

## **Vuzix Publisher Distribution Agreement**

By uploading or otherwise making available applications or any other materials via the Vuzix App Store, you (on behalf of yourself or the business you represent) agree to be bound by the terms of this agreement. As used in this Agreement, "we," "us," and "Vuzix" means Vuzix Corporation ("Vuzix"), a company with principal place of business at 25 Hendrix Rd, West Henrietta, NY 14586 or any of its affiliates, and "you" and "Publisher" means the applicant (if registering as an individual), or the business employing the applicant (if registering as a business). Capitalized terms have the meanings listed in the Definitions below.

### **Definitions**

**Device:** Any device that can access the Vuzix App Store, as defined herein.

**Products:** Software, content and digital materials distributed via the Vuzix App Store.

**Vuzix Developer Account:** An account issued to users of Vuzix App Store that enables the distribution of Products via the Vuzix App Store.

**Vuzix App Store:** the Store managed by Vuzix.

**Services:** The services provided by Vuzix in relation to the distribution of Products via the Vuzix App Store.

### **1. Introduction**

1.1 The Vuzix App Store is a publicly available site on which Publishers can distribute their own Products for Vuzix Devices. In order to distribute your Products through the Vuzix App Store, you must maintain a valid Vuzix Developer Account.

### **2. Accepting this Agreement**

2.1 This agreement ("Agreement") forms a legally binding contract between you and Vuzix in relation to distribution of Products via the Vuzix App Store. In order to distribute Products via the Vuzix App Store, you must first agree to this Agreement by accepting it online (through the button "I accept"). You may not distribute Products on the Vuzix App Store if you do not accept this Agreement.

2.2 Use of the Vuzix App Store and Services is limited to parties that lawfully can enter into and form contracts under applicable law.

2.3 you represent and warrant that: (a) if you are a business, you are duly organized, validly existing and in good standing under the laws of the country in which your business is registered; and (b) you have all requisite right, power and authority to enter into this Agreement and perform your obligations hereunder.

### **3. Distribution of Products**

3.1 you can distribute your Products through the Vuzix App Store.

3.2 You agree to use the Vuzix App Store for distribution of your Products only for purposes that are permitted by (a) this Agreement, (b) the Vuzix App Store Terms of Service and Privacy Policy and (b) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions.

**3.5 Privacy of Device Users.** You agree that if you use the Vuzix App Store to distribute your own Products, you will protect the privacy and legal rights of users. If the users provide you with, or your Product accesses or uses, user names, passwords, or other login information or personal information, you must make the users aware that the information will be available to your Product, and you must provide legally adequate privacy notice and protection for those users. Further, your Product may only use that information for the limited purposes for which the user has given you permission to do so. If your Product stores personal or sensitive information provided by users, it must do so securely and only for as long as it is needed. But if the user has opted into a separate agreement with you that allows you or your Product to store or use personal or sensitive information directly related to your Product (not including other products or applications) then the terms of that separate agreement will govern your use of such information. If the user provides your Product with Vuzix Account information, your Product 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.

Vuzix owns all the information related to customers of the Vuzix App Store and to the transactions entered with such customers; Vuzix may share this information with you, following specific agreement, if that is allowed by the applicable laws.

**3.6 Prohibited Actions.** you agree that you will not engage in any activity with the Vuzix App Store, including the publishing or distribution of Products, that interferes with, disrupts, damages, or accesses in an unauthorized manner the devices, servers, networks, or other properties or services of any third party including, but not limited to, Device users and Vuzix. You may not use customer information obtained from the Vuzix App Store to sell or distribute Products outside of the Vuzix App Store.

**3.7 Non-Compete.** You may not use the Vuzix App Store to distribute or make available any Product whose primary purpose is to facilitate the distribution of software applications and games for use on devices outside of the Vuzix App Store.

3.8 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 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.

**3.9 Product Ratings.** The Vuzix App Store in the future will allow users to rate Products. Product ratings may be used to determine the placement of Products on the Store with higher rated Products generally given better placement. Your Products may be subject to user ratings to which you may not agree. You may contact Vuzix if you have any questions or concerns regarding such ratings.

