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- ii) YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT; AND
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The terms below are defined as follows under this Agreement:

“**Appendix**” means an addendum to this Agreement.

“**Basic Support**” means support in accordance with Tobii’s Basic Support contract.

“**Commercial License**” means a Software Development License Agreement with Tobii that permits commercialisation of the Licensed Software.

“**Eye Tracking Data**” means data about a user’s eye gaze, eye images, pupil size, facial expression, behaviour, presence, head pose or position from Tobii Eye Tracking, in raw or processed form, on its own or in combination with other information.

“**Intellectual Property Rights**” means patents, rights to apply for patents, trademarks, trade names, service marks, domain names, copyrights and all applications and registrations of such worldwide, schematics, industrial models, inventions, know-how, trade secrets, computer software programs and other intangible proprietary information.

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“**Medical Use License**” means a Software Development License Agreement with Tobii that permits commercialisation of the Licensed Software for Medical Use.

“**Research Community**” means the community of researchers that work for, and provide research to, academia and not for profit organisations.

“**Your Software**” means software developed by You, including all object code, source code, and any related documentation.

## 1. OVERVIEW

- 1.1 Tobii grants You limited rights to use the Licensed Software subject to the restrictions outlined in this Agreement.
- 1.2 Your use of the Licensed Software is strictly permitted solely to develop Your Software for your own research, use and distribution within the Research Community and non-commercial use outside of the Research Community (“**Your Use**”).

## 2. LICENSE

- 2.1 Subject to Sections 2.2, 3 and 7, Tobii grants You a limited, non-exclusive, non-transferable, non-sublicensable, revocable, license:
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- c) to any Intellectual Property Rights owned by Tobii covering binary files, or example source code, in the Licensed Software, necessary for Your Use.

2.2 The license rights in this Section 2 are conditional upon compliance with all terms in this Agreement and, specifically, the following:

- a) You may not commercialise, sell, lease or profit from Your Software. If You wish to commercialise Your Software, or distribute outside of the Research Community, then You must contact Tobii Pro at [pro.sales@tobii.com](mailto:pro.sales@tobii.com) to arrange a Commercial License.
- b) You may not use the Licensed Software on eye tracking platforms other than those produced by Tobii, or platforms that include Tobii hardware.
- c) If Your Software stores or transfers Eye Tracking Data, then You must comply with the Eye Tracking Data Transparency Policy in Appendix A of this Agreement.
- d) If Your Software implements an API of its own, which exposes Eye Tracking Data to other third-party software, then You must ensure that:
  - i) the other third-party software is for non-commercial use and that it will not be distributed outside of the Research Community, and
  - ii) that it complies with the Eye Tracking Data Transparency Policy in Appendix A of this Agreement.

### 3. USE RESTRICTIONS

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## 5. USAGE DATA TO ENHANCE USER EXPERIENCE

The Licensed Software may report anonymous usage statistics and/or error and bug reports to Tobii's servers in order to identify problems that may affect the technical stability and/or overall quality of the application, as well as inform Tobii which of the program components have been in use. For the avoidance of doubt, this data does not include Eye Tracking Data.

## 6. SUPPORT & MAINTENANCE

Tobii will only provide You with Basic Support for the Licensed Software as described in the following document <https://www.tobii.com/siteassets/tobii-pro/documents/tobii-pro-support-service-description.pdf>. Tobii will not provide You with maintenance of the Licensed Software and will have no obligation to provide updates to it.

## 7. MEDICAL OR HIGH-RISK USE

7.1 **Medical Use:** You may only develop Your Software for Medical Use that is for non-commercial research purposes, within the Research Community. “**Medical Use**” is any use in medically classified devices or environments, for instance hospitals, surgeries, or other healthcare environments. Examples of Medical Use include systems for Assistive and Alternative Communication (**AAC**), medical condition assessment solutions, vision or eye condition solutions and solutions or systems intended to be used in hospitals, surgeries and doctor’s consulting rooms. If you wish to commercialise Your Software for Medical Use, or distribute it outside of the Research Community, then you must contact Tobii Pro at [pro.sales@tobii.com](mailto:pro.sales@tobii.com) to arrange a Medical Use License.

7.2 **High-Risk Use:** You have no right to develop Your Software for High-Risk Use under this Agreement. “**High Risk Use**” is use in any environment where failure or fault of any kind could lead to death or serious bodily injury of any person, or to severe physical or environmental damage. High Risk Use includes, but is not limited to, aircraft navigation, control of other modes of human mass transportation, military applications and control of nuclear or chemical facilities. If you wish to use the Licensed Software for High-Risk Use, then you must contact Tobii Pro.

## 8. LIMITATION OF LIABILITY AND INDEMNIFICATION

8.1 In no event will Tobii be liable for the following, whether arising out of the use of or inability to use the Licensed Software or for any other reason, even if it has been advised of the possibility of such damages: (a) indirect, incidental, special or consequential damages; (b) loss or corruption of data or interrupted or loss of business; or (c) loss of revenue, profits, goodwill or anticipated sales or savings. All liability of Tobii, its affiliates, officers, directors, employees, agents and suppliers collectively, to you, whether based in warranty, contract, tort (including negligence), or otherwise, and your exclusive remedy will not exceed USD \$100. Some jurisdictions do not allow the limitation or exclusion of liability. Accordingly, some of the above limitations may not apply to You. To the extent that Tobii may not, as a matter of applicable law, disclaim any implied warranty or limit its liabilities, the scope of duration of such warranty and the extent of Tobii’s liability shall be the minimum permitted under such applicable law.

