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**SDK LICENSE AGREEMENT**

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IF YOU DO NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, CLICK “I DON’T AGREE”. YOU WILL NOT BE GIVEN ACCESS TO THE SOFTWARE UNLESS YOU ACCEPT THE TERMS OF THIS AGREEMENT. IF YOU HAVE PAID A LICENSE FEE FOR USE OF THE SOFTWARE AND DO NOT AGREE TO THESE TERMS, YOU MAY RETURN THE SOFTWARE FOR A FULL REFUND PROVIDED YOU (A) DO NOT USE THE SOFTWARE AND (B) RETURN THE SOFTWARE WITHIN THIRTY (30) DAYS OF YOUR INITIAL PURCHASE.

IF YOU WISH TO USE THE SOFTWARE AS AN EMPLOYEE, CONTRACTOR, OR AGENT OF A CORPORATION, PARTNERSHIP OR SIMILAR ENTITY, THEN YOU MUST BE AUTHORIZED TO SIGN FOR AND BIND THE ENTITY IN ORDER TO ACCEPT THE TERMS OF THIS AGREEMENT. THE LICENSES GRANTED UNDER THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON ACCEPTANCE BY SUCH AUTHORIZED PERSONNEL.

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This SDK License Agreement (“Agreement”) is between Emotiv Limited, a Hong Kong corporation located at Room 611, Fook Cheong Building, 63 Hoi Yuen Road, Kwun Tong, Hong Kong (“Emotiv”) and the customer (individual or entity) that has downloaded or otherwise procured the licensed Software (as defined below) for use as an end user (“Licensee”). This Agreement covers any Software and supporting technical documentation provided with the Software (“Documentation”). This Agreement permits Licensee to use the Software to create an Application (as specified at the time of purchase) which is compatible with the Emotiv Consumer Headset.

**1. Definitions.**

Application: the software product developed by Licensee as specified at the time of purchase.

Detection Suites: Emotiv’s Expressiv, Affectiv and Cognitiv detection suites provided to Developer Licensee and Enterprise Licensee in connection with the Software.

Developer Licensee: independent developers or entities with less than \$100,000/year in gross revenues that license the Software, including Detection Suites, under this Agreement.

Documentation: the supporting technical documentation provided with the Software.

EEG Data: raw electroencephalogram data provided to Enterprise Plus Licensee and Research Licensee in connection with the Software.

Emotiv Consumer Headset: the then-current version of the commercially released consumer version of the Emotiv headset.

Emotiv Equipment: the Emotiv supplied equipment specified on the cover page of this Agreement.

Emotiv SDK Headset: the version of the Emotiv headset provided by Emotiv for development purposes.

Enterprise Licensee: companies with more than \$100,000/year in gross revenues that license the Software, including Detection Suites, under this Agreement.

Enterprise Plus Licensee: companies with more than \$100,000/year in gross revenues that license the Software, including EEG Data, under this Agreement.

Licensee Code: any software or computer code, including audio and video material, developed or licensed by Licensee, which, when integrated with the Libraries, creates the Application.

Research Licensee: independent developers, researchers or entities with less than \$100,000/year in gross revenues that license the Software, including EEG Data, under this Agreement.

Software: the Emotiv software product(s) provided under this Agreement (as identified on the front page of this Agreement), including Detection Suites and EEG Data. Software consists of Emotiv’s software development kit tools (the “Tools”) and software development kit file libraries (the “Libraries”). “Software” shall also include any support and maintenance releases provided to Licensee by Emotiv. Unless otherwise noted, the Software and Documentation are referred to collectively herein as “Software”.

Term: is the term specified on the cover page of this Agreement (and if no such period is specified, then twelve (12) months from the Effective Date).

**2. License.**

**2.1 License Grant.**

(a) Application Development License. During the Term, subject to all of the terms and conditions of this Agreement, Licensee shall have the non-exclusive, non-transferable, non-sublicensable right to (i) install and use, only on its own computers, a



reasonable number of copies of the Software solely for Application development and support purposes and (ii) integrate the Libraries with Licensee Code to create the Application. This license grant to the Software shall include the Detection Suites and EEG Data only as applicable, subject to the terms of Section 2.1(c).

(b) **No Distribution Right.** No right to sublicense, distribute to any third party or otherwise commercially exploit in any manner any Application is granted under this Agreement. Any such rights shall be granted by a separate written agreement or attachment to this Agreement, if any, as negotiated and agreed between Licensee and Emotiv.

(c) **Additional Access.** Subject to the terms and conditions of the license grant in this Section 2.1, Emotiv grants Licensees a non-exclusive, non-transferable, non-sublicensable right to (i) the Detection Suites if Licensee is a Developer Licensee or Enterprise Licensee and (ii) the EEG Data if Licensee is a Research Licensee or Enterprise Plus Licensee.

2.2 **Use by Consultants.** Any consultants or agents of Licensee may use the Software and Emotiv Equipment provided that: (i) such use is for the sole benefit of Licensee while in the course of performing services for Licensee; (ii) such use is in accordance with the terms of this Agreement; and (iii) Licensee remains responsible for compliance by each such consultant or agent with such conditions.

2.3 **Installation and Copies.** Emotiv shall deliver the Software and Documentation by disk or other media or make it available for download in electronic form. Emotiv shall also provide Licensee with electronic passwords or other enabling mechanisms if necessary to permit the licensed usage of the Software. Licensee may make a reasonable number of copies of the Software for back-up and archival purposes during the Term.

#### 2.4 **License Restrictions.**

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2.5 **Emotiv Equipment.** For the Term, Licensee will take possession of the Emotiv Equipment for use in connection with the Software license granted hereunder. Licensee acknowledges that Emotiv shall retain all rights, title and interest in and to the Emotiv Equipment, and that Licensee's rights therein shall be a limited license to use the Emotiv Equipment subject to the same terms and restrictions as the license grant set forth in Section 2.1. During the term of this Agreement, Licensee shall bear the risk of loss with respect to the Emotiv Equipment.

2.6 **Non-Exclusive.** The rights granted to Licensee hereunder are non-exclusive and nothing under this Agreement shall prohibit Emotiv from entering into any development, distribution or other agreement with any other party in any territory or region of the world.

3. **Ownership.** Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly provided herein, Emotiv and its suppliers have and will retain all rights, title and interest (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Software and the Emotiv Equipment (including Licensee feedback regarding the Software and Emotiv Equipment) and all copies, modifications and derivative works thereof (including any changes made based on any Licensee feedback). Licensee acknowledges that it is obtaining only a limited license right to the Software and Emotiv Equipment and that irrespective of any use of the words "purchase", "sale" or like terms hereunder no ownership rights are being conveyed to Licensee under this Agreement or otherwise.

4. **Payment.** Licensee shall pay all fees associated with the Software licensed as set forth in Exhibit A. All payments shall be made in U.S. dollars within thirty (30) days of Licensee's receipt of the applicable invoice, unless otherwise specified in writing by Emotiv. Except as expressly set forth herein, all fees are non-refundable once paid. Licensee shall be responsible for all taxes, withholdings, duties and levies arising from the order (excluding taxes based on the net income of Emotiv). Any late payments shall be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less.



## 5. Licensee Obligations.

5.1 Representations. Licensee shall not make any representations, guarantees or warranties of any type with respect to the specifications, features, capabilities or otherwise concerning the Software or Emotiv Equipment. In no event shall Licensee make any representation, warranty or guarantee by or on behalf of Emotiv. Licensee shall represent Emotiv and the Software and Emotiv Equipment in a positive and professional manner at all times.

5.2 Business Practices. Licensee agrees not to engage in any deceptive, misleading, illegal or unethical practices that may be detrimental to Emotiv or the Software or Emotiv Equipment and agrees to comply with all applicable federal, state and local laws and regulations) while exercising its rights under this Agreement.

5.3 Records and Audit. Licensee agrees to maintain complete, clear and accurate records relating to its use of the Software and Emotiv Equipment and the exercise of its rights under this Agreement. Upon reasonable notice, Licensee shall permit Emotiv or its representative to review such records and any other books and records of Licensee which relate to Licensee's performance under this Agreement to ensure Licensee's compliance with its obligations to Emotiv. Any such audit will be conducted during normal business hours and in a manner designed to cause minimal impact on Licensee's ordinary business activities. Licensee shall maintain all records required under this Agreement for at least three (3) years following expiration or termination of the Agreement.

