

EVALUATION LICENSE AGREEMENT

This Evaluation License Agreement (this “**Agreement**”) is between you (both the individual downloading or installing the Software (defined below) and any single legal entity on behalf of which such individual is acting) (collectively, “**You**” or “**Your**”) and either (1) Immersion Corporation if You have a principal place of business in, are incorporated in, are organized under the laws of, or have a primary residence within North America or Japan; or (2) Immersion Software Ireland Limited if You have a principal place of business in, are incorporated in, are organized under the laws of, or have a primary residence in any country or territory other than North America or Japan (in either case, “**Immersion**”) and shall be deemed fully executed and effective as of the date that Immersion delivers Software to You, in Immersion’s sole discretion (“**Effective Date**”).

IT IS IMPORTANT THAT YOU READ THIS AGREEMENT CAREFULLY. BY CLICKING TO ACCEPT OR AGREE TO THIS AGREEMENT (WHERE THIS OPTION IS MADE AVAILABLE TO YOU) OR BY MAKING ANY USE OF THE SOFTWARE, YOU AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE WITH ALL THE TERMS OF THIS AGREEMENT OR DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, DO NOT CLICK TO ACCEPT OR AGREE TO THIS AGREEMENT AND DO NOT MAKE ANY USE OF THE SOFTWARE. IF YOU DO NOT AGREE TO ACCEPT THIS AGREEMENT, YOU MAY NOT USE OR ACCESS THE SOFTWARE. NOTWITHSTANDING THE FOREGOING, THIS AGREEMENT IS NOT EFFECTIVE UNLESS AND UNTIL IMMERSION DELIVERS SOFTWARE TO YOU. IN THE EVENT IMMERSION, IN ITS SOLE DISCRETION, ELECTS NOT TO DELIVER SOFTWARE TO YOU, THIS AGREEMENT SHALL HAVE NO FORCE AND EFFECT, REGARDLESS OF WHETHER YOU CLICKED TO ACCEPT OR AGREE TO THIS AGREEMENT.

1. Definitions

1.1 “Software” shall mean Immersion’s TouchSense® SDK for Mobile Apps (in object code form), software and sample applications (in object code form or source code form), files, plug ins, tools, other SDKs, application programming interfaces, and/or hardware materials provided by Immersion to You hereunder; any related materials and documentation therefore; and any modifications, error corrections, bug fixes, new releases or other updates to any of the foregoing that may be provided hereunder by Immersion to You during the Term of this Agreement.

2. Evaluation License

2.1 Limited Evaluation License. Subject to Your compliance with the terms and conditions of this Agreement, Immersion hereby grants to You a restricted, non-exclusive, personal, nontransferable, nonsublicensable, royalty-free, revocable (at-will) right to use and copy, during the Term of this Agreement and in accordance with the documentation provided by Immersion, the Software, solely in a non-production capacity and solely for Your own internal testing and evaluation of the Software, and for no other business purpose. Except as set forth in this Section 2.1, no other right or license of any kind is granted by Immersion to You hereunder with respect to the Software.

2.2 Exclusions. Notwithstanding Section 2.1, You shall not (and shall not allow any third party to), without the prior written consent of Immersion: (a) decompile, disassemble or otherwise reverse engineer the Software, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in the Software or any portion thereof (unless Software is delivered to You in source code form by Immersion); (b) distribute, disclose, market, rent, lease, assign, sublicense, pledge, encumber or otherwise transfer the Software, in whole or in part, to any third party; or (c) use the Software for production purposes or any other business purpose (other than the internal testing and evaluation authorized under Section 2.1). You must not remove, alter, or obscure in any way all proprietary notices of Immersion or its suppliers on or within the Software provided by Immersion to You. You will be responsible for compliance with all laws, including without limitation export control, import and custom requirements regarding receipt of and use of the Software.

2.3 Restrictions. Except for hardware and documentation provided by Immersion, You shall store the Software (and all copies thereof) on no more than two (2) secure servers owned and controlled by You. You shall securely maintain hardware and documentation provided by Immersion. You acknowledge that the Software constitutes the trade secrets of Immersion. Further, You agree to control and safeguard all Software using security

measures and safeguards at least as stringent as You use for Your own most sensitive software and/or confidential information but in any event shall observe procedures and controls including at a minimum the following:

(a) The Software shall be accessible only by You or Your employees with a manifest “need to know” directly related to the purpose of this Agreement. You are responsible for the acts and omissions of Your employees with respect to the Software.

(b) You agree to record in a database or source code control system the user name, date and portion of the Software accessed, each time an employee accesses the Software. You shall keep such records for at least two (2) years after each access. You agree to make such records available for inspection by Immersion upon request.

