

## NULLSPACE VR SDK LICENSE AGREEMENT

**READ THIS AGREEMENT CAREFULLY. YOUR ACCESS TO AND USE OF THE NULLSPACE VR SOFTWARE DEVELOPMENT KIT IS GOVERNED BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY INSTALLING, USING OR ACCESSING THE SDK, YOU ACCEPT THESE TERMS. IF YOU DO NOT ACCEPT THESE TERMS, DO NOT INSTALL, USE OR ACCESS THE SDK.**

### 1. Definitions

- a. **“Agreement”** means the version of this NullSpace VR SDK License Agreement as it appears on the NullSpace site at any given time.
- b. **“Application”** means engines, utilities, applications, content, games or demos that operate solely in connection with NullSpace Products.
- c. **“Authorized User”** means you and any member of your class or organization or any employee or contractor who (i) must have access to the SDK in order to develop Applications and (ii) understands and is bound by the terms of this Agreement.
- d. **“End User”** means any customer or licensee who has purchased or licensed your Application for personal use in connection with a NullSpace Product and not for redistribution or further development.
- e. **“Firmware”** means software programs, applications or instructions programmed on a device embedded in NullSpace Hardware.
- f. **“Intellectual Property Rights”** means all forms of intellectual property rights as recognized worldwide including, without limitation, patents, trademarks, copyrights, industrial design rights, moral rights, mask rights, trade secrets and proprietary know-how.
- g. **“NullSpace”, “us” or “we”** means NullSpace VR, Inc., a Delaware corporation with offices at 150 Lucius Gordon Drive, Suite 115, West Henrietta, NY, 14586.
- h. **“NullSpace Hardware”** means the NullSpace wearable haptic feedback device, suit and gloves and all electrical, mechanical, motorized, and non-software/firmware elements of the NullSpace Products.
- i. **“NullSpace Products”** means any device using NullSpace Hardware and NullSpace Software made commercially available by NullSpace.
- j. **“NullSpace Software”** means (i) the applications that operate and interact with NullSpace Hardware to provide core haptic feedback functionality and tracking, (ii) the SDK, and (iii) the NullSpace Firmware.
- k. **“SDK”** means the NullSpace Software Development Kit, (including programs, tools, sample code, templates, libraries, and interfaces), Updates, APIs, information, data, files, documentation, and other materials, whether tangible or intangible, in whatever form or medium (including on-line tools), provided to you at any time, either by way of downloading from NullSpace or otherwise provided to you, for purposes of developing an Application.
- l. **“Update”** means updates, upgrades, modifications, enhancements, revisions, new releases or new versions to the SDK.
- m. **“You” or “you”** means the person or entity which is entering into this Agreement with NullSpace and agreeing to be bound by its terms.

### 2. Acceptance and Scope of License; Changes

- a. Your acceptance of this Agreement (and any later versions), including the licenses granted and all restrictions, is evidenced by any one of the following: (i) installing the SDK, (ii) using of all or part of the SDK, (iii) developing an Application, or (iv) accepting the click-through license.
- b. When you accept this Agreement, you accept on behalf of yourself and all Authorized Users.

- c. NullSpace may change this Agreement or the SDK at its option, at any time and without notice to you, by posting them on the NullSpace site at <http://nullspacevr.com/>. You are responsible for checking the NullSpace site and ensuring that you are operating under the correct Agreement or SDK. Applications (and any updates to the Applications) are governed by the version of the Agreement and SDK in effect when they are developed. You may not develop an Application using a retired SDK or under the terms of an old Agreement.
- d. If you do not accept a new version of the Agreement, you must immediately stop using the SDK and terminate this Agreement as provided in Section 11.

### **3. License Grant and Restrictions**

- a. Subject to your compliance with the terms and conditions of this Agreement, NullSpace hereby grants you a limited, non-exclusive, perpetual, revocable, worldwide, royalty-free, personal and non-transferable license to:
  - (i) install complete copies of the SDK (including without limitation all "read me" files, copyright notices, and other legal notices and terms) on devices that are owned or controlled by you or Authorized Users;
  - (ii) use the SDK solely for the purpose of developing, prototyping and testing Applications;
  - (iii) modify, copy, incorporate into an Application, and distribute the source code form of any sample code provided in the SDK;
  - (iv) subject to Section 9(a)(3), modify, copy, incorporate into an Application, and distribute the source and object code form of any API code provided in the SDK;
  - (v) copy and distribute (or allow someone else to copy and distribute) the sample code and API in the SDK, solely as compiled with, incorporated into, or packaged with your Application; and
  - (vi) make (but not allow anyone else to make), use, sell, and offer for sale your Application.
- b. The license granted to you under Section 3(a) is subject to certain limitations. In addition to other obligations and restrictions outlined elsewhere in this Agreement, you may not:
  - (i) use the SDK for any purpose or in any manner not specifically mentioned in the license granted to you under Section 3(a);
  - (ii) use the SDK to develop applications for use with any non-NullSpace haptic device, hardware or software;
  - (iii) publish the SDK for others to use or copy;
  - (iv) create derivative works of the SDK;
  - (v) work around any technical limitations in the SDK or reverse engineer, decompile, disassemble or otherwise seek to ascertain the source code in the SDK, NullSpace Software, or NullSpace Firmware, except and only to the extent that applicable law expressly permits despite this limitation;
  - (vi) incorporate into or distribute with an Application any part of the SDK that is designated as non-distributable; or
  - (vii) remove or alter any copyright, trademark or proprietary notices from any part of the SDK.

