



LICENSE AGREEMENT FOR TOBII CORE SDK AND TOBII GAMING SDK

Document version 1.2

Please note! The Tobii Core SDK and the Tobii Gaming SDK are software development kits intended for use in interactive and gaming applications only.

If you want to develop or distribute software for so-called "Analytical Use", where eye tracking data is stored or transferred to another device with the purpose to analyze, record, visualize or interpret behavior or attention, you must instead use the Tobii Pro SDK. Applications developed using the Tobii Pro SDK are compatible with Tobii Pro eye tracker hardware, as well as with consumer devices with Tobii eye tracking in combination with a specific license key.

More information about Tobii's different SDKs are available at developer.tobii.com/tobii-sdk-guide/.

We also offer other licensing options to selected partners - please contact SDKlicensing@tobii.com if you want to discuss your situation.

PREAMBLE

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

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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 The SDK is a "toolbox" (including *inter alia* various building blocks) for developing applications to use Tobii Data as a user input for interactive experiences in games or other software

(Gaze Interaction Use).

1.4 This Agreement is intended to provide Licensee with limited rights to develop, use and, if applicable, distribute applications for Gaze Interaction Use in games and other software, that process data from Tobii Hardware and Software only. A separate commercial license with Tobii is required if Licensee desires the right to use the SDK or Software Components 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 developed by Licensee (i) using the SDK; and/or (ii) including, utilizing or accessing the Software Components.

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 the SDK or Software Components.

2.3 “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.

2.4 “Gaze Interaction Use” means to use Tobii Data as a user input for interactive experiences in games or other software.

2.5 “Software Components” means all object code files (for example dynamic-link library files, commonly referred to as DLL-files or .SO files) 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. This includes, but is not limited to, the Tobii Stream Engine and the Tobii Interaction Engine.

2.6 “Tobii Hardware and Software” means eye tracking hardware and software components designed or provided by Tobii. These components may be provided directly by Tobii or incorporated within a third party product.

2.7 “Tobii Data” means data about eye movements, attention or behavior, or any other data generated by or derived from the Software Components.

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 Software Components intended to replace or enhance a prior release of the Software Components.

3. Grant of License.

3.1 Grant of License. Subject to the limitations specified in this Agreement and 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 and use of example code) solely to develop, use and distribute Applications that process data from Tobii Hardware and Software for the purpose of Gaze Interaction Use.

3.2 Limitations. Licensee may not (i) copy (except for backup purposes), modify, adapt, decompile, reverse engineer, disassemble, or create derivative works of the Software Components; or (ii) use the SDK to build software 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.

3.4 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. Updates may also affect Licensee’s ability to use, access or interact with the SDK.

3.5 Anonymous data logging. The Software Components may log information about the use of the Software Components on Tobii servers. Such information is limited to the usage of the Software Components, and does not contain any actual gaze data information or other personal identifiable data.

3.6 Not for Analytical Use. Unless Licensee enters into a separate agreement with Tobii, the SDK may not be used to develop and distribute software that (a) store Tobii Data; or (b) transfer Tobii Data to another computing device or network; in both cases where the intent is to use or make it possible to use Tobii Data to analyze, record, visualize or interpret behavior or attention (“Analytical Use”). To clarify; storing, using or transferring Tobii Data for the sole purpose of implementing software that uses Tobii Data for Gaze Interaction Use does not constitute Analytical Use.

3.7 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 any such use of the SDK or the Software Components, unless a special license agreement is entered into for this purpose. Tobii 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. Use of 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 licenses and rights explicitly granted

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7. Changes.

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

7.2 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.

8. Indemnification.

8.1 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.

8.2 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.

9. Term and Termination.

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

9.2 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.

9.3 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.

9.4 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 obligations regarding audits; and (iii) all provisions regarding the limitations of warranty, remedy and liability.

9.5 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.

10. 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.

11. Disclaimer of Warranties

11.1 "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.

11.2 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.

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13. General.

13.1 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.

13.2 Entire agreement. This Agreement 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.

13.3 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.

13.4 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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