

# TOBII EYEX ENGINE SOFTWARE DEVELOPMENT KIT LICENSE AGREEMENT

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## PREAMBLE

This *Tobii EyeX Engine Software Development Kit License Agreement* (the "**Agreement**") forms a legally binding contract between **Tobii Technology AB** (reg. No. 556613-9654), with registered office at Karlsrovägen 2D, SE-182 53, Danderyd, Sweden ("**Tobii**"), and the party ("**Licensee**") entered as the licensee in the *Licensee Information Box* (the "**Infobox**") when downloading and installing Tobii's *EyeX Engine Software Development Kit* (the "**SDK**").

An individual entering the name of a legal person (e.g. his or her employer) in the Infobox confirms the authority to bind such legal person in accordance with the terms and conditions of this Agreement. An individual that does not have the necessary authority, may neither accept the terms and conditions below, nor use the SDK, on behalf of the legal person.

BY DOWNLOADING AND INSTALLING THE SDK, LICENSEE (i) CONFIRMS THAT IT HAS READ AND UNDERSTOOD THE TERMS AND CONDITIONS BELOW; AND (ii) AGREES TO BE BOUND BY THIS AGREEMENT.

BY DOWNLOADING AND INSTALLING THE SDK, LICENSEE FURTHER AGREES THAT (i) THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE RIGHTS AND LIABILITY BETWEEN LICENSEE AND TOBII IN RELATION TO LICENSEE'S USE OF THE SDK AND DISTRIBUTION OF THE SOFTWARE COMPONENTS (AS DEFINED HEREIN); AND (ii) WITH THE EXCEPTION OF ANY TERMS OF SALE APPLICABLE TO LICENSEE'S ACQUISITION OF THE SDK, THIS AGREEMENT SUPERSEDES ALL PRIOR COMMUNICATIONS (BOTH ORAL AND WRITTEN), STATEMENTS IN MARKETING, ADVERTISING, OR ANY OTHER COMMUNICATION BETWEEN LICENSEE AND TOBII CONCERNING THE SDK (INCLUDING THE SOFTWARE COMPONENTS).

***N.B. This Agreement permits Licensee a limited right to use the SDK for internal development work and a limited right to distribute Applications (as defined herein) developed by Licensee through the use of the SDK according to the terms and conditions in this Agreement. The foregoing notwithstanding, if Licensee desires to distribute a Niche Application (as defined herein), please contact Tobii at [isvpartners@tobii.com](mailto:isvpartners@tobii.com).***

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## TERMS AND CONDITIONS

### 1. Background.

1.1 Tobii is a supplier of hardware and software solutions for eye tracking.

1.2 Licensee is a software vendor or individual that develops, markets and licenses software solutions or intends to do the same.

1.3 Tobii's SDK is a "toolbox" (including *inter alia* various building blocks) for developing applications that support human-computer interaction through real time processing of human gaze ("**Gaze Interaction**").

1.4 This Agreement is intended to provide Licensee with limited rights to develop and, if applicable, distribute applications for Gaze Interaction that process data from Tobii Hardware and Software (as defined below) only; a separate commercial license must be negotiated with Tobii if Licensee desires the right to use the SDK for any other purpose.

### 2. Definitions.

In addition to the capitalized words defined in the *Preamble* and Section 1, the following defined terms are used in this Agreement:

2.1 "**Application**" means any software application (except for the Niche Applications) developed by Licensee (i) using the SDK; and/or (ii) including the Software Components (and any Updates, modifications and/or patches or hot fixes thereto that Tobii may make generally available from time to time).

2.2 "**Confidential Information**" shall mean all information provided by Tobii under this Agreement (except information which becomes publicly available without an act of default by Licensee) which Tobii has declared confidential or which Licensee should have understood to be confidential.

2.3 "**Effective Date**" means the date when the Licensee downloads the SDK.

2.4 "**End User**" means any person or entity that sub-licenses Software Components through Licensee (or Licensee's appointed resellers or distributors) as part of an Application.

2.5 "**Niche Applications**" means an application developed by Licensee (i) using the SDK; and/or (ii) including the Software Components (and any Updates, modifications and/or patches or hot fixes thereto that Tobii may make generally available from time to time) that is or is intended to be licensed, sold, or otherwise disposed of, separately or as part of a system, application or other technical device, more than one time for a price of more than US\$800 or for more than US\$400 per year if licensed or sold per subscription, lease or similar.

2.6 "**Software Components**" means files (for example dynamic-link library files, commonly referred to as DLL-files) created by Tobii, object code or other components of the SDK (and any Updates, modifications and/or patches or hot fixes thereto that Tobii may make generally available from time to time) that are intended to be reused in Applications or Niche Applications.

2.7 "**Tobii Hardware and Software**" means eye tracking hardware and software components designed or provided by Tobii

Technology AB. These components may be provided directly by Tobii or incorporated within a third party product.

**2.8 "Tobii Materials"** means the SDK (including the Software Components) and any ideas, know-how, programs, processes, designs, inventions, works and other information, which may be developed or created by Tobii.