### **4. Prohibited Applications; Waiver and Indemnity**

- a. You may not create Applications or other software that:

- (i) prevent or degrade the interaction of Applications developed by anyone else for use with the NullSpace Products;
  - (ii) disparage NullSpace or its products or services;
  - (iii) violate or infringe any NullSpace Intellectual Property Right; or
  - (iv) use the 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.
- b. You are not licensed and expressly agree not to develop Applications which might cause death or serious bodily injury to any person, or serious physical or environmental damage if your Application or NullSpace Products fail in any way. ANY SUCH USE IS STRICTLY PROHIBITED.
- c. You understand and acknowledge that (i) your Application will control the mechanical, electrical and motorized elements of NullSpace Products and (ii) that NullSpace Products and the SDK Software, in particular, may not always operate as intended or error free. For this reason, you must and expressly agree to design and test your Application to ensure that the Application or the failure of NullSpace Products does not present risk of personal injury or death or damage to real or personal property. **If you choose to use the SDK, (i) you assume all risk that your or someone else's use of the NullSpace Products, NullSpace Hardware or NullSpace Software causes any harm or loss, including to End Users of your Applications or to third parties, (ii) you hereby waive, on behalf of yourself and your Authorized Users, all claims against NullSpace related to such use, harm or loss (including, but not limited to, any claim that the SDK, NullSpace Products, NullSpace Hardware or NullSpace Software is defective), and (iii) you agree to indemnify, defend and hold harmless NullSpace VR from such claims.**

## 5. Updates

This Agreement will apply to any Updates made available to you by NullSpace. You acknowledge that Updates may require you to change or update your Application, and may affect your ability to use, access or interact with the SDK, NullSpace Software or NullSpace Hardware.

## 6. Trademarks and Publicity; Promotional License

- a. You must indicate that your Application "Works with NullSpace", has "Haptics Provided by NullSpace" or the like, but you may not use the NullSpace VR name or trademark in your Applications' names, company name, any URL, or logo or in a way that suggests your Applications come from or are endorsed by NullSpace. You may not use a NullSpace trademark, logo or service mark in any advertising, promotional or marketing materials, press release, endorsement or public statement without the prior written consent of NullSpace. Any permitted use will be subject to the NullSpace's branding guidelines and prior review.
- b. You will make reasonable effort to notify NullSpace in advance if any promotion, advertising, PR campaign or demonstration of your Application or NullSpace Products is likely to generate press or public inquiries to NullSpace. NullSpace may support your promotional activities, including technical and marketing advice or attendance at trade shows, but we are under no obligation to do so.
- c. You hereby grant to NullSpace, during the term of this Agreement, a limited, non-exclusive, worldwide, royalty-free, license to use, demonstrate, reproduce, display, perform, publish and distribute screenshots, elements, photographic, graphic or video reproductions or all or part of your Application in any medium or media, solely for purposes of promoting your Application or NullSpace and its technology and business.

NullSpace will use reasonable effort to ensure that any materials created under this license conform to your branding guidelines.

## **7. Pre-release Software and Hardware Obligations**

NullSpace may, at its option, make certain pre-release (alpha or beta) versions of software or hardware available to you which it identifies as non-public. You agree not to disclose such pre-release versions to anyone else without NullSpace's prior written consent unless or until they are made public by NullSpace, and that their use is governed by the terms of this Agreement.

## **8. Support and Feedback**

- a. NullSpace is not obligated to provide any technical or other support for the SDK to you or your End Users. However, if NullSpace chooses to provide any support to you, then you agree that NullSpace has an unrestricted right to use any technical or other information you provide for its business purposes, including for product support and development. NullSpace will not use such information in a form that personally identifies you.
- b. You may, at your option, provide feedback, comments and suggestions to NullSpace regarding technical and business issues. You hereby grant to NullSpace a non-exclusive, perpetual, irrevocable, paid-up, transferable, sub-licensable, worldwide license under all relevant Intellectual Property Rights to use, disclose and exploit all such feedback for any purpose.

