

Last updated February 12, 2018.

## **VIVEPORT PLATFORM AGREEMENT**

This Viveport Platform Agreement (“Agreement”) is a contract between you (“You” or “Your”) and HTC Corporation and/or one or more of its affiliates (“Platform Provider”). Hereinafter, You and Platform Provider may be individually referred to as a “Party” and collectively as the “Parties.”

This Agreement is a legally binding contract between You and Platform Provider, and together with any additional terms (“Additional Terms”) provided to You by Platform Provider when using the Platform (defined below) governs Your access to and use of the Platform to post, display, offer for sale, and distribute Products (defined below).

In order to use the Platform to post, display, offer for sale, and distribute Products, You must first agree to this Agreement by clicking to accept where this option is made available to You. You may not distribute Products in the Platform if You do not accept this Agreement and any Additional Terms. You represent and warrant that You are of legal age and otherwise competent to be contractually bound by this Agreement. If You are not of legal age and otherwise competent to be contractually bound by this Agreement, You may not accept this Agreement or use the Platform. If You agree to be bound by this Agreement on behalf of Your company or other entity, You represent and warrant that You have full legal authority to bind Your company or such entity to this Agreement. If You do not have the requisite authority, You may not accept the Agreement or use the Platform on behalf of Your company or other entity.

**1. THE VIVEPORT PLATFORM.** The Viveport Platform (the “Platform”) is an online marketplace that Platform Provider has created and operates which allows registered persons and companies approved by Platform Provider (“Developers”) to post, display, offer for sale and distribute software, content, services, applications, and other digital materials directly or indirectly to users through the Platform (“Products”).

### **2. DISTRIBUTING PRODUCTS THROUGH THE PLATFORM**

- a) In order for You to distribute Your Products through the Platform, You must (i) fully and accurately complete the Developer registration process and (iii) acquire and maintain a valid Developer Account. A “Developer Account” is a publishing account issued by Platform Provider to You as a Developer that enables You to post, display, offer for sale, and distribute Your Products through the Platform. To register a Developer Account, You will be required to provide information about You (e.g. name, email, birthday (if applicable), country, address, etc.). You must also acquire and maintain a valid payment account to facilitate the collection and remittance of payments on Your behalf if You want to charge a fee for Your Products. The payment account information You might be required to provide include bank name, beneficiary name, banking account number, VAT number/tax ID, etc.
- b) You are responsible for uploading Your Products to the Platform, providing required Product information to users including, but not limited to, a Terms of Use and/or End User License Agreement and a Privacy Policy, compatibility requirements, health and safety information, and accurately disclosing all permissions and consents necessary for Your Product to function. Products that are not properly uploaded or otherwise fail to comply with these requirements or any other requirements in this Agreement or the Additional Terms will not be distributed through the Platform.
- c) You are responsible for determining the countries in which Your Product will be made available for distribution. You must ensure that Your Product, its Terms of Use and/or End User License Agreement, Privacy Policy, and all related Product information comply with all applicable country specific laws and regulations.
- d) Users who have purchased a Product are allowed unlimited reinstalls of that Product at no additional charge.

- e) Platform Provider may use an authorized third party to manage and control the sales and purchase experience in the Platform (“Third-Party Seller”).

### **3. STANDARD PRICING AND PLATFORM FEES**

- a) You may choose to distribute Your Products for free. If Your Product is free (including any of its in-app purchases), You will not be charged a Platform Fee (as such term is defined below). If You initially distribute Your Product for free but then want to collect fees after the free trial period expires, You must collect all fees for the full version of Your Product through the Platform’s payment processing system. If You distribute Your Product for free You agree to comply with all applicable guidelines and/or other applicable law relating to the offering of free Products.
- b) You may choose to distribute Your Products for a price. In such case, Your Product will be displayed to users on Your behalf at prices You establish, except that each of Your Products must be priced in accordance with any pricing guidelines established by the Platform. You must set the price for Your Products only in currencies and increments supported by Platform Provider or its Third-Party Seller.
- c) If in-app purchases are supported by the Platform, the following terms shall apply: In-app purchases may be priced at any amount You establish so long as such prices are within any pricing guidelines established by the Platform. The Platform may require that in-app purchases be made using Paid Points or Reward Points. “Paid Points” shall refer to the purchase of limited licenses to use content currency that may be redeemed by the Platform or within a Product. “Reward Points” shall refer to limited licenses to use content currency earned through use of the Platform or a Product or participation in certain games and activities.
- d) To determine the payment You will receive hereunder, the first step will be to calculate the “Adjusted Gross Revenue” by taking the gross revenue actually received by Platform Provider or its Third-Party Seller from Your Product (including any of its in-app purchases) and netting out applicable refunds, charge backs, VAT, and sales taxes. Then, a Platform Fee will be charged and subtracted from the Adjusted Gross Revenue, and the remainder will be remitted to You, less any applicable withholding taxes, charge back fees, currency charges, and other reasonable related transaction fees and expenses.
- e) Platform Provider’s standard “Platform Fee” is 30% of the Adjusted Gross Revenue from Your Product and any of its in-app purchases. However, Platform Fees may vary if You elect to participate in other distribution Programs (defined below) offered by the Platform, with such variances specified in the Additional Terms applicable for that Program.

- 4. **OTHER DISTRIBUTION PROGRAMS AND DISTRIBUTION IN CHINA.** The Platform may offer You the ability to further monetize or more widely distribute Your Product by participating in special distribution programs (each a “Program”). Available Programs are described in more detail in the Platform developer console. Participation in these Programs will be at Your election and subject to Platform Provider’s approval. You may opt-in to a Program by selecting the opt-in option where made available to You within the Platform developer console and accepting the associated Additional Terms.

As of the date of this writing, Platform Provider uses a third-party provider named Fanshare Co., Ltd to operate the Platform in China. If You elect to distribute Your Product in China, then (i) You must read and accept their agreement which will be made available through the Viveport developer console, and (ii) that agreement will control with regard to distribution of Your Product in China for so long as Platform Provider uses that third party to operate the Platform in China.

### **5. OTHER PAYMENT RELATED TERMS**

- a) On a monthly basis, Platform Provider or its Third-Party Seller will provide reporting on revenues generated by Your Products and make available the amounts then owed to You under this Agreement after Platform Provider or its Third-Party Seller has received such amounts. Payments will be calculated and paid to You through the currency(ies) supported by the Platform. Currency

conversion and associated rates will be in accordance with Platform Provider or its Third-Party Seller's standard policies.

- b) If the total balance of amounts owed to You under this Agreement in any particular month is less than the minimum payment threshold established by Platform Provider or its Third-Party Seller, then Platform Provider or its Third-Party Seller may withhold payment hereunder until the month in which the total of such payments meet or exceed this minimum payment threshold.
- c) Platform Provider may display the price for Products on the Platform to users in their native currency. Platform Provider is not responsible for currency fluctuations that may occur after the price for Your Product has been set in such native currency.
- d) Platform Provider or its Third-Party Seller shall report sales of Products on the Platform to the relevant taxing authorities and shall collect and remit certain taxes on Your behalf where required by applicable law. If Platform Provider or its Third-Party Seller, under mandatory tax law in the jurisdiction in which the payment is made, is required to withhold certain amounts or a certain portion of the payment due to You, Platform Provider or its Third-Party Seller may deduct such mandatory amounts to the extent as required under the applicable tax law from all payments to You, and remit such amounts to the appropriate tax authority. Platform Provider or its Third-Party Seller shall provide You with copies of all necessary documents (e.g. tax receipts received from the applicable tax authority) in order for You to be able to claim and receive a foreign tax credit in an amount corresponding to the amount withheld by Platform Provider or its Third-Party Seller.
- e) All payments received by Developers for Products distributed via the Platform and all payments received by Developers for in-app purchases must be processed through the Platform, including as applicable through its Third-Party Seller.
- f) Platform Provider and/or its Third-Party Seller reserves the right to handle refund and chargeback requests for Products as Platform Provider deems appropriate in its reasonable discretion. This may mean a full refund of the price paid by the user. Platform Provider or its Third-Party Seller shall manage refund and chargeback requests for Products in an ethical manner, in compliance with applicable laws, and in accordance with the refund policies it has established.
- g) Platform Provider is not obligated to pay You any amounts connected with activities deemed to be fraudulent or criminal by Platform Provider in its sole and reasonable discretion.

