

CLOUD9 SOFTWARE DEVELOPMENT KIT NON-COMMERCIAL LICENSE AGREEMENT

BY CLICKING THE ACCEPT BUTTON OR DOWNLOADING THE SOFTWARE, YOU AGREE TO BE BOUND BY AND BECOME A PARTY TO THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, YOU MUST CLICK THE BUTTON THAT INDICATES THAT YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT AND YOU MAY NOT DOWNLOAD, INSTALL, OR USE THE SDK.

CAREFULLY READ THE FOLLOWING LEGAL AGREEMENT (“AGREEMENT”) FOR THE LICENSE OF THE CLOUD9 SDK SOFTWARE YOU ARE ABOUT TO DOWNLOAD OR INSTALL (THE “SDK”).

“CLOUD9” MEANS CLOUD9 IDE, INC, REGISTERED DELAWARE CORPORATION WITH PRINCIPAL PLACE OF BUSINESS 1663 MCALLISTER STREET #B, SAN FRANCISCO, CA 94115,

UNITED STATES. “YOU” MEANS THE INDIVIDUAL PERSON INSTALLING OR USING THE SDK ON HIS OR HER OWN BEHALF; OR, IF THE SDK IS BEING DOWNLOADED OR INSTALLED ON BEHALF OF AN ORGANIZATION, SUCH AS AN EMPLOYER, “YOU” MEANS THE ORGANIZATION FOR WHICH THE SDK IS DOWNLOADED OR INSTALLED AND YOU REPRESENT THAT YOU HAVE AUTHORIZED THE PERSON ACCEPTING THIS AGREEMENT TO DO SO ON YOUR BEHALF.

THE SDK IS PROTECTED BY COPYRIGHTS AND/OR PATENTS IN THE UNITED STATES AND OTHER COUNTRIES. IF YOU DOWNLOAD OR USE THE SDK IN WAYS NOT PERMITTED BY THIS AGREEMENT, YOU WILL NOT ONLY BE IN BREACH OF THIS AGREEMENT, YOU WILL ALSO BE INFRINGING CLOUD9’S PATENTS AND COPYRIGHTS.

1. The Cloud9 SDK

1.1 Subject to the terms and conditions of this Agreement, Cloud9 grants to you a non-exclusive, non-sublicensable, non-transferable, personal license to:

* Download the SDK and make a reasonable number of copies on the devices you own or control as necessary to exercise the rights granted below;

* Internally use, perform, display, reproduce, modify and create derivative

works of the SDK for the sole purpose of developing and testing a software plug-in (“Derived Software”) that may be integrated with Cloud9’s proprietary software in accordance with the Documentation (as defined below);

* Internally use SDK (in both source code and object code form), and Derived Software for your own personal, noncommercial use; and

* Download and internally use a copy of any documentation related to the SDK that Cloud9 may provide to you as part of the SDK download, through the Cloud9 website or otherwise (“Documentation”) in order to exercise the rights in this Section 1, on the condition that you use the Documentation solely as allowed under this Agreement and that you refrain from disclosing the Documentation to any third party, except as permitted herein.

1.2 You may distribute the Derived Software and Documentation to third parties, provided that you may only distribute the Derived Software and Documentation for non-commercial purposes and may not charge a fee or consideration of any kind in connection with such distribution, and you must license such Derived Software and Documentation under the terms no less restrictive than those contained herein. You will immediately notify Cloud9 if you become aware of any material breach of such terms relating to the Derived Software or Documentation.

1.3 The SDK and Documentation, and all worldwide intellectual property rights therein, are the exclusive property of Cloud9 and its licensors. All rights in and to the SDK and Documentation not expressly granted to you in this Agreement are reserved by Cloud9 and its licensors. Without limiting the foregoing, nothing in this Agreement gives you a right to use any of Cloud9’s trade names, trademarks, service marks, logos, domain names, or other distinctive brand features.

1.4 You may not use the SDK for any purpose not expressly permitted by this License Agreement. You may not:

- * Except as expressly set forth herein, modify, create derivative works of, reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the SDK, or defeat, bypass, or circumvent any security features of any code in the SDK, or authorize any third party to do any of the foregoing, except to the extent allowed under applicable law;

- * License, sell, rent, lease, transfer, distribute, display, host, outsource, disclose or otherwise commercially exploit or make the SDK available to any third party, except as expressly permitted herein;

- * Access the SDK in order to build a similar or competitive product or service to Cloud9's proprietary software;

- * Remove, alter, or obscure in any way any proprietary rights notices (including copyright notices) of Cloud9 or its licensors including or within copies of the SDK or Documentation;

- * Make more copies of the SDK or Documentation than are reasonably necessary for your authorized use of the SDK and Documentation; or

- * Use the SDK to create any products designed to interface or operate with non-Cloud9 products or sources or for any purpose other than to develop Derived Software for use with Cloud9's proprietary software.

