**SOFTWARE LICENSE AND DISTRIBUTION AGREEMENT**

**(NXP** **Gesture Recognition (Gesture Library))**

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**6. Remedies**. You acknowledge that if NXP is required to bring an action to enforce the provisions of this Agreement, the damages may be irreparable and difficult to measure, and that NXP shall be entitled to seek equitable relief, including a preliminary injