

EMOTIV

Software Development Kit License Agreement

Thank you for purchasing an EMOTIV headset. The headset is bundled with an End User License Agreement and this Software Development Kit License Agreement.

1. Some Definitions for this Agreement

1.1 "EMOTIV" means EMOTIV, Inc., a Delaware corporation, with its principal place of business at 490 Post Street, San Francisco, CA 94102, USA.

1.2 "SDK" means the Software Development Kit that comes bundled with your purchase of an EMOTIV headset, which is either the Basic SDK or the Enhanced SDK.

1.3 "Basic SDK" means the SDK that comes with your purchase of a standard EMOTIV headset. A standard EMOTIV headset gives you access to EMOTIV's Detection Suites: Mental Commands, Performance Metrics & Emotional States, and Facial Expressions. A standard EMOTIV headset does not give you EEG access.

1.4 "Enhanced SDK" means the SDK that comes with your purchase of an EMOTIV headset with EEG access. An EMOTIV headset with EEG access gives you access to EMOTIV's Detection Suites, and also includes EEG firmware providing real-time display of unencrypted raw EEG data stream. EEG apps will only work with EEG enabled devices.

1.5 "SDK License Agreement" means this agreement, which contains the terms under which the SDK is licensed to you and under which you may develop and distribute applications to use with an EMOTIV headset.

1.6 "EULA" means your EMOTIV End User License Agreement, which is incorporated into this SDK License Agreement. Your EULA and any corresponding license fee will depend on the type of licensing arrangement with EMOTIV that you select.

2. SDK License Tiers

2.1 There are six SDK license tiers. Please refer to the EMOTIV Developer Page for information concerning the features, cost, registration process, beta testing guidelines, and application release guidelines applicable to each tier.

3. Accepting this SDK License Agreement

3.1 In order to use the SDK, you must first accept this SDK License Agreement and pay the charge, if any, applicable to your SDK license tier. You do not have to accept this SDK License Agreement in order to use your EMOTIV headset, but you may not use the SDK until you have accepted this SDK License Agreement and made any payment applicable to your SDK license tier.

3.2 By clicking to accept, you agree to the terms of this SDK License Agreement, which creates a legally binding contract between you and EMOTIV in relation to your use of the SDK.

3.3 You may not accept the SDK License Agreement and you may not use the SDK if you are a person barred from receiving the SDK under the laws of the United States or other relevant countries, including the country in which you are resident or in which you use the SDK.

3.4 If you are agreeing to be bound by this SDK License Agreement on behalf of another entity, for example your employer, you represent and warrant that you have full legal authority to bind that entity to this SDK License Agreement. If you do not have that authority, you may not accept the SDK License Agreement or use the SDK on behalf of that entity.

4. Your SDK License from EMOTIV

4.1 Subject to the terms and conditions of this SDK License Agreement, EMOTIV grants you a limited, worldwide, nonexclusive, non-transferrable or assignable license to use the SDK solely to develop applications to be paired with an EMOTIV headset. You may not use the SDK for any other purpose.

4.2 Your SDK license is linked to the EMOTIV hardware device you have purchased.

4.3 The terms of this SDK License Agreement include any registration, beta testing, and release requirements and restrictions applicable to your SDK license tier as set forth on the EMOTIV Developer Page.

4.4 EMOTIV or third parties own all legal right, title, and interest in and to the SDK, including any rights under patent law, copyright law, trade secret law, trademark law, and any other proprietary rights that subsist in the SDK. EMOTIV reserves all rights not expressly granted to you.

4.5 You may not take any actions that may cause or result in the fragmentation of the SDK, including but not limited to distributing, participating in the creation of, or promoting in any way a software development kit derived from the SDK.

4.6 Use, reproduction, and distribution of components of the SDK licensed under an open source software license are governed solely by the terms of that open source software license and not this License Agreement.

4.7 Nothing in this SDK License Agreement gives you the right to use any of EMOTIV's trade names, trademarks, service marks, logos, domain names, or other distinctive brand features.

4.8 You may not remove, obscure, or alter any proprietary rights notices, including copyright and trademark notices, that may be contained within the SDK.