## **6. PROPER USE OF THE PLATFORM**

- a) Your use of the Platform must comply with all applicable law, regulations, and generally accepted practices or guidelines in the relevant jurisdictions (including any laws regarding the export of data or software to and from all relevant countries).
- b) You must not use the Platform to distribute Products that are unlawful in any capacity or otherwise violate Platform Provider's Code of Conduct, content guidelines, rating or similar obligations.
- c) You must not engage in any activity, including the development 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 Platform Provider, the Platform, or any third party including, but not limited to, users of the Platform.
- d) You must not use the Platform to distribute or make available any Product which has a purpose that facilitates the distribution of software applications and games outside of the Platform.
- e) If You breach any obligation set forth in this Section or become subject to any governmental inquiry about Your Product, You must provide Platform Provider with prompt written notice describing the breach or the nature of the governmental inquiry to the extent legally permitted.

## **7. YOU ARE RESPONSIBLE FOR YOUR PRODUCT**

- a) The Platform offers tools to help protect Your Products from illegal or unauthorized copying. You are responsible to use these tools to help protect Your Products from and against illegal or unauthorized reproduction or copying by users or by any other persons. Use of these tools is not a guarantee of protection from illegal or unauthorized copying.

- b) You are solely responsible for any Products You distribute through the Platform and for any loss or damages that arise based on the use of such Products. You are solely responsible for and must provide an appropriate and conspicuous warning to users if there are health and safety concerns specific to Your Product.

## **8. PRODUCT SUPPORT**

- a) You are solely responsible for support and maintenance of Your Products and any complaints about Your Products.
- b) You are solely responsible to ensure Your Products' compatibility with the virtual reality products and services for which they are intended. You must clearly communicate to users of the Platform any compatibility requirements which are necessary for users to use Your Product in the Product description made available to users prior to download or purchase of Your Product.
- c) You must use good faith efforts to expeditiously resolve material bugs, errors, and complaints about Your Products encountered by Platform Provider and/or users.
- d) You must maintain an active support email address, which shall be prominently displayed to users within a detail page within Your Product.
- e) You must ensure Your Products are fully tested and have passed any quality assurance metrics required by Platform Provider prior to uploading Your Products to the Platform.
- f) You must prominently display a Terms of Use and/or End User License Agreement and Privacy Policy for Your Products and must honor any promises or obligations made to users with respect to the Products and collection and use of user data under Your policies and agreements.

## **9. PRODUCT PLACEMENT AND RATINGS**

- a) Notwithstanding anything to the contrary herein, Platform Provider reserves the right, in its sole discretion, (i) to determine whether or not to display Your Product in the Platform, (ii) to determine the date Your Product is first displayed in the Platform, (iii) to remove Your Product from the Platform at any time with or without advance notice, and (iv) to display Your Product in the Platform in any order or level of prominence as it deems appropriate in its sole discretion.
- b) The Platform may allow users to rate Products. Product ratings may be used to help determine the placement of Products in the Platform. You agree not to post fake ratings or otherwise manipulate ratings for Your Products or any other Products on the Platform or outside of the Platform in any manner. Your Products may receive user ratings with which You may not agree.
- c) If required by Platform Provider or applicable law, You agree to obtain and post an Entertainment Software Rating Board "ESRB" (or similar) rating for Your Product in the Product description made available to users prior to download or purchase of Your Product.

## **10. PRODUCT OWNERSHIP AND LICENSES**

- a) Except for the rights, title, and interest granted to Platform Provider under this Agreement, (i) You retain all right, title and interest in Your Products including any intellectual property rights which subsist in Your Products, and (ii) nothing in this Agreement shall create any right of ownership or license in and to the other Party's intellectual property rights, and each Party shall continue to independently own and maintain its intellectual property rights.
- b) You grant to Platform Provider a non-exclusive, worldwide, transferable, sub-licensable (in accordance with Section 22(a) below), and royalty-free license to: copy, transmit, perform, display, modify, adapt, translate, distribute, and use the Products (including all intellectual property rights embodied therein) (i) in accordance with the publishing options You selected when You uploaded Your Product into the Platform (including Program participation options), (ii) in connection with the operation, marketing, and/or promotion of Your Products, the Platform, elected Programs, the Vive, and other Platform Provider products and services, and/or (iii) to make improvements to the Platform, Vive, Programs, and any other Platform Provider products and services. Platform Provider will only modify Your Product consistent with the publishing and modification options You select when You upload Your Product into the Platform.