5.4 Application Copyright Notices and Branding Requirements. Each copy of the Application shall contain a reference to Emotiv's copyright in the incorporated Software in at least the following locations within the Application: (i) the main copyright notice for the Application and any related documentation, (ii) any "About Box" or similar general legal notice or copyright page and (iii) in any other location in which Licensee provides a copyright notice for other licensors to the Application. In addition, each Application shall comply with such branding guidelines as may be set forth on Exhibit A or as later mutually agreed by Licensee and Emotiv.

5.5 Quality Assurance. The Application shall be subject to Emotiv's prior written approval, which shall not be unreasonably withheld or delayed and which shall be within Emotiv's sole discretion as to acceptable standards of quality. Emotiv shall have the right at any stage of the development of the Application to review the Application to ensure that it meets Emotiv's quality assurance standards and to perform compatibility testing of the Application with the Emotiv Consumer Headset. No approval by Emotiv of any element or stage of development of any Application shall be deemed an approval of any other element or stage of such Application, nor shall any such approval be deemed to constitute a waiver of any of Emotiv's rights under this Agreement or release Licensee from any of its representations and warranties hereunder.

5.6 Feedback. Upon request, Licensee agrees to provide to Emotiv written reports with its feedback regarding the Software and Emotiv Equipment.

5.7 Disclosure to Participant. Before permitting any of its employees, consultants or agents (each, a "Participant") to use the Software or Emotiv Equipment (including, without limitation, any headset), Licensee agrees to disclose to each such Participant an "Information for Participants" sheet, in the form set forth in Exhibit B. With respect to any questions or further information requests from any Participant regarding the Software or the Emotiv Equipment, Licensee agrees to answer such questions or provide such information, or direct such inquiries to Emotiv for further answers and information, prior to its Participants' use of the Software.

5.8 Trade Secrets. Licensee acknowledges that use of Software or the Emotiv Equipment will expose Licensee to proprietary methodologies, formulae, algorithms, and other trade secret materials of Emotiv. During the term of this Agreement and for a period of one year following the termination thereof, Licensee shall not, directly or through a third party, create or develop (or assist or otherwise share information with a third party which is developing) any information, products, concepts, systems, or techniques that are similar to or compete with the information products, concepts, systems, or techniques contemplated by or embodied in Emotiv's Confidential Information (as defined below) ("Competing Products"). Any employee, consultant or agent of Licensee who has had access to any Emotiv's Confidential Information shall not be permitted to create or develop any Competing Products during the term of this Agreement and for a period of one year following the termination thereof.

5.9 Use of Emotiv Name and Logos. In no event may Licensee use Emotiv's name, logos or other trademarks without a separate written agreement between Licensee and Emotiv except that Licensee may use Emotiv's name in text (such as documentation accompanying the Application) to describe the functionality or features enabled by the Software.

### 5.10 Use of Emotiv Equipment.

(a) The parties acknowledge that Emotiv has no control over Licensee's use of the Emotiv Equipment, including, without limitation, any use of the Emotiv Equipment in inherently risky activities.

(b) Licensee assumes all risk of property damage, bodily injury, bodily harm, or death arising from or related to Licensee's use of the Emotiv Equipment.

(c) Licensee shall indemnify, defend and hold harmless Emotiv, its directors, officers, employees and affiliates, from and against any claim, demand, cause of action, judgment, proceeding, debt, liability, cost or expense, including attorneys' fees, arising from or related to Licensee's use of the Emotiv Equipment.



(d) Licensee, at its own expense, throughout the term of this Agreement, shall continuously maintain in full force and effect liability insurance, covering all acts and omissions arising from or related to Licensee's use of the Emotiv Equipment, with limits of no less than \$2,000,000. The underwriter(s) of all insurance policies must have an AM Best's rating of "A" or higher. The policies shall not be amended, cancelled or refused for renewal except upon not fewer than thirty (30) days prior written notice to Emotiv. Licensee shall provide certificates of insurance for coverages and limits as required upon request by Emotiv.