**2.9 "Trademarks"** means the registered or unregistered trademarks and service marks related to the SDK or the Software Components that Tobii may adopt from time to time.

**2.10 "Updates"** means (to the extent that such items are not accompanied by a separate license agreement or terms of use) any subsequent releases, software updates, add-on components, stencils, templates, shapes, web services and/or supplements of the SDK (including the Software Components) intended to replace or enhance a prior release of the SDK or a Software Component.

### 3. Grant of License.

**3.1 License.** Subject to the limitations specified in this Agreement, Licensee is granted a limited, worldwide, royalty-free, non-assignable, revocable and nonexclusive license to use the SDK (including the Software Components) solely (i) to develop and distribute Applications for Gaze Interaction that process data from Tobii Hardware and Software; and (ii) to develop Niche Applications for Gaze Interaction that process data from Tobii Hardware and Software.

**3.2 Development.** The Licensee may, solely for the purpose of developing Applications and Niche Applications as specified in Section 3.1 above:

- 3.2.1 Install and use Software Components on computers owned and controlled by Licensee;
- 3.2.2 Distribute a reasonable amount of copies of the documentation of the SDK among Licensee's employees and consultants; and
- 3.2.3 Incorporate the Software Components into the developed Applications and Niche Applications.

This Agreement provides Licensee no right to develop Applications or Niche Applications that process data from non-Tobii Hardware and Software; a separate commercial license must be negotiated with Tobii for such purpose.

**3.3 Distribution.** The Licensee may, solely for the purpose of distributing an Application as specified in Section 3.1 above, copy, distribute and sub-license the Software Components as part of the Application, intended to be sold, licensed or otherwise disposed of by Licensee. This Agreement provides Licensee no right to distribute Niche Applications; a separate commercial license must be negotiated with Tobii for such purpose.

### 3.4 **Limitations.**

**3.4.1 Privacy and integrity.** Unless Licensee enters into a separate agreement with Tobii, the SDK may only be used to develop and distribute software that does not (i) inflict on a person's privacy or integrity; (ii) transfer data about eye movements, behavior, intention or attention generated by or derived from the Software Components to another computing device, network, display or printer; and (iii) store data about eye movements, behavior, intention or attention generated by or derived from the Software Components on any persistent storage media (except for calibration files and data used for accuracy-enhancing filters), i.e. data may only be stored in primary memory and only while it is being processed.

**3.4.2 Copy, etc.** Licensee may not (i) copy (except as provided for in this Agreement or for backup purposes), modify, adapt, decompile, reverse engineer, disassemble, or create derivative works of the SDK or any part thereof (including the Software Components); or (ii) use the SDK to build Applications that may

be used as an SDK providing API's that use functionality from the Software Components.

**3.4.3 No other distribution.** Except for the Software Components incorporated in an Application, Licensee may not under this Agreement distribute, sub-license or combine/bundle any part of the SDK (including the Software Components) with other software, or distribute any software or device incorporating any part of the SDK.

**3.4.4 Updates.** The terms of this Agreement will apply to any Updates, modifications and/or patches or hot fixes that Tobii makes available to Licensee. Licensee agrees that Updates may require Licensee to change or update the Applications and Niche Applications. Updates may also affect Licensee's ability to use, access or interact with the SDK.

**3.4.5 No high risk use.** The Software Components are not fault-tolerant. Accordingly, the Software Components are not designed or intended for use in any software where failure or fault of any kind could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("**High Risk Use**"). The SDK may only be used to develop Applications and Niche Applications that do not (and the Software Components may only be distributed and sub-licensed as permitted herein if the Application does not) involve High Risk Use. High Risk Use (which is strictly prohibited) includes, for example, aircraft navigation and control of other modes of human mass transportation, control of nuclear or chemical facilities.

**4. Support.** Tobii is not obliged to support Licensee regarding the use of the SDK (including the Software Components) unless a separate support agreement between the parties has been entered into.

**5. Trademarks.** Licensee shall not remove or alter any Trademark, copyright, patent or other proprietary notices contained in the SDK (including the Software Components).

**6. Ownership.** Except for the license explicitly granted herein to Licensee, Tobii retains all right, title and interest in and to the Tobii Materials, and all patents, copyrights, Trademarks, trade names, trade secrets and other proprietary rights in or related to the Tobii Materials, whether or not specifically recognized or perfected under the laws of the country in which the Tobii Materials are located.

**7. Changes.** Tobii reserve the right to change in its sole discretion this Agreement or the SDK at any time. Tobii may require that Licensee either accepts and agrees to new or revised terms of this Agreement, or, if Licensee does not agree to the new or revised terms, ceases or terminates the use of the SDK. Licensee's continued use of the SDK after changes to this Agreement take effect will constitute Licensee's acceptances of the changed terms. If Licensee does not agree to a change, Licensee must stop using the SDK and terminate this Agreement. For the avoidance of doubt, changed terms do not take retroactive effect with respect to any Application or Niche Application developed before the change or any Application first distributed before the change.