- c) You grant to the user a non-exclusive, worldwide, and perpetual license to perform, display, transmit, and use the Product on computers, mobile devices (if applicable), Platform Provider or third-party platforms, and on the Vive or other virtual reality systems (i) in accordance with the publishing options and Programs You selected when You uploaded Your Product into the Platform, and (ii) in accordance with Your current End User License Agreement and/or Terms of Use and Section 2(d).
- d) After termination of this Agreement, Your Products will not be displayed on the Platform, but Platform Provider may retain and use copies of the Product (i) in the part of the Platform where previously purchased or downloaded applications are stored on behalf of users and (ii) for support of the Platform, the Vive or other virtual reality systems, and/or users who previously purchased the Product.
- e) You may, but are not required, to submit oral or written comments or suggestions regarding Platform Provider's products and services ("Feedback"). If You do submit Feedback to Platform Provider, You agree that Platform Provider is free to use, disclose, reproduce, license or otherwise distribute the Feedback without any obligations or restrictions of any kind, including intellectual property rights.

## **11. TRADEMARKS**

- a) The term "Trademarks" as used herein means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each Party, respectively, as owned (or licensed) by such Party from time to time. Each Party shall own all right, title and interest, including without limitation all intellectual property rights, relating to its Trademarks. Except to the limited extent expressly provided in this Agreement, neither Party grants, nor shall the other Party acquire, any right, title or interest (including, without limitation, any implied license) in or to any Trademarks of the other Party.
- b) You grant to Platform Provider a limited, non-exclusive, worldwide, transferable, sub-licensable (in accordance with Section 22(a) below), and royalty-free license to display Your Trademarks that You submit to Platform Provider solely for the marketing, promotion, distribution or sale of Your Products, and along with the marketing of Vive, the Platform, or other Platform Provider products or services, or to otherwise fulfill its obligations under this Agreement. If the Agreement is terminated, Platform Provider will cease further new uses of Your Trademarks, except as necessary to allow Platform Provider to effectuate Section 2(d) and 10(d).
- c) Platform Provider grants You a limited, non-exclusive, worldwide, revocable, license to display Platform Provider's "Viveport" and "HTC" Trademarks solely to promote the availability of Your Product on the Platform in accordance with Platform Provider brand guidelines, which will be provided upon Your request. If You discontinue Your distribution of Products on the Platform, You will cease further uses of the Platform Provider Trademarks granted under this Agreement.

## **12. REMOVAL OF YOUR PRODUCTS FROM A PROGRAM OR THE PLATFORM**

- a) You may request the removal of Your Product(s) from a Program or from future distribution via the Platform by designating which of Your Products are to be removed and clicking the "remove content" button within Your Developer Account or an equivalent process specified by Platform Provider. Platform Provider will remove Your Product(s) as requested within thirty (30) days after receipt of Your request. Removing Your Product(s) does not (i) affect the license rights of users who have previously purchased or downloaded Your Products, (ii) remove Your Product(s) from the computers or other devices of users who have downloaded them, or from any part of the Platform where previously purchased or downloaded applications are stored on behalf of users, or (iii) change Your obligation to deliver or support Your Products that have been previously purchased or downloaded by users.
- b) Platform Provider reserves the right to suspend and/or bar any Developer or Product from the Platform at any time for any reason with or without advance notice.