**3.12 Restricted Content.** Any Product you distribute on the Vuzix App Store must adhere to Vuzix Content Policy for Publishers located at <http://www.Vuzix.com/contentpolicy>

**3.13 Support.** You will be solely responsible for support and maintenance of your Products and any complaints about your Products. Your contact information will be displayed in each application detail page and made available to users for customer support purposes.

#### **4. Products Revenue Share.**

4.1 If you enroll as a Vuzix Developer, this Agreement covers the share of the revenue generated by the sale of your Products.

4.2 You may set the price for your Products in the currencies permitted by the Vuzix App Store. The Vuzix App Store may display to users the price of Products in their native currency, but it is not responsible for the accuracy of currency rates or conversion.

4.3 The sales prices for your Products are determined by you. Third party Products prices are determined by their authors or distributors. Prices set by the Publisher shall be inclusive of all indirect taxes.

4.4 As an exception to 4.3, Vuzix may agree with some partners that the price set by you for your Products will be adjusted to a round figure that such partner is able to charge its customers. This may lead to changes in the sales price defined by you, always to the closest higher price set by the partner at issue.

4.5 The Publisher has the primary responsibility to collect and remit all indirect taxes for sale of Products to the appropriate taxation authorities; Vuzix will provide sufficient data to the Publisher for this purpose.

4.6 The price you set for Products will determine the amount of payment you will receive. For Products provided by third parties that you sell through your Store, the amount you will receive will be calculated over the price less the revenue share due to such third parties. The amount to be paid to you is equal to the sales price less the share due to: (i) third party Publishers, (ii) Vuzix, (iii) Vuzix' Partners and (iii) Payment Processor. Such amounts will be remitted to you according to these Agreement rules.

4.7 The default (Tier 1) revenue share for certified publishers is 70% for you and 30% for Vuzix, after deduction of all transaction expenses. Minimum fee from Vuzix to utilize the app store for app distribution will be \$3.00.

4.8 You may also choose to distribute free Products. If the Product is free, you will not be entitled to receive any amounts.

4.9 **Special Refund Requirements.** You authorize Vuzix to give the buyer a full refund of the Product price if the buyer requests the refund within 24 hours after purchase.

4.10 **Reinstalls.** Users are allowed unlimited reinstalls of each application distributed via the Vuzix App Store, provided however that if you remove paid Products from the Vuzix App Store, such Products shall be removed from all portions of the Vuzix App Store and users shall no longer have a right or ability to reinstall the affected Products.

#### **6. Payments**

6.1 You shall receive payments related to the sale of your Products, as determined by Vuzix for the participants in this Vuzix Publishers Distribution Agreement.

6.2 Unless otherwise agreed to by the parties in writing (including by electronic mail), payments to you shall be sent by Vuzix within approximately thirty (30) days after the end of each calendar quarter that Products are sold on your Store if your total earned balance is 200 USD or more.

6.3 In the event the Agreement is terminated, Vuzix shall pay your earned balance to you within approximately ninety (90) days after the end of the calendar month in which the Agreement is terminated by you (following Vuzix' receipt of your written request, including by email, to terminate the Agreement) or by Vuzix. In no event, however, shall Vuzix make payments for any earned balance less than 20 USD.

6.4 If you are past due on any payment to Vuzix, Vuzix reserves the right to withhold payment until all outstanding payments have been made or to offset amounts owed to you in connection with the Program by amounts owed by you to Vuzix.

6.5 To ensure proper payment, you are solely responsible for providing and maintaining accurate address and other contact information as well as payment information associated with your account. This information includes without limitation a valid address and tax identification number.

6.6 You are responsible for all of your expenses in connection with this Agreement, unless this Agreement expressly provides otherwise.

6.7 You agree to pay all applicable taxes or charges imposed by any government entity in connection with your participation in this Vuzix Publishers Distribution Agreement.

6.8 As a security measure, we may, but are not required to, impose transaction limits relating to the value of any transaction or disbursement, the cumulative value of all transactions or disbursements during a period of time, or the number of transactions per day or other period of time. We will not be liable to you: (i) if we do not proceed with a transaction or disbursement that would exceed any limit established by us for a security reason, or (ii) if we permit a customer to withdraw from a transaction because the Vuzix App or the Vuzix App Store are unavailable following the commencement of a transaction.

