License Agreement
Tobii Pro Software Development Kit (SDK)

Version 2.0

PREAMBLE

This *Tobii Pro Software Development Kit License Agreement* (the "**Agreement**") forms a legally binding contract between **Tobii Pro AB (publ)** (reg. no. 556914-7613), with registered office at Karlsrovägen 2D, SE-182 53, Danderyd, Sweden ("**Tobii**"), and the licensee ("**Licensee**"). The Licensee is entered as the licensee by completing the *Licensee Information Box* (the "**Infobox**") when downloading and installing the *Tobii Pro Software Development Kit* (the "**SDK**") or by otherwise using the SDK.

An individual entering as a Licensee on behalf of a legal person (e.g. his or her employer) 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, INSTALLING OR USING THE SDK, LICENSEE (i) CONFIRMS THAT LICENSEE HAS READ AND UNDERSTOOD THE TERMS AND CONDITIONS BELOW; AND (ii) AGREES TO BE BOUND BY THIS AGREEMENT.

BY DOWNLOADING, INSTALLING OR USING 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) 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 includes two annexes that are presented in association with the **Terms and Conditions** *below. The annexes include provisions regarding* inter alia *presentation of Tobii's trademarks and Licensee's obligation to apply certain minimum end user license terms when Licensee redistributes an application that uses the SDK.*

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 utilize eye tracking data.

2. **Definitions.**

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

    2.1 **"Application"** means any software 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).

    2.2 **"Effective Date"** means the date when the Licensee completes the Infobox (as defined in the Preamble) and downloads the SDK, or otherwise starts to use of the SDK.

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

    2.4 **"Software Components"** means files (for example dynamic-link library files, commonly referred to as DLL-files or .SO files), 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 an Application.

2.5 **"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.

2.6 **"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.

2.7 **"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 Software Components intended to replace or enhance a prior release of the SDK or a Software Component.

3. **Grant of License.**

3.1 **Grant of license**. During the term of this Agreement, Tobii grants Licensee a limited, worldwide, royalty-free, non-assignable, revocable and non-exclusive license to use the SDK (including the Software Components) to develop and distribute Applications that process data from Tobii hardware and software.

3.2 **Limitations**. Licensee may not (i) copy (except 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.

3.3 **Grant of sub-licensing rights**. During the term of this Agreement, Tobii designates Licensee as non-exclusive sub-licensor for the Software Components. The right to sublicense (directly or indirectly through appointed resellers or distributors) the Software Components is non-transferable and applies solely to the sub-licensing of the Software Components in machine-readable object code version to End Users licensing the Application. For greater clarity it is noted that Licensee may not sub-license the SDK.

3.4 **No High Risk Use or Medical Classified Use**. The SDK (including the Software Components) is not fault tolerant, and is accordingly not designed or intended for use in any software or situation where failure or fault of any kind could lead to death or serious bodily injury of any person, or to severe physical, environmental or property damage ("**High Risk Use**"). The SDK (including the Software Components) may only be used to develop Applications that do not involve High Risk Use. High Risk Use includes, for example, aircraft navigation, military and industrial use, control of nuclear, chemical facilities and of other modes of human mass transportation, as well as medical, surgical, or other use intended to support or sustain life. Furthermore, but

nonetheless, the SDK (including the Software Components) is not certified for medical classified environments ("**Medical Classified Use**") and Tobii prohibits and disclaims liability for all such use.

4. **Support for the Software Components.**

4.1 **No support of the Software Components.** 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.

4.2 **No support of the Application.** Tobii shall not be responsible for the support of the Application or any other application that uses the Software Components to access data, content or resources.

5. **Specific Obligations of Licensee.** Licensee shall see to it that (i) Tobii's Trademarks are displayed and presented in the Application as set out in **Annex 1** hereto; and (ii) each End User accepts with respect to the Software Components at least the license terms and conditions set out in **Annex 2** hereto.

6. **Use of Trademarks.** Tobii grants to Licensee a right to use Tobii's Trademarks as required to fulfill Licensee's obligations pursuant to Article 5 above. Licensee shall not remove or alter any Trademark, copyright, patent or other proprietary notices contained in the SDK (including the Software Components).

7. **Ownership.** Except for licenses and rights 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. Nothing contained in this Agreement shall be construed to transfer any rights in or to the Tobii Materials or Tobii's patents other than as explicitly set forth in this Agreement.

8. **Audits.**
Licensee agrees to, upon not less than thirty (30) days prior notice from Tobii, permit Tobii, or its third party audit firm, to access Licensee's books and records in order to establish if Licensee has breached any terms of this Agreement. Licensee agrees to fully cooperate with Tobii in these audits, provided that Tobii will not perform these audits more than once a year, or otherwise upon suspected breach of contract by Licensee. In addition, Tobii reserves the right to collect usage data from remote through the Software Components to detect potential breaches of this Agreement.