## **9. Ownership**

- a. The SDK is licensed, not sold. NullSpace reserves all other rights not granted in this Agreement. The parties acknowledge that, as between NullSpace and you:
  - (i) NullSpace or its licensors retain complete ownership of all Intellectual Property Rights in and to the SDK;
  - (ii) you retain complete ownership of all Intellectual Property Rights in the Application (subject to NullSpace's underlying ownership of the Intellectual Property Rights in and to the SDK); and
  - (iii) If and to the extent you modify any source code in the API, you hereby grant to NullSpace a non-exclusive, perpetual, irrevocable, paid-up, transferable, sub-licensable, worldwide license under all applicable Intellectual Property Rights to use, disclose and exploit all such modifications for any purpose.
- b. Nothing in this Agreement will be construed to transfer or assign any Intellectual Property Rights of either party to the other

## **10. Data Collection and Privacy**

By submitting your information to NullSpace through your access to the SDK, you agree that NullSpace may periodically collect, process and store personal information provided by you, as well as technical non-personally-identifiable and/or aggregated information including (but not limited to) usage statistics, hardware configuration, problem/fault data, IP addresses, SDK version number, and use of SDK tools and services. NullSpace will use the collected data for internal statistical and analytical purposes, to verify compliance with this Agreement, and to improve the SDK and NullSpace Products and for no other purposes (except as required by law). We will not share your information with any third party for any reason.

## **11. Termination**

This Agreement will continue as long as you are in compliance with its terms or until otherwise terminated. NullSpace may terminate this Agreement for any reason or no reason at all by giving 5 business days written notice to you. You understand that by doing so we will not be liable to you or any other person for any inconvenience, losses or damages whatsoever. NullSpace may terminate this Agreement, effective immediately, if you fail to cure any breach of this Agreement within 10 days following notice of such breach from NullSpace. You may terminate this Agreement at any time with notice to NullSpace. When this Agreement is terminated by either party, you must immediately destroy all copies of the SDK in your possession or control and stop developing Applications. End Users may continue to use Applications after this Agreement is terminated.

## **12. Disclaimer of Warranties and Limitation of Liability**

THE SDK IS PROVIDED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NULLSPACE DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, 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 NULLSPACE 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. NULLSPACE'S TOTAL LIABILITY RELATING TO THE SDK OR THIS AGREEMENT WILL NOT, IN ANY EVENT, EXCEED US \$100.00. THE FOREGOING LIMITATIONS WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER NULLSPACE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

## **13. Indemnification**

You will defend, indemnify, and hold harmless NullSpace, including its directors, officers, employees, contractors, agents, and end users against any third party claim, suit, or proceeding and any liability, damage, loss, cost, and expenses (including attorney's fees) arising from the Claim threatened or brought against NullSpace alleging that any Application infringes (including contributory infringement) or misappropriates any third party Intellectual Property Right. NullSpace will provide you written notice of any claim within a reasonable time after it receives written notice of the Claim. NullSpace's failure to provide timely written notice will not excuse your obligation under this Agreement unless lack of actual notice of the claim has a substantially adverse effect on your ability to defend the claim. You will have sole control of the defense, but you will not settle any claim, and no settlement of a claim will be binding on NullSpace, without its prior written consent, which will not be unreasonably withheld or delayed.

## **14. Assignment**

NullSpace may assign this contract at any time without your consent, but we will use reasonable efforts to notify you regarding any changes of ownership. You may not assign, transfer or sublicense this Agreement to anyone else and any attempt to do so in violation of this section will be null and void.

## **15. Governing Law**

This Agreement will be governed and interpreted in accordance with the laws of the State of New York, United States, without regard to conflict of law principles.

## **16. Relationship**

NullSpace and you are independent third parties. Neither party has, nor may 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 in this Agreement may be construed as creating an employer/employee, franchiser/franchisee or principal/agent relationship between the parties.

## **17. Notices**

All notices under this Agreement must be in writing. NullSpace will send notices to you at the email address from which you accessed the SDK. You must send notices by recognized courier to NullSpace at the address listed in Section 1(g), with a copy to [contact@nullspacevr.com](mailto:contact@nullspacevr.com) with confirmation of receipt.

## **18. Export**

You acknowledge 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. You represent, warrant and covenant that (i) You are not, and are 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 (ii) You 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.

## **19. Severability; Enforceability**

If any provision of this Agreement is held invalid or unenforceable, the unenforceable provision will (i) not affect the validity or enforceability of any other provision of this Agreement, and (ii) be deemed modified to the limited extent required to permit its enforcement in a manner most closely approximating the intent of the parties.

## **20. Eligibility and Authority; Warranty**

You represent and warrant that (i) you are at least 18 years old or otherwise old enough to enter into this Agreement in your jurisdiction and (ii) have the authority to bind Authorized Users, if applicable.

## **21. Government Use**

The SDK provided to the U.S. Government as "**commercial items**," "**commercial computer software**," "**commercial computer software documentation**," and "**technical data**" (each, as defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement) with the same rights and restrictions generally applicable to others under this License Agreement. If you are using the SDK on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, you must immediately discontinue your use of the SDK.

**22. Survival**

Sections 9, 10, 12, 13 and 15 will survive the expiration or termination of this Agreement.

**23. Waiver**

A waiver of a breach of any term in this Agreement will not be considered (i) a waiver of another breach of the same term, (ii) a waiver of a breach of any other term, or (iii) a waiver of NullSpace's right to declare an immediate or a subsequent breach.

**24. Entire Agreement; Modifications**

This Agreement is the complete and exclusive statement of the mutual understanding between NullSpace and you and supersedes and cancels all previous written and oral agreements, negotiations and communications relating to its subject matter. This Agreement may only be modified or amended in a writing signed by both parties.