

## SOFTWARE DEVELOPMENT LICENSE AGREEMENT

### IMPORTANT- READ CAREFULLY:

This Development License Agreement (hereinafter referred to as the "DLA") is a legal agreement between You (single person or entity hereinafter referred to as "You") and Total Immersion S.A. (hereinafter referred to as "Total Immersion") governing the use of the Total Immersion software, which includes computer software, associated media and printed materials, and "on-line" or electronic documentation (hereinafter referred to as the "Software").

By installing, copying or otherwise using the Software, You agree to be bound by the terms of this DLA. If You do not agree to the terms and conditions of this DLA, do not install or use the Software. Using any part of the Software indicates that You accept these terms.

The Software is protected by copyright laws (in particular the French Intellectual property code, articles L 112-2 13° and seq.) and international copyright treaties, as well as other intellectual property laws and treaties. All Software provided by Total Immersion and all copies including compilation, revisions, and updates thereof by You shall remain the sole property of Total Immersion.

### Definitions:

For the purpose of the DLA, the following terms, whether used in the singular or the plural, shall have the following meanings:

**"Application"** means the application(s) developed by You with the Software Development Kit under this DLA.

**"Contents for the Runtime Player"** means the three dimensional ("3D"), the multimedia contents and multimedia augmented reality application created and developed with the Software Authoring Tools by You, and only displayable with the Runtime Player. Contents for the Runtime Player are derived or composite works pursuant to the terms of article L. 113-2 § 2 of the French Intellectual property code.

**"Designated System"** means the computer hardware, operating system and software programs for use in conjunction with the SDK or the Software, and defined in the Documentation.

**"Runtime Player"** means the player integrated in the Software and used to display the Contents for Runtime Players with a watermark.

**"Documentation"** means any operating manuals, technical reference manuals, user instructions and other related materials relating to the SDK and the Software and generally made available by Total Immersion from time to time, whether physically or by electronic means.

**"Effective Date"** means the date that You download or otherwise access any portion of the SDK.

**"Free Version"** means the version of the SDK You can download and use for free. This version can be used solely in accordance with license terms defined below.

**"Intellectual Property Rights"** means any and all rights existing from time to time under patent law, copyright law, moral rights law, trade secret law, trademark law, and any and all other proprietary or intellectual property rights, as well as any and all applications, registrations, renewals, extensions, thereof, now or hereafter in force and effect in any jurisdiction in the world.

**"Pro Version"** means the version of the SDK provided by Total Immersion to You under a duly signed partnership agreement and in accordance with license terms defined below.

**"Runtime Key"** means the Software license key that enables You to distribute the Application without watermark. This Runtime Key is subject to a separate agreement between You and Total Immersion and can only be used with the Pro Version.

**"Software"** means the software included in the Software Development Kit. Total Immersion is the sole and exclusive owner of the Software; it being agreed that the Software may be amended from time to time by Total Immersion in its sole discretion. For clarification purpose, the Software includes, without limitation, the D'Fusion software.

**"Software Authoring Tools"** means the part of the Software enabling You to create and develop Contents for the Software player.

**"Software Development Kit (SDK)"** means the English version of the object code of the Software in machine readable form, including the Software Authoring Tools, the Runtime Player and related Documentation, for which You acquire this DLA on the Effective Date.

**"Total Immersion"** means Total Immersion S.A., a French corporation with principal place of business at 22 rue Edouard Nieuport, 92150 Suresnes, France.

## **1. License grants**

### **1.1 Free Version**

Total Immersion grants to You a limited, non-exclusive, non-transferable license to use the SDK solely to test and evaluate the Software or to develop Applications to run on the Designated System. Any and all Applications developed with the Free Version of the SDK is watermarked.

You are authorized to:

- Install and use the SDK on one (1) computer at a given point at a time.
- Use the SDK and all or part of its functionality subject to the terms and conditions of this DLA.
- Use the Software Authoring Tools to create and develop Contents for the Runtime Player.

ANY COMMERCIAL USE OF THE SOFTWARE, THE SDK, THE APPLICATION, OR ANY ELEMENT RELATED THERETO, IS PROHIBITED.

You shall not:

- Market or distribute any work or Application developed with the SDK.
- Create derivative works based on the SDK or on the Software.
- Reproduce the Software.
- Sell, assign, sublicense, disclose, or otherwise transfer or make available the SDK or the Software, or any copies thereof, in any form to any third parties.
- Alter, translate, decompile, or attempt to reverse engineer the SDK or the Software.
- Remove or alter any proprietary notices or marks on the Software, including, without limitation the watermark.
- Use the SDK or the Software in a time-sharing arrangement or in any other unauthorized manner.