## **13. CONFIDENTIAL INFORMATION**

- a) You are responsible for maintaining the confidentiality of any account access credentials that may be issued to You by Platform Provider or which You may choose Yourself. You are solely responsible for all Products that are uploaded to the Platform or other actions that are undertaken using Your Developer Account. Platform Provider may limit the number of Developer Accounts issued to You or to Your company or organization. You shall use all physical, administrative, and technical controls, screening and security procedures and other safeguards necessary to securely administer access and use of Your Developer Account and protect against unauthorized access to or use of Your Developer Account or the Platform.
- b) You and Platform Provider acknowledge that by reason of the relationship established under this Agreement, each party may have access to and acquire knowledge from, materials, data, systems and other information concerning the operation, business, projections, financial affairs, products, services, customers and intellectual property rights of the other party that may not be accessible or known to the general public (“Confidential Information”).
- c) Each party receiving Confidential Information (the “Receiving Party”) agrees to maintain all such Confidential Information received in any form or medium from the other party (the “Disclosing Party”), in confidence and agrees not to disclose or otherwise make available such Confidential Information to any third party without the prior written consent of the Disclosing Party; provided, however, that the Receiving Party may disclose Confidential Information to its affiliates, employees, consultants, subcontractors, and advisors on a “need to know” basis, if such third parties agree to maintain the confidentiality of such Confidential Information under terms no less restrictive than those contained herein. The Receiving Party further agrees to use the Confidential Information only for the purpose of performing under this Agreement. In addition, the Receiving Party shall not reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody Confidential Information and which are provided to the Receiving Party hereunder.
- d) The Receiving Party’s obligations under this Section shall not apply to Confidential Information which: (i) is or becomes a matter of public knowledge through no fault of or action by the Receiving Party; (ii) was rightfully in the Receiving Party’s possession prior to disclosure by the Disclosing Party; (iii) subsequent to disclosure, is rightfully obtained by the Receiving Party from a third party who is lawfully in possession of such Confidential Information without restriction; (iv) is independently developed by the Receiving Party without resort to the Disclosing Party’s Confidential Information; or (v) is required by law or judicial order, provided that prior written notice of such required disclosure is furnished to the Disclosing Party as soon as practicable, and prior to disclosure occurring, in order to afford the Disclosing Party an opportunity to seek a protective order or other legal remedy to prevent such disclosure.

#### **14. USER DATA**

- a) You agree that if You use the Platform to distribute Products, You will protect the privacy and legal rights of users. You agree to only collect and use user data in accordance with the terms and conditions of Your Terms of Use and/or End User License Agreement and Privacy Policy You publish in conjunction with Your Products and applicable laws. You shall ensure that each user receives sufficient notification prior to any collection of their data. This notice must clearly and expressly state that their data shall be collected by You and is subject to Your Terms of Use and/or End User License Agreement and Privacy Policy. You must also ensure that each user provides affirmative consent prior to such collection and any use of the data by You or any third party on Your behalf. You agree to take all steps required and reasonably necessary (including appropriate physical, technical, and organizational measures) to protect such user data in Your possession or control against loss and unauthorized or unlawful access, use, modification, disclosure, processing or other misuse. You agree to implement and comply with industry-standard measures with respect to the technical and physical security of such user data. You agree to ensure that its collection, use, storage, processing, distribution, or transfer (including cross-border transfers), and Your information technology platforms and systems on which such user data is collected, used, stored, processed, distributed, or transferred are at all times compliant with applicable law (including all privacy laws

and laws governing data security) and the terms and conditions of Your published use and privacy policies. Your standard of care to comply with Your obligations under the foregoing sentences shall conform to the requirements of applicable laws and industry standard security measures with respect to the sensitivity of the user data in Your possession or control. If users provide Your Product with Platform Provider account information, Your Product may only use that information to access the user's Platform Provider account when, and for the limited purposes for which, the user has given You permission to do so.

- b) In order to innovate and improve the Platform, Platform Provider may collect certain usage data from the Platform and Your Products, including but not limited to, information on how the Platform and Your Products are being used. The data collected will be used and maintained in accordance with Platform Provider's Privacy Policy.

## **15. TERMINATION**

- a) The term of this Agreement starts on the date You click to accept it and shall continue until terminated by either You or Platform Provider as set out below.
- b) You may terminate this Agreement for any reason by providing Platform Provider with prior written notice of such termination and requesting removal of all Your Products from the Platform as described in Section 12. This Agreement will terminate thirty (30) days after the date You have completed both actions. Such termination notice shall be sent to Platform Provider at the Platform Provider addresses set forth in Section 21 below.
- c) Platform Provider may terminate this Agreement at any time for any reason with or without advance notice to You.
- d) In the event of any termination of this Agreement, Platform Provider will stop displaying Your Products in the Platform except as described in Section 2(d) and 10(d).