## **7. License Grants**

7.1 Vuzix reserves the right to determine and control all aspects (including all functionality) of the Vuzix App.

you may not and may not authorize any other party to do the following to or with the Vuzix App Store or other materials provided by Vuzix: (a) reverse engineer, decompile, or disassemble them; (b) modify or create derivative works based upon them in whole or in part; (c) distribute copies of them; (d) remove any proprietary notices or labels on them; or (e) resell, lease, rent, transfer, sublicense, or otherwise transfer rights to them. In addition to any other rights or remedies that we may have, any use in violation of this section will immediately terminate your right to use the Vuzix App Store.

You acknowledge and agree that Vuzix owns all right, title and interest in and to the Vuzix App Store, materials provided by Vuzix or Vuzix trademarks, and, except as explicitly included in this Agreement, you do not, by virtue of this Agreement or otherwise, acquire any ownership interest or rights in or to them. All licenses not expressly granted in this Agreement are reserved and no other licenses, immunity or rights, express or implied are granted by us, by implication, estoppels or otherwise.

7.2 you grant to Vuzix a nonexclusive, and royalty-free license to distribute the Products on the Vuzix Site.

7.3 You grant to Vuzix a nonexclusive, worldwide, and royalty-free license to: copy, perform, display, and use the Products for administrative and demonstration purposes.

7.4 **EULA** You may provide a EULA (“Publisher’s EULA”) with any Product if it complies with the requirements of, and is not inconsistent with, this Agreement. For any Product you submit to the Vuzix App Store, you agree that the provisions of the Vuzix App Store Terms of Use in regard of what we designate as Standard end user license terms (“Standard EULA Terms”) will apply to end users’ use of your Products. The Standard EULA Terms will specify, among other things, that you are the licensor of the Products and that we are not parties to your EULA. If there are any conflicts between the Standard EULA Terms and the Publisher’s EULA, then to the extent of such conflict the Standard EULA Terms will control. We do not have any responsibility or liability related to compliance or non-compliance by you or any end user under a Publisher’s EULA or the Standard EULA Terms.

The Standard EULA includes the following end user license terms, and if the Product does not include a Publisher’s EULA, these terms will constitute the entire EULA between the Publisher and the end users:

(i) The Publisher is the licensor of the Product.

(ii) If the Product does not include a Publisher’s EULA that specifies license rights, Publisher grants the end user a limited, nontransferable license to download and use the Product only for personal and noncommercial purposes.

(iii) You may not modify, reverse engineer, decompile or disassemble the Product in whole or in part, or create any derivative works from or sublicense any rights in the Product, unless otherwise expressly authorized in writing by Publisher.

(iv) The Product is protected by copyright and other intellectual property laws and treaties. Unless otherwise expressly stated in the Publisher’s EULA, Publisher or its licensors own all title, copyright and other intellectual property rights in the Product, and the Product is licensed, not sold.

(v) The end user acknowledges and agrees that Vuzix has no responsibility or liability with respect to your use of the Product or any content or functionality in the Product.

7.5 You represent and warrant that you have all intellectual property rights, including all necessary patent, trademark, trade secret, copyright or other proprietary rights, in and to the Product. If you use third-party materials, you represent and warrant that you have the right to distribute the third-party material in the Product. You agree that you will not submit material to Vuzix App Store that is copyrighted, protected by trade secret or otherwise subject to third party proprietary rights, including patent, privacy and publicity rights, unless you are the owner of such rights or have permission from their rightful owner to submit the material.

7.6 Vuzix grants you a non-exclusive, non-transferable, non-assignable, revocable right and license during the term of this Agreement to use the Vuzix marks solely in connection with your use of the Services for which the Vuzix marks were provided to you. You must use the Vuzix marks solely in the manner in which they were provided to you, meaning you may not change, alter, amend, vary, or modify the Vuzix marks in any way, at any time. You may not use any Vuzix mark except as expressly provided

herein, and may not sublicense these rights or otherwise permit any party to use the Vuzix marks. You acknowledge that Vuzix is the sole owner of the Vuzix marks, and you agree to do nothing inconsistent with that ownership. All goodwill arising out of your use of the Vuzix marks will inure to the sole benefit of Vuzix. Vuzix may revoke your license to any or all of the Vuzix marks at any time in its sole discretion. Upon the termination this Agreement, or termination or suspension of the Services for which any Vuzix mark was provided to you, you shall immediately cease and discontinue all further use of the Vuzix mark.