4.9 THE SDK IS SUBJECT TO UNITED STATES EXPORT LAWS AND REGULATIONS. YOU MUST COMPLY WITH ALL DOMESTIC AND INTERNATIONAL EXPORT LAWS AND REGULATIONS THAT APPLY TO THE SDK. THESE LAWS INCLUDE RESTRICTIONS ON DESTINATIONS, END USERS, AND END USE.

5. Your Use of the SDK

5.1 EMOTIV obtains no right, title, or interest from you under this SDK License Agreement in or to any software applications you develop using the SDK, including any intellectual property rights that subsist in those applications.

5.2 You may use the SDK and write applications only for purposes that are permitted by any applicable law, regulation, or generally accepted practices or guidelines in the relevant jurisdictions, including laws regarding the export of data or software to and from the United States or other relevant countries.

5.3 If you use the SDK to develop applications for general public users, you must protect the privacy and legal rights of those users. If the users provide you with user names, passwords, or other login information or personal information, you must make the users aware that the information will be available to your application, and you must provide legally adequate privacy notice and protection for those users. If your application stores personal or sensitive information provided by users, it must do so securely. If the user provides your application with EMOTIV Account information, your application may only use that information to access the user's EMOTIV Account when, and for the limited purposes for which, the user has given you permission to do so.

5.4 You are solely responsible for any data, content, or resources that you create, transmit, or display through your use of the SDK, and for the consequences of your actions by doing so, including any loss or damage EMOTIV may suffer. EMOTIV has no responsibility to you or to any third party for any data, content, or resources that you create, transmit, or display through your use of the SDK, or for the consequences of your actions by doing so.

6. Your EMOTIV Developer Credentials

6.1 You are responsible for maintaining the confidentiality of any developer credentials that EMOTIV may issue to you or that you may choose yourself, and you will be solely responsible for all applications that are developed under your developer credentials.

7. SDK Support, Modifications, and Discontinuance

7.1 EMOTIV, in its sole discretion, may elect to provide you with support or modifications for the SDK, and may terminate support at any time without notice or liability to you.

7.2 Without prior notice or liability to you, EMOTIV may change, suspend, or discontinue the SDK or any aspect of the SDK at any time at EMOTIV's sole discretion, and future versions of the SDK may be incompatible with applications developed on previous versions of the SDK. EMOTIV may also impose limits on certain features and services or restrict your access to parts or all of the SDK without notice or liability.

8. Information that May Be Collected by EMOTIV

8.1 In order to innovate and improve the SDK, EMOTIV may collect certain usage

statistics from the software, including but not limited to a unique identifier, associated IP address, version number of the software, and information on which tools and services in the SDK are being used and how they are being used. Before any of this information is collected, the SDK will notify you and request your consent. If you withhold consent, the information will not be collected.

8.2 EMOTIV will examine the data collected in the aggregate to improve the SDK and will maintain the data in accordance with EMOTIV's Privacy Policy.

9. Third Party Applications

9.1 If you use the SDK to run applications developed by a third party or that access data, content, or resources provided by a third party, EMOTIV is not responsible for those applications, data, content, or resources. All data, content, and resources that you access through third party applications are the sole responsibility of the person from whom they originated, and EMOTIV is not liable for any loss or damage that you may experience as a result of your use or access of any of those third party applications, data, content, or resources.

9.2 Intellectual property rights owned by the providers or by other persons or companies may protect the data, content, and resources presented to you through a third party application. You may not modify, rent, lease, loan, sell, distribute, or create derivative works based on such data, content, or resources unless you have been given permission to do so by the owners.

9.3 You acknowledge that your use of third party applications, data, content, or resources may be subject to separate terms between you and the third party. This SDK License Agreement does not affect your legal relationship with any such third parties.

10. Using EMOTIV APIs

10.1 Intellectual property rights owned by EMOTIV or by other parties may protect data you retrieve from EMOTIV using an EMOTIV API. Your use of any such API may be subject to additional Terms of Service. You may not modify, rent, lease, loan, sell, distribute or create derivative works based on such data unless allowed by the relevant Terms of Service.

10.2 You may retrieve a user's data from EMOTIV using an EMOTIV API only with the user's explicit consent, and only when and for the limited purposes for which the user has given you permission to do so.

11. Termination of the SDK License Agreement

11.1 This SDK License Agreement will continue to apply until terminated by either you or EMOTIV as set out below.

11.2 If you want to terminate this SDK License Agreement, you may do so by discontinuing your use of the SDK and any developer credentials.

