

EMOTIV SYSTEMS, INC.

EMOTIV SDK ENTERPRISE EDITION LICENSE AGREEMENT

READ THIS AGREEMENT CAREFULLY.

BY CLICKING ON THE "I AGREE" BUTTON OR INSTALLING OR USING ALL OR ANY PORTION OF THE SDK, YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU.

IF YOU DO NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, CLICK "I DON'T AGREE". YOU WILL NOT BE GIVEN ACCESS TO THE SDK UNLESS YOU ACCEPT THE TERMS OF THIS AGREEMENT. EMOTIV CAN CHANGE THESE TERMS AT ANY TIME BY POSTING AN UPDATED VERSION ON THE SDK DOWNLOAD PORTAL. THEREAFTER, IT WILL BE YOUR RESPONSIBILITY TO REVIEW THE NEW TERMS TO SEE IF YOU AGREE WITH THE NEW TERMS AS IT CREATES A BINDING LEGAL AGREEMENT BETWEEN YOU AND EMOTIV. IF YOU USE THE SDK AFTER EMOTIV HAS CHANGED ANY OF THESE TERMS, YOU ARE AGREEING TO ALL OF THE CHANGES. AGAIN, IF YOU DO NOT AGREE, PLEASE DON'T USE THE SDK.

IF YOU WISH TO USE THE SDK AS AN EMPLOYEE, CONTRACTOR, OR AGENT OF A CORPORATION, PARTNERSHIP OR SIMILAR ENTITY, THEN YOU MUST BE AUTHORIZED TO SIGN FOR AND BIND THE ENTITY IN ORDER TO ACCEPT THE TERMS OF THIS AGREEMENT. THE LICENSES GRANTED UNDER THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON ACCEPTANCE BY SUCH AUTHORIZED PERSONNEL.

IF YOU HAVE ENTERED INTO A SEPARATE WRITTEN LICENSE AGREEMENT WITH EMOTIV FOR USE OF THE SDK, THE TERMS AND CONDITIONS OF SUCH OTHER AGREEMENT SHALL PREVAIL OVER ANY CONFLICTING TERMS OR CONDITIONS IN THIS AGREEMENT.

This SDK License Agreement ("Agreement") is between Emotiv Systems, Inc., a Delaware corporation located at 199 New Montgomery Street, Suite 1202, San Francisco, California 94105 ("Emotiv"), and the Enterprise (company or incorporated entity) that has procured the licensed SDK (as defined below) for use as an end user ("you"). This Agreement covers Emotiv's SDK and supporting technical documentation provided with the SDK ("Documentation").

1. Definitions.

Application: the executable program which uses Emotiv technology for input resulting from the combination of your Code with the distributable portions of the SDK.

Code: any software or computer code, including audio and video material, developed or licensed by you, which, when integrated with the SDK, creates the Application.

Effective Date: the date on which the SDK is first made available to you.

Emortal: An online distribution platform comprising of an application store managed by Emotiv.

Emotiv SDK Headset: the version of the Emotiv headset provided by Emotiv for development purposes.

End User: an end user customer of the Application.

Enterprise: companies or incorporated entities that had a turnover in excess of US\$100,000 in their last fiscal year

EULA: an enforceable agreement between you and each End User in the form provided by Emotiv. You will find this agreement in the file SDKEnterpriseAgreement.pdf included with the SDK.

SDK: the Software, Emotiv SDK Headset, EULA and Documentation provided under this Agreement.

Software: the Emotiv software product(s) provided under this Agreement. Software consists of Emotiv's software development kit tools (the "Tools") and software development kit file libraries (the "Libraries"). "Software" shall also include any support and maintenance releases provided to you by Emotiv. Unless otherwise noted, the Software and Documentation are referred to collectively herein as "Software".

Term: the term lasting until twelve (12) months from the Effective Date.

2. License.

2.1 License Grant.

(a) Application Development License. During the Term, subject to all of the terms and conditions of this Agreement, you shall have the non-exclusive, non-transferable, non-sublicensable right to (i) install and use, only on your own computer, one copy of the SDK solely for Application development and support purposes and (ii) integrate the Libraries with your Code to create the Application.

(b) Limited Distribution License. Emotiv makes available certain portions of the SDK for distribution by SDK licensees ("Distributable Software"). Distributable Software will be clearly labeled by Emotiv as distributable by SDK licensees. A list of Distributable Software can be found in the file Emotiv SDK Redistributable included with the SDK.