## **16. WARRANTIES AND DISCLAIMER OF WARRANTIES**

- a) 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 Your Product. If You use third-party materials, You represent and warrant that You have the right to distribute the third-party material in Your Product. Notwithstanding anything to the contrary, You must have the right to distribute and exploit Your Products posted on the Platform throughout the jurisdictions in the world where Your Product is distributed. Obtaining and maintaining such rights with respect to the Products is Your sole responsibility. You agree that You will not submit material to the Platform 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.
- b) You represent and warrant that Your Product shall not contain any viruses, malicious code, trojan horse, worm, time bomb, self-help code, back door or other software code or routine designed to (or resulting in): (i) damage, destroy or alter any software, hardware, or network; (ii) reveal, damage, destroy or alter any data; (iii) disable any computer program automatically; or (iv) permit unauthorized access to any software, hardware, or network.
- c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF THE PLATFORM AND PLATFORM MATERIALS IS AT YOUR SOLE RISK AND THE PLATFORM AND PLATFORM MATERIALS ARE PROVIDED "AS IS," "WITH ALL FAULTS" AND "AS AVAILABLE" AND THE ENTIRE RISK OF USE AND PERFORMANCE, REMAINS WITH YOU. PLATFORM PROVIDER AND ITS SUPPLIERS AND LICENSORS DO NOT MAKE ANY REPRESENTATIONS, WARRANTIES, OR CONDITIONS, EXPRESS, IMPLIED, OR STATUTORY AND HEREBY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT.

## **17. LIMITATION OF LIABILITY**

- a) IN NO EVENT WILL YOU OR PLATFORM PROVIDER (OR ANY SUPPLIER OR LICENSOR OF PLATFORM PROVIDER) BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, BUSINESS, OR GOODWILL, OR USE, LOSS, OR CORRUPTION OF DATA, BUSINESS INTERRUPTION, OR PROPERTY DAMAGE, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR YOUR USE OF THE PLATFORM OR PLATFORM MATERIALS, EVEN IF YOU OR PLATFORM PROVIDER (OR ANY SUPPLIER OR LICENSOR OF PLATFORM PROVIDER) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- b) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND TO THE EXTENT THEY ARE NOT EXCLUDED OR DISCLAIMED UNDER THIS SECTION, EACH PARTY'S MAXIMUM, AGGREGATE LIABILITY FOR ANY AND ALL DAMAGES, INJURIES, AND LOSSES ARISING FROM ANY AND ALL CLAIMS AND CAUSES OF ACTION ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT WILL BE LIMITED TO ACTUAL DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE AGGREGATE AMOUNT PAID TO YOU UNDER THIS AGREEMENT FOR THE 12 MONTH PERIOD IMMEDIATELY PRECEDING SUCH BREACH. THE EXISTENCE OF MULTIPLE CLAIMS OR SUITS WILL NOT ENLARGE OR EXTEND THE LIMITATION OF MONEY DAMAGES.
- c) NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED IN THIS SECTION 17 SHALL LIMIT A PARTY'S LIABILITY TO THE EXTENT ARISING FROM: (I) BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, (II) BREACH OF ITS REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 16, (III) ITS INDEMNITY OBLIGATIONS HEREUNDER, OR (IV) ITS GROSS NEGLIGENCE OR WILFUL MISCONDUCT.

## **18. INDEMNIFICATION**

- a) To the maximum extent permitted by law, You agree to defend, indemnify and hold harmless Platform Provider, its affiliates and their respective directors, officers, employees, subcontractors, and agents, from and against any and all third-party claims, actions, suits or proceedings (each, a "Claim"), as well as any and all losses, liabilities, damages, costs and expenses (including reasonable legal fees) arising out of or relating to (i) Your use of the Platform or Platform Materials in violation of this Agreement, (ii) any allegation that Your Product 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, (iii) Your breach of the representations, warranties or covenants set forth herein, and (iv) damage to tangible property, bodily injury or death sustained as a result of Your Product or any use thereof.
- b) You will not consent to the entry of a judgment or settle any Claim without Platform Provider's prior written consent, if such entry of judgment or settlement arises from or is part of any of any criminal action, suit, or proceeding, or contains a stipulation to or admission or acknowledgment of any liability or wrongdoing on the part of Platform Provider, or requires any specific performance or non-pecuniary remedy by Platform Provider. You will use counsel reasonably satisfactory to Platform Provider to defend each Claim. If Platform Provider reasonably determines that a Claim might adversely affect Platform Provider, Platform Provider may take control of the defense at its expense (and without limiting Your indemnification obligations). Your obligations under this Section 18 are independent of Your other obligations under the Agreement.