(c) Any of Your employees who have access to Software and who terminate their association with You or who are assigned to a different project shall be immediately removed from access to the Software, and You shall take all reasonable actions to ensure that such employees have neither made nor kept copies of the same, whether in electronic or paper form.

(d) You agree to notify Immersion promptly if a breach of security occurs that compromises the confidentiality of the Software and to take actions appropriate in the circumstances or otherwise requested by Immersion to rectify such breach.

For the avoidance of doubt, the foregoing obligations, and all other of Your obligations relating to the Software, shall apply with respect to all enhancements, adaptations, improvements, derivative works and other modifications made to any Software.

2.4 Audit Rights. At Immersion’s written request, from time to time, (a) You will verify in writing Your compliance with this Agreement, and (b) Immersion may have an independent auditor review Your books, records, systems, and facilities to audit Your compliance with this Agreement. Any such audit shall be at Immersion’s expense; provided that if such audit reveals any material breach of this Agreement, You shall promptly pay to Immersion all costs and expenses of such audit. You shall correct any noncompliance.

2.5 No Support. Immersion has no obligation to provide support, maintenance, upgrades, modifications or new releases under this Agreement.

2.6 Collection of Performance Data. The Software allows Immersion to collect certain data about usage of the Software by You, as set forth in the Immersion Corporation Privacy Policy, available at the following web address: <http://www.immersion.com/legal/privacy/>. By accepting this Agreement, You acknowledge that You have reviewed the Immersion Corporation Privacy Policy, and hereby agree to comply with all terms and conditions set forth therein.

3. Proprietary Rights. Immersion retains and shall own all right, title and interest in and to the patent, copyright, trademark, trade secret and any other intellectual property rights (collectively, the “**Intellectual Property Rights**”) in and to the Software, as well as any changes, improvements, and modifications to, and adaptations and derivative works of, the foregoing produced by or on behalf of Immersion (collectively the “**Haptic Technology**”). No implied rights or licenses are granted pursuant to this Agreement. Except for the rights expressly provided herein, You shall not acquire any right to distribute or otherwise use any Haptic Technology (or practice any rights under Immersion’s patents) and the provision of, and license to, the Software hereunder is expressly conditioned on Your acknowledgement that such use may constitute infringement of Immersion’s Intellectual Property Rights (which is expressly prohibited) and that You must separately obtain a license with respect to any such use. In the event that any invention, work of authorship, creation, trade secret, change, improvement, modification, adaptation, or derivative work is developed by You using the Haptic Technology (an “**Improvement**”), unless prohibited by law all Intellectual Property Rights arising in respect of such Improvement shall initially vest in Immersion upon creation. Regardless of whether as a matter of law any Intellectual Property Rights arising in respect of such Improvement initially vest in You upon creation, in consideration of Immersion granting You the favorable license terms set forth in this Agreement (which You acknowledge and agree comprise a fair and reasonable consideration), You hereby irrevocably assign and agree to assign all rights, title, and interest in and to the Intellectual Property Rights in the Improvement to Immersion. You further agree to assist Immersion in any reasonable manner to obtain and enforce the Intellectual Property Rights in the Improvement (including to execute, when requested, applications and registrations therefor and assignments to Immersion). Immersion hereby grants to You a non-exclusive right to use the Intellectual Property Rights in the Improvement during the Term for Your internal use only in accordance with the stipulations and restrictions set forth in this Agreement. You hereby covenant that You will not assert

against Immersion any claim that the Software infringes any Intellectual Property Rights owned or controlled by You.

4. No Warranties; Remedies

4.1 No Warranties. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, (A) IMMERSION MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, OF ANY KIND WITH RESPECT TO THE SOFTWARE OR THE DOCUMENTATION, (B) THE SOFTWARE AND THE DOCUMENTATION ARE PROVIDED “AS IS” WITH NO WARRANTY, (C) YOU AGREE THAT YOUR USE OF THE SOFTWARE AND THE DOCUMENTATION IS AT YOUR SOLE RISK, AND (D) IMMERSION EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE AND THE DOCUMENTATION INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ACCURACY, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY ARISE OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. IMMERSION DOES NOT WARRANT THAT THE SOFTWARE OR ANY APPLICATION INCORPORATING THE SOFTWARE WILL OPERATE IN COMBINATION WITH HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY IMMERSION, EXCEPT AS EXPRESSLY SPECIFIED IN THE DOCUMENTATION, OR THAT THE OPERATION OF THE SOFTWARE OR ANY APPLICATION INCORPORATING THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE.

