

HARMAN SDK AGREEMENT

License for Development of Software Compatible with Harman Products

IMPORTANT -- READ CAREFULLY BEFORE USING THIS SOFTWARE: This License Agreement for certain Harman software products (this "Agreement") is a legal agreement between you (either an individual or an entity, hereafter "you" or "Developer") and Harman International Industries, Incorporated and its suppliers, affiliates, and licensors (collectively "Harman") for use of Harman's Software Development Kit (the "SDK"), for the sole purpose of developing and distributing the Developer Application (as defined below). By downloading, installing, copying, and/or otherwise using (in whole or in part) the SDK, you agree to be bound by the terms of this Agreement. If you do not agree to the terms of this Agreement, click on the "cancel" button and/or do not install and/or otherwise use the SDK.

YOU AGREE THAT YOUR USE OF THE SOFTWARE ACKNOWLEDGES THAT YOU HAVE READ THIS LICENSE, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

ANY THIRD PARTY SOFTWARE THAT MAY BE PROVIDED WITH THE SDK IS INCLUDED FOR USE AT YOUR OPTION. IF YOU CHOOSE TO USE SUCH THIRD PARTY SOFTWARE, THEN SUCH USE SHALL BE GOVERNED BY SUCH THIRD PARTY'S LICENSE AGREEMENT, AN ELECTRONIC COPY OF WHICH WILL BE INSTALLED IN THE APPROPRIATE HARMAN PRODUCT FOLDER ON YOUR COMPUTER UPON INSTALLATION OF THE SOFTWARE. HARMAN IS NOT RESPONSIBLE FOR ANY THIRD PARTY'S SOFTWARE AND SHALL HAVE NO LIABILITY FOR YOUR USE OF THIRD PARTY SOFTWARE.

In consideration of the rights and licenses granted below, Developer hereby agrees as follows:

1. ACCEPTING THIS AGREEMENT

- a.** In order to use the SDK (as that term is defined below) and related services, you must first agree to this Agreement. If you do not do so, you are not permitted to use the SDK or related services and in that case must not download or use the SDK or related services.
- b.** You accept and agree to the terms of this Agreement on Your own behalf, and/or on behalf of Developer's company/organization as its authorized legal representative by checking the box and submitting Your acceptance of this Agreement.

2. DEFINITIONS

- a.** "Agreement" means this Harman SDK Agreement, including any attachments and exhibits, which are hereby incorporated by this reference.
- b.** "API," or application programming interface, means the specific method prescribed by a computer operating system or by another application program (such as the Harman Controller) by which a programmer writing an application program can make requests of an operating system or another application.
- c.** "Application" or "App" means one or more software programs developed by you for use in connection with the Harman System.
- d.** "Authorized Developers" means Developer's employees and contractors and members of Developer's organization and as Developers that are licensed further restrictions as set forth in Exhibit A.
- e.** "Code" means the APIs and the Sample(s) from the SDK, collectively.
- f.** "Developer Application" means an Application You develop in compliance with the Documentation and Program Requirements, under Developer's own trademark or brand, and for specific use with the Harman

System, including bug fixes, updates, upgrades, modifications, enhancements, supplements to, revisions, new releases, and new versions of such software programs.

- g. "Documentation" means any technical or other specifications or documentation that Harman may provide to Developer for use in connection with the SDK, the Harman Software and/or the Harman System, including but not limited to this Agreement.
- h. "FOSS" (Free and Open Source Software) means any software that is subject to terms that, as a condition of use, copying, modification, and/or redistribution, require such software and/or derivative works thereof to be disclosed and/or distributed in source code form, to be licensed for the purpose of making derivative works, and/or to be distributed free of charge, including but not limited to software distributed under the GNU General Public License or the GNU Lesser/Library GPL.
- i. "Harman Controller" means the Harman Application that can be used to interface with and/or control the Harman System.
- j. "Harman Marks" means HARMAN, HARMAN KARDON, JBL, and such other trademarks or registered trademarks of Harman, as Harman may make available to you from time to time.
- k. "Harman Software" means the SDK, the Harman Controller application, other software included as part of the SDK, and any and all other software provided by Harman.
- l. "Harman System" means Harman's Wireless HD wi-fi speaker system.
- m. "New Version" means any update, upgrade, and any and all corrections, modifications, enhancements, bug fixes, or successor versions of the SDK issued by Harman during the Term, and any update, upgrade, and any and all corrections, modifications, enhancements, bug fixes, or successor versions to the Developer Application created by You during the Term.
- n. "Samples" means the sample Apps included in the SDK, which, at the time of SDK installation, is located in the folder named "Samples."
- o. "SDK" (Software Development Kit) means the Documentation, software (source code and object code), applications, Samples, tools, libraries, APIs, data, files, and materials provided by Harman for Developer's use in connection with Your development of Your Application, and includes any Updates that may be provided to Developer by Harman pursuant to this Agreement.
- p. "Term" means the period described in Section 11 of this Agreement.
- q. "Updates" means bug fixes, updates, upgrades, modifications, enhancements, supplements, and new releases or versions of the Harman Software, or to any part of the Harman Software.
- r. "You," "Your," "Licensee," and "Developer" means and refers to the person(s) or legal entity using the Harman Software or otherwise exercising rights under this Agreement. If you are entering into this Agreement on behalf of your company/organization, these terms also include your company/organization.