From time to time, Emotiv may provide you with a revised list of Distributable Software on the SDK download portal as updates to the SDK become available for download by you, subject to these terms. Certain Distributable Software may be subject to additional terms which will be included with the relevant software. Subject to all of the terms and conditions of this Agreement, during the Term, Emotiv hereby grants you a non-exclusive, non-transferable, non-sublicensable right to (i) integrate the Distributable Software with your Code to create the Application and (ii) distribute the object code form of the Distributable Software as integrated into the Application to End Users directly, but solely for use by such End Users only and without any right of redistribution.

As a condition to this license, (1) your Code must add substantial functionality to the Application in addition to the features provided by the SDK, (2) in no event may you distribute the Distributable Software on a stand-alone basis or in any manner other than as integrated into the Application (3) the Application must not expose any of the functionality of the Distributable Software directly to the End User and (4) you must distribute the EULA along with the Application and each End User receiving the Application must agree to the terms of the EULA.

You may only distribute Distributable Software downloaded from Emotiv in connection with the SDK. For example, if you purchase the Emotiv headset, you may not distribute any libraries you receive with the headset, even if they have the same file names as libraries listed as Distributable Software. You may only distribute the libraries that are Distributable Software. However, your Application may make calls to libraries installed by a user who obtained that software from an Emotiv headset purchase.

If you have not paid the applicable license fee for an Enterprise License, then you are granted only an evaluation license in accordance with Section 2.2 immediately below.

2.2 Evaluation License. Notwithstanding the foregoing, if you elect to use the Software on an evaluation basis, you will be authorized to access and use the Software only for a limited evaluation period of thirty (30) days, beginning on the day that you first receive the Software (the "Evaluation Period"). The Software may become inoperable and, in any event, your right to use the Software automatically expires at the end of the Evaluation Period. Your license to use the Software during the Evaluation Period is limited to using the Software internally at your designated evaluation site, solely to test the Software in an evaluation environment for the purpose of determining whether to use the Software to create an application. Any other use of the Software during the Evaluation Period is expressly prohibited.

2.3 Installation and Copies. Emotiv shall deliver the Software and Documentation by disk or other media or make it available for download in electronic form. Emotiv shall also provide you with electronic passwords or other enabling mechanisms if necessary to permit the licensed usage of the Software. You may make a reasonable number of copies of the Software for back-up and archival purposes during the Term.

2.4 License Restrictions. You shall not (and shall not allow any third party to): (a) decompile, disassemble, or otherwise reverse engineer the SDK or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the SDK by any means whatsoever (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions and only then upon advance written notice to Emotiv); (b) except as expressly provided herein, distribute, sell, sublicense, rent, lease or use the SDK (or any portion thereof); (c) remove any product identification, proprietary, copyright or other notices contained in the SDK; (d) modify any part of the SDK, create a derivative work of any part of the SDK, or incorporate the SDK into or with other software, except for the limited development rights for the Application as expressly set forth in Section 2.1; or (e) publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the SDK. In no event may the SDK be used in connection with the development of any technology or product which has features similar to or is otherwise in any manner competitive with the SDK or the Emotiv headset.

2.5 Non-Exclusive. The rights granted to you hereunder are non-exclusive and nothing under this Agreement shall prohibit Emotiv from entering into any development, distribution or other agreement with any other party in any territory or region of the world.

3. **Ownership.** Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly provided herein, Emotiv and its suppliers have and will retain all rights, title and interest (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the SDK (including your feedback regarding the SDK) and all copies, modifications and derivative works thereof (including any changes made based on your feedback but excluding your Code). You acknowledge that you are obtaining only a limited license right to the SDK and that irrespective of any use of the words "purchase", "sale" or like terms hereunder no ownership rights are being conveyed to you under this Agreement or otherwise.

4. **Payment.** You shall pay all fees associated with the Software licensed as set at time of accepting this Agreement. All payments shall be made in U.S. dollars. All fees are non-refundable once paid. You shall be responsible for all taxes, withholdings, duties and levies arising from the order (excluding taxes based on the net income of Emotiv).