## 6. Term of Agreement.

6.1 Term. This Agreement is effective as of the Effective Date and shall terminate upon the earlier to occur of: (i) expiration of the Term or (ii) termination in accordance with this Section 6.1. Either party may terminate this Agreement if the other party: (a) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party (and not dismissed within sixty (60) days)). Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

6.2 Termination. Upon any expiration or termination of this Agreement, Licensee shall cease any and all use of any Software and destroy all copies thereof and so certify to Emotiv in writing and promptly return all Emotiv Equipment to Emotiv.

6.3 Survival. Sections 2.4 (License Restrictions), 3 (Ownership), 4 (Payment), 5.8 (Trade Secrets), 6 (Term of Agreement), 7 (Disclaimer of Warranties), 8 (Representations and Warranties of Licensee), 10 (Limitation of Remedies and Damages), 11 (Indemnification), 12 (Confidential Information), 14 (Export Compliance) and 15 (General) shall survive any termination or expiration of this Agreement.

7. **Disclaimer of Warranties**. THE SOFTWARE, EMOTIV EQUIPMENT AND ALL EMOTIV SERVICES ARE PROVIDED "AS IS". NEITHER EMOTIV NOR ITS SUPPLIERS MAKES ANY OTHER WARRANTIES, CONDITIONS OR UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT.

8. **Representations and Warranties of Licensee**. Licensee represents and warrants that:

(a) Licensee's business and its performance under this Agreement are in compliance with all applicable federal, state and local laws and government rules and regulations;

(b) Neither the Licensee Code nor any portion thereof, constitutes or may give rise to a claim of infringement of any patent, copyright, trade secret or other property right of a third party anywhere in the world; and

(c) No portion of the Licensee Code (including any libraries) contains any viral "open source", code licensed under the General Public License, or any other software or code which could compromise or interfere in any way with Emotiv's property rights in or to the Libraries or other Emotiv materials that may come into contact with such Licensee Code or require Emotiv to disclose any source code to any such Libraries integrated with the Licensee Code.

9. **Support & Maintenance**. Emotiv shall provide reasonable technical assistance during Emotiv's normal business hours to Licensee in using the Software, not to exceed email and/or phone support (of a type and turnaround to be determined solely in Emotiv's discretion) and subject to limitations on Emotiv's resources. Emotiv may provide releases, modifications, enhancements, code corrections, patches, updates and minor version releases of the Software, if and as they become generally commercially available.

## 10. Limitation of Remedies and Damages.

10.1 NEITHER LICENSEE NOR EMOTIV (INCLUDING EMOTIV'S SUPPLIERS) SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. THIS SECTION 10.1 SHALL NOT APPLY TO LICENSEE WITH RESPECT TO ANY CLAIM ARISING UNDER THE SECTIONS TITLED "LICENSE GRANT," "LICENSE RESTRICTIONS," "EMOTIV EQUIPMENT," "INDEMNIFICATION" OR "CONFIDENTIAL INFORMATION".

10.2 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EMOTIV AND ITS SUPPLIERS' ENTIRE LIABILITY TO LICENSEE UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE TO EMOTIV UNDER THIS AGREEMENT.

10.3 THE EMOTIV EQUIPMENT IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS OR ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE WHERE THE FAILURE OF THE EMOTIV EQUIPMENT COULD LEAD TO DEATH, PERSONAL INJURY, OR SIGNIFICANT PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES"). FOR THE AVOIDANCE OF DOUBT, LICENSEE SHALL BEAR ALL RISK AND LIABILITY FOR ANY USE OF THE EMOTIV EQUIPMENT IN HIGH RISK ACTIVITIES. IN NO EVENT SHALL





EMOTIV OR ITS SUPPLIERS HAVE ANY LIABILITY EXCEEDING THE LIMITATIONS SET FORTH IN THIS SECTION 10.