3. LICENSE TO DEVELOP

- a. **License Grant.** Subject to the provisions contained herein and further restrictions for definition of Licensed Developers as set forth in Exhibit A, Harman hereby grants Developer a limited, non-exclusive, royalty-free license to:
 - i. install and use the SDK solely for the purpose of developing the Developer Application;

- ii. install a reasonable number of copies of the SDK on computers owned or controlled by You, to be used internally by You and/or Your Authorized Developers solely for the purpose of developing and/or testing the Developer Application; and
 - iii. make and distribute a reasonable number of copies of the Documentation to Authorized Developers for their internal use only and for the sole purpose of developing and/or testing the Developer Application.
- b. **Integration of Sample with Developer Application.** Harman grants Developer a limited, non-exclusive, nontransferable, royalty-free license to use, modify, adapt, and reproduce the Sample solely as an integrated component of the Developer Application.
- c. **Use of APIs with Developer Application.** Harman grants Developer a limited, non-exclusive, royalty-free right to use but not reproduce the APIs solely as integrated components of the Developer Application.
- d. **SDK Use.** Developer will only use the SDK on a single computer or on its internal computer network, providing that each person accessing the SDK through the network abides by this Agreement. Developer may download the online documentation, if any, in conjunction with the SDK, but may not make further copies of any printed or electronically transmitted materials accompanying the SDK.
- e. **Limitations on Developer Application.** Developer Application must be designed, developed, and tested to function with the Harman System and not degrade or in any way impair the functionality of any Harman product. The SDK may not be used to develop a Developer Application that:
 - i. encodes, serves, or plays on any speaker system competitive to any Harman System, as determined by Harman in its sole discretion;
 - ii. contains any third party product or any Developer product that is competitive with a Harman product;
 - iii. contains any code that disrupts, disables, harms, or otherwise impedes the operation of the Harman System, Harman products or any other software, firmware, hardware, computer system or network (sometimes referred to as "viruses" or "worms");
 - iv. accesses any end user's computer to disable or impair any end user's software or hardware (sometimes referred to as "traps," "access codes" or "trap door" devices), or to track such end user's behavior; or
 - v. contains any other similar harmful, malicious or hidden procedures, routines or mechanisms which would damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations.
 - vi. uses APIs in any manner other than the manner prescribed by Harman and/or uses or calls any private APIs;
 - vii. installs or launches any other executable code by any other means, including without limitation, through the use of a plug-in architecture, calling other frameworks, other APIs or otherwise;
 - viii. reads data from or writes data to anywhere other than the Application's designated container area on the Harman System, except as otherwise specified by Harman.
 - ix. fails to comply with all applicable privacy laws and regulations as well as any additional requirements of Harman in connection with the form of user or device data collection, personal information, or image, picture, or voice capture or recording performed by Your Application, and any other form of user data, content or information processing, maintenance, dissemination, uploading, syncing, or transmission performed by the Application;
 - x. fails to comply with all applicable criminal, civil, and statutory laws and regulation, including those in any jurisdictions in which Your Applications may be delivered.

- xi.** in connection with Applications that offer location-based services or functionality, fails to notify and obtain consent from the individual user before her/his location data is collected, transmitted, and/or otherwise used by the Application.
 - xii.** uses master recordings and/or musical compositions embodied in Your Application that are not wholly-owned by You or licensed to You on a fully paid-up basis and in a manner that will not require the payment of any fees, royalties, and/or sums by Harman to You or any third party. If Your Application will be distributed outside of the United States, any master recordings and/or musical compositions embodied in Your Application must not now or in the future fall within the repertoire of any mechanical or performance/communication rights collecting or licensing organization; and, if licensed, must be exclusively licensed to You for Your Application by each applicable copyright owner.
 - xiii.** uses any other content that you do not either own or have permission from the content owner to use in Your Application;
 - xiv.** contains any obscene, pornographic, offensive, and/or defamatory content or materials of any kind or other content or materials that, in Harman's reasonable judgment, may be found objectionable by Harman System users; and/or
 - xv.** uses any FOSS in such a way that would cause the non-FOSS portions of the Harman Software to be subject to any FOSS licensing terms or obligations. Subject to the foregoing, if Your Application includes any FOSS, You agree to comply with any and all applicable FOSS licensing terms.
- f. No Disclosure.** Developer may not expose any of the APIs in this SDK to any other application or person, and may not use or include any part of this SDK as part of any other software development kit without Harman's express written approval.
- g. Privacy Requirements.** In the event that Developer, through the Developer Application or any individual component thereof, desires to communicate with, track end user information of, or collect any personally identifiable information from an end user of the Developer Application, Developer will:
 - i.** post its privacy statement applicable to the Developer Application/component on its website;
 - ii.** clearly disclose to end users what information is being collected;
 - iii.** enable end users to opt-out of receiving emails or other communications resulting from the information that is collected;
 - iv.** clearly disclose any communications or tracking features (including anonymous tracking across websites) and allow users to opt out of such features;
 - v.** receive explicit opt-in consent from each end user for any personally identifiable information, including personally identifiable tracking information, that is collected from such end user; and
 - vi.** not sell, rent or disclose to third parties any personally identifiable information collected from end users in connection with the Developer Application/component without the end user's express consent.