4.2 Limitation of Liability. IN NO EVENT WILL IMMERSION BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, BUSINESS, SAVINGS, DATA, USE OR COST OF SUBSTITUTE PROCUREMENT, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF IMMERSION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL IMMERSION’S LIABILITY FOR DAMAGES HEREUNDER, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE), EXCEED TWO HUNDRED AND FIFTY DOLLARS (U.S.\$250). THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 4.2 AND IN THE OTHER PROVISIONS OF THIS AGREEMENT AND THE ALLOCATION OF RISK HEREIN ARE AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES, WITHOUT WHICH IMMERSION WOULD NOT HAVE ENTERED INTO THIS AGREEMENT.

5. Term and Termination

This Agreement is effective for the period from the Effective Date until the expiration date set forth on the Immersion website where such Software is made available for download or accompanying delivery of the Software to You, unless earlier terminated (the “**Term**”). Either party may terminate this Agreement for any or no reason upon five (5) days’ prior notice to the other party (which, in the case of notice delivered to You, may be delivered via the email address or physical address provided by You when requesting or downloading the Software). In addition, Immersion may terminate this Agreement immediately in the event that You breach any of the provisions of this Agreement or take any action in derogation of Immersion’s rights in and to the Software. Upon termination or expiration of this Agreement, You will cease all use of the Software, return to Immersion or destroy the Software and related materials in Your possession, and so certify to Immersion. Immersion reserves the right to terminate the functionality of the Software at any time. Except for the licenses granted to You herein and as otherwise expressly provided herein, the terms of this Agreement will survive expiration or termination.

6. General Terms

6.1 Changes to this Agreement. Immersion may make changes to or otherwise amend this Agreement:

- (a) as it distributes new versions of the Software; or
- (b) with respect to any previously released version of the Software, via at least thirty (30) days’ prior written notice to You (which may be delivered via the email address or physical address provided by You when requesting or downloading the Software).

You agree that, if You do not agree with any change made by Immersion pursuant to Section 6.1(b) above, this Agreement (without such change) shall automatically terminate as of the date in which such change would become effective and, accordingly, Your right to use the previously released version of the Software shall terminate.

6.2 Confidentiality. You agree not to disclose to any third party (a) the contents of any documentation provided to You pursuant to this Agreement, and (b) any other Confidential Information of Immersion (including the contents of any Software or components thereof). For purposes of this Agreement, “**Confidential Information**” shall mean, with respect to Immersion, any non-public information (including business and/or technical information) of Immersion whether disclosed in writing, orally or visually, that is designated “confidential,” “proprietary,” or which, under all of the circumstances, should reasonably be treated as confidential. Confidential Information shall include, without limitation, business information, pricing and terms, related product documentation, technical data, algorithms, software (whether in object or source code), performance statistics, future plans, product road maps, customer and employee information, know-how (including reference designs), trade secrets, and other information of a non-public nature that is known or used by Immersion.

6.3 Indemnification. You will indemnify, defend, and hold harmless Immersion and its affiliates, and their successors, assigns, officers, directors, employees, and agents, from any claim, liability, loss, damage, lien, judgment, and cost, including reasonable attorneys’ fees and litigation expenses, with respect to Your use or misuse of the Software and any component thereof.

6.4 Law. This Agreement and all matters arising out of or relating to this Agreement will be governed by the internal laws of the State of California without giving effect to any choice of law rule. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sales of Goods, the application of which is expressly excluded.

6.5 Dispute Resolution (Hague Convention Resident). If You (or the entity that You represent) reside in, are incorporated within, or are otherwise located in a country that is a signatory to the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the “**Hague Convention**”), then in the event of any controversy, claim or dispute between the parties arising out of or relating to this Agreement, such controversy, claim or dispute may be tried solely in a State or Federal Court in Santa Clara County, California, and the parties hereby irrevocably consent to the exclusive jurisdiction and venue of such courts.

6.6 Arbitration. This Section 6.6 only applies if You (or the entity that You represent) reside in, are incorporated within, or are otherwise located in a country that is a signatory to The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, June 10, 1958 (the “**New York Convention**”), but not a signatory to the Hague Convention. The parties to this Agreement hereby irrevocably agree:

(a) Except with respect to the matters described in sub-sections (b) and (c) below, all claims, disputes, controversies, and other matters between the parties to this Agreement, arising out of or relating to this Agreement, or the breach thereof, which cannot be resolved by mutual agreement shall be resolved by binding arbitration to be conducted before the American Arbitration Association (the “**AAA**”), or its successor, in accordance with the Commercial Rules of the AAA then in effect. The arbitration proceeding shall be held in Santa Clara County in the State of California, before a single arbitrator selected in accordance with the rules and regulations of the AAA, and shall apply California’s substantive governing law. The cost of the arbitration shall be borne equally by the parties pending the arbitrator’s award. The prevailing party in any arbitration proceeding or litigation hereunder shall be entitled, in addition to such other relief as may be granted, to recover reasonable attorneys’ fees and the costs incurred in connection with arbitration or litigation under this Agreement. The arbitrator shall issue a reasoned award, which shall be enforceable in any court of competent jurisdiction.

