## SensoMotoric Instruments GmbH

## LICENSE AGREEMENT FOR THE SMI SOFTWARE DEVELOPMENT KITS ("SDK") PROVIDED FREE OF CHARGE

DO NOT CLICK "ACCEPT" UNLESS (1) YOU ARE AUTHORIZED TO AGREE TO THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT ON BEHALF OF YOURSELF AND/OR THE COMPANY OR OTHER LEGAL ENTITY YOU WORK FOR ("YOUR COMPANY"); AND (2) YOU INTEND TO ENTER INTO THIS LEGALLY BINDING AGREEMENT ON BEHALF OF YOURSELF AND/OR YOUR COMPANY.

IMPORTANT – PLEASE READ CAREFULLY: This license agreement ("Agreement") is an agreement between you (either an individual or Your Company, "Licensee") and SensoMotoric Instruments Gesellschaft für innovative Sensorik mbH, Warthestraße 21, 14513 Teltow, Germany ("SMI"). The "Licensed Materials" provided to Licensee free of charge subject to this Agreement include the SDK and any "on-line", electronic or written documentation associated with the SDK, or any portion thereof (the "Documentation"), as well as any updates or upgrades to the SDK and Documentation, if any, or any portion thereof, provided to Licensee at SMI's sole discretion. The application of conflicting general terms and conditions of Licensee shall be excluded. This applies irrespective of whether or not such terms and conditions have been expressly rejected by SMI or whether SMI, having knowledge of such conflicting terms and conditions, has accepted or effects contractual performance without reservation.

By clicking "Accept", you agree to abide by the following provisions. This Agreement is displayed for you to read and accept prior to using the Licensed Materials.

<u>If you do not agree with these provisions, do not install, download or use the Licensed Materials.</u>

- 1) <u>License</u>. Subject to the terms of this Agreement, SMI hereby grants and Licensee accepts a non-transferable and non-exclusive license without the right to sublicense for the use of the Licensed Materials only for (i) Licensee's operations, (ii) the development of applications for SMI Eye Tracking Devices, (iii) in accordance with the Documentation and (iv) only by one (1) concurrent user. Licensee may make one (1) copy of the SDK in machine readable form for backup purposes only; every notice on the original will be replicated on the copy. Installation of the SDK is Licensee's sole responsibility. The Licensed Materials may be protected by technical means as explained in the user manual, if any. Licensee is not entitled to rent, lease or otherwise make available the SDK to third parties on a non-permanent commercial basis (including as part of any software as a service or application service provider offering), except with the prior written consent of SMI.
- 2) Rights in Licensed Materials. With the exception of the limited license rights granted to Licensee under this Agreement, title to and ownership in the Licensed Materials and all proprietary rights with respect to the Licensed Materials remain exclusively with SMI. Title to and ownership in Licensee's application software that makes calls to the SDK but does not contain the SDK or any portion thereof remain with Licensee, but such application software may not be licensed or otherwise transferred to third parties without SMI's prior written consent.

<u>Confidentiality</u>. Licensed Materials are proprietary to SMI and constitute SMI trade and business secrets. Licensee shall maintain Licensed Materials in confidence and prevent their disclosure using at least the same degree of care it uses for its own trade and business secrets, but in no event less than a reasonable degree of care. Licensee shall not disclose Licensed Materials or any part thereof to anyone for any purpose, other than to its employees and sub-contractors, if any, for the purpose of exercising the rights expressly granted under this Agreement, provided they have in writing agreed to confidentiality obligations at least equivalent to the obligations stated herein. The foregoing does not apply to information that (i) is or becomes generally known or available to the

## SensoMotoric Instruments GmbH

public without any breach of the confidentiality obligation by Licensee, (ii) was already known to Licensee prior to the disclosure by SMI, or (iii) was rightfully acquired by Licensee from a third party without a breach of a confidentiality obligation towards SMI. In case of a dispute, Licensee has the burden of proof that the Licensed Materials and/or any portion thereof fall under one of these exceptions. Should Licensee be legally compelled to disclose any Licensed Materials to a third party, such as pursuant to a mandatory order by a court or authority or any comparable action, Licensee shall, to the extent permitted under applicable law, inform SMI without undue delay and undertake all possible measures to safeguard secrecy.