Notwithstanding the foregoing, Developer will be free to use such information collected from users in order to inform such users of specific security problems, system problems, patches necessary to ensure proper operation of the system and the like, or for customer service purposes, unless an end user has opted-out of receiving further emails or other communications from Developer. Developer will not use any information that personally identifies, selects, or categorizes end users as users of the Harman products, and will not gather, track or otherwise collect information concerning a user's specific uses of Harman products.

- h. Harman Copyright Notice in Developer Application.** Developer must provide attribution to Harman in the "About" box or user interface of the Developer Application in the form and manner prescribed and approved by Harman (current attribution form: Harman WirelessHD wi-fi speaker system technology is provided under license from Harman International Industries, Incorporated. Copyright © 2014 Harman International Industries, Incorporated. Patents Pending. HARMAN, HARMAN KARDON, JBL, and their logos are trademarks of Harman International Industries, Incorporated. All rights reserved.). To assure compliance with this Section, on Harman's reasonable request, Developer will furnish Harman with samples of attribution in and/or on the Developer Application. Upon notice by Harman that Developer's attribution does not comply with this Agreement, Developer will, within a reasonable period of time, make all requested changes.
- i. Updates; No Support or Maintenance.** Harman may extend, enhance, or otherwise modify the Harman Software provided hereunder, including but not limited to the SDK, at any time without notice, but is not obligated to provide You with any Updates to the Harman Software. If Harman does make any Updates available, the terms of this Agreement will govern such Updates, unless the Update is accompanied by a separate license in which case the terms of that license will govern to the extent they conflict with the terms of this Agreement. Harman is not obligated to provide any maintenance, technical, or other support for the Harman Software or services. You acknowledge that Harman does not have any express or implied obligation to announce or make available any Updates to anyone in the future. Should any Update be made available, it may have APIs, features, services, and/or functionality different from those found in the Harman Software as originally downloaded by You and licensed hereunder. For each New Version of the SDK released by Harman during the Term, Developer will create a Developer Application New Version within six (6) months after such release to be compatible with the SDK New Version.
- j. No Other Permitted Uses.** Except as otherwise permitted in this Agreement, Developer agrees not to rent, lease, lend, upload to or host on any website or server, sell, redistribute, or sublicense the Harman Software and/or any services, in whole or in part, or to enable others to do so. You may not use the Harman Software or any services provided hereunder for any purpose not expressly permitted by this Agreement. You may not, and You agree not to, or to enable others to, copy (except as permitted under this Agreement), decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, decrypt, or create derivative works of the Harman Software or any services provided by the Harman Software or otherwise provided hereunder, or any part thereof (except as and only to the extent the foregoing restriction is prohibited by applicable law or to the extent as may be permitted by licensing terms governing use of open-sourced components or the Sample included with the Harman Software). If You breach any of the foregoing restrictions, You may be subject to prosecution and damages. All licenses not expressly granted in this Agreement are reserved and no other licenses, immunity, or rights, express or implied, are granted by Harman by implication, estoppel or otherwise. This Agreement does not grant You any rights to use any trademarks, logos, or service marks belonging to Harman except as expressly provided in this Agreement.

