

Software User Agreement

THIS Software User Agreement ("Agreement") is entered into upon installing or otherwise using the Software ("Effective Date") between Hamamatsu Photonics K.K., a Japanese corporation with its registered office at 1126-1 Ichino-cho, Chuo-ku, Hamamatsu City, Shizuoka Pref., Japan ("Hamamatsu") and the registered corporate office of the LICENSEE representative installing or otherwise using this Software.

1. GRANT OF LICENSE; LICENSEE RESTRICTIONS

1.1 Limited License Grant. Hamamatsu grants to LICENSEE a free of charge, nonexclusive, nontransferable, non-sublicensable, revocable, limited license to use the DCAM-API Drivers ("Software") within the scope defined in article 1.2 below, subject to the terms and conditions of this Agreement. Except as permitted under a prior separate written authorization from Hamamatsu, LICENSEE shall not use the Software and intellectual property rights for any other purpose. All such use shall be at the sole expense of the LICENSEE. The license set forth in this Agreement are licensed for LICENSEE only.

1.2 The Scope of License. LICENSEE shall use Software granted hereunder only to design and develop a software to control Hamamatsu's camera products (as specified on a separate list). Notwithstanding the foregoing, LICENSEE may incorporate the Software into its own products (including software) and sell such products to its customers. (LICENSEE's product which incorporate the Software is hereinafter referred to as "LICENSEE's Product")

1.3 LICENSEE Restrictions and Prohibitions. LICENSEE represents and warrants that it will not at any time, directly or indirectly reverse Engineer, analyze, duplicate or otherwise use the Software in a way that is not expressly permitted hereunder (including assisting any of the foregoing), including but not limited to, any and all binary files associated therewith, or Hamamatsu's camera products which are specified in a separate list, including the hardware or software (whether embedded or otherwise), or the security technology.

LICENSEE shall not, directly or indirectly, (a) reproduce or create derivatives of these Software, except in association with the development of Software under this Agreement, (b) sell, lease, assign, lend, license, or encumber the Software, (c) distribute the Software in any form other than the pre-packaged installers without prior express written consent of Hamamatsu.

1.4 Right of Hamamatsu. All ownerships, intellectual property rights including copyrights and any other rights to the Software shall remain the property of Hamamatsu or a third party who rightfully owns such rights. Hamamatsu shall not assign and provide the LICENSEE any rights to the Software except for expressly granted hereby, and Hamamatsu or a third party who rightfully owns such rights retain any rights to the Software. Notwithstanding the stipulation in article 1.2, 1.3, 1.4, anything developed or derived by LICENSEE because of a study of the performance, design or operation of the Software shall be considered derivative works of the intellectual property rights, but may be retained and utilized by LICENSEE in connection with this Agreement. In no event shall LICENSEE (i) seek, claim or file for any patent, copyright or other proprietary right with regard to any such derivative work, (ii) make available any such derivative work to any third party, or (iii) use any such derivative work except in connection with the design and development of Software under this Agreement.

2. PRODUCT SUPPORT

Warranty and Repair. LICENSEE shall provide the original consumer with a minimum ninety (90) day warranty on all LICENSEE's Products. LICENSEE shall also provide reasonable product service, including out-of-warranty service, for all LICENSEE's Products. Under no circumstance shall Hamamatsu be responsible for any warranty or support of LICENSEE's Products.

3. CONFIDENTIAL INFORMATION

3.1 Definition. "Confidential Information" means information provided to LICENSEE by Hamamatsu or any third party working with Hamamatsu relating to the Software, including, but not limited to, (a) all current or future information, know-how, techniques, methods, information, tools, emulator hardware or software, software development specifications, and/or trade secrets, (b) any patents or patent applications, (c) any business, marketing or

sales data or information, and (d) any other information or data relating to development, design, operation, manufacturing, marketing or sales. Confidential Information shall include all confidential information disclosed, whether in writing, orally, visually, or in the form of drawings, technical specifications, software, samples, pictures, models, recordings, or other tangible items, which contain or manifest, in any form, the above listed information.

Confidential Information shall not include data and information (i) which was in the public domain prior to LICENSEE's receipt of the same hereunder, or which subsequently becomes part of the public domain by publication or otherwise, except by LICENSEE's wrongful act or omission, (ii) which LICENSEE can demonstrate, through written records, was in its possession without restriction of use or disclosure, prior to its receipt of the same hereunder, and (iii) which LICENSEE can show such data and information was received by it from a third party who did not acquire the same directly or indirectly from Hamamatsu and to whom LICENSEE has no obligation of confidentiality.