10.4 The parties agree that the limitations specified in this Section 10 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

## 11. Indemnification.

11.1 By Emotiv. Emotiv shall indemnify, defend and hold Licensee harmless from and against any claim of infringement of a U.S. patent, U.S. copyright, or U.S. trademark asserted against Licensee by a third party based upon Licensee's authorized use of the Software, provided that Emotiv shall have received from Licensee: (i) prompt notice of such claim (but in any event notice in sufficient time for Emotiv to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, and settlement of such claim; and (iii) all reasonable necessary cooperation. If Licensee's use of any of the Software is, or in Emotiv's opinion is likely to be, enjoined due to the type of infringement specified above, or if required by settlement, Emotiv may, in its sole discretion: (a) substitute for the Software substantially functionally similar programs and documentation; (b) procure for Licensee the right to continue using the Software; or if (a) and (b) are commercially impracticable, (c) terminate the Agreement and refund the license fee paid by Licensee as reduced to reflect a five (5) year straight-line depreciation from the applicable license purchase date. The foregoing indemnification obligation of Emotiv shall not apply: (1) if the Software is modified by any party other than Emotiv, but solely to the extent the alleged infringement is caused by such modification; (2) the Software is combined with other non-Emotiv products or software, but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of the Software; or (4) to any third-party code contained within the Software. THIS SECTION 11.1 SETS FORTH EMOTIV'S SOLE LIABILITY AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

11.2 By Licensee. Licensee shall indemnify, defend and hold Emotiv harmless from any and all third-party claims, liabilities, damages or expenses (including reasonable attorney's fees) in connection with or which result from (a) any claim of infringement of a third party's intellectual property rights with respect to the Application, except as indemnified by Emotiv as set forth above, or (b) any claim relating to the marketing, distribution or manufacture of the Application (collectively, "Claims") but excluding any such claim in either case to the extent based on the Software or Emotiv Equipment on a stand-alone basis, provided that Licensee shall have received from Emotiv: (i) prompt notice of such Claim (but in any event notice in sufficient time for Licensee to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, and settlement of such Claim; and (iii) all reasonable

necessary cooperation and assistance of Emotiv. Emotiv may participate in the defense of the Claims by counsel of its own choosing, at its cost and expense. Licensee shall not settle any such Claim without Emotiv's prior written approval if such settlement requires Emotiv to take any action, refrain from taking any action, or admit any liability.

12. **Confidential Information.** Each party agrees that all code, inventions, know-how, business, technical and financial information it obtains ("Receiving Party") from the disclosing party ("Disclosing Party") constitute the confidential property of the Disclosing Party ("Confidential Information"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. The Software and Emotiv Equipment and any feedback from Licensee relating to the Software or Emotiv Equipment shall be deemed trade secret and Confidential Information of Emotiv without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (iv) is independently developed by employees of the Receiving Party who had no access to such information; or (v) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm to the Disclosing Party that could not be remedied by the payment of damages alone and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever remedies it might have at law.

13. **Customer Acknowledgement.** Licensee agrees that Emotiv may disclose Licensee as a development partner of Emotiv.

14. **Export Compliance.** Licensee acknowledges that the Software and Emotiv Equipment are subject to export restrictions by the United States government and import restrictions by certain foreign governments. Licensee shall not, and shall not allow any third-party to, remove or export from the United States or allow the export or re-export of any part of the Software, Emotiv Equipment or any direct product thereof: (i) into (or to a national or resident of) any embargoed or terrorist-supporting country; (ii) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (iii) to any country to which such export or re-export is restricted or



prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (iv) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. Licensee agrees to the foregoing and warrant that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Software and Emotiv Equipment are further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity, without the prior permission of the United States government.

## **15. General.**

15.1 Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Emotiv may assign this Agreement to any affiliate or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of Emotiv's assets or voting securities. Licensee may not assign or transfer this Agreement, in whole or in part, without Emotiv's written consent. Any attempt to transfer or assign this Agreement without such written consent will be null and void.

15.2 Severability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

15.3 Governing Law; Jurisdiction and Venue. This Agreement shall be governed by the laws of the Hong Kong Special Administrative Region of the People's Republic of China without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. The jurisdiction and venue for actions related to the subject matter hereof shall be the Hong Kong courts located in Hong Kong, and both parties hereby submit to the personal jurisdiction of such courts.