4. DISTRIBUTION LICENSE TO DEVELOPER

- a. Developer Distribution of Developer Application.** Subject to the limitations set forth herein and as set forth in Exhibit A, Harman hereby grants Developer a non-exclusive, non-transferable, non-sublicensable, royalty-free license to distribute only for iOS and Android platforms to end users the Developer Application created using production versions of the SDK only if Developer Application contains only the Code required for the execution of the Developer Application. Furthermore, distribution rights granted only to developers that connect to Harman speakers. For any SDK in beta or pre-release form, the following restrictions will apply:

 - i.** if distributing a beta version of the Code, Developer will clearly mark Developer Application as either "beta" or "pre-release;"

- ii. Developer may not use the beta version of any SDK component, or distribute or have distributed the beta version of Code, in a live operating environment where such may be relied upon to perform in the same manner as a commercially released product, nor may Developer use such beta SDK components with data that has not been sufficiently backed up;
 - iii. Developer understands that beta or pre-release versions of SDK components may be changed substantially before the final commercial release;
 - iv. Developer may not use the SDK components for benchmark or performance testing;
 - v. if Developer has distributed or had distributed as permitted by this Agreement a beta version of the Code, Developer will be solely responsible for updating Developer's customer end users with versions of any Developer Application that operate satisfactorily with the final commercial release of such Code;
 - vi. for Developers providing reasonable feedback to Harman, including but not limited to usability, bug reports and test results, with respect to the testing of the SDK or any component thereof, such feedback should be sent through the "contact us" link on the developer.harman.com site.
 - vii. Developer will use reasonable efforts to review and comment on all documentation supplied;
 - viii. any and all bug reports, test results and other feedback made by Developer will be the property of Harman and may be used by Harman for any purpose it sees fit; and
 - ix. Developer understands and acknowledges that, due to the nature of the development work, Harman may not correct errors or discrepancies in the SDK by the time of final release.
 - x. Redistribution of embedded library is not permitted.
 - xi. No Distribution rights to enable connection to Blackfire enabled devices. A separate license with Blackfire needs to be obtained.
- b. End User License Agreement Requirements.** Any distribution of the Developer Application will be under the terms of an End User License Agreement containing terms that:
- i. license use of the Code only as an integrated component of the Developer Application;
 - ii. prohibit any modifications to the Code;
 - iii. prohibit any distribution of the Code separate from the Developer Application;
 - iv. prohibit transfer or assignment of the Code;
 - v. prohibit the reverse engineering, disassembly or decompilation of the Code;
 - vi. disclaim any and all warranties on behalf of Harman;
 - vii. disclaim, to the extent permitted by applicable law, Harman's liability for any damages, whether direct, indirect, incidental or consequential, arising from the use of the Code and/or the Developer Application; and
 - viii. require the end user to comply fully with all relevant export laws and regulations of the United States to assure that the Developer Application or the SDK is not exported, directly or indirectly, in violation of United States law.
- c. License to Use Harman Marks.** Harman hereby grants to Developer a non-exclusive, limited license to use, and Developer agrees that it will always use, Harman Marks solely in connection with Developer's distribution of the Developer Application. Developer will only use the Harman Marks in the form and manner set forth by Harman.

- d. Limitations on Use of Harman Marks.** Developer may use Harman Marks for the sole purpose of informing users that applications developed through the use of the SDK are compatible with Harman's technology and the Harman System. Developer will not use any Harman Mark in a way which may imply that Developer is affiliated with or related to Harman, or that Harman endorses any of Developer's products or services. Developer's use of any Harman Mark in connection with this Agreement will not create any right, title or interest, in or to the use of the Harman Marks and all such use and goodwill associated with the Harman Marks will inure to the benefit of Harman. Developer further acknowledges and agrees that it will not have the right to use any trademarks associated with third party technologies (e.g., Dolby, MP3, etc.) contained within any Harman products without first obtaining a separate trademark license from such third party.
- e. Branding.** Developer will identify the Developer Application as being designed for use with and compatible with Harman's WirelessHD product in a manner and form as approved by Harman in its sole discretion. Developer's marketing literature and website to display Harman and Blackfire logos. Applications need to display Harman and Blackfire logos within the application based at least in part on convenience, usability, and aesthetics.
- f. Sample Copies of Developer Application to Harman.** Developer will promptly provide Harman with two packaged copies of any Developer Applications, including associated documentation, upon Harman's request. Harman may use the copies for testing and evaluation purposes only. Harman reserves the right to terminate the distribution rights contained in this Agreement in the event that Harman's testing demonstrates that the Developer Application is not fully compatible with any Harman product or otherwise violates the terms of this Agreement. Prior to terminating the Developer's distribution rights under this Section, Harman will provide Developer with notice and a reasonable opportunity to cure, not to exceed 30 days.
- g. No Other Distribution.** Except as provided in this Section 3, no distribution of any other part of the SDK (such as the documentation included with the SDK) is allowed under this Agreement.

