

End User License Agreement for the Software Development Kit

IMPORTANT

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0. Applicability of certain terms and conditions for some files in the SDK

- 0.1 Clauses 1, 4.3, 4.4, 5, 7, 8 of these terms and conditions do not apply to those files of the SDK contained in the following sub-folders of the Software downloaded from https://www.blackmagicdesign.com/desktopvideo_sdk:
/Mac/Include
/Win/Include
/Linux/Include
- 0.2 This entire written Agreement applies to all other files of the SDK and documentation.

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 - in the case of the supply of goods:
 - i the replacement of the goods;
 - ii the supply of equivalent goods;
 - iii the repair of the goods;
 - iv the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - v the payment of the cost of having the goods repaired; and

- in the case of the provision of services:
 - i the supplying of the services again; or
 - ii the payment of the cost of having the services supplied again.

- 2.5 The Licensee acknowledges that the Software in general is not error-free and agrees that the existence of such errors will not constitute a breach of this Agreement.
- 2.6 The Licensor and its suppliers do not warrant that the Software will be free from all known viruses and the Licensee is solely responsible for virus scanning the Software.
- 2.7 The Licensor and its suppliers do not warrant that the Software will enable the Licensee to render its products compatible with the Licensor or its suppliers' products.

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- 3.4 The Licensee acknowledges that the Licensor has entered into this Agreement in reliance upon the Warranty and Disclaimer and Liability clauses set forth in this Agreement, and that the same form an essential basis of the bargain between the parties. The parties agree that the limitation of liability specified in this Agreement will survive and apply even if the Warranty and Disclaimer or Liability clause, or any limitation of remedies is found to have failed its essential purpose.

4. Intellectual Property Rights

- 4.1 For the purposes of this Agreement, the term Intellectual Property Rights means all copyright, patents, designs, trademarks or service marks, brand names, product names, trade secrets, know-how, rights to confidentiality and other intellectual and industrial property rights (including Marks as defined in clause 6), whether or not registered or capable of registration, in all parts of the world.
- 4.2 The Licensee acknowledges that it obtains no Intellectual Property Rights whatsoever in the Software. As between the parties all Intellectual Property Rights vest in the Licensor or its suppliers.
- 4.3 The Licensee must not, except to the extent permitted by any law that cannot be excluded by the parties, copy, modify, disassemble, decompile, or reverse engineer the Software nor directly or indirectly permit any third party to do any of the foregoing.

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5. Infringement of Intellectual Property Rights

If the Licensee becomes aware of any infringements or suspected infringements by any third party of any Intellectual Property Rights in the Software, the Licensee must immediately notify the Licensor, and must at the request and expense of the Licensor, take such action as the Licensor may reasonably deem appropriate to protect its Intellectual Property Rights.

6. Marks

- 6.1 The Licensee will not adopt or use, nor authorise others to adopt or use, any trademark, service mark or trade name which includes, or is likely to mislead, deceive or cause confusion, or is substantially identical with, or deceptively similar to, any Mark. This clause will survive the expiration or earlier termination of this Agreement.

- 6.2 For the avoidance of doubt, the Licensee is permitted to use the following designations only during the term of this Agreement:

- ‘XXX compatible with Blackmagic Design YYY’; and
- ‘XXX for Blackmagic Design YYY’,

where ‘XXX’ refers to the Licensee’s product name, and YYY refers to the Blackmagic product, “DeckLink,” “Multibridge,” “Intensity,” “HDLINK,” “Videohub,” or “UltraScope,” with which such XXX product is compatible (provided that the Licensee’s product is compatible with such Blackmagic product). If the Licensor determines in its sole discretion that any of the Licensee’s products are not compatible with the applicable Blackmagic product, then the Licensor shall so notify the Licensee, and the Licensee shall discontinue any use of the Marks on such incompatible Licensee product(s).

- 6.3 For the purposes of this Agreement, the term Marks means any trademark, service mark or trade name of Blackmagic or its affiliates, as the case may be, including but not limited to “DeckLink”, “Multibridge”, “Intensity”, “HDLINK”, “Videohub” or “UltraScope”, whether or not they are registered or capable of being registered.

7. Term and Termination

- 7.1 This Agreement is effective until terminated.

- 7.2 The Licensor may immediately terminate this Agreement at any time with or without notice:

- at the Licensor’s sole discretion; or
- if the Licensee breaches a term of this Agreement.

- 7.3 Upon termination of this Agreement, the Licensee must immediately cease to use the Software and if capable of return, return the Software (and all copies thereof) to the Licensor. Where such Software is incapable of return, the Licensee must permanently delete or destroy the Software and provide a declaration to the Licensor that the Licensee has complied with this clause 7.3. This requirement is without prejudice to any other rights and remedies that the Licensor may have in respect of the breach.

- 7.4 Despite any other provision of this Agreement this clause 7.4 and clauses 2, 3, 4, 5, 6, 7.3 and 8 survive the expiration or termination of this Agreement.

8. General

- 8.1 This written Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement and supersedes all prior communications and agreements between the parties as to its subject matter. Each party agrees that unless expressly stated in this Agreement, that party has not relied on any representation, warranty or undertaking of any kind in relation to the subject matter of this Agreement.
- 8.2 If any provision of this Agreement or any part of a provision is unenforceable or void for any reason, then:
- that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the economic intent of the parties, and the remainder of this Agreement will continue in full force and effect; and
 - in any other case, such provision must be severed from this Agreement, in which case a valid, legal and enforceable provision of similar intent and economic impact will be substituted, and the remaining provisions will continue in full force and effect as if the severed provision had not been included.
- 8.3 The Licensee must not, without prior written consent of the Licensor assign, charge, sub-license, or otherwise transfer any of its rights or obligations under this Agreement in whole or in part.
- 8.4 Any delay or forbearance by either party in enforcing any provisions of this Agreement or any of its rights hereunder will not be construed as a waiver of such provision or right to subsequently enforce the same.
- 8.5 Clause headings have been included in this Agreement for convenience only and must not be considered part of, or be used in interpreting, this Agreement.
- 8.6 This Agreement is governed by and must be construed in accordance with the laws in force in the State of California. The parties submit to the exclusive jurisdiction of the courts of that State and the United States of America in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.
- 8.7 The Licensee agrees to abide by all applicable laws of the State of California and all applicable jurisdictions, including the federal laws of the United States. The Licensor reserves the right to enforce its Intellectual Property Rights before the competent courts of any jurisdiction where an act of infringement has occurred.
- 8.8 The Licensee acknowledges and agrees that it will not export or re-export the Software or any products utilizing the Software in violation of any applicable laws or regulations of the United States of America.