(b) Notwithstanding sub-section (a) above, Immersion may bring any claim arising out of or relating to the infringement or misappropriation of intellectual property in any court of competent jurisdiction.

(c) Notwithstanding sub-section (a) above, Immersion may apply to any court of competent jurisdiction for interim relief in respect of any claim of whatsoever nature (including, but not limited to a temporary restraining order or a preliminary injunction).

(d) For the purposes of sub-sections (b) and (c) above, but without prejudice to sub-section (a) above, to submit to the non-exclusive jurisdiction and venue, within the State of California, of the State and/or Federal Courts in Santa Clara County, California.

6.7 Notices. All notices sent to Immersion under this Agreement shall be deemed effective when received and made in writing by either: (a) registered mail; (b) certified mail, return receipt requested; or (c) DHL, Federal Express, UPS, or other reliable overnight courier service, and, except as otherwise revised by written notice provided in conformance with this Section 6.7, shall be sent to the address and attention set forth below. All notices sent to You under this Agreement shall be deemed effective when received and made in writing by either: (i) electronic mail; (ii) registered mail; (iii) certified mail, return receipt requested; or (iv) DHL, Federal Express, UPS, or other reliable overnight courier service, and, except as otherwise revised by written notice provided in conformance with this Section 6.7, shall be sent to the email address or physical address provided by You when requesting or downloading the Software.

For Immersion Corporation:

Immersion Corporation
50 Rio Robles
San Jose, California 95134
ATTN: Legal Department

For Immersion Software Ireland Limited:

Immersion Software Ireland Limited
3rd Floor, Ulysses House
Foley Street
Dublin 1, Republic of Ireland
ATTN: Director

With a copy to:

Immersion Software Ireland Limited
c/o Corporate Legal
50 Rio Robles
San Jose, California 95134
ATTN: Legal Department

6.8 Severability and Waiver. If any provision of this Agreement is held to be illegal, invalid or otherwise unenforceable, such provision will be enforced to the extent possible consistent with the stated intention of the parties, or, if incapable of such enforcement, will be deemed to be severed and deleted from this Agreement, while the remainder of this Agreement will continue in full force and effect. The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.

6.9 No Assignment. You may not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any rights or obligations under this Agreement without the prior written consent of Immersion. Any purported assignment, transfer or delegation by You will be null and void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

6.10 Export Administration. THE SOFTWARE IS SUBJECT TO UNITED STATES EXPORT LAWS AND REGULATIONS. YOU MUST COMPLY WITH ALL DOMESTIC AND INTERNATIONAL EXPORT LAWS AND REGULATIONS THAT APPLY TO THE SOFTWARE. THESE LAWS INCLUDE RESTRICTIONS ON DESTINATIONS, END USERS AND END USE. FURTHER, ANY DIVERSIONS OF THE SOFTWARE THAT ARE CONTRARY TO U.S. LAW IS PROHIBITED.

6.11 U.S. Government End Users. The Software is “commercial computer software,” as that term is defined in the U.S. Federal Acquisition Regulations. The Software is being licensed to U.S. Government end users (a) only as commercial computer software and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.

6.12 Entire Agreement. This Agreement constitutes the entire agreement between the parties and, other than any Immersion license agreement manually signed by the parties, supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. In the event of a conflict between the terms of this Agreement and a manually-signed Immersion license agreement, the terms of such manually-signed license agreement will control. Except as provided under Section 6.1 above, this

Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party; no other act, document, usage or custom will be deemed to amend or modify this Agreement. It is expressly agreed that the terms of this Agreement will supersede the terms in any of Your purchase orders or other ordering documents.

BY CLICKING TO ACCEPT OR AGREE TO THIS AGREEMENT (WHERE THIS OPTION IS MADE AVAILABLE TO YOU) OR BY MAKING ANY USE OF THE SOFTWARE, YOU ACKNOWLEDGE THAT (1) YOU HAVE READ AND REVIEWED THIS AGREEMENT IN ITS ENTIRETY, (2) YOU AGREE TO BE BOUND BY THIS AGREEMENT, (3) THE INDIVIDUAL SO CLICKING HAS THE POWER, AUTHORITY AND LEGAL RIGHT TO ENTER INTO THIS AGREEMENT, AND (4) BY SO CLICKING, THIS AGREEMENT CONSTITUTES BINDING AND ENFORCEABLE OBLIGATIONS OF YOU.