5. ADDITIONAL DEVELOPER OBLIGATIONS, REPRESENTATIONS, AND WARRANTIES

- a. General.** Developer hereby certifies and agrees that:

 - i.** You are of the legal age of majority in the jurisdiction in which You reside (at least 18 years of age in many countries) and have the right and authority to enter into this Agreement on Your own behalf, or if You are entering into this Agreement on behalf of your company/organization, that you have the right and authority to legally bind Your company/organization to the terms and obligations of this Agreement;
 - ii.** all information You provide to Harman, including without limitation all information concerning the Developer Application, will be current, true, accurate, and complete, and You will promptly notify Harman of any changes to such information;
 - iii.** You will comply with the terms and fulfill Your obligations under this Agreement and You agree to monitor and be responsible for Your Authorized Developers' use of the Harman Software and services and their compliance with this Agreement;
 - iv.** You will be solely responsible for all costs, expenses, losses, and/or liabilities incurred, and activities undertaken by You and Your Authorized Developers in connection with the Harman Software and services, Your Developer Applications, and Your related development and distribution efforts, including but not limited to, any related development efforts, network and server equipment, Internet service(s), and/or any other hardware, software, and/or services used by You in connection with such efforts.
- b. Use of the Harman Software.** As a condition to using the Harman Software, including but not limited to the SDK, You agree that:

- i. You will only use the Harman Software and any services for the purposes and in the manner expressly permitted by this Agreement and in accordance with applicable laws and regulations;
- ii. You will not use the Harman Software or any services for any unlawful or illegal activity, or to develop any Application that would commit or facilitate the commission of a crime, or other tortuous, unlawful, and/or illegal act;
- iii. Your Developer Application will be developed in compliance with the Documentation;
- iv. to the best of Your knowledge and belief, the Developer Application does not and will not violate, misappropriate, and/or infringe any Harman and/or third party copyrights, trademarks, rights of privacy and publicity, trade secrets, patents, and/or any other proprietary or legal rights (including but not limited to musical composition or performance rights, third party data rights, etc. for content and materials that may be included in Your Developer Application);
- v. You will not and will not enable others to, through the use of the Harman Software, services, or otherwise, create any Application or other program that would or could be used to disable, hack, or otherwise interfere with any security, digital signing, digital rights management, verification, and/or authentication mechanisms; and
- vi. You will not distribute any Application as provided under this Agreement or otherwise in the event Harman provides you notice that the Application does not, in Harman's sole discretion, satisfy the requirements of this Agreement, any other Documentation, and/or any other reasonable requirements of Harman for Developer Applications.

6. PRODUCT MAINTENANCE & TECHNICAL SUPPORT

- a. As previously provided, Harman is not obligated to provide maintenance, updates, or technical support to Developer for the SDK. Developer will be solely responsible for providing, and agrees that it will provide, customer, technical, and help desk support to end users for the Developer Application. Harman will refer to Developer all customer support inquiries regarding the Developer Application.
- b. From time to time, Harman may provide access to additional software or services for You to use in connection with Your Applications. Some of these may be subject to separate terms and conditions in addition to this Agreement. If You elect to use such software and/or services, Your usage will also be subject to those separate terms and conditions. In addition, such services and/or software may not be available in all languages or in all countries. Harman makes no representation that such software and/or services are appropriate or available for use in any particular location. To the extent You choose to access such software and/or services, You do so at Your own initiative and are responsible for compliance with any and all applicable laws, including but not limited to applicable local laws. You acknowledge and agree that certain software and/or services provided to you may be provided by third parties, and Harman will not have any liability or responsibility to You or any other person (including to any end user) for any third-party software and/or services. Harman and its licensors reserve the right to change, suspend, remove, or disable access to any software and/or services at any time. In no event will Harman be liable for the removal of or disabling of access to any such software and/or services.

7. SOFTWARE OWNERSHIP

- a. **Harman's Ownership.** Title, ownership rights and intellectual property rights in and to the SDK, accompanying printed materials, and any copies Developer is permitted to make herein are owned by Harman or its suppliers and are protected by United States copyright law and international treaty provisions. Developer may (a) make one copy of the SDK solely for backup or archival purposes (in accordance with customary practices for such purpose), provided such copy must contain all of the original SDK's proprietary notices; or

(b) transfer the SDK to a single hard disk, provided Developer keeps the original solely for backup or archival purposes. Developer's rights to use the SDK are specified in this Agreement, and Harman retains all rights not expressly granted to Developer in this Agreement. Nothing in this Agreement constitutes a waiver of Harman's rights under U.S. or international copyright law or any other federal or state law.

- b. Developer's Ownership. Title, ownership rights, and intellectual property rights in and to the Developer Application are owned by Developer, with the exception of Harman's ownership as defined herein. The parties agree that nothing in this Agreement gives Harman any ownership of Developer Application. Notwithstanding, Developer waives right to assert intellectual property actions against Harman and Blackfire based on intellectual property rights derived from or related to the SDK and Development Library from this agreement or related agreements.

