

Wii U SDK
Terms and Conditions
Last Updated: November 12, 2012

The following terms and conditions (the “**Terms and Conditions**”) between Nintendo of America Inc. (“**Nintendo**” or “**we**” or “**us**” or “**our**”) and you on behalf of the company you are authorized to represent (“**you**” or “**your**”) apply to your use and access of the Wii U system development kit and all related materials and documentation that we make available to you (the “**SDK**”), and include the following terms, the terms of your Non-disclosure agreement with us, and any third party terms set forth below or posted within the SDK.

1. Nintendo License

Subject to your compliance with these Terms and Conditions, we hereby grant you a limited, worldwide (excluding Japan and South Korea), royalty-free, non-assignable, and non-exclusive license to use the SDK solely to develop software to run on the Wii U platform. You may not use the SDK for any other purpose. We may cease providing the SDK and we may terminate your right to use the SDK at any time. You agree that the form and nature of the SDK 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. Your rights to use the SDK will automatically terminate without notice from us if you fail to comply with these Terms and Conditions or any other agreement between you and Nintendo. Additional third party terms contained within or distributed with the SDK that are specifically identified in related documentation may apply to third party software incorporated into the SDK. However, such third party terms do not otherwise apply to the SDK. All software used in the SDK is the property of Nintendo or its software suppliers and protected by United States and international copyright laws. Software provided as part of the SDK is licensed and not sold. Nintendo reserves all other rights not expressly granted in these Terms and Conditions.

2. Compliance with Laws. You and your contractors and representatives must comply with all laws and regulations in your use of the SDK, including export and re-export regulations of the Department of Commerce and other United States agencies and authorities. If you are a U.S. Government end user, we are licensing the SDK to you as a "Commercial Item" as that term is defined in the U.S. Code of Federal Regulations (see 48 C.F.R. § 2.101), and the rights we grant you to the SDK are the same as the rights we grant to all others under these Terms and Conditions.

3. No Warranty; Limitation of Liability. THE SDK IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND FROM NINTENDO. NINTENDO FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NINTENDO WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR RELATING TO THE SDK, EVEN IF NINTENDO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, NINTENDO'S AGGREGATE LIABILITY TO YOU IN CONNECTION WITH ANY CLAIMS ARISING OUT OF OR RELATING TO THE SDK IS LIMITED TO THE AMOUNT YOU ACTUALLY PAID FOR THE SDK. IF A LAW RESTRICTS OUR ABILITY TO LIMIT LIABILITY OR DISCLAIM WARRANTIES, THE LIMITATIONS LISTED ABOVE MAY NOT APPLY TO YOU. IN THAT CASE, WE LIMIT OUR LIABILITY AND DISCLAIM WARRANTIES TO THE GREATEST EXTENT PERMITTED BY LAW. THE ABOVE DISCLAIMER AND LIMITATION OF LIABILITY IS MADE ON BEHALF OF NINTENDO, ITS PARENT COMPANY, EACH OF THEIR AFFILIATES, AND THE DIRECTORS, OFFICERS, EMPLOYEES, VENDORS AND AGENTS OF EACH OF THE FOREGOING.

4. Indemnification. To the maximum extent permitted by law, you agree to defend, indemnify, and hold harmless Nintendo, its parent company, each of their affiliates, and the directors, officers, employees,

vendors, and agents of each of the foregoing from and against any and all claims, actions, suits, and proceedings, as well as any and all losses, liabilities, damages, costs, and expenses (including reasonable attorneys' fees and costs) arising out of or accruing from (a) your use of the SDK, and (b) any non-compliance by you with these Terms and Conditions.

5. Enforcement; Non-waiver. If any part of these Terms and Conditions is held to be invalid or unenforceable, that part will no longer apply to the parties and will be replaced by an enforceable provision that most closely reflects the original intent of the parties, but all other parts of these Terms and Conditions will remain in effect unless otherwise provided. Our failure or delay to insist upon or enforce your strict compliance with these Terms and Conditions will not constitute a waiver of any of our rights.

6. Governing Law. These Terms and Conditions, and your relationship with Nintendo under these Terms and Conditions, are governed by the laws of the State of Washington without regard to its conflict of laws provisions. You agree to submit to the exclusive jurisdiction of the courts located within King County, Washington, to resolve any legal matter arising from these Terms and Conditions.