- 3.2 Disclosure for Administrative or Judicial Order. LICENSEE shall be permitted to disclose Confidential Information if such disclosure is required by an authorized governmental or judicial entity, provided that Hamamatsu is given Notice thereof at least thirty (30) days prior to such disclosure. LICENSEE shall use its best efforts to limit the disclosure to the greatest extent possible consistent with LICENSEE's legal obligations, and if required by Hamamatsu, shall cooperate in the preparation and entry of appropriate protective orders.
- 3.3 Disclosure and Use. Hamamatsu may disclose LICENSEE with highly confidential development information, systems, specifications and related resources and information constituting and incorporating the Confidential Information to assist LICENSEE in the operation of Software. LICENSEE agrees to maintain all Confidential Information as strictly confidential and to use such Confidential Information only in accordance with this Agreement. LICENSEE shall limit access to the Confidential Information to LICENSEE's employees having a strict need to know and shall ensure such employees are bound by a written agreement or otherwise to confidentiality obligation which is at least as restrictive as the obligation of confidentiality as provided herein. LICENSEE shall use its best efforts to ensure that its employees working with or otherwise having access to Confidential Information shall not disclose or make any unauthorized use of the Confidential Information.
- 3.4 No Disclosure to Independent Contractors. LICENSEE shall not disclose the Confidential Information to any independent contractor, sub-contractor, and third party ("Independent Contractor") without the prior written consent of Hamamatsu. Any Independent Contractor seeking access to Confidential Information shall be required to enter into a written non-disclosure agreement with Hamamatsu prior to receiving any access to or disclosure of the Confidential Information from either LICENSEE or Hamamatsu, and LICENSEE shall assist in Hamamatsu and the Independent Contractor executing such non-disclosure agreement.

4. NO WARRANTIES

Hamamatsu makes no warranties that; the Software is fit or useful for the particular purpose of the Licensee; or there are no errors or defects in the Software; or the software of Licensee based on the Software is complete, useful, or error-free. Hamamatsu doesn't make any other warranty relating to the Software. Hamamatsu shall not be liable for direct or indirect cost or damages arising out of or in connection with any use of the Software in any case. Hamamatsu shall not provide the Licensee or end users any maintenance or support to the software of LICENSEE, and Hamamatsu shall not be liable for troubles or failures arising out of or in connection with any use of the software.

5. TERM AND TERMINATION

- 5.1 Term. This Agreement shall commence on the Effective Date and shall be terminated upon Hamamatsu's election for such termination.
- 5.2 Default or Breach. In the event that LICENSEE is in default or commits a breach of this Agreement, which is not cured within thirty (30) days after Notice thereof, then this Agreement shall automatically terminate on the date specified in such Notice.
- 5.3 Effect of Termination. In the event of termination or expiration of this Agreement, all of the licenses granted hereunder shall terminate, and all Software (including any copies thereof) shall be destroyed immediately and use of Software shall be ceased. In addition, all copies of the Software shall be immediately deleted from all servers, computers, terminals or

otherwise, on which it is installed.

6. GENERAL PROVISIONS

- 6.1 Export Control. LICENSEE agrees to comply with all applicable export laws and regulations of any country with jurisdiction over the Software and/or either party.
- 6.2 Governing Law/Jurisdiction. This Agreement is governed by the laws of Japan, without regard to conflict of law principles. The United Nations Convention for the International Sale of Goods shall not apply. The district courts located in Tokyo, Japan shall have the exclusive jurisdiction in respect of disputes arising in connection with this Agreement.
- 6.3 Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. All prior negotiations, representations, agreements, and understandings are merged into, extinguished by and completely expressed by this Agreement.
- 6.4 Revisions. This Agreement may be updated by Hamamatsu from time to time, in which case the latest version shall take precedence.
- 6.5 No Waiver. No term or provision hereof will be considered waived by Hamamatsu, and no breach shall be excused, unless such waiver or consent is in writing signed by Hamamatsu.
- 6.6 Survival. In addition to those rights specified elsewhere in this Agreement, the rights and obligations set forth in Sections 3, shall survive any expiration or termination of this Agreement to the degree necessary to permit their complete fulfillment of discharge.

7. OSS

This Software includes open source software listed in the "third-party-notice.txt" which is separately saved within the downloaded package and the term of this Agreement is valid to the extent not inconsistent with the terms of OSS license agreements.

LICENSEE shall be obligated to confirm and comply with the terms and conditions applicable to such open source software listed in the "third-party-notice.txt".