8. CONFIDENTIALITY

- a. You agree that any information given to you by Harman and identified as such, including but not limited to the Harman Software, shall be deemed Harman Confidential Information. Harman Confidential Information will not include:
 - i. information that is generally and legitimately made available to the public through no fault or breach of Yours;
 - ii. information that is generally made available to the public by Harman;
 - iii. information that is independently developed by You without the use of any Harman Confidential Information;
 - iv. information rightfully obtained by a third party who had the right to transfer and/or disclose such information; and/or
 - v. any FOSS included in the Harman Software and accompanied by licensing terms that do not impose confidentiality obligations on the use or disclosure of such FOSS.
- b. You agree to protect Harman Confidential Information using at least the same degree of care that You use to protect Developer's own confidential information of similar importance, but in no event less than a reasonable degree of care. You agree to use the Harman Confidential Information solely for the purpose of exercising Your rights and performing Your obligations under this Agreement and agree not to use Harman Confidential Information for any other purpose, for Your own or any third party's benefit, without Harman's prior written consent. You further agree not to disclose or disseminate Harman Confidential Information to anyone other than:
 - i. those of Your employees and contractors, who have a need to know and who are bound by a written agreement that prohibits unauthorized use or disclosure of the Harman Confidential Information; or
 - ii. as otherwise agreed to or permitted in writing by Harman.
- c. You may disclose Harman Confidential Information to the extent required by law, provided You take reasonable steps to notify Harman before disclosing the Harman Confidential Information and to allow Harman time to obtain protective treatment of the Harman Confidential Information. You acknowledge that damages for improper disclosure of the Harman Confidential Information may be irreparable, and, therefore, Harman is entitled to equitable relief, including all available emergency and preliminary injunctive relief, in addition to any other remedies it may have, without a requirement of posting any kind of bond.

- d. Developer understands and acknowledges that Harman works with many application and software developers, and some of their products may be similar to or compete with Your Applications. Harman may also be developing its own similar or competing applications and products, or may determine to do so in the future. To avoid potential misunderstandings, Harman cannot agree to, and hereby expressly disclaims, any confidentiality obligations or use restrictions of any kind, express or implied, with respect to any information You may provide in connection with this Agreement, including but not limited to information about Your Application and any metadata (Your information of this kind will be referred to as "Developer Information"). You agree that any such Developer Information is and will be NON-CONFIDENTIAL. Harman will be free to disclose and use any and all Developer Information on an unrestricted basis without notifying or compensating You. You hereby release, and agree to release in the future, Harman from any and all liability and/or obligations that may arise from the receipt, review, use, and/or disclosure of any portion of any Developer Information. Any physical materials You submit to Harman will become Harman property and Harman will have no obligation to return those materials to You or certify their destruction.
- e. You may not issue any press release or make any other public statements regarding this Agreement, its terms, or Your relationship with Harman without Harman's express prior written approval, to be granted or withheld at Harman's sole discretion.

9. DISCLAIMER OF WARRANTY

The Harman Software, including but not limited to the SDK is deemed accepted by Developer. The Harman Software, including but not limited to the SDK is provided to Developer AS IS, WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HARMAN FURTHER DISCLAIMS ALL WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE HARMAN SOFTWARE, INCLUDING BUT NOT LIMITED TO THE SDK, AND DOCUMENTATION REMAINS WITH DEVELOPER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL HARMAN OR ITS SUPPLIERS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE PRODUCT, EVEN IF HARMAN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO DEVELOPER. HARMAN'S ENTIRE LIABILITY UNDER THIS AGREEMENT FOR ANY REASON WILL NOT EXCEED \$50.00.

10. INDEMNIFICATION

- a. **Indemnity.** Developer will, at its expense and Harman's request, defend any claim or action brought by a third party against Harman, or hold harmless, indemnify, and defend Harman affiliates, its officers, directors, and/or employees, arising out of or related to the Developer Application ("Developer Claims"). Developer will indemnify and hold Harman harmless from and against any claim, suit, or proceeding and any losses, damages, fines, and expenses (including attorneys' fees and costs) arising out of or relating to any claims that Developer's use of the SDK in conjunction with the Developer Application infringes the patent, copyright, trademark, trade secret, or other proprietary rights of any third party, or resulting from any breach of this

Agreement. Developer will indemnify and hold Harman harmless from and against any costs, damages, and fees incurred by Harman, including but not limited to fees of outside attorneys and other professionals, that are attributable to such Developer Claims. Harman will: (i) provide Developer reasonably prompt notice in writing of any such Developer Claims and permit Developer, through counsel chosen by Developer, to answer and defend such Developer Claims; and (ii) provide the entity defending such claim information, assistance, and authority, at such entity's expense, to help defend such Developer Claims. Developer will not be responsible for any settlement made by Harman without Developer's written permission, which permission will not be unreasonably withheld or delayed. Developer will consult with Harman on the choice of any counsel under this Section.