## **8. Publicity**

8.1 you agree that Vuzix may use your name and logo in presentations, marketing materials, customer lists, financial reports, Web site listings of customers and Referral Pages.

## **9. Product Takedowns.**

9.1 **Your Takedowns.** You may remove your Products from future distribution via the Vuzix App Store at any time, but you must comply with this Agreement for any Products distributed through the Vuzix App Store, including but not limited to refund requirements. Removing your Products from future distribution via the Vuzix App Store does not (a) affect the license rights of users who have previously purchased or downloaded your Products, (b) remove your Products from Devices or from any part of the Vuzix App Store where previously purchased or downloaded applications are stored on behalf of users, or (c) change your obligation to deliver or support Products or services that have been previously purchased or downloaded by users. Notwithstanding the foregoing, in no event will Vuzix maintain on any portion of the Vuzix App Store (including, without limitation, the part of the Vuzix App Store where previously purchased or downloaded applications are stored on behalf of users) any paid Product that you have removed from the Vuzix App Store and provided written notice to Vuzix that such removal was due to (i) an allegation of infringement, or actual infringement, of any copyright, trademark, trade secret, trade dress, patent or other intellectual property right of any person, (ii) an allegation of defamation or actual defamation, (iii) an allegation of violation, or actual violation, of any third party's right of publicity or privacy, or (iv) an allegation or determination that such Product does not comply with applicable law.

9.2 **Vuzix Takedowns.** If Vuzix is notified by you or otherwise becomes aware that a Product or any portion thereof; (a) violates the intellectual property rights or any other rights of any third party; (b) violates any applicable law or is subject to an injunction; (c) violates Vuzix' policies or other terms of service as may be updated by Vuzix from time to time in its sole discretion; (d) is being distributed by you improperly; (e) may create liability for Vuzix ; (f) is deemed by Vuzix to have a virus or is deemed to be malware, spyware or have an adverse impact on Vuzix' infrastructure; (g) violates the terms of this Agreement or the Partner Program Policies for Partners; or (h) the display of the Product is impacting the integrity of Vuzix servers (i.e., users are unable to access such content or otherwise experience difficulty), Vuzix may remove the Product from the Vuzix App Store.

In the event that your Product is involuntarily removed because it is defective, malicious, infringes intellectual property rights of another person, defames, violates a third party's right of publicity or privacy, or does not comply with applicable law, and an end user purchased such Product within a year before the date of takedown,: (i) you must refund to Vuzix, all amounts received, plus any associated

fees (i.e. chargebacks and payment transaction fees), and (ii) Vuzix may, at its sole discretion, withhold from your future sales the amount in subsection (i) above.

**9.3 DMCA Notices.** If Vuzix receives a Notice according to the US Digital Millennium Copyright Act (DMCA), Vuzix will immediately remove the Product in question. Such notices shall be directed to Vuzix' DMCA Agent at [abuserreport@Vuzix.com](mailto:abuserreport@Vuzix.com).

**9.4 Repeat Infringers Policy.** If Vuzix verifies or is warned of repeat infringement by a Publisher of (a) the intellectual property rights or any other rights of any third party; (b) any applicable law or this Agreement; (c) Vuzix' policies or other terms of service as may be updated by Vuzix from time to time in its sole discretion; or repeat upload of Products (d) containing virus or malware, spyware or which have an adverse impact on Vuzix' infrastructure; (e) impacting the integrity of Vuzix servers (i.e., users are unable to access such content or otherwise experience difficulty), Vuzix will terminate the Publisher's User Account and remove all of such Publisher's Products from the Vuzix App Store.

## **10. Your Partner Credentials**

10.1 You agree that you are responsible for maintaining the confidentiality of any 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 published under your credentials.