License from S3 Graphics Co., Ltd. for S3TC Texture Compression

This is a legal agreement between Nintendo Co., Ltd., you, as the Nintendo-approved developer ("Developer"), and S3 Graphics Co., Ltd. ("S3 Graphics"). Be sure to read the following agreement (the "Agreement") before using the S3TC and S3TC related texture compression and decompression algorithms and data formats accompanying this Agreement ("S3 Texture Compression Technology"). BY USING THE S3 TEXTURE COMPRESSION TECHNOLOGY, YOU ARE AGREEING TO BE BOUND BY AND BECOMING A PARTY TO THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CEASE ANY FURTHER USE OF THE S3 TEXTURE COMPRESSION TECHNOLOGY AND PROMPTLY DELETE ALL COPIES FROM YOUR SYSTEMS.

1. S3 Texture Compression Technology. The S3 Texture Compression Technology files accompanying this Agreement, whether on disk, on compact disc, in read only memory, or any other media, the related documentation and other materials are licensed, not sold, to Developer by S3 Graphics. The S3 Texture Compression Technology in this package and any copies, modifications and distributions thereof are subject to the terms of this Agreement.

2. License; Permitted Uses. (i) Subject to the terms of this Agreement, Developer is granted a worldwide, nonexclusive, nontransferable license to (a) use, copy and distribute the S3 Texture Compression Technology only for (1) testing the S3 Texture Compression Technology, and (2) incorporating the S3 Texture Compression Technology into applications designed solely for use in connection with Nintendo's Wii U game system (each, an "Application") and (b) to use, copy and distribute data in the S3 Graphics' proprietary data formats for representing compressed texture data in the Application (and for use on personal computers to the extent necessary for the development of such Application). Developer agrees not to use or distribute S3 Texture Compression Technology either on a standalone basis or with any product or technology other than the Applications referred to in Section 2(i)(b) above. (ii) Developer may incorporate the S3 Texture Compression Technology or portions thereof solely into Developer's Applications, provided that Developer distributes Developer's product pursuant to a valid agreement that is at least as protective of S3 Graphics' rights in the S3 Texture Compression Technology as this Agreement.

3. Limitations and Restrictions. Developer's rights under this Agreement will terminate automatically without notice from S3 Graphics if Developer fails to comply with any term(s) of this Agreement. All rights not expressly granted in this Agreement with respect to the S3 Texture Compression Technology are reserved by S3 Graphics. Developer agrees not to attempt or authorize others to reverse engineer,

disassemble, or decompile the confidential portions of the S3 Texture Compression Technology, except to the extent such restrictions are prohibited by law. Unless S3 Graphics gives a prior written approval, Developer shall not to modify, create any derivative work from, or disclose the S3 Texture Compression Technology or make it subject to the GNU General Public License (“GPL”) or the equivalent where it was not already subject to such GPL or the equivalent, or make any copies of S3 Texture Compression Technology or copies of any portion thereof, except as otherwise expressly provided in this Agreement.

4. Ownership. S3 Graphics is the sole and exclusive owner of the S3 Texture Compression Technology. S3 Graphics owns the S3 Texture Compression Technology and all copyrights thereto and has licensed Developer to use and distribute the S3 Texture Compression Technology solely with Applications that operate solely on Nintendo’s Wii U game system. The S3 Texture Compression Technology and any derivative works based on the S3 Texture Compression Technology remain the exclusive property of S3. Whenever the S3 Texture Compression Technology, in whole or in part, is distributed with Applications, S3 Graphics will have no right in and to such Applications. Developer agrees not to delete, alter, add to or fail to reproduce, in and on any S3 Texture Compression Technology copy and media, the name of S3 Texture Compression Technology and any copyright or other notices appearing in or on any copy, media or package materials in connection with S3 Texture Compression Technology or which may be required by S3 Graphics or Nintendo at any time.

5. Royalty Fees. This Agreement is provided to Developers who meet the terms of this Agreement free of any royalty fees due to S3 Graphics.

6. No Service Support. Developer understands that S3 Graphics will not provide service or support for the S3 Texture Compression Technology to Developer.

7. Indemnification. Developer will indemnify, hold harmless and defend S3 Graphics and Nintendo Co., Ltd., and their respective subsidiaries and affiliates (and their officers, executives, employees, contractors and agents) from and against all damages, costs and expenses (including reasonable outside attorneys’ fees) which result from any claim against S3 Graphics by any third party which arises out of or is in any way connected to any Application manufactured, created, sold, or distributed by Developer.

8. Disclaimer Of Warranty. The S3 Texture Compression Technology may contain errors that could cause failures or loss of data, and may be incomplete or contain inaccuracies. Developer expressly acknowledges and agrees that use of the S3 Texture Compression Technology is at Developer’s sole risk. The S3 Texture Compression Technology is provided “AS IS” and without warranty of any kind. Some jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not apply to Developer.