You assume all risk associated with the quality, performance, installation and use of the SDK including, but not limited to, the risks of program errors, damage to equipment, loss of data or software programs, or unavailability or interruption of operations. You assume all risks associated with its use.

### **1.2 Pro version**

If You entered into a partnership agreement with Total Immersion, and subject to the payment of the corresponding license fees, Total Immersion grants to You a limited, non-exclusive, non-transferable license to use the SDK to develop Applications to run on the Designated System.

You are authorized to:

- Install and use the SDK on one (1) computer at a given point at a time.
- Transfer the SDK from one (1) computer to another, provided the SDK is used on one (1) computer at a given point at a time.
- Use the Software Authoring Tools to create and develop Contents for the Runtime Player.
- Directly market and distribute the Application to customers solely coupled with the Runtime Key and in accordance with the partnership agreement.

You shall not:

- Sell, assign, sublicense, disclose, or otherwise transfer or make available the SDK or the Software, or any copies thereof, in any form to any third parties.
- Alter, translate, decompile, or attempt to reverse engineer the SDK or the Software.
- Remove or alter any proprietary notices or marks on the Software.
- Use the SDK or the Software in a time-sharing arrangement or in any other unauthorized manner.

## **2. License limitations**

Total Immersion reserves all rights not expressly granted to You in this DLA.

Any operation not expressly authorized under this DLA shall only be carried out by You pursuant to a separate license agreement to be previously agreed upon and executed with Total Immersion or its Licensors, on a case by case basis.

Except as provided above, this DLA does not grant You any rights to patents, copyrights, trade secrets, trademarks, know how or any other rights in respect to the Software.

It is hereby specifically understood that the DLA hereby granted to You, whether related to the Free or to the Pro Version, may be used on one (1) site only, by staff employed by You, or third party developers under contract with You, drafted in accordance with the provisions of this DLA.

Use, reproduction and distribution of components of the SDK licensed under an open source software license are governed solely by the terms of that open source software license and not this DLA.

Total Immersion is not obligated to provide maintenance, technical support or updates to You for any portion of the SDK.

## **3. Export restrictions**

WHEN APPLICABLE, THE SDK 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 SDK. THESE LAWS INCLUDE RESTRICTIONS ON DESTINATIONS, END USERS AND END USE.

## **4. Intellectual property**

Total Immersion grants no rights or licenses, either directly or by implication, except as expressly set forth herein. You acknowledge that Total Immersion owns and retains all right, title and interest, including any Intellectual Property Rights in and to the Software, Total Immersion's technology or any other Total Immersion's material/element, whether now known or developed in the future by Total Immersion (including any updates).

Each copy of the Software and related documentation shall contain the same proprietary notices which appear on or in such Software, documentation as delivered by Total Immersion and as otherwise required by Total Immersion, including trademarks and other proprietary notices of Total Immersion and/or third parties. You agree not to remove or obscure any such notices, not to add any additional legends or notices without the prior written consent of Total Immersion.

Examples of Total Immersion proprietary notices:

- "Augmented by Total Immersion" logo
- "D'Fusion is a registered trademark of Total Immersion or its subsidiaries. (c)1999 - 2011 Total Immersion".

You shall promptly, whenever reasonably feasible, take all reasonable measures to protect those Intellectual Property Rights from infringement by any third party, and ensure similar compliance from your employees or agents.

You shall promptly notify Total Immersion of any actual or suspected unauthorized use of the SDK or the Software, and/or disclosure of any proprietary information of Total Immersion, of which You have knowledge, and You will cooperate fully, at Total Immersion's cost, with Total Immersion in the investigation and prosecution of such unauthorized use and/or disclosure. You acknowledge that Total Immersion shall have the exclusive right to institute infringement and other appropriate legal action against alleged infringers of the Software. Total Immersion shall retain all monetary recoveries received there from.

You shall not, nor permit others to, modify, correct any error contained in the Software, decompile, reverse engineer, disassemble the Software or attempt to discover the source code of the Software under any conditions.

When the SDK is delivered, You may receive, upon request, installation disks that will be considered as backup copies after the SDK's installation. In that case, You cannot make any copy of the SDK or the Software, either entirely or partially.