- b. Settlement by Developer.** Unless Developer obtains for Harman a complete release of all Developer Claims hereunder, without any admission of wrongdoing or liability, Developer may not settle any Developer Claim under this Section on Harman's behalf without first obtaining Harman's written permission, which permission will not be unreasonably withheld or delayed. In the event Developer and Harman agree to settle a Developer Claim, Developer agrees to not disclose terms of the settlement without first obtaining Harman's written permission.

11. TERM AND TERMINATION

- a. Term.** This Agreement will be in effect for one (1) year after the Effective Date ("Term"). Thereafter the Agreement will automatically renew for additional terms of one year each unless terminated in accordance with this Agreement.
- b. Termination.** This Agreement and all rights and licenses provided by Harman hereunder and any services provided hereunder will terminate, effective immediately upon notice from Harman if:
 - i.** You and/or any of Your Authorized Developers fail to comply with any term of this Agreement and fail to cure such breach within thirty (30) days after becoming aware of or receiving notice of such breach;
 - ii.** You and/or any of Your Authorized Developers fail to comply with the Confidentiality requirements under this Agreement;
 - iii.** You, and any time during the Term, commence an action for patent and/or copyright infringement against Harman;
 - iv.** You become insolvent, fail to pay Your debts when due, dissolve or cease to do business, file for bankruptcy, or have filed against You a petition in bankruptcy;
 - v.** You engage, or encourage others to engage, in any fraudulent, improper, unlawful, or dishonest act relating to this Agreement, including but not limited to embezzlement, alteration or falsification of documents, theft, inappropriate use of computer systems, bribery, or other misrepresentation of facts.
- c. Termination for Convenience.** Either party may terminate this Agreement for its convenience, for any reason or no reason, effective sixty (60) days after providing the other party with written notice of its intent to terminate.
- d. Effect of Termination.** Upon termination of this Agreement, Developer will immediately discontinue the use of the SDK and distribution of any Developer Applications and will within five (5) days either return to Harman, or certify destruction of, all full or partial copies of the SDK, documentation and related materials provided by Harman. The provisions of Sections [] will survive any termination of this Agreement, except that Harman's distribution rights will terminate if this Agreement is terminated for Harman's breach. Termination

will not affect the rights of end users to continue using copies of the Developer Application already distributed.

12. ASSIGNMENT

This Agreement is personal to Developer. Developer may not assign, transfer, or otherwise dispose of this Agreement, or any rights or obligations hereunder, without Harman's prior written consent, including pursuant to a "Change of Control." As used herein, a Change of Control means (a) a sale of all or substantially all of Developer's assets to another entity; (b) the assignment, transfer, or other disposition of the majority of Developer's equity securities; or (c) a merger of Developer with another entity, if as a result of the transaction the holders of a majority of Developer's equity securities before the transaction hold less than a majority of the voting securities of the surviving entity. Notwithstanding the foregoing, if Harman does not consent to an assignment of the Agreement pursuant to a Change of Control, Developer may terminate this Agreement upon notice to Harman. This Agreement will be binding upon and inure to the benefit of the parties, their successors and permitted assigns.

13. NO REVENUE PARTICIPATION

Nothing in this Agreement provides any right, express or implied, for either party concerning the other party's revenue from any source. Nothing in this Agreement provides a right to Developer to participate in any way in revenue derived by Harman from any Harman product or other proprietary technology, and nothing in this Agreement provides a right to Harman to participate in any way in revenue derived by Developer from the Developer Application or any other Developer proprietary technology. Each party is responsible for any cost or expenses it incurs in connection with its performance under this Agreement, except as otherwise provided herein.

14. GOVERNING LAW; ATTORNEYS' FEES

This Agreement will be governed by the laws of the State of California. Developer consents to exclusive jurisdiction by the state and federal courts sitting in the State of California. This Agreement will not be governed by the United Nations Convention of Contracts for the International Sale of Goods, the application of which is hereby expressly excluded. Any litigation or other dispute resolution between You and Harman arising out of or relating to this Agreement, the Harman Software, or Your relationship with Harman will take place in the state and federal courts located in the Northern District of California. If Harman employs attorneys to enforce any rights arising out of or relating to this Agreement, Harman will be entitled to recover reasonable attorneys' fees in the event it prevails. If you are located in the province of Quebec, Canada, the following clause applies: The parties hereby confirm that they have requested that this Agreement and all related documents be drafted in English. Les parties ont exigé que le présent contrat et tous les documents connexes soient rédigés en anglais.

15. CHANGES TO THIS AGREEMENT

Harman may change the terms of this Agreement at any time. New or modified terms will not retroactively apply to Applications already in distribution. In order to continue using the Harman Software and/or any services, , You must accept and agree to the new terms of this Agreement. If You do not agree to new terms, Your use of the Harman Software and/or services will be terminated. You agree that Your acceptance of such new Agreement terms may be signified electronically, including without limitation, by Your checking a box or clicking "I Agree"

or a similar button.