15.4 Attorneys' Fees and Costs. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

15.5 Notices and Reports. Any notice or report hereunder shall be in writing. If to Emotiv, such notice or report shall be sent to Emotiv at the address above to the attention of "Legal Department". If to Licensee, such notice or report shall be sent to the address set forth above. Notices and reports shall be deemed given: (i) upon receipt if by personal delivery; (ii) upon receipt if sent by certified or registered mail (return receipt requested); or (iii) one day after it is sent if by next day delivery by a major commercial delivery service.

15.6 Amendments; Waivers. No supplement, modification, or amendment of this Agreement shall

be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived.

15.7 Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. No provision of any purchase order or in any other business form employed by Licensee will supersede the terms and conditions of this Agreement, and any such document issued by a party hereto relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

15.8 Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

15.9 Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events, which occur after the signing of this Agreement and which are beyond the reasonable control of the parties, such as strikes, blockade, war, terrorism, riots, natural disasters, refusal of license by the government or other governmental agencies, in so far as such an event prevents or delays the affected party from fulfilling its obligations and such party is not able to prevent or remove the force majeure at reasonable cost.

15.10 Government End-Users. The Software is commercial computer software. If the user or licensee of the Software is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Software, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Software was developed fully at private expense. All other use is prohibited.



## Exhibit A

### Application Schedule

#### Development License Fee:

1. **Developer Licensee.** Emotiv shall pay Developer Licensee 70% of gross revenue from the sale of the Application, and Developer Licensee shall pay Emotiv \$500.00/single User license granted under this Agreement.
2. **Research Licensee.** Emotiv shall pay Research Licensee 70% of gross revenue from the sale of the Application, and Research Licensee shall pay Emotiv \$750.00/single User license granted under this Agreement.
3. **Enterprise Licensee.** Enterprise Licensee shall pay Emotiv \$2,500/single User license granted under this Agreement. Enterprise Licensee shall pay Emotiv \$500.00/headset for each Emotiv SDK Headset provided by Emotiv to Enterprise Licensee.
4. **Enterprise Plus Licensee.** Enterprise Plus Licensee shall pay Emotiv \$7,500/single User license under this Agreement. Enterprise Plus Licensee shall pay Emotiv \$500/headset for each Emotiv SDK Headset provided by Emotiv to Enterprise Plus Licensee.

"User" means a developer, engineer or administrator who may access or use the Software.

#### Branding Guidelines:



**Exhibit B**  
**Information for Participants**

EEG

The brain is made of approximately 100-billion nerve cells, called neurons. Neurons have the amazing ability to gather and transmit electrochemical signals. With the billions of active neurons, the brain tissue contains a myriad of active current sources that cause the local electrical potential to endlessly fluctuate with a great deal of variability. This electrical brain activity can be observed non-invasively using electroencephalography (EEG).

An EEG is a recording of electrical signals from the brain made by placing electrodes at a person's scalp. The electrical fluctuations detected over the scalp by EEG are attributed largely to brain tissue located at or near the skull, i.e., their source is the electrical activity of the cerebral cortex, a significant portion of which lies on the outer surface of the brain below the scalp. The electrodes pick up electric signals naturally produced by the brain and make it possible to observe electrical impulses across the surface of the brain and detect changes over split seconds of time.

EEG or brainwave recordings

To sense and collect the electrical signals of the brain, you will need to don a headset with small electrodes mounted into it. The activity in the underlying brain tissue is picked up by the electrodes and this information is sent to the computer. This procedure enables us to detect your brainwaves and process this information to make appropriate classifications about your deliberative, non-deliberative mental states and facial expressions. Brainwave recording is safe, non-invasive and completely painless.

Risks

EEG or brainwave recording procedures are quite safe and has been in use for over 30 years; it is used routinely in hospitals to test brain function and to diagnose illness such as temporal epilepsy. There are no known major risks associated with this procedure other than a mild discomfort for some people who have sensitive skin when wearing the headset. This is not permanent and is of no serious consequence. Also, if you have any medical condition that you feel will preclude you from participating, please inform Emotiv prior to commencing use of the Emotiv Equipment.





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