## **19. GOVERNING LAW AND VENUE.** THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF WASHINGTON, WITHOUT REFERENCE TO RULES GOVERNING CHOICE OF LAWS OR THE U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. YOU HEREBY IRREVOCABLY CONSENT TO AND

WAIVE ANY OBJECTION TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE FEDERAL AND STATE COURTS LOCATED AT KING COUNTY, WASHINGTON WITH RESPECT TO ANY CLAIMS, SUITS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. UNLESS THE FOLLOWING LIMITATION IS PROHIBITED BY APPLICABLE LAW, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT MUST BE FILED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION AROSE OTHERWISE IT WILL BE BARRED.

**20. MODIFICATIONS TO THE AGREEMENT AND/OR ADDITIONAL TERMS.** Platform Provider may make modifications to this Agreement and/or the Additional Terms at any time by posting a notification on the Platform site. You should regularly check for notice of any modifications. Platform Provider may, but need not, also notify Developers of such modifications via email. Modifications will become effective, and will be deemed accepted by Developers, (i) immediately for those who become Developers after the notification is posted, or (ii) for pre-existing Developers, on the date specified in the notice, which will be no sooner than thirty (30) days after the modifications are posted (except modifications required by law which will be effective immediately). If You do not agree with the modifications to the Agreement and/or the Additional Terms, You must terminate Your use of the Platform, which will be Your sole and exclusive remedy. You agree that Your continued use of the Platform constitutes Your agreement to the modified terms of this Agreement and the Additional Terms. If there is a conflict between the terms in this Agreement and the Additional Terms, this Agreement will govern unless the Additional Terms expressly override a specific section of this Agreement.

**21. CONTACT INFORMATION.** Please direct all notices and correspondence to:

HTC Corporation  
Attn: General Counsel  
No. 88, Section 3, Zhongxing Road  
Xindian Dist., New Taipei City 231  
Taiwan

with a copy to:

HTC America, Inc.  
Attn: Legal Department  
308 Occidental Avenue South  
Suite 300  
Seattle, Washington 98104  
United States

**22. GENERAL**

- a) Platform Provider may use sub-contractors or consultants in connection with the performance of its rights and obligations hereunder, which may include allowing such sub-contractors or consultants to have access or use of Your Products, data, and materials provided hereunder provided that such sub-contractors or consultants shall be subject to no less restrictive obligations as those set forth herein.
- b) You are an independent contractor and not an employee, agent, partner, joint venturer, representative, broker or principal of Platform Provider for any purpose.
- c) Platform Provider's failure to act with respect to a breach by You does not waive its rights to act with respect to subsequent or similar breaches. No waiver of any provision of this Agreement will be effective unless it is in a signed writing, and no waiver will constitute a waiver of any other provision(s) or of the same provision on another occasion.

- d) If a court of competent jurisdiction holds any term, covenant or restriction of this Agreement to be illegal, invalid or unenforceable, the remaining terms, covenants and restrictions will remain in full force and effect and will in no way be affected, impaired or invalidated.
- e) You may not assign any of Your rights or obligations under this Agreement, whether by operation of law or otherwise, without providing Platform Provider with prior written notice of such assignment. Platform Provider may assign its rights or obligations under this Agreement to any of its affiliates. Subject to the foregoing limitations, this Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.
- f) The obligations in Sections 10 and 11 (solely as necessary or useful to permit Platform Provider to effectuate Section 2(d) and 101.d)) and Sections 13-22 will survive any expiration or termination of this Agreement.
- g) This Agreement and any Additional Terms were originally written in English. If this Agreement or any Additional Terms are translated into other languages, the English versions will control to the extent of any conflict. This Agreement and the Additional Terms constitute the entire agreement between You and Platform Provider with respect to Your use of the Platform and replaces any prior agreements between You and Platform Provider in relation to the Platform. Notwithstanding the foregoing, if there is any conflict between this Agreement and any other agreement between You and Platform Provider which pertains to the same subject matter and which was duly signed by authorized signatories of both parties, then such duly signed agreement shall control to the extent of any conflict.

## EXHIBIT A

### PLATFORM MATERIALS

- a) Platform Provider may make available certain software, software development kits, libraries, application programming interfaces, services, documentation, sample code, related materials, information, and equipment for use in connection with the Platform or other Platform Provider services, programs, and/or features (collectively, the “Platform Materials”). If You use any Platform Materials, the following terms and conditions apply.
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