Property Rights in the Company Product(s) (subject to VMTurbo's underlying ownership of the Intellectual Property Rights in and to the SDK). Nothing in this Agreement will be construed to transfer or assign any Intellectual Property Rights of either party to the other. "**Intellectual Property Rights**" means any and all rights under patent law, copyright law, trade secret law, trademark law, and any and all other proprietary rights.
9. **DISCLAIMER OF WARRANTIES & LIABILITY.** YOU ACKNOWLEDGE THAT THE SDK (AS DEFINED BELOW) MAY BE PRONE TO BUGS AND/OR STABILITY ISSUES. THE SDK IS PROVIDED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VMTURBO DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL VMTURBO BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES RELATING TO THE SDK OR THIS AGREEMENT, UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. VMTURBO'S TOTAL LIABILITY RELATING TO THE SDK OR THIS AGREEMENT WILL NOT, IN ANY EVENT, EXCEED US\$100.00. THE FOREGOING LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER VMTURBO HAS BEEN ADVISED OF THE POSSIBILITY OF



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SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

10. **INDEMNIFICATION.** Company shall defend, indemnify, and hold harmless VMTurbo and its affiliates and their respective directors, officers, employees, contractors, agents, and end users ("**Indemnified Parties**") against any third party claim, suit, or proceeding ("**Claim**") and any liability, damage, loss, cost, and expenses (including attorney's fees) arising from the Claim ("**Damages**") threatened or brought against any Indemnified Party alleging that any Company Product infringes (including contributory infringement) or misappropriates any third party intellectual property right. The Indemnified Party shall provide Company written notice of any Claim within a reasonable time after the Indemnified Party receives written notice of the Claim. The Indemnified Party's failure to provide timely written notice will not excuse Company's obligation under this Agreement unless lack of actual notice of the Claim has a substantially adverse effect on Company's ability to defend the Claim. The any Indemnified Party must allow Company sole control of the defense. Company shall not settle any Claim, and no settlement of a Claim will be binding on the Indemnified Party, without its prior written consent, which will not be unreasonably withheld or delayed.

11. **General.**

- a. **Governing Law/Venue.** This Agreement will be governed and interpreted in accordance with the laws of the Commonwealth of Massachusetts, without regard to conflict of law principles. Venue for any legal action is proper in the state or federal courts located in Boston, Massachusetts and each party expressly consents to venue and jurisdiction of those courts.
- b. **Assignment.** This Agreement may not be assigned in whole or in part, by operation of law or otherwise, by either party without the prior written consent of the other party. Notwithstanding the forgoing, VMTurbo may assign this Agreement in connection with merger, a corporate reorganization, or the transfer of substantially all of the assets of the business to which this Agreement relates. This Agreement will bind and inure to the benefit of the parties and their permitted assigns.
- c. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes entirely all written or oral agreements previously existing between the parties with respect to that subject matter. Each of the parties acknowledges that it is not entering into this Agreement on the basis of any representations other than those representations contained expressly in this Agreement. Any modifications of this Agreement must be in writing and signed by both



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parties hereto. If any provision of this Agreement is held to be illegal, invalid, or unenforceable, the parties agree to comply with the provision to the maximum extent permissible so as to affect the intent of the parties, and the remaining provisions of this Agreement remain in full force and effect.

- d. **Export Control.** Company acknowledges that the SDK is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. Company represents, warrants and covenants that (1) Company is not, and is not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) Company will not permit the SDK to be used for any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons.
- e. **Data Privacy.** Company agrees that VMTurbo may periodically collect, process and store technical and related information about Company's device, system, application, peripherals and Company's use of the SDK, including internet protocol address, hardware identification, operating system, application software, peripheral hardware, number of active plugins and software development kits, the successful installation and launch of SDK, and SDK usage statistics (collectively, "**Technical Data**"). VMTurbo will use Technical Data for internal statistical and analytical purposes to facilitate support, invoicing or online services, the provisioning of updates, and the development of VMTurbo products and services. VMTurbo may transfer Technical Data to other companies in the VMTurbo worldwide group of companies from time to time. Company acknowledges that correspondence and log files generated in conjunction with a request for support services may contain sensitive, confidential or personal information. Company is solely responsible for taking the steps necessary to protect such data, including obfuscating the logs or otherwise guarding such information prior to sending it to VMTurbo.
- f. **Relationship of Parties.** The relationship of the parties during the term of this Agreement is that of independent third parties. Neither party has, nor no party has the right to represent that it has any power, right or authority to bind the other party, or to assume or create any obligation or responsibility, express or implied, on behalf of the other party or in the other party's name. Nothing stated in this



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Agreement may be construed as creating a partnership between the parties, creating the relationships of employer/employee, franchiser/franchisee, or principal/agent between the parties.

- g. **Notices.** Notices to either party must be in writing and must be delivered in person, by United States mail, first-class certified mail, postage prepaid, return receipt requested, or by an express courier service addressed as stated at the beginning of this Agreement.
- h. **Modifications.** If VMTurbo changes this Agreement, then we will give you notice before the change is in force. If you do not agree to these changes, then you must cancel and stop using the SDK and APIs before the changes are in force. If you do not stop using the SDK or APIs, then your use of the SDK or APIs will continue under the changed agreement.