1.5 Certain items of independent, third-party code may be included in the SDK that are subject to the GNU General Public License ("GPL") or other open source

licenses (“Open Source Software”). Such Open Source Software is licensed under the terms of the license that accompanies such Open Source Software. Nothing in this Agreement limits your rights under, or grants you rights that supersede, the terms and conditions of any applicable end user license for such Open Source Software.

1.6 You acknowledge and agree that you have no rights to any upgrades, modifications, enhancements or revisions that Cloud9 may make to the SDK. Cloud9 has no obligation to provide support or engineering assistance of any sort, unless otherwise agreed in writing by Cloud9. You agree that the form and nature of the SDK that Cloud9 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 Cloud9 may stop (permanently or temporarily) providing the SDK (or any features within the SDK) to you or to users generally at Cloud9's sole discretion, without prior notice to you.

1.7 Each of the components that constitute the SDK and its related documentation is a “commercial item” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the SDK and any Documentation with only those rights set forth in this Agreement.

2. Privacy and Information

In order to continually innovate and improve the SDK, Cloud9 may collect certain usage statistics related to your use of the SDK and Cloud9 proprietary 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 (“Usage Data”). You hereby expressly consent to Cloud9’s collection and processing of your Usage Data (which may be collected by Cloud9 or its suppliers) according to Cloud9's Privacy Policy available at: [INSERT URL]; provided, that Cloud9 may only use and disclose Usage Data on an aggregated anonymized basis.

3. Your developer credentials

You agree that you are responsible for maintaining the confidentiality of any developer credentials that may be issued to you by Cloud9 or which you may choose yourself and that you will be solely responsible for all applications that are developed under your developer credentials. You agree to immediately notify Cloud9 of any unauthorized use or suspected unauthorized use of your credentials. Cloud9 will not be liable for any loss or damage arising from your failure to comply with the above requirements.

4. Termination of this license agreement

This Agreement will commence when you download or install the SDK and shall continue until this Agreement terminates. You may terminate this Agreement at any time by ceasing your use of the SDK and any relevant developer credentials. Additionally, Cloud9 may at any time, terminate this Agreement: (a) immediately if you breach any provision of this Agreement; (b) at any time upon 72 hours notice to you; or

(c) at any time upon post of a notice of termination to Cloud9’s website. Upon termination of this Agreement, you must immediately cease use of the SDK, Derived Software and the Documentation and destroy all copies of same. The provisions of Sections 1.3, 1.5, 1.7, 2, and 4 – 10 will survive any termination of this Agreement.

5. DISCLAIMER OF WARRANTIES

THE SDK AND ANY INFORMATION AVAILABLE IN CONNECTION THEREWITH ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, "WITH ALL FAULTS" AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, (I) WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT; (II) THE SDK BEING FREE OF BUGS OR ERRORS; (III) USE OF THE SDK IN NUCLEAR POWER PLANTS, AIRCRAFT NAVIGATION OR COMMUNICATIONS, AIR TRAFFIC CONTROL, WEAPONS SYSTEMS, OR OTHER HIGH RISK ACTIVITIES. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

6. LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY

IN NO EVENT WILL CLOUD9 BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY DAMAGES, OR ANY OTHER DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE SDK, ANY DERIVED SOFTWARE, ANY INFORMATION AVAILABLE IN CONNECTION THEREWITH, OR THE DELAY OR INABILITY TO USE THE SDK, ANY DERIVED SOFTWARE, OR ANY INFORMATION, EVEN IN THE EVENT OF FAULT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF ANY WARRANTY AND EVEN IF CLOUD9 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU ACKNOWLEDGE AND AGREE THAT YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH CLOUD9 WITH REGARD TO THE SDK IS TO DISCONTINUE USE OF THE SDK AND ANY DERIVED SOFTWARE. YOU HEREBY WAIVE ANY AND ALL CLAIMS AGAINST CLOUD9 AND ITS AFFILIATES, AGENTS, REPRESENTATIVES AND LICENSORS ARISING OUT OF THE SDK. BECAUSE SOME STATES DO NOT ALLOW THE DISCLAIMER OF IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN TYPES OF DAMAGES, THESE PROVISIONS MAY NOT APPLY TO YOU. IF ANY PORTION OF THIS LIMITATION ON LIABILITY IS FOUND TO BE INVALID OR UNENFORCEABLE FOR ANY REASON, THEN CLOUD9'S TOTAL, CUMULATIVE LIABILITY ARISING FROM OR RELATING TO THE SOFTWARE, UNDER ANY AND ALL THEORIES OF LIABILITY AND CAUSES OF ACTION WILL BE LIMITED TO DIRECT DAMAGES UP TO AN AGGREGATE OF FIFTY U.S. DOLLARS.