### 8. Term and Termination.

**8.1 Term.** This Agreement shall become effective on the Effective Date and shall continue until terminated.

**8.2 Termination by Licensee.** Licensee may terminate this Agreement at any time by (i) uninstalling and destroying all copies of the SDK that are in the possession, custody or control of Licensee and its organization; and (ii) providing Tobii written notice thereof.

**8.3 Termination by Tobii.** Tobii may, at any time, terminate this Agreement with Licensee for any reason or for no reason in Tobii's sole discretion and, in such a case, Licensee must immediately (i) cease using the SDK; and (ii) provide Tobii written notice thereof.

**8.4 Survival of obligations.** The following obligations will survive termination of the Agreement for any reason: (i) all obligations relating to protection of proprietary rights; and (ii) all provisions regarding the limitations of warranty, remedy and liability.

**8.5 Effects of termination.** Upon termination of this Agreement for any reason, all rights and licenses granted hereunder shall terminate and revert to Tobii. Any termination of this Agreement except for termination due to Licensee's breach of contract will not affect Licensee's right, subject to Licensee's continued compliance with Licensee's obligations under this Agreement, to continue to distribute versions of the Applications created and first distributed before termination, and will not affect the right of the End Users to continue using such versions of the Application, both of which rights will survive termination.

## **9. Indemnification.**

Licensee shall defend and hold Tobii and its subsidiaries harmless from losses finally arising from any third party claim that an Application or Niche Application infringes any patent, trade secret or copyright of any third party or resulting from Licensee's breach of this Agreement; provided that, Licensee shall not have any obligation to indemnify Tobii or its subsidiary if such claim is caused by one or several Software Components as provided by Tobii, provided that: (a) Licensee is promptly notified in writing of the claim; (b) Licensee has, subject to the below, sole control in the defense of any claim and any settlement negotiations attendant thereto; and (c) Tobii provides Licensee, at Licensee's expense, all reasonable assistance, information and cooperation to defend or settle the claim. Licensee shall not enter into any settlement of any claim covered by the above indemnification without the prior approval of Tobii, which approval will not be unreasonably withheld. Tobii shall have the right to retain separate counsel and participate in the defense of the action or claim at its own expense.

## **10. Representations and warranties.**

**10.1 Tobii's Representations.** Tobii makes the following representations and warranties to Licensee:

**10.1.1** Tobii has all rights necessary under Swedish law to grant to Licensee the various rights set forth in this Agreement and Tobii has not previously granted any rights in the SDK (including the Software Components) to any third party which limit the rights granted to Licensee herein.

**10.2 Licensee's Representations.** Licensee makes the following representations and warranties to Tobii:

**10.2.1** Each of Licensee's employees, consultants or partners who will have access to any Confidential Information of Tobii, will have signed, before beginning such involvement, Licensee's standard form agreement with respect to proprietary rights and confidentiality; and

**10.2.2** Licensee has full corporate power to enter into this Agreement and to carry out its obligations hereunder.

**10.2.3** Licensee will use the SDK only in accordance with all accompanying documentation, in the manner expressly permitted by this Agreement, and Licensee use of the SDK, and the marketing, sales and distribution of the Applications, will be in compliance with all applicable laws and regulations. Licensee will not develop any Application or Niche Application which would commit or facilitate the commission of a crime, or other tortious, unlawful, or illegal act.

**10.3 Disclaimer.** EXCEPT AS SPECIFICALLY PROVIDED HEREIN TOBII MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, RELATING TO THE SDK OR THE SOFTWARE COMPONENTS, AND TOBII FURTHER EXPRESSLY DISCLAIMS, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL WARRANTIES AND CONDITIONS OF ANY KIND RELATED TO THE SDK OR THE SOFTWARE COMPONENTS, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## **11. Limitation of Liability.**

EXCEPT FOR GROSS NEGLIGENCE, WILLFUL INTENT, AND EXCEPT AS PROVIDED IN SECTION 9 ABOVE, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR INDIRECT OR CONSEQUENTIAL DAMAGES OR THE LOSS OF ANTICIPATED PROFITS ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT BY SUCH PARTY, EVEN IF SUCH PARTY IS NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES ARISING.

## **12. General.**

**12.1 Waiver; severability.** Except as may be affirmed in writing by the parties, no failure or delay by either party in exercising any right, power or privilege hereunder will operate as a waiver or preclude further exercise thereof. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law that provision will be enforced to the maximum extent possible and the remaining provisions of this Agreement will remain in full force and effect.

**12.2 Governing law.** This Agreement shall be construed and enforced in accordance with the laws of Sweden, without giving effect to its conflict of law provisions.

**12.3 Dispute resolution.** Any dispute, controversy or claim arising out of or in connection with this Agreement or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered at the Arbitration Institute of the Stockholm Chamber of Commerce (the "Institute"). The place of arbitration shall be Stockholm and the arbitration shall be conducted in English language. The Rules of the Institute shall apply, and the Institute shall decide whether the tribunal shall be composed of one or three arbitrators. At the option of either party, and if the amount in dispute does not exceed EUR 500,000 the Institute's Rules for Expedited Arbitrations shall apply. The amount in dispute includes the claimant's claims in the Request for Arbitration and any counterclaims in the respondent's reply to the Request for Arbitration.

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