#### **5. Warranty disclaimer**

YOU EXPRESSLY ACKNOWLEDGE THAT YOUR USE OF THE SDK IS AT YOUR SOLE RISK AND THAT THE SDK IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND FROM TOTAL IMMERSION.

YOUR USE OF THE SDK AND ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SDK IS AT YOUR OWN DISCRETION AND RISK AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM SUCH USE.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TOTAL IMMERSION EXPRESSLY DISCLAIMS ALL WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

#### **6. Limitation of liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TOTAL IMMERSION ALSO EXCLUDES FOR ITSELF, ITS SUBSIDIARIES AND LICENSORS ANY LIABILITY WHETHER BASED IN CONTRACT OR TORT FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND OR FOR LOSS OF REVENUE OR PROFITS, BUSINESS PROFIT, BUSINESS INTERRUPTION, LOSS OF BUSINESS OR INFORMATION, OR ANY OTHER PECUNIARY LOSS ARISING OUT OR IN CONNECTION WITH THE SALE, INSTALLATION, THE USE OR INABILITY TO USE, PERFORMANCE, FAILURE OR INTERRUPTION OF THE SOFTWARE, EVEN IF TOTAL IMMERSION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TOTAL IMMERSION'S AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS DLA SHALL BE LIMITED TO THE AMOUNT PAID FOR THE SDK, IF ANY.

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 YOU.

#### **7. Indemnification**

To the maximum extent permitted by law, You agree to defend, indemnify and hold Total Immersion and its subsidiaries harmless from and against any and all liabilities, losses, actions, damages, lawsuits, or claims (including product liability, warranty and intellectual property claims, and all reasonable expenses, costs and attorneys fees), that arise or result from (a) your use of the SDK, (b) any Application or content you develop with the SDK that infringes copyright, trademark, trade secret, trade dress, patent or other Intellectual Property Right of any person or defames any person or violates their rights of publicity or privacy, and (c) any non-compliance by You with this DLA.

## **8. Term and termination**

This DLA enters into effect as of the Effective Date and shall remain in effect until terminated by either You or Total Immersion as set forth below.

Under no circumstances the duration of the DLA for the Free Version of the SDK will exceed one (1) year.

Without prejudice to any other rights, Total Immersion may terminate this DLA at any time in the event:

- You have breached any provision of this DLA;
- Total Immersion is required to do so by law;
- A third party with whom Total Immersion offered certain parts of the SDK to You has terminated its relationship with Total Immersion or ceased to offer certain parts of the SDK to You;
- Total Immersion decides to no longer providing the SDK or certain parts of the SDK to users in the country in which You are resident or from which You use the service, or the provision of the SDK or certain SDK services to You by Total Immersion is, in Total Immersion's sole discretion, no longer commercially viable.
- A new version (update or upgrade) of the Software or the SDK is released by Total Immersion.

You agree that Total Immersion may stop providing the SDK to You at Total Immersion's sole discretion, without prior notice to You.

If You want to terminate this DLA, you may do so by ceasing your use of the SDK and element related thereto.

Upon termination of this DLA, You shall cease any use of the SDK and the Software and shall return to Total Immersion or destroy (with written confirmation) the SDK and the Software, together with any copies thereof and related documentation, within one (1) month.

## **9. Miscellaneous**

### **9.1 No assignment**

You shall not sublicense, assign or transfer the SDK or the Software or your rights in the SDK or in the Software, or authorize any portion of the SDK or the Software to be copied onto or accessed from another individual's or entity's computer except as may be explicitly provided in this DLA. Notwithstanding anything to the contrary, You may transfer copies of the Software installed on one of your computers to another one of your computers provided that the resulting installation and use of the Software is in accordance with the terms of this DLA and does not cause You to exceed your right to use the SDK or the Software under this DLA.

### **9.2 Waiver**

No waiver of any provision of the Agreement shall be binding upon Total Immersion or Client unless set out in a written waiver signed by both Parties.

### **9.3 Severability**

If any provision of the Agreement is held to be invalid or unenforceable, such provision shall be severed from the Agreement but all remaining provisions shall remain in full force and effect.

#### **9.4 Communication**

You allow Total Immersion to publish a client list containing your name, which will be used by Total Immersion in advertising or promotional material, according to normal professional practice.

#### **9.5 Applicable law and litigation**

The DLA is governed and construed in accordance with French law. The parties agree that any dispute shall be submitted to the jurisdiction of Paris (Tribunal de Commerce de Paris).