THE LIMITATION OF LIABILITY HEREIN IS A FUNDAMENTAL ELEMENT OF THE BASIS OF THE BARGAIN AND REFLECTS A FAIR ALLOCATION OF RISK. THE SDK WOULD NOT BE PROVIDED WITHOUT SUCH LIMITATIONS AND YOU AGREE THAT THE LIMITATIONS AND EXCLUSIONS OF LIABILITY, DISCLAIMERS AND EXCLUSIVE REMEDIES SPECIFIED HEREIN WILL SURVIVE EVEN IF FOUND TO HAVE FAILED IN THEIR ESSENTIAL PURPOSE.

7. Indemnification

You agree to defend, indemnify and hold harmless Cloud9, its licensors and each of their affiliates from all liabilities, suits, actions, damages, losses, claims and expenses, including attorneys' fees, that arise from or in connection with your breach of this Agreement, or use of the SDK or any Derived Software, including, but not limited to, the creation, distribution, promotion and use of any Derived Software. Cloud9 reserves the right to assume the exclusive defense and control of any matter subject to indemnification by you.

8. Modifications

Cloud9 reserves the right, at any time, to modify, suspend, or discontinue the SDK, or prevent the Derived Software from linking into Cloud9's proprietary software, or change access requirements, with or without notice. Cloud9 may remove the Derived Software from Cloud9 proprietary software in its sole discretion. You agree that Cloud9 will not be liable to you or to any third party for any modification, suspension, or discontinuance of the SDK. Cloud9 reserves the right to change the terms and conditions of this Agreement or its policies relating to the SDK at any time, and such changes will be effective thirty (30) days after notice to you. Your continued use of the SDK after any such changes take effect shall constitute your consent to such changes. You are responsible for providing Cloud9 with your most current e-mail address. In the event that the last e-mail address provided by you is not valid, Cloud9's dispatch of an e-mail containing such notice will nonetheless constitute effective notice of the changes described in the notice.

9. Applicable law, jurisdiction

This Agreement, and your relationship with Cloud9 under this Agreement, shall be governed by the laws of the State of California without regard to its conflict of laws provisions. You and Cloud9 hereby submit to the exclusive jurisdiction of the courts located within the county of Santa Clara, California to resolve any legal matter arising from this Agreement. Notwithstanding the foregoing, this Section shall not prevent Cloud9 from seeking injunctive or equitable relief in any court of competent jurisdiction. The U.N. Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

10. General legal terms

10.1 This SDK License sets forth all rights for the user of the SDK and Documentation and is the entire agreement between the parties. This SDK License supersedes any other communications with respect to the SDK. You agree that this SDK License is not intended to confer and does not confer any rights or remedies upon any person other than the parties to this SDK License. No provision hereof shall be deemed waived unless such waiver shall be in writing and signed by Cloud9. If any provision of this SDK License is held invalid or unenforceable, the remainder of this SDK License shall continue in full force and effect, and such provision shall be reformed only to the extent necessary to make it valid and enforceable. The parties confirm that it is their wish that this Agreement has been written in the English language only (or an equivalent type of urgent legal relief) in any jurisdiction. Your rights under this Agreement are nonexclusive and personal and cannot be assigned, sublicensed or transferred in any other manner to anyone else, and any attempted assignment, sublicense, or transfer will be null and void.

10.2 EXPORT RESTRICTIONS. YOU ACKNOWLEDGE THAT THE SDK IS OF U.S. ORIGIN. YOU

AGREE TO COMPLY WITH ALL APPLICABLE INTERNATIONAL AND NATIONAL LAWS THAT APPLY TO THESE PRODUCTS, INCLUDING THE U.S. EXPORT ADMINISTRATION REGULATIONS, AS WELL AS END-USER, END-USE AND DESTINATION RESTRICTIONS BY U.S. AND OTHER GOVERNMENTS.