5. **Licensee Obligations.**

5.1 **Representations.** You shall not make any representations, guarantees or warranties of any type with respect to the specifications, features, capabilities or otherwise concerning the SDK or the Emotiv headset. In no event shall you make any representation, warranty or guarantee by or on behalf of Emotiv. You shall represent Emotiv and the SDK and Emotiv headset in a positive and professional manner at all times.

5.2 **Business Practices.** You agree not to engage in any deceptive, misleading, illegal or unethical practices that may be detrimental to Emotiv or the SDK or Emotiv headset and agree to comply with all applicable federal, state and local laws and regulations) while exercising your rights under this Agreement.

5.3 **Records and Audit.** You agree to maintain complete, clear and accurate records relating to your use and distribution of the SDK (or any portion thereof) and the exercise of your rights under this Agreement. Upon reasonable notice, you shall permit Emotiv or its representative to review such records and any other of your books and records which relate to your performance under this Agreement to ensure your compliance with your obligations to Emotiv. Any such audit will be conducted during normal business hours and in a manner designed to cause minimal impact on your ordinary business activities. You shall maintain all records required under this Agreement for at least three (3) years following expiration or termination of the Agreement.

5.4 **Application Copyright Notices and Branding Requirements.** Each copy of the Application shall contain a reference to Emotiv's copyright in at least the following locations within the Application: (i) the main copyright notice for the Application and any related documentation, (ii) any "About Box" or similar general legal notice or copyright page and (iii) in any other location in which you provide a copyright notice for other licensors to the Application. In addition, each Application shall comply with such branding guidelines as may be mutually agreed by you and Emotiv.

5.5 **Quality Assurance.** The Application shall be subject to Emotiv's prior written approval, which shall not be unreasonably withheld or delayed and which shall be within Emotiv's sole discretion as to acceptable standards of quality. Emotiv shall have the right at any stage of the development of the Application to review the Application to ensure that it meets Emotiv's quality assurance standards and to perform compatibility testing of the Application with the Emotiv Consumer Headset. No approval by Emotiv of any element or stage of development of any Application shall be deemed an approval of any other element or stage of such Application, nor shall any such approval be deemed to constitute a waiver of any of Emotiv's rights under this Agreement or release you from any of your representations and warranties hereunder.

5.6 **Use of Emotiv Name and Logos.** In no event may you use Emotiv's name, logos or other trademarks without a separate written agreement between you and Emotiv except that you may use Emotiv's name in text (such as documentation accompanying the Application) to describe the functionality or features enabled by the Distributable Software.

5.7 **Feedback.** Upon request, you agree to provide to Emotiv written reports with your feedback regarding the SDK.

5.8 **Trade Secrets.** You acknowledge that use of the SDK will expose you to proprietary methodologies, formulae, algorithms, and other trade secret materials of Emotiv. During the term of this Agreement and for a period of one year following the termination thereof, you shall not, directly or through a third party, create or develop (or assist or otherwise share information with a third party which is developing) any information, products, concepts, systems, or techniques that are similar to or compete with the information products, concepts, systems, or techniques contemplated by or embodied in Emotiv's Confidential Information (as defined below) ("Competing Products").

5.9 **Enforcement.** You agree to remain responsible for enforcement of the terms of each End User Agreement and to immediately notify Emotiv of any known breach of such terms.

5.10 **Licensee Content.** Emotiv will provide you with the means to upload content to Emotiv's online application store, Emortal. To the extent you choose to upload any content, you agree that Emotiv may redistribute any such content in accordance with the then current Emotiv community terms of service.

6. Term of Agreement.

6.1 **Term.** This Agreement is effective as of the Effective Date and shall terminate upon the earlier to occur of: (i) expiration of the Term or (ii) termination in accordance with this Section 5.1. Each party may terminate this Agreement at any time for any reason. Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

6.2 **Termination.** Upon any expiration or termination of this Agreement, you shall cease any and all use of the SDK and destroy all copies thereof and so certify to Emotiv in writing.

6.3 **Survival.** Sections 2.4 (License Restrictions), 3 (Ownership), 4 (Payment), 5.8 (Trade Secrets), 5.9 (Enforcement), 5.10 (Licensee Content), 6 (Term of Agreement), 7 (Disclaimer of Warranties), 8 (Representations and Warranties of Licensee), 9 (Limitation of Remedies and Damages), 10 (Indemnification), 11 (Confidential Information), 12 (Export Compliance) and 13 (General) shall survive any termination or expiration of this Agreement.