8.2 You agree to indemnify, defend and hold harmless Tobii and its licensors, affiliates, contractors, officers, directors, employees or agents from any and all third-party claims, liabilities, damages, costs and expenses, including reasonable attorney fees, arising from your violation of any provision of Sections 2 and 3 of this Agreement.

## 9. TERM AND TERMINATION

- 9.1 This Agreement remains in force until termination (the “**Term**”).
- 9.2 Tobii may terminate this Agreement at any time for convenience by providing You with thirty (30) days written notice.
- 9.3 If You materially breach this Agreement, or are declared bankrupt, placed into receivership, liquidation or similar mechanism, this Agreement terminates automatically without notice.
- 9.4 Upon termination, all obligations relating to the ownership of the Licensed Software and any indemnification or liability obligations survive.
- 9.5 Upon termination, all rights and licenses granted in this Agreement shall immediately and automatically terminate.

## 10. GENERAL

- 10.1 **Assignment:** This Agreement, and the rights and obligations herein, are not assignable or transferable by the Licensee under any circumstance, except as may be provided elsewhere in this Agreement.
- 10.2 **NO WARRANTY:** EXCEPT AS SPECIFICALLY PROVIDED HEREIN TOBII MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, RELATING TO THE LICENSED SOFTWARE, AND TOBII FURTHER EXPRESSLY DISCLAIMS, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL WARRANTIES AND CONDITIONS OF ANY KIND RELATED THERETO, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, ACCURACY, OR FITNESS FOR A PARTICULAR PURPOSE.
- 10.3 **Governing Law:** This Agreement, including its appendices, will be governed by, and construed according with, the laws of Sweden (without regard to conflict of laws principles), all rights and remedies being governed by said laws. Any dispute or conflict under this agreement shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce, in accordance with its rules. The seat of the arbitration shall be Stockholm and the tribunal shall comprise of one (1) arbitrator. The language of the arbitration shall be English.
- 10.4 **Disclaimer and Injunctive Relief:** The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods. Regardless of the above governing law, either party may seek interim injunctive relief respect to any alleged breach of such party's Intellectual Property Rights or other proprietary rights.

## APPENDIX A

### EYE TRACKING DATA TRANSPARENCY POLICY

If Your Software stores or transfers Eye Tracking Data, then You must comply with this policy and as such, Tobii requires the following to be implemented into Your Software:

- **Active User Acceptance:** Your Software needs to use a consistent format to ask the user, explicitly and clearly, for their permission to store, or transfer, their Eye Tracking Data. This request for permission must happen before the user's data is stored or transferred. It also needs to state the purpose of storing/transferring Eye Tracking Data and that such data will not be used for any other purpose.
- **Visualisation:** Your Software must show the user when the storing or transferring of Eye Tracking Data is taking place. You must provide a mechanism for visualisation. This is required unless explicitly waived by Tobii.

Tobii recommends that the following is implemented into Your Software:

- The **"What's in it for me"** policy: Clearly inform users about the value they will receive from Your Software. This is about giving the user clear guidance and motivation about why they should provide their Eye Tracking Data to You.

Please note that the implementation of this policy may vary between different categories of products. For screen-based products, a window, such as the one below, is recommended for the Active User Acceptance and What's in it for me policy.

This software will store and/or transfer your eye tracking data.

We do so only for the purpose of <description> and we never <description of limitations>.

The benefit to you is <description of benefits>

Don't ask me about this again.

#### Compliance Review

Compliance with this Policy is Your responsibility and Tobii has the right to request a Compliance Review. Further information about the policy can be found at <https://transparency.tobii.com/>. Upon receipt by Tobii of all information requested regarding Your Software, Tobii will provide You with a response regarding your compliance with this Policy, in the form of:

- a) Approval of Your Software and confirmation that it is compliant with this Policy;
- b) A request to alter Your Software to comply with this Policy; or
- c) A request for more information.



### **Revoked License**

If Tobii requests a Compliance Review of Your Software and You refuse to do so, or Tobii finds that Your Software does not comply with this Eye Tracking Data Policy and/or You do not implement the requested changes suggested by Tobii within the agreed timeframe, then Your license to the Licensed Technology may be immediately terminated.



## APPENDIX B

### TOBII PRO TRADEMARKS

Your Software shall clearly present in an “About box” or other corresponding notice visible to the End User:

- (i) the Tobii Pro logotype in reasonable size; and
- (ii) the text “*This application is powered by Tobii Pro*” in standard font size.



## **APPENDIX C**

### **MEDICAL USE**

#### **MEDICAL USE TERMS & CONDITIONS**

1. Licensee acknowledges that the Licensed Technology is not fault tolerant and, accordingly, is not designed, intended or allowed for use in any situation where failure, or fault of any kind, could lead to death, or serious bodily injury, of any person.
2. Licensee is prohibited from developing software which is designed, intended or allowed for use in any situation where failure or fault of any kind could lead to death, or serious bodily injury, of any person, including any medical, surgical, or other use intended to support or sustain life.
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