- 3) No Reverse Engineering. Licensee shall not, and shall not allow any third party to, decompile, disassemble or otherwise reverse engineer or by any means whatsoever attempt to reconstruct or discover any source code or underlying ideas, algorithms, file formats or programming or interoperability interfaces of the SDK or of any files contained or generated using the SDK.
- **4)** <u>Warranty.</u> The Licensed Materials are provided free of any charge and "as is" without any warranty of any kind.
- 5) Liability Limitations.
  - a) SMI shall only be liable for damages caused by willful intent or gross negligence.
  - b) With the exception of claims for damages in the event of (i) an injury to life, body or health, (ii) liability under the Product Liability Act [*Produkthaftungsgesetz*], and (iii) fraudulently concealed defects, the above limitation of liability\_shall apply to all claims for damages, irrespective of their legal basis, including but not limited to all claims based on breach of contract or tort.
  - c) The above limitation of liability also applies in case of Licensee's claims for damages against SMI's employees, statutory representatives [gesetzliche Vertreter] or agents [Erfüllungsgehilfen].
- **6)** <u>Licensee Indemnity.</u> Licensee will defend and indemnify SMI, and hold it harmless from all costs, including attorney's fees, arising from any claim that may be made against SMI by any third party as a result of Licensee's use of Licensed Materials.
- 7) Export Restriction. Licensee will not remove or export from Germany or from the country Licensed Materials were originally transmitted and/or shipped to by SMI or re-export from anywhere any part of the Licensed Materials or any direct product of the SDK except in compliance with all applicable export laws and regulations, including without limitation, those of the U.S. Department of Commerce.
- 8) Non-Waiver; Severability; Non-Assignment. The delay or failure of either party to exercise any right provided in this Agreement shall not be deemed a waiver. If any provision of this Agreement is held invalid, all others shall remain in force. Except as expressly set forth in this Agreement, Licensee may not, in whole or in part, assign or otherwise transfer this Agreement or any of its rights or obligations hereunder.
- 9) Entire Agreement; Written Form Requirement. Unless otherwise specified herein, SMI's General Terms and Conditions for the Supply of Products and Services available at <a href="http://www.smivision.com/en/gaze-and-eye-tracking-systems/support/documents-download.html">http://www.smivision.com/en/gaze-and-eye-tracking-systems/support/documents-download.html</a> or attached hereto apply. Any supplementary agreements or modifications hereto must be made in writing. This also applies to any waiver of this requirement of written form.
- **10)** <u>Termination.</u> This Agreement may be terminated by written notice (i) by Licensee without cause on 30 (thirty) days written notice; (ii) by SMI, in addition to other remedies SMI may have, if Licensee

## SensoMotoric Instruments GmbH

fails to cure any breach of this Agreement within 30 (thirty) days of written notice thereof; (iii) by SMI if there is a transfer of twenty-five percent (25%) or more of the ownership interest in Licensee, which in good faith is not acceptable to SMI, and by either party if the other party ceases to do business in the normal course, becomes insolvent, or becomes subject to any bankruptcy, insolvency, or equivalent proceedings. Upon termination by either party for any reason, Licensee shall at SMI's instructions immediately destroy or return to SMI the Licensed Materials and all copies thereof and delete the SDK and all copies thereof from any computer on which the SDK had been installed.

- **11)** <u>Notices</u>. All notices under the Agreement must be in writing and shall be delivered by hand or by overnight courier.
- **12)** Applicable Law and Jurisdiction. German law applies with the exception of its conflict of laws rules. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded. The courts of Berlin, Germany, shall have exclusive jurisdiction for any action brought under or in connection with this Agreement.