

Resonon SDK Terms of Use

Thank you for using the Resonon, Inc. software development kit (the "Resonon SDK"). By using the Resonon SDK, you agree to the terms below. If you disagree with any of these terms, Resonon does not grant you a license to use the Resonon SDK. We reserve the right to update and change these terms from time to time without notice. You can find the most recent version of these terms under the "Warranty, Repair, and Legal" section of this page: http://www.resonon.com/customer_support.html.

1. Your license to the Resonon SDK under these terms continues until it is terminated by either party. You may terminate the license by discontinuing use of the Resonon SDK. Resonon may terminate the license at any time for any reason. Your rights to use the Resonon SDK terminate automatically if (i) you violate any of these terms, (ii) Resonon publicly posts a written notice of termination on Resonon.com, or (iii) Resonon sends a written notice of termination to you.

2. The Resonon SDK is owned by Resonon and is licensed to you on a worldwide (except as limited below), non-exclusive basis on the terms and conditions set forth herein. These terms define legal use of the Resonon SDK, including all updates, revisions, substitutions, and any copies of the Resonon SDK made by or for you. All rights not expressly granted to you are reserved by Resonon.

3. The Resonon SDK may be protected by copyrights, trademarks, service marks, international treaties, and/or other proprietary rights and laws of the U.S. and other countries. Resonon's rights apply to the Resonon SDK and all output and executables of the Resonon SDK, excluding any software components developed by you which do not themselves incorporate the Resonon SDK or any output or executables of the Resonon SDK. You agree to abide by all applicable proprietary rights laws and other laws, as well as any additional copyright notices or restrictions contained in these terms. Resonon owns all rights, title, and interest in and to the Resonon SDK. These terms grant you no right, title, or interest in any intellectual property owned or licensed by Resonon, including (but not limited to) the Resonon SDK and Resonon trademarks.

4. Resonon may elect to provide you with support or modifications for the Resonon SDK (collectively, "Support"), in its sole discretion, and may terminate such Support at any time without notice to you. Resonon may change, suspend, or discontinue any aspect of the Resonon SDK at any time, including the availability of any Resonon SDK. Resonon may also impose limits on certain features and services or restrict your access to parts or all of the Resonon SDK.

5. **DISCLAIMER OF WARRANTY.** THE SOFTWARE IS PROVIDED "AS IS" WITH ALL FAULTS. TO THE EXTENT PERMITTED BY LAW, RESONON AND RESONON'S DISTRIBUTORS and LICENSORS HEREBY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES THAT THE SOFTWARE IS FREE OF DEFECTS, MERCHANTABLE, FIT FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. YOU BEAR THE ENTIRE RISK AS TO SELECTING THE SOFTWARE FOR YOUR PURPOSES AND AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE. THIS LIMITATION WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, SO THIS DISCLAIMER MAY NOT APPLY TO YOU.

6. **LIMITATION OF LIABILITY.** EXCEPT AS REQUIRED BY LAW, RESONON AND ITS DISTRIBUTORS, DIRECTORS, LICENSORS, CONTRIBUTORS, AND AGENTS (COLLECTIVELY, THE "RESONON GROUP") WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES

ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SOFTWARE, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, LOST PROFITS, LOSS OF DATA, AND COMPUTER FAILURE OR MALFUNCTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH SUCH CLAIM IS BASED. THE RESONON GROUP'S COLLECTIVE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE GREATER OF \$500 (FIVE HUNDRED U.S. DOLLARS) AND THE FEES PAID BY YOU UNDER THIS LICENSE (IF ANY). SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, SO THIS EXCLUSION AND LIMITATION MAY NOT APPLY TO YOU.

7. To the maximum extent permitted by applicable law, you hereby release and waive all claims against Resonon, and its subsidiaries, affiliates, officers, agents, licensors, cobranders or other partners, and employees from any and all liability for claims, damages (actual and/or consequential), costs and expenses (including litigation costs and attorneys' fees) of every kind and nature, arising from or in any way related to your use of the Resonon SDK. In addition, you expressly waive and relinquish any and all rights and benefits which you may have under any state or federal statute or common law principle of similar effect, to the fullest extent permitted by law.

8. To the maximum extent permitted by applicable law, you agree to hold harmless and indemnify Resonon and its subsidiaries, affiliates, officers, agents, licensors, cobranders or other partners, and employees from and against any third-party claim arising from or in any way related to your use of the Resonon SDK, including any liability or expense arising from all claims, losses, damages (actual and/or consequential), suits, judgments, litigation costs and attorneys' fees, of every kind and nature. Resonon shall use good faith efforts to provide you with written notice of such claim, suit or action.

9. MISCELLANEOUS.

(a) This Agreement constitutes the entire agreement between Resonon and you concerning the subject matter hereof, and it may only be modified by a written amendment signed by an authorized executive of Resonon.

(b) Except to the extent applicable law, if any, provides otherwise, this Agreement will be governed by the laws of the State of Montana, U.S.A., excluding its conflict of law provisions, and, in respect of any dispute which may arise hereunder, you consent to the jurisdiction of the federal and state courts sitting in the State of Montana

(c) This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

(d) If any part of this Agreement is held invalid or unenforceable, that part will be construed to reflect the parties' original intent, and the remaining portions will remain in full force and effect.

(e) A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, will not waive such term or condition or any subsequent breach thereof.

(f) Except as required by law, the controlling language of this Agreement is English.

(g) You may assign your rights under this Agreement to any party that consents to, and agrees to be bound by, its terms; Resonon may assign its rights under this Agreement without condition.

(h) This Agreement will be binding upon and will inure to the benefit of the parties, their successors, and permitted assigns.

(i) The section headings and subheadings contained in this agreement are included for convenience only, and shall not limit or otherwise affect the terms of the SDK Terms of Use. Any construction or interpretation to be made of the SDK Terms of Use shall not be construed against the drafter. The SDK Terms of Use constitute the entire agreement between Resonon and you with respect to the subject matter hereof. 10. Relationship of the Parties. Notwithstanding any provision hereof, for all purposes of the SDK Terms of Use, you and Resonon shall be and act independently and not as partner, joint venturer, agent, employee or employer of the other. You shall not have any authority to assume or create any obligation for or on behalf of Resonon, express or implied, and you shall not attempt to bind Resonon to any contract.