16. GENERAL LEGAL PROVISIONS – IMPORTANT

- a. This Agreement constitutes the complete and exclusive agreement between Harman and Developer with respect to the subject matter hereof, and supersedes all prior oral or written understandings, communications or agreements not specifically incorporated herein. The relationship of Harman and Developer is that of independent contractors, and nothing contained in this Agreement will be construed to:
 - i. give either party the power to direct and control the activities of the other;
 - ii. constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint undertaking; or
 - iii. allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.
- b. Each party is solely responsible for the payment of its own costs and expenses including, without limitation, payments on behalf of its agents, contractors, and employees in connection with this Agreement. This Agreement may not be modified except in writing duly signed by an authorized representative of Harman and Developer. The waiver by either party of any breach of this Agreement by the other party will not waive subsequent defaults by such party of the same or a different kind. If any provision of this Agreement is held to be unenforceable for any reason, such provision will be reformed only to the extent necessary to make it enforceable, and such decision will not affect the enforceability
 - i. of such provision under other circumstances, or
 - ii. of the remaining provisions hereof under all circumstances.
- c. Portions of the Harman Software or services may utilize or include third party software and other copyrighted material. Acknowledgements, licensing terms, and/or disclaimers for such material are contained in the electronic documentation for the Harman Software and services, and Your use of such material is governed by those terms.
- d. **Consent to Collection and Use of Non-Personal Data.** You agree that Harman may collect and use technical and related information, including but not limited to information about Your Applications, computers, system software, other software and peripherals. Such information is gathered periodically to facilitate the provision of software updates and other services to You (if any) related to the Harman Software, and to verify compliance with the terms of this Agreement. Harman may use this information, as long as it is in a form that does not personally identify You, to improve the Harman Software and/or Harman products, and/or to provide services to You and our customers.
- e. Nothing in this Agreement will impair Harman's right to develop, acquire, license, market, promote, or distribute products or technologies that perform the same or similar functions as, or otherwise compete with Your Applications, Developer Applications, or any other products or technologies that You may develop, produce, market, and/or distribute.
- f. **Notices.** Any notices relating to this Agreement shall be in writing. Notices will be deemed given by Harman when sent to You at the email address or mailing address you provided during the registration process. All notices to Harman relating to this Agreement will be deemed given upon receipt by Harman and must be sent by trackable overnight courier to Attention: Legal Department Harman International Industries, Incorporated 400 Atlantic Street, 15th Floor Stamford, CT 06901, USA +1.203.328.3500.

- g. Severability.** If any provision of the Agreement or its application is held invalid, the invalidity shall not affect other provisions or applications of the Agreement that can be given effect without the invalid provision or application and, to this end, the provisions of the Agreement are declared to be severable.
- h. Waiver and Construction.** Failure by Harman to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision. You further agree that any laws or regulation that provide that the language of a contract will be construed against the drafter will not apply to this Agreement. Any and all remedies herein expressly conferred upon a party will be deemed cumulative and not exclusive of any remedy conferred hereby or by law, and the exercise of any one remedy will not preclude the exercise of any other. Section headings are for convenience only and are not to be considered in construing or interpreting this Agreement.

17. U.S. GOVERNMENT RESTRICTED RIGHTS AND EXPORT RESTRICTIONS

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause of DFARS 252.227-7013 or subparagraphs (c)(i) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is Harman International Industries, Incorporated, located at 400 Atlantic Street, Suite 1500, Stamford, Connecticut 06901. Developer acknowledges that neither the SDK or underlying information or technology may be downloaded or otherwise exported or re-exported: (i) into (or to a national or resident of) Cuba, Iraq, Libya, North Korea, Iran, Syria or any other country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders. By using the SDK, Developer is agreeing to the foregoing and is representing and warranting that it is not located in or under the control of, a national or resident of any such country or on any such list.

Exhibit A

The criteria for defining a licensed Developer for the SDK are as follows. Otherwise, if a developer fails to meet any of the criteria below, a developer must obtain a license from Blackfire Research, 1465 Bush Street, San Francisco 94109, email:rrajapakse@bfrx.com, www.bfrx.com

In some cases for condition B below, if revenue exceeds \$10,000 US dollars per month, a 25% license fee of net developer or publisher revenue applies.

- A) Corporations or Entities with less than \$5 million US dollars in revenue or less than 50 employees
OR
- B) For monetized applications that are less than \$10,000 US dollars per month for developer or publisher revenues from Harman SDK enabled applications.
OR
- C) If the applications are not monetized, no fee is charged for the use of Harman's brand or Development SDK.
OR
- D) Developers from or for the Automotive market.