7. Disclaimer of Warranties. THE SDK IS PROVIDED “AS IS”. NEITHER EMOTIV NOR ITS SUPPLIERS MAKES ANY OTHER WARRANTIES, CONDITIONS OR UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT.

8. Representations and Warranties of Licensee. You represent and warrant that:

- (a) Your business and performance under this Agreement are in compliance with all applicable federal, state and local laws and government rules and regulations;
- (b) Neither your Code nor any portion thereof, constitutes or may give rise to a claim of infringement of any patent, copyright, trade secret or other property right of a third party anywhere in the world; and
- (c) No portion of your Code (including any libraries) contains any viral “open source”, code licensed under the General Public License, or any other software or code which could compromise or interfere in any way with Emotiv’s property rights in or to the SDK or other Emotiv materials that may come into contact with such Code or require Emotiv to disclose any source code to any software integrated with your Code.

9. Limitation of Remedies and Damages.

9.1 EMOTIV (INCLUDING EMOTIV’S SUPPLIERS) SHALL NOT BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

9.2 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EMOTIV AND ITS SUPPLIERS’ ENTIRE LIABILITY TO YOU UNDER THIS AGREEMENT SHALL NOT EXCEED \$100.

9.3 The parties agree that the limitations specified in this Section 8 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

10. Indemnification. You shall indemnify, defend and hold Emotiv harmless from any and all third-party claims, liabilities, damages or expenses (including reasonable attorney’s fees) in connection with or which result from (a) any claim of infringement of a third party’s intellectual property rights with respect to the Application or (b) any claim relating to the marketing, distribution or manufacture of the Application (collectively, “Claims”) but excluding any such claim in either case to the extent based on the SDK on a stand-alone basis. Emotiv may participate in the defense of the Claims by counsel of its own choosing, at its cost and expense. You shall not settle any such Claim without Emotiv’s prior written approval.

11. Confidential Information. Any software, documentation or technical information provided by Emotiv (or its agents) shall be deemed “Emotiv Confidential Information” without any marking or further designation. Except as expressly authorized herein, you will hold in confidence and not use or disclose any Emotiv Confidential Information. You acknowledge that disclosure of Emotiv Confidential Information would cause substantial harm to Emotiv that could not be remedied by the payment of damages alone and therefore that upon any such disclosure by you, Emotiv shall be entitled to appropriate equitable relief in addition to whatever remedies it might have at law.

12. Export Compliance. You acknowledge that the SDK is subject to export restrictions by the United States government and import restrictions by certain foreign governments. You shall not, and shall not allow any third-party to, remove or export from the United States or allow the export or re-export of any part of the SDK or any direct product thereof: (i) into (or to a national or resident of) any embargoed or terrorist-supporting country; (ii) to anyone on the U.S. Commerce Department’s Table of Denial Orders or U.S. Treasury Department’s list of Specially Designated Nationals; (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (iv) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. You agree to the foregoing and warrant that you are not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The SDK is further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity, without the prior permission of the United States government.

13. General.

13.1 Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Emotiv may assign this Agreement to any affiliate or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of Emotiv's assets or voting securities. You may not assign or transfer this Agreement, in whole or in part, without Emotiv's written consent. Any attempt to transfer or assign this Agreement without such written consent will be null and void.

13.2 Severability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

13.3 Governing Law; Jurisdiction and Venue. This Agreement shall be governed by the laws of The State of California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. The jurisdiction and venue for actions related to the subject matter hereof shall be the California state and United States federal courts located in San Francisco, California, and both parties hereby submit to the personal jurisdiction of such courts.

13.4 Attorneys' Fees and Costs. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

13.5 Notices and Reports. Any notice or report hereunder shall be in writing. If to Emotiv, such notice or report shall be sent to Emotiv at the address above to the attention of "Legal Department". If to you, such notice or report shall be sent to the address you provided upon placing your order. Notices and reports shall be deemed given: (i) upon receipt if by personal delivery; (ii) upon receipt if sent by certified or registered U.S. mail (return receipt requested); or (iii) one day after it is sent if by next day delivery by a major commercial delivery service.

13.6 Amendments; Waivers. No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived.

13.7 Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. No provision of any purchase order or in any other business form employed by you will supersede the terms and conditions of this Agreement, and any such document issued by a party hereto relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

13.8 Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

[The following text is not part of the agreement. It is placed above the accept/reject buttons]

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