



TOBII ENGINE SOFTWARE DEVELOPMENT KIT LICENSE AGREEMENT

Document version 1.1

Please note! This SDK is for interactive and gaming applications only.

If you want to develop software for analytical purposes, post processing or aggregation of eye tracking data across multiple users, please contact Tobii's licensing team at SDKlicensing@tobii.com (see section 3.4 below).

PREAMBLE

This *Tobii Engine Software Development Kit License Agreement* (the "**Agreement**") forms a legally binding contract between **Tobii AB** (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 *Engine Software Development Kit* (the "**SDK**"), previously known as the Tobii EyeX Engine Software Development Kit.

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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 Tobii's SDK is a "toolbox" (including *inter alia* various building blocks) for developing applications that support human-computer interaction through real time processing of human gaze ("**Gaze Interaction**").

1.4 **This Agreement is intended to provide Licensee with limited rights to develop and, if applicable, distribute applications for Gaze Interaction that process data from Tobii Hardware and Software (as defined below) only; a separate commercial license must be negotiated with Tobii if Licensee desires the right to use the SDK 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 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 "**Confidential Information**" shall mean all information provided by Tobii under this Agreement (except information which becomes publicly available without an act of default by Licensee) which Tobii has declared confidential or which Licensee should have understood to be confidential.

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

2.4 "**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.

2.5 “Gaze Interaction” means human-computer interaction through real time processing of human gaze.

2.6 “Sample Code” means source code marked as "sample" in the SDK.

2.7 “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.

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

2.9 “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.

2.10 “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.

2.11 “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.

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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 (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.

8.3 Termination by Tobii. Tobii may, at any time, terminate this Agreement with Licensee for any reason or for no reason in Tobii's sole discretion and, in such a case, Licensee must immediately (i) cease using the SDK; and (ii) provide Tobii written notice thereof.

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.

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9. Indemnification.

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10. Representations and warranties.

10.1 Tobii's Representations. Tobii makes the following representations and warranties to Licensee:

10.1.1 Tobii has all rights necessary under Swedish law to grant to Licensee the various rights set forth in this Agreement and Tobii has not previously granted any rights in the SDK (including the Software Components) to any third party which limit the rights granted to Licensee herein.

10.2 Licensee's Representations. Licensee makes the following representations and warranties to Tobii:

10.2.1 Each of Licensee's employees, consultants or partners who will have access to any Confidential Information of Tobii, will have signed, before beginning such involvement, Licensee's standard form agreement with respect to proprietary rights and confidentiality; and

10.2.2 Licensee has full corporate power to enter into this Agreement and to carry out its obligations hereunder.

10.2.3 Licensee will use the SDK only in accordance with all accompanying documentation, in the manner expressly permitted by this Agreement, and Licensee use of the SDK, and the marketing, sales and distribution of the Applications, will be in compliance with all applicable laws and regulations. Licensee will not develop any Application which would commit or facilitate the commission of a crime, or other tortious, unlawful, or illegal act.

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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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