



SOFTWARE DEVELOPMENT KIT LICENSE AGREEMENT

SALES OR LICENSES MADE BY ZSPACE, INC. AND ITS AFFILIATES (COLLECTIVELY, "ZSPACE") TO THE DEVELOPER OF THIS SOFTWARE DEVELOPMENT KIT (SDK) ("DEVELOPER") ARE EXPRESSLY CONDITIONED ON DEVELOPER'S ACCEPTANCE OF THIS ZSPACE SDK ("AGREEMENT") CONTAINED HEREIN. THIS AGREEMENT AND ANY SUPPLEMENTAL TERMS PROVIDED BY ZSPACE CONSTITUTE THE ENTIRE AGREEMENT BETWEEN ZSPACE AND THE DEVELOPER OF THIS AGREEMENT AND SUPERSEDE ALL PREVIOUS NEGOTIATIONS, DISCUSSIONS AND UNDERSTANDINGS, WHETHER ORAL OR WRITTEN, BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF. BY INSTALLING THIS SOFTWARE, UTILIZING THE HARDWARE WHICH IS DRIVEN BY THIS SOFTWARE, OR CLICKING ON THE "ACCEPT" BUTTON (EITHER OF WHICH IS THE EFFECTIVE DATE OF THIS AGREEMENT), LICENSEE IS AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT. This Software protected by the copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. This Software is licensed (not sold), and its use is subject to the terms of this Agreement.

RECITALS

- A. zSpace has developed a virtual holographic computing platform (the "zSpace® Platform"). zSpace has also developed a software development kit, consisting of certain software tools, APIs and related documentation, as more fully described in Exhibit A (the "zSpace SDK").
- B. zSpace is making versions of the zSpace SDK available to developers that desire to develop applications that operate on or in connection with the zSpace zSpace® Platform.
- C. Developer desires to obtain one or more copies or versions of the zSpace SDK for internal development or commercial product development purposes and zSpace is willing to make such versions of the zSpace SDK available to Developer, subject to and in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the parties hereby agree as follows:

1. LICENSE.

- a. **zSpace SDK License.** Subject to Developer's compliance with the terms and conditions of this Agreement, zSpace hereby grants Developer a personal, perpetual, nonexclusive license to use and reproduce the zSpace SDK for installation on Developer owned development stations for use by Developer employees and contractors, solely for the purposes of developing and testing applications that operate on or in connection with the zSpace® Platform ("Developer Applications"). The zSpace SDK contains certain open source software and is licensed pursuant to the applicable open source licenses specified in the documentation and is provided WITHOUT ANY WARRANTY. You can modify and distribute the open source software in accordance with the terms of the specified licenses. Upon request at any time within three (3) years from your receipt of this software the supplier will provide it to you in source code form. More details are available at zspace.com.
- b. **Restrictions.** Developer has no right to use or reproduce the zSpace SDK except as expressly set forth in Section 1.a. Developer acknowledges and agrees that portions of the zSpace SDK, including but not limited to the source code and the specific design and structure of individual modules or programs, constitute or contain trade secrets of zSpace and its licensors. Except to the extent the following prohibitions may be prohibited by local law, Developer may not: (a) modify, adapt, decompile, disassemble, or reverse engineer the Software; (b) allow any third party to use or have access to the Software or Documentation, except for an outsourced service provider who agrees to be bound by this Agreement; (c) make the Software available over the Internet or similar networking technology; (d) use, evaluate or view the Software or Documentation for purpose of designing, modifying, or otherwise creating any software program, or any portion thereof, which performs functions similar to the functions performed by the Software; or (e) sublicense the Software or Documentation to any third party. Developer will not use the zSpace SDK to perform comparisons or other "benchmarking" activities against products that are competitive with the zSpace SDK or the zSpace® Platform.
- c. **Limited Rights.** zSpace and its licensors reserve all rights and licenses in and to the zSpace SDK not expressly granted to Developer under this Agreement.

2. CONDITIONS.

- a. **Ownership.** Developer acknowledges and agrees that, as between the parties, zSpace owns all right, title, and interest in and to the zSpace SDK, including all worldwide patent rights, copyrights, trade secrets, and any other intellectual property rights therein. Developer will reproduce all of zSpace's and its licensor's copyright notices and any other proprietary rights notices on all copies of the zSpace SDK that Developer makes hereunder.
- b. **Feedback.** Developer acknowledges that zSpace desires to obtain comments, suggestions and feedback with respect to the operation, performance and reliability of the zSpace SDK, including suggestions for improvement (collectively, "Feedback"). Developer agrees to provide zSpace with Feedback regarding the zSpace SDK, and any other information reasonably requested by zSpace. Developer agrees that such Feedback will be the sole and exclusive property of zSpace and Developer hereby irrevocably assigns to zSpace and agrees to assign to zSpace all rights, title, and interest in and to all Feedback, including all intellectual property rights therein.

3. CONFIDENTIAL INFORMATION:

- a. **Definition.** "Confidential Information" means: (a) the zSpace SDK and all technical information relating thereto; and (b) any business or technical information of zSpace, including, but not limited to, any information relating to zSpace's product plans, designs, costs, product prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how.
- b. **Restrictions.** Developer will not use or disclose any Confidential Information, except as necessary for the exercise of its rights under this Agreement. Developer will use all reasonable efforts to protect Confidential Information from unauthorized use or disclosure, but in no event less than the efforts that it ordinarily uses with respect to its own confidential information of similar importance. Developer may disclose Confidential Information only to those of its employees and contractors who need to know such Confidential Information for the exercise of Developer's rights under this Agreement; provided, that each such employee and contractor first is bound by a written agreement that contains use and nondisclosure restrictions at least as protective of the Confidential Information as those set forth in this Agreement.
- c. **Exclusions.** The obligations in Section 3.b. will not apply to the extent any information: (a) is or becomes generally known to the public through no fault or breach of this Agreement by Developer; (b) is rightfully known by Developer at the time of disclosure without an obligation of confidentiality; (c) is independently developed by Developer without access to or use of any Confidential Information; or (d) is rightfully obtained by Developer from a third party without restriction on use or disclosure.

d. **Publicity.** Developer may not issue any press releases or make any other public statements regarding this Agreement, its terms and conditions or the relationship of the parties without zSpace's express prior written approval, which approval zSpace may grant or withhold at its sole discretion.