## **11. Privacy and Information**

11.1 In order to continually innovate and improve the Vuzix App Store, Vuzix may collect certain usage statistics from the Vuzix App Store and Devices, including but not limited to, information on how the Vuzix App Store and Devices are being used.

11.2 The data collected is examined in the aggregate to improve the Vuzix App Store for users and Partners and is maintained in accordance with Vuzix' Privacy Policy. To ensure the improvement of Products, limited aggregate data may be available to you.

## **12. Terminating this Agreement**

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

12.2 If you want to terminate this Agreement, you must provide Vuzix with thirty (30) days prior written notice and cease your use of any relevant credentials.

12.3 Vuzix may at any time, terminate this Agreement with you if:

- (A) You have breached any provision of this Agreement; or
- (B) Vuzix is required to do so by law; or
- (C) Vuzix decides to no longer provide the Store or Vuzix App Store.

12.4 Upon termination, all rights and obligations of the parties under this Agreement will terminate, except that Sections 8 to 18 will survive termination.

## **13. DISCLAIMER OF WARRANTIES**

13.1 YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE USE OF THE VUZIX APP STORE ARE AT YOUR SOLE RISK AND THAT THEY ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND.

13.2 YOUR USE OF THE VUZIX APP STORE IS AT YOUR OWN DISCRETION AND RISK AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ANY COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM SUCH USE.

13.3 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.

#### **14. LIMITATION OF LIABILITY**

14.1 CONSIDERING THE ABSENCE OF WARRANTIES DESCRIBED ABOVE, 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. FURTHER, OUR AGGREGATE LIABILITY ARISING OUT OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED WILL NOT EXCEED AT ANY TIME THE TOTAL AMOUNTS DURING THE PRIOR SIX MONTH PERIOD PAID BY YOU TO VUZIX IN CONNECTION WITH THE PARTICULAR SERVICE GIVING RISE TO THE CLAIM.

#### **15. Indemnification**

15.1 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 third party claims, actions, suits or proceedings, as well as any and all losses, liabilities, damages, costs and expenses (including reasonable attorney's fees) arising out of or accruing from (a) your use of the Vuzix App Store in violation of this Agreement, (b) your Product 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 and all taxes due by you as a result of any sales, advertising or any other activity conducted through the Vuzix App Store.

#### **16. Changes to the Agreement**

16.1 Vuzix may make changes to this Agreement at any time by sending you notice by email describing the modifications made. Vuzix will also post a notification on the Vuzix App Store site describing the modifications made. The changes will become effective, and will be deemed accepted by you, (a) immediately for those who submit Products for distribution after the notification is posted, or (b) for pre-existing users, the modified Agreement will become effective upon your acceptance of the modified Agreement (except changes required by law which will be effective immediately). You will show your acceptance of the modified Agreement by going to the Vuzix App Store site and accepting the modified Agreement. Your continued use of the Services after Vuzix' posting of any changes will constitute your acceptance of such changes or modifications. In the event you do not agree with the modifications to the Agreement within thirty (30) days after the date the email is sent, then Vuzix may suspend the Store and distribution of your Products you agree to the modified Agreement. In the event that you do not



agree with the modifications within ninety (90) days after the date the email is sent, then you must terminate your use of the Vuzix App Store, which will be your sole and exclusive remedy.

## **17. General Legal Terms**

17.1 This Agreement constitutes the whole legal agreement between you and Vuzix and governs your use of the Vuzix App Store, and completely replaces any prior agreements between you and Vuzix in relation to the Vuzix App Store.

17.2 you agree that if Vuzix does not exercise or enforce any legal right or remedy which is contained in this 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.

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

17.4 You and Vuzix are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between us. You will have no authority to make or accept any offers or representations on our behalf. This Agreement will not create an exclusive relationship between you and us. Nothing expressed or mentioned in or implied from this Agreement is intended or shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy, or claim under or in respect to this Agreement.

17.5 The rights granted in this 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 Agreement without the prior written approval of the other party.

17.6 This Agreement will be governed by the laws of New York State, USA. You consent to the exclusive jurisdiction and venue of the courts in New York State, USA.