9. Changes.

9.1 Tobii reserve the right to change in its sole discretion this Agreement or the SDK at any time.

9.2 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 developed before the change or any Application first distributed before the change.

10. Indemnification.

10.1 No Tobii indemnification.
SINCE TOBII GRANTS LICENSEE THE RIGHT TO USE THE SDK AND TO SUB-LICENSE THE SOFTWARE COMPONENTS FOR FREE, TOBII MAKES NO REPRESENTATION OR WARRANTY ON NON-INFRINGEMENT AND TOBII WILL NOT DEFEND AND HOLD LICENSEE, LICENSEE'S AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, HARMLESS FROM ANY CLAIM FROM A THIRD PARTY THAT THE SDK OR THE SOFTWARE COMPONENTS INFRINGE ANY PATENT, TRADE SECRET OR COPYRIGHT.

10.2 Licensee's indemnification. Licensee shall defend and hold Tobii and its officers, directors, employees, subsidiaries and agents harmless from (i) any claim by a third party that an Application infringes any patent, trade secret or copyright of any third party; provided that, Licensee shall not have any obligation to indemnify Tobii if such claim relates only to the Software Components as provided by Tobii; and (ii) any claim, allegation, liability or loss suffered by Tobii arising from Licensee's breach of any provision in this Agreement, provided that: (a) Licensee is promptly notified in writing of the claim; (b) Licensee has 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.

11. Term and Termination.

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

11.2 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.

11.3 Termination by Tobii. Tobii may terminate this Agreement for any reason upon six (6) months written notice. Tobii may also terminate this Agreement immediately if Licensee breaches this Agreement and has not cured such breach within thirty (30) days from Tobii's notice to Licensee of the nature of the breach.

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

11.5 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.

12. Reputation, Goodwill and Compliance.
Licensee shall not knowingly make false or misleading representations with regard to the Software Components or Tobii. Licensee further agrees to conduct business in a professional manner and act in good faith with respect to the Software Components and the good reputation of Tobii. Licensee represents and warrants that it (i) will conduct its performance under this Agreement at all times in keeping with professional standards of ethics and integrity; and (ii) is familiar with applicable laws concerning bribery, corruption and prohibited business practices, and will at all times perform in accordance with the requirements of such laws.

13. Disclaimer of Warranties.

13.1 "As is". Since Tobii grants Licensee the right to use the SDK and the Software Components for free, Licensee's use of the SDK and the Software Components and the sub-licensing of Software Components is at Licensee's sole risk. The SDK and the Software Components are provided "as is" and "as available" without warranty of any kind from Tobii.

13.2 Complete 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, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

14. **Limitation of Liability.** IN NO EVENT SHALL

TOBII BE LIABLE TO LICENSEE, LICENSEE'S AFFILIATES OR ANY END USER UNDER ANY THEORY OF LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING ANY LOSS OF DATA, THAT MAY BE INCURRED BY LICENSEE, LICENSEE'S AFFILIATES OR ANY END USER, DUE TO THE USE OF THE SDK OR ONE OR SEVERAL OF THE SOFTWARE COMPONENTS, WHETHER OR NOT TOBII HAD BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING.

15. **General.**

15.1   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.

15.2   Entire agreement. This Agreement, including the annexes, sets forth the entire understanding between the parties and supersedes any prior communication or agreement between the parties regarding the right to use the SDK or sub-licensing of the Software Components.

15.3   Order of precedence. In the event of a conflict of terms, this Agreement takes precedence over any annex.

15.4   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.

15.5   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.

*   *   *

Annex No. 1

to *Licensee Agreement*

PRESENTATION OF TRADEMARKS, ETC.

The Application shall clearly present in an "About box" or other corresponding notice visible to the End User

(i)   the Tobii logotype in reasonable size; and

(ii)   the text "*This application is powered by Tobii*" in standard font size.

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Annex No. 2

to *Licensee Agreement*

MINIMUM END USER LICENSE TERMS AND CONDITIONS

The End User license terms and conditions applied by Licensee shall include at least the following terms and conditions relating to the End User's right to use the Software Components:

1) The End User may not copy (except for backup purposes), modify, adapt, decompile, reverse engineer, disassemble, or create derivative works of the Software Components or any part thereof.

2) The End User may not redistribute or combine/bundle any part of the Software Components with other software, or distribute any software or device incorporating part of the Software Components.

3) The End User shall agree that Tobii (i) owns all legal right, title and interest in and to the Software Components, including any related intellectual property rights; and (ii) reserves all rights not expressly granted.

4) The End User shall agree that the End User has no right to use any of Tobii's trade names, trademarks, service marks, logos, domain names, or other distinctive brand features.

5) The End User shall agree that he/she will not remove, obscure, or alter any proprietary rights notices (including copyright and trademark notices) that may be affixed to or contained within the Software Components.

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