4. WARRANTY DISCLAIMER.

The zSpace SDK is provided "AS IS," WITHOUT WARRANTY OF ANY KIND. ZSPACE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

5. TECHNICAL SUPPORT.

zSpace will provide Developer with technical support for the zSpace SDK. Such support services will be limited to answering technical questions regarding software application programming interfaces, including the zSpace SDK, via telephone or electronic mail. zSpace will make such technical support available during the hours of 9:00AM to 5:00 PM (Pacific Time) Monday through Friday (except holidays). Support services requested by email will be responded with two (2) business days of receipt. When possible Developer will funnel support service requests through a limited number of Developer personnel.

6. INDEMNITY.

Developer will indemnify, hold harmless, and defend zSpace from and against any and all claims, liabilities, damages, losses, costs and expenses (including but not limited to reasonable attorneys fees) arising out of or resulting from the use, marketing, licensing, distribution or sale of any Developer Application including any claims alleging that a Developer Application infringes or misappropriates a third party's intellectual property rights of a third party. zSpace will (i) promptly notify Developer of the claim; (ii) provide Developer with all reasonable information and assistance, at Developer's expense, to defend or settle such a claim; and (iii) grant Developer authority and control of the defense and settlement of the claim.

7. LIMITATION OF LIABILITY.

a. **Exclusion of Damages.** IN NO EVENT WILL ZSPACE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF REVENUE, USE, PROFITS, DATA OR GOODWILL, OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE, OPERATION OR PERFORMANCE OF THE ZSPACE SDK, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, AND WHETHER OR NOT ZSPACE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

b. **Total Liability.** ZSPACE'S TOTAL LIABILITY TO LICENSEE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, WILL BE LIMITED TO THE AMOUNTS PAID BY DEVELOPER TO ZSPACE PURSUANT TO THIS AGREEMENT. IF ZSPACE HAS MADE THE ZSPACE SDK AVAILABLE TO DEVELOPER WITHOUT CHARGE, ZSPACE'S TOTAL LIABILITY WILL BE LIMITED TO \$500.

8. TERM AND TERMINATION.

a. **Termination.** Each party has the right to terminate this Agreement if the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after written notice thereof.

b. **Effect of Termination.** Upon any termination of this Agreement: (a) the rights and licenses granted to Developer under this Agreement will automatically terminate; and (b) Developer will return to zSpace or destroy all copies of the zSpace SDK and any other Confidential Information in Developer's possession or control at zSpace's request.

c. **Survival.** The applicable provisions of Sections 2, 3, 4, 5, 6, 7 and 8 will survive any termination or expiration of this Agreement.

9. GENERAL.

a. **Assignment.** Developer may not assign or transfer this Agreement, in whole or in part, by operation of law or otherwise, without the prior written consent of zSpace. Any attempted assignment without such consent will be void. Subject to the foregoing, this Agreement will bind and benefit the parties and their respective successors and assigns.

b. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the state of California (excluding its body of law controlling conflict of laws). The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the Northern District of California and the parties hereby consent to the personal jurisdiction and venue therein.

c. **Nonexclusive Remedy.** Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will not be deemed an election of remedies and will be without prejudice to its other remedies under this Agreement or available at law or in equity or otherwise.

d. **Severability.** If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

e. **Waiver.** The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

f. **Notices.** Any waiver, modification, amendment of any provision or notices required or permitted under this Agreement will be in writing and signed by duly authorized representatives of each party, will reference this Agreement, and will be deemed given: (i) when delivered personally; (ii) one (1) business day after deposit with a nationally-recognized express courier, with written confirmation of receipt; or (iii) three (3) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid. All such notices will be sent to the addresses set forth above or to such other address as may be specified by either party to the other party in accordance with this Section.

- g. **Entire Agreement.** This Agreement and the attached exhibits constitute the entire and exclusive agreement between the parties pertaining to the subject matter hereof, and supersede any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter. This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.
- h. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
- i. **Export Law.** Developer agrees to comply fully with all U.S. export laws and regulations to ensure that neither the zSpace SDK nor any technical data related thereto nor any direct product thereof are exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by, such laws and regulations.



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EXHIBIT A - ZSPACE SDK

1. Real-time 3D Stereo engine with native head tracking and stylus (6DOF) input consisting of:

- 1.1. Object Model
- 1.2. Interpolative Animation
- 1.3. 3d Spatial-ized Audio
- 1.4. Collision Detection and Physics Simulation
- 1.5. Event Management
- 1.6. Input Management

2. Comprehensive Suite of Engine Demo Applications

3. Core Libraries including:

- 3.1. Stereo
- 3.2. Tracker
 - 3.2.1. zSpace Head Tracking
 - 3.2.2. zSpace Stylus Input
 - 3.2.3. 3rd Party Support via a Plug-in API
- 3.3. Common
 - 3.3.1. 3D Math Library
 - 3.3.2. Various Utility Classes

4. Comprehensive suite of core libs demo applications