11.3 EMOTIV may terminate this SDK License Agreement with you at any time if:

(A) you have breached any provision of this SDK License Agreement; or

(B) EMOTIV is required to do so by law; or

(C) EMOTIV decides it will no longer provide the SDK to users in the country in which you are resident or from which you use the service; or

(D) EMOTIV determines in its sole discretion that providing the SDK or certain SDK services to you is no longer commercially viable.

11.4 Upon termination of this SDK License Agreement, all rights and licenses granted to you by EMOTIV under this SDK License Agreement will cease.

11.5 Following termination of this SDK License Agreement, Sections 5.1, 5.4, 12.1-12.4, 13.1, and 14.1-14.7 will continue to bind you and EMOTIV.

12. EMOTIV's Disclaimer and Limitation of Liability

12.1 YOUR USE OF THE SDK IS AT YOUR SOLE RISK. EMOTIV PROVIDES THE SDK "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND.

12.2 YOUR USE OF THE SDK AND ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SDK IS AT YOUR OWN DISCRETION AND RISK AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE THAT RESULTS FROM THAT USE, INCLUDING BUT NOT LIMITED TO DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA.

12.3 EMOTIV DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

12.4 TO THE EXTENT PERMITTED BY LAW, EMOTIV WILL NOT, UNDER ANY CIRCUMSTANCES AND NO MATTER WHAT THE LEGAL THEORY (TORT, WARRANTY, CONTRACT, OR OTHER), BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF THE SDK, INCLUDING ANY LOSS OF DATA, AND WHETHER OR NOT EMOTIV HAS BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING. UNDER NO CIRCUMSTANCES WILL EMOTIV BE LIABLE TO YOU FOR ANY AMOUNT.

13. Your Obligation To Indemnify EMOTIV

13.1 To the maximum extent permitted by law, you agree to defend, indemnify, and hold harmless EMOTIV, its affiliates, and their respective directors, officers, employees, and agents from and against any and all claims, actions, suits, or proceedings, as well as any and all losses, liabilities, damages, costs, and expenses (including attorneys fees) arising out of or accruing from (a) your use of the SDK, (b) any application you develop on the SDK that infringes any copyright, trademark, trade secret, trade dress, patent, or other intellectual property right of any person or defames any person or violates their rights of publicity or privacy, and (c) any failure by you to comply with this License Agreement.

14. GENERAL TERMS

14.1 **Your Relationship with EMOTIV.** For all purposes of this SDK License Agreement and your use of the SDK, you and EMOTIV are acting independently and not as the partner, joint venturer, agent, employee, or employer of the other. You do not have any authority to assume or create any obligation for or on behalf of EMOTIV, express or implied, and you will not attempt to bind EMOTIV to any contract or other obligation.

14.2 **SDK License Agreement Amendments.** EMOTIV may amend this SDK License Agreement on a prospective basis, and your use of the SDK after an amendment constitutes your consent to be bound by the amendment going forward.

14.3 **Applicable Law and Location of Lawsuits.** This SDK License Agreement, and your relationship with EMOTIV under this SDK License Agreement, will be governed by and construed in accordance with the laws of the State of California, excluding any rules that would apply the law of another jurisdiction. You and EMOTIV agree to submit to the exclusive jurisdiction of the courts located within the City and County of San Francisco, California, to resolve any legal matter arising from this SDK License Agreement.

14.4 **No Waiver of Rights by EMOTIV.** EMOTIV's failure to exercise or enforce a legal right or remedy contained in this SDK License Agreement will not constitute a waiver of that right or remedy.

14.5 **Effect of Invalidity of Specific Terms.** If a court of competent jurisdiction holds any provision of this SDK License Agreement to be unenforceable, the rest of the SDK License Agreement will be severable and remain in effect.

14.6 **Assignment of Rights.** You may not assign any rights or obligations under this SDK License Agreement without EMOTIV's advance written consent, which EMOTIV may withhold in its sole discretion. EMOTIV may assign its rights or obligations under this SDK License Agreement in its sole discretion.

14.7 **Entire Agreement.** This SDK License Agreement constitutes the entire agreement between you and EMOTIV regarding your use of the SDK.

July 10, 2015