

# TOBII EYEX ENGINE SOFTWARE DEVELOPMENT KIT LICENSE AGREEMENT

## PREAMBLE

This *Tobii Gaze Interaction API Software Development Kit License Agreement* (the "**Agreement**") forms a legally binding contract between **Tobii AB (publ)** (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 *Gaze Interaction API 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 (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.

***N.B. This Agreement does merely permit Licensee a right to use the SDK for internal development work. If Licensee desires to use commercially or redistribute the SDK or an application that uses the SDK, a separate Distribution License Agreement for Tobii Gaze Interaction API needs to be agreed with Tobii (as further specified below). If interested to receive a draft distribution agreement, please contact Tobii at [sales@tobii.com](mailto:sales@tobii.com).***

## 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 that develops, markets and licenses software solutions.

**1.3** Tobii's SDK is a "toolbox" for developing applications that supports human-computer interaction through human gaze ("**Gaze Interaction**").

### 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 developed by Licensee (i) using the SDK; and/or (ii) including the Software Components.

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

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

**2.6 "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.

**2.7 "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.

**2.8 "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.** During the term of this Agreement, Licensee is granted a limited, worldwide, royalty-free, non-assignable and nonexclusive license to use the SDK (including the Software Components) solely to develop Applications for Gaze Interaction that process data from Tobii hardware and software.

**3.2 Privacy and integrity.** The SDK may only be used to develop 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.

**3.3 No high risk use.** The SDK and the Software Components are not fault-tolerant. Accordingly, the SDK and the Software Components are not designed or intended for use with any program where failure or fault of any kind of the SDK or a Software Component could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). Licensee is not

licensed to, and Licensee agrees not to use the SDK or any Software Component in, or in conjunction with, 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.

**3.4 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) include the SDK or the Software Components in any application that is malicious, obscene, deceptive or unlawful.

**3.5 No redistribution.** Licensee may not under this Agreement redistribute or combine/bundle any part of the SDK with other software, or distribute any software or device incorporating any part of the SDK. Redistribution of the SDK (or any parts thereof), as well as distribution or commercial use of Applications integrating parts of the SDK, requires a separate *Distribution License Agreement for Tobii Gaze Interaction API* between the parties.

**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).

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## **7. Indemnification.**

**7.1 No Tobii indemnification.** SINCE TOBII GRANTS LICENSEE THE RIGHT TO USE THE SDK (INCLUDING 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 ANY PART THEREOF) INFRINGES ANY PATENT, TRADE SECRET OR COPYRIGHT.

**7.2 Licensee's indemnification.** Licensee shall defend and hold Tobii and its officers, directors, employees 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.

## **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 providing Tobii notice thereof.

**8.3 Termination by Tobii.** Tobii may only terminate this Agreement 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.

**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.

## **9. Disclaimer of Warranties.**

**9.1 "As is".** Since Tobii grants Licensee the right to use the SDK (including the Software Components) for free, Licensee's use of the SDK is at Licensee's sole risk. The SDK (including the Software Components) is provided "as is" and "as available" without warranty of any kind from Tobii.

**9.2 Complete disclaimer.** TOBII MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, RELATING TO THE SDK, AND TOBII FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND RELATED TO THE SDK (INCLUDING 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

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## **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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