9. Limitation of Liability. (i) In no event will S3 Graphics, Nintendo Co., Ltd., or any of their respective subsidiaries or affiliates be liable to Developer for any consequential or incidental damages, including any lost profits or lost savings, or for any claim by any party, even if a S3 Graphics representative has been advised of the possibility of such damages. (ii) Some states or provinces do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to Developer. In no event will S3 Graphics’ total liability to Developer for all damages, losses, and causes of action (whether in contract, tort (including negligence) or otherwise) exceed \$50.

10. Confidentiality. Developer agrees that S3 Texture Compression Technology and any Nintendo and S3 Graphics information provided and/or exchanged among the parties under this Agreement shall be considered as “Confidential Information” as defined in Non-Disclosure Agreement effective between Developer and Nintendo (“NDA”). Developer and Nintendo hereby agree that S3 Graphics is a third party beneficiary to the NDA and the obligations and duties imposed by the NDA with respect to any Confidential Information may be enforced by S3 Graphics.

11. Term. This Agreement shall commence upon the Effective Date set forth above, and shall remain in full effect from the date of the execution of this Agreement until September 10, 2019. Either party may terminate this Agreement upon thirty (30) days prior written notice for failure to cure a breach after

receipt of notice of such default. Nevertheless, S3 Graphics may terminate this Agreement earlier by giving Developer sixty (60) days prior written notice. Upon termination, only the following provisions shall survive and remain in effect: Article 3, 4, 6, 7, 8, 9, 10, and 11, and 12.

12. Governing Law, Venue and Jurisdiction. This Agreement will be governed by the laws in force in the State of California excluding the application of its conflicts of laws rules. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. S3 Graphics and Developer hereby expressly consent to exclusive jurisdiction of and venue in the state courts located in and serving Santa Clara County, California (or, if federal courts have exclusive jurisdiction, the United States District Court for the Northern District of California).

13. Severability. In the event of any invalidity of any provision of this Agreement, the parties agree that such invalidity will not affect the validity of the remaining portions of this Agreement.

14. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to Developer's use of the S3 Texture Compression Technology in connection with the Wii U system, and supersedes all prior or contemporaneous understandings regarding such subject matter. No amendment to or modification of this Agreement will be binding unless in writing and signed by S3 Graphics and Developer.

END-USER LICENSE AGREEMENT

License from Roland Corporation for the Roland GS Sound Set and Related Trademarks.

This is a legal agreement between you, the Nintendo-Approved Game Developer ("Developer"), and Roland Corporation ("Roland"). Be sure to read the following agreement (the "Agreement") before using the Roland GS Sound Set. BY USING THE ROLAND GS SOUND SET, YOU ARE AGREEING TO BE BOUND BY AND BECOMING A PARTY TO THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, PROMPTLY DELETE THE ROLAND GS SOUND SET FROM YOUR SYSTEM.

1. License. The Roland files accompanying this Agreement, whether on disk, on compact disc, in read only memory, or any other media, the related documentation and other materials (collectively, the "Roland GS Sound Set") are licensed, not sold, to Developer by Roland. The Roland GS Sound Set in this package and any copies, modifications and distributions thereof are subject to the terms of this Agreement.

2. Permitted Uses. (i) Subject to the terms of this Agreement, Developer is granted a worldwide, nonexclusive, nontransferable license to use, copy, modify, and distribute the Roland GS Sound Set only for (a) testing the Roland GS Sound Set, and (b) incorporating the Roland GS Sound Set into "video game software" (as that term is currently understood in the video game industry) that runs solely on the Wii game system.

(ii) Developer may incorporate the Roland GS Sound Set or portions thereof solely into Developer's own video game software that operates solely on a Nintendo Wii game system, provided that Developer includes with the video game software the required copyright notices and other credits to Roland as defined in Section 3, "Credit/Attribution" and distribute Developer's product pursuant to a valid agreement that is at least as protective of Roland's rights in the Roland GS Sound Set as this Agreement.

(iii) Developer may use Roland trademarks only as defined in Section 3, "Credit/Attribution".

3. Credit/Attribution. (i) Whenever the Roland GS Sound Set, in whole or in part, is incorporated into Developer's video game software, Developer must acknowledge Roland as the source in a user's standard point of entry to find the appropriate credit information, such as in the "credit roll" or other visible display of credits. The minimum notice is identified in Attachment 1 and shall include the words "Roland GS Sound Set used under license.", the Roland trademark logo, and the words "(P)1996 Roland Corporation U.S."

The displayed size of the Roland trademark logo in the above credit shall be no smaller than 30 % of the total width of the viewable screen area. The respective proportions of the Roland Logo shall not be altered. The Logo shall be rendered in a display resolution no lower than the display resolution of Developer's own company logo.

(ii) Whenever the Roland GS Sound Set, in whole or in part, is incorporated into Developer's video game software that has music education, music participation, music appreciation, or music creation, as a component of the software, in addition to requirements in Section 3(i) above, Developer must also acknowledge Roland as the source of the sounds on the outside packaging and inside the owners' manual of Developer's video game software product. Such acknowledgment displayed on the outside packaging and inside the owners' manual shall include the Roland logo and the accompanying text, "Includes Sounds Licensed from Roland" and "(P)1996 Roland Corporation U.S." "For the avoidance of doubt, this requirement shall not apply to games or software where music is used only as sound effects, and/or as background to or enhancement of game play activities, events, or other actions of such game or software."

When this acknowledgment is displayed on the outside packaging and inside the owners' manual, the portion of the notice consisting of the Roland logo shall be displayed according to the examples in Attachment 2; the Roland logo shall be displayed no smaller than 18mm wide and approximately 3mm high; the proportions of the Roland logo notice shall not be altered; the accompanying text must be displayed in a size and resolution which is clearly legible and readable; and the Roland logo shall be rendered in resolution no lower than the display resolution of the Nintendo logo or the Developer's own company logo.

4. Limitations and Restrictions. (i) The Roland GS Sound Set is distributed in DLS file format with copyright notices. If Developer distributes the Roland GS Sound Set, in whole or in part, in the DLS file format, or in any other file format which has any suitable placeholder for copyright notice, Developer shall keep the original copyright notice as supplied in the file.

(ii) The Roland GS Sound Set or any derivative works based on the Roland GS Sound Set may not be used, copied or redistributed with any musical instrument, karaoke system, or any other non-game application.

(iii) Developer's rights under this Agreement will terminate automatically without notice from Roland if Developer fails to comply with any term(s) of this Agreement.

5. Copyright. Roland is the sole and exclusive owner of the Roland GS Sound Set. The Roland GS Sound Set contains copyrighted Sound Recordings registered with the U.S. Copyright Office. Roland

Corporation U.S. owns the Roland GS Sound Set and all copyrights thereto and has licensed Nintendo and Nintendo's Approved Game Developers to use and distribute the Roland GS Sound Set solely with software programs and that operate solely on a Nintendo Wii game system. The Roland Sounds in the Roland GS Sound Set and any derivative works based on the Roland GS Sound Set remain the exclusive property of Roland. Whenever the Roland GS Sound Set, in whole or in part, is distributed with Developer's video game, Roland will have no right in and to such video game.

6. Royalty Fees. This Agreement is provided to Nintendo Approved Game Developers who meet the terms of this Agreement free of any royalty fees due to Roland.

7. Indemnification. Developer shall indemnify, hold harmless and defend Roland and Nintendo Co., Ltd., and their respective subsidiaries and affiliates (and their officers, executives, employees, agents or affiliates) from and against all damages, costs and expenses (including reasonable outside attorneys' fees) which result from: (a) any breach of Developer's representations or warranties; or (b) any claim against Roland by any third party which arises out of or is in any way connected to the Nintendo Wii game system or any video game software manufactured, created, sold, or distributed by Developer.

8. Disclaimer Of Warranty. The Roland GS Sound Set may contain errors that could cause failures or loss of data, and may be incomplete or contain inaccuracies. Developer expressly acknowledges and agrees that use of the Roland GS Sound Set is at Developer's sole risk. The Roland GS Sound Set is provided "AS IS" and without warranty of any kind. Some jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not apply to Developer.

9. Limit of Liability. (i) In no event will Roland, Nintendo Co., Ltd., or any of their respective subsidiaries or affiliates be liable to Developer for any consequential or incidental damages, including any lost profits or lost savings, or for any claim by any party, even if a Roland representative has been advised of the possibility of such damages. (ii) Some states or provinces do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to Developer. In no event shall Roland's total liability to Developer for all damages, losses, and causes of action (whether in contract, tort (including negligence) or otherwise) exceed \$50.

10. Governing Law. This Agreement will be governed by the laws in force in the State of California excluding the application of its conflicts of laws rules. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

11. Severability. In the event of any invalidity of any provision of this Agreement, the parties agree that such invalidity shall not affect the validity of the remaining portions of this Agreement.

12. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the use of the Roland GS Sound Set and supersedes all prior or contemporaneous understandings regarding such subject matter. No amendment to or modification of this Agreement will be binding unless in writing and signed by Roland and Developer.