

Vuzix Corporation

M100 Software Development Kit License and Confidentiality Agreement

Terms and Conditions

1. Introduction

1.1 The Vuzix Corporation M100 Software Development Kit (referred to in this License Agreement as the "SDK" and specifically including the M100 system files, packaged APIs, and Vuzix APIs add-ons) is licensed to you subject to the terms of this License Agreement. This License Agreement forms a legally binding contract between you and Vuzix in relation to your use of the SDK.

1.2 "Android" means the Android software stack for devices, as made available under the Android Open Source Project, which is located at the following URL: <http://source.android.com/>, as updated from time to time.

1.3 "Confidential Information" shall mean any and all technical and non-technical information provided by Vuzix to you, including but not limited to any trade secret, idea, invention, information, process, technique, algorithm, computer program (source and object code), design, drawing, formula, model, or test data relating to research projects, work-in-process, future developments, engineering, licenses, manufacturing, marketing, servicing, financing, personnel matters, past, present or future products, sales, suppliers, clients, customers, employees, investors, inventors, or business, whether in oral, written, graphic, electronic or other form.

1.4 "Vuzix" means Vuzix Corporation, a Delaware corporation with principal place of business at 2166 Brighton Henrietta Town Line Road, Rochester, New York 14623, United States.

2. Accepting this License Agreement

2.1 In order to use the SDK, you must first agree to this License Agreement. You may not use the SDK if you do not accept this License Agreement.

2.2 By clicking to accept, you hereby agree to the terms of this License Agreement.

2.3 You may not use the SDK and may not accept the License Agreement if you are a person barred from receiving the SDK under the laws of the United States or other countries including the country in which you are resident or from which you use the SDK.

2.4 If you are agreeing to be bound by this License Agreement on behalf of your employer or other entity, you represent and warrant that you have full legal authority to bind your employer or such entity to this License Agreement. If you do not have the requisite authority, you may not accept the License Agreement or use the SDK on behalf of your employer or other entity.

3. SDK License from Vuzix

3.1 Subject to the terms of this License Agreement, Vuzix grants you a limited, worldwide, royalty-free, non-assignable and non-exclusive license to use the SDK solely to develop applications to run on the Android platform.

3.2 You agree that Vuzix or third parties own all legal right, title and interest in and to the SDK, including any Intellectual Property Rights that subsist in the SDK. "Intellectual Property Rights" means any and all rights under patent law, copyright law, trade secret law, trademark law, and any and all other proprietary rights. Vuzix reserves all rights not expressly granted to you.

3.3 You may not use the SDK for any purpose not expressly permitted by this License Agreement. Except to the extent required by applicable third party licenses, you may not: (a) copy (except for backup purposes), modify, adapt, redistribute, decompile, reverse engineer, disassemble, or create derivative works of the SDK or any part of the SDK; or (b) load any part of the SDK onto a mobile handset or any other hardware device except a personal computer, combine any part of the SDK with other software, or distribute any software or device incorporating a part of the SDK.

3.4 You agree that you will not take any actions that may cause or result in the fragmentation of Android, including but not limited to distributing, participating in the creation of, or promoting in any way a software development kit derived from the SDK.

3.5 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 License Agreement.

3.6 You agree that the form and nature of the SDK that Vuzix provides may change without prior notice to you and that future versions of the SDK may be incompatible with applications developed on previous versions of the SDK. You agree that Vuzix may stop (permanently or temporarily) providing the SDK (or any features within the SDK) to you or to users generally at Vuzix' sole discretion, without prior notice to you.

3.7 Nothing in this License Agreement gives you a right to use any of Vuzix' trade names, trademarks, service marks, logos, domain names, or other distinctive brand features.

3.8 You agree that you will not remove, obscure, or alter any proprietary rights notices (including copyright and trademark notices) that may be affixed to or contained within the SDK.

4. Use of the SDK by You

4.1 Vuzix agrees that it obtains no right, title or interest from you (or your licensors) under this License Agreement in or to any software applications that you develop using the SDK, including any intellectual property rights that subsist in those applications.

4.2 You agree to use the SDK and write applications only for purposes that are permitted by (a) this License Agreement and (b) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions (including any laws regarding the export of data or software to and from the United States or other relevant countries).

4.3 You agree that if you use the SDK to develop applications for general public users, you will protect the privacy and legal rights of those users. If the users provide you with user names, passwords, or other login information or personal information, you must make the users aware that the information will be available to your application, and you must provide legally adequate privacy notice and protection for those users. If your application stores personal or sensitive information provided by users, it must do so securely. If the user provides your application with Vuzix Account information, your application may only use that information to access the user's Vuzix Account when, and for the limited purposes for which, the user has given you permission to do so.

4.4 You agree that you will not engage in any activity with the SDK, including the development or distribution of an application, that interferes with, disrupts, damages, or accesses in an unauthorized manner the servers, networks, or other properties or services of any third party including, but not limited to, Vuzix or any mobile communications carrier.

4.5 You agree that you are solely responsible for (and that Vuzix has no responsibility to you or to any third party for) any data, content, or resources that you create, transmit or display through Android and/or applications for Android, and for the consequences of your actions (including any loss or damage which Vuzix may suffer) by doing so.

4.6 You agree that you are solely responsible for (and that Vuzix has no responsibility to you or to any third party for) any breach of your obligations under this License Agreement, any applicable third party contract or Terms of Service, or any applicable law or regulation, and for the consequences (including any loss or damage which Vuzix or any third party may suffer) of any such breach.

4.7 You agree that you will not use the SDK to distribute or sell applications for use in military, defense, law enforcement or first responder markets without the prior written consent from and additional licensing from VUZIX.

5. Your Developer Credentials

5.1 You agree that you are responsible for maintaining the confidentiality of any developer credentials that may be issued to you by Vuzix or which you may choose yourself and that you will be solely responsible for all applications that are developed under your developer credentials.

6. Privacy and Information

6.1 In order to continually innovate and improve the SDK, Vuzix may collect certain usage statistics from the software including but not limited to a unique identifier, associated IP address, version number of the software, and information on which tools and/or services in the SDK are being used and how they are being used. Before any of this information is collected, the SDK will notify you and seek your consent. If you withhold consent, the information will not be collected.

6.2 The data collected is examined in the aggregate to improve the SDK and is maintained in accordance with Vuzix' Privacy Policy.

7. Third Party Applications

7.1 If you use the SDK to run applications developed by a third party or that access data, content or resources provided by a third party, you agree that Vuzix is not responsible for those applications, data, content, or resources. You understand that all data, content or resources which you may access through such third party applications are the sole responsibility of the person from which they originated and that Vuzix is not liable for any loss or damage that you may experience as a result of the use or access of any of those third party applications, data, content, or resources.

7.2 You should be aware the data, content, and resources presented to you through such a third party application may be protected by intellectual property rights which are owned by the providers (or by other persons or companies on their behalf). You may not modify, rent, lease, loan, sell, distribute or create derivative works based on these data, content, or resources (either in whole or in part) unless you have been specifically given permission to do so by the relevant owners.

7.3 You acknowledge that your use of such third party applications, data, content, or resources may be subject to separate terms between you and the relevant third party. In that case, this License Agreement does not affect your legal relationship with these third parties.

8. Using M100 APIs

8.1 Vuzix Data APIs

8.1.1 If you use any API to retrieve data from Vuzix, you acknowledge that the data may be protected by intellectual property rights which are owned by Vuzix or those parties that provide the data (or by other persons or companies on their behalf). Your use of any such API may be subject to additional Terms of Service. You may not modify, rent, lease, loan, sell, distribute or create derivative works based on this data (either in whole or in part) unless allowed by the relevant Terms of Service.

8.1.2 If you use any API to retrieve a user's data from Vuzix, you acknowledge and agree that you shall retrieve data only with the user's explicit consent and only when, and for the limited purposes for which, the user has given you permission to do so.

9. Terminating this License Agreement

9.1 This License Agreement will continue to apply until terminated by either you or Vuzix as set out below.

9.2 If you want to terminate this License Agreement, you may do so by ceasing your use of the SDK and any relevant developer credentials.

9.3 Vuzix may at any time, terminate this License Agreement with you if: (A) you have breached any provision of this License Agreement; or (B) Vuzix is required to do so by law; or (C) the partner with whom Vuzix offered certain parts of SDK (such as APIs) to you has terminated its relationship with Vuzix or ceased to offer certain parts of the SDK to you; or (D) Vuzix decides to no longer provide 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 Vuzix is, in Vuzix' sole discretion, no longer commercially viable.

9.4 When this License Agreement comes to an end, all of the legal rights, obligations and liabilities that you and Vuzix have benefited from, been subject to (or which have accrued over time whilst this License Agreement has been in force) or which are expressed to continue indefinitely, shall be unaffected by this cessation, and the provisions of paragraph 15.7 shall continue to apply to such rights, obligations and liabilities indefinitely.

10. DISCLAIMER OF WARRANTIES

10.1 YOU EXPRESSLY UNDERSTAND AND AGREE 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 VUZIX.

10.2 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.

10.3 VUZIX FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

11. LIMITATION OF LIABILITY

11.1 YOU EXPRESSLY UNDERSTAND AND AGREE THAT VUZIX, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS SHALL NOT BE LIABLE TO YOU UNDER ANY THEORY OF LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES THAT MAY BE INCURRED BY YOU, INCLUDING ANY LOSS OF DATA, WHETHER OR NOT VUZIX OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING.

12. Indemnification

12.1 To the maximum extent permitted by law, you agree to defend, indemnify and hold harmless Vuzix, its affiliates and their respective directors, officers, employees and agents from and against any and all claims, actions, suits or proceedings, as well as any and all losses, liabilities, damages, costs and expenses (including reasonable attorneys fees) arising out of or accruing from (a) your use of the SDK, (b) any application you develop on the SDK that infringes any 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 License Agreement.

13. Changes to the License Agreement

13.1 Vuzix may make changes to the License Agreement as it distributes new versions of the SDK. When these changes are made, Vuzix will make a new version of the License Agreement available on the website where the SDK is made available.

14. Confidential Information

14.1 Confidential Information disclosed in tangible form may or may not be marked with a "confidential," "proprietary," or other similar legend. Whether or not so marked, the information shall be deemed to be Confidential Information. No rights or licenses to trademarks, inventions, copyrights or patents or otherwise are implied or granted under this License Agreement and all right, title and interest in the Confidential Information shall remain with Vuzix.

14.2 You shall not disclose the Confidential Information to any third party without the prior written approval of Vuzix and shall maintain the Confidential Information with at least the same degree of care that you use to protect your own similar categories of confidential and proprietary information, but no less than a reasonable degree of care under the circumstances.

14.3 Confidential Information shall not be reproduced in any form, except as required to accomplish the intent of this Agreement.

14.4 All obligations of confidentiality shall survive after the termination of this Agreement.

14.5 Confidential Information shall not include information which: (a) is or becomes a part of the public domain through no act or omission of You; or (b) was in your lawful possession prior to the disclosure and had not been obtained by You either directly or indirectly from Vuzix; or (c) is lawfully disclosed to You by a third party without restriction on disclosure; or (d) You can adequately demonstrate was independently developed by You without use of or reference to Vuzix' Confidential Information.

14.6 You will use Confidential Information solely in connection with this License Agreement. Upon Vuzix' written request, you will promptly return all Confidential Information and copies, or certify in writing that it has destroyed all such materials.

15. General Legal Terms

15.1 This License Agreement constitutes the whole legal agreement between you and Vuzix and governs your use of the SDK (excluding any services which Vuzix may provide to you under a separate written agreement), and completely replaces any prior agreements between you and Vuzix in relation to the SDK.

15.2 You agree that if Vuzix does not exercise or enforce any legal right or remedy which is contained in this License Agreement (or which Vuzix has the benefit of under any applicable law), this will not be taken to be a formal waiver of Vuzix' rights and that those rights or remedies will still be available to Vuzix.

15.3 If any court of law, having the jurisdiction to decide on this matter, rules that any provision of this License Agreement is invalid, then that provision will be removed from this License Agreement without affecting the rest of this License Agreement. The remaining provisions of this License Agreement will continue to be valid and enforceable.

15.4 You acknowledge and agree that each member of the group of companies of which Vuzix is the parent shall be third party beneficiaries to this License Agreement and that such other companies shall be entitled to directly enforce, and rely upon, any provision of this License Agreement that confers a benefit on (or rights in favor of) them. Other than this, no other person or company shall be third party beneficiaries to this License Agreement.

15.5 EXPORT RESTRICTIONS. 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.

15.6 The rights granted in this License Agreement may not be assigned or transferred by either you or Vuzix without the prior written approval of the other party. Neither you nor Vuzix shall be permitted to delegate their responsibilities or obligations under this License Agreement without the prior written approval of the other party.

15.7 This License Agreement, and your relationship with Vuzix under this License Agreement, shall be governed by the laws of the State of New York without regard to its conflict of laws provisions. You and Vuzix agree to submit to the exclusive jurisdiction of the courts located within the county of Rochester, New York to resolve any legal matter arising from this License Agreement. Notwithstanding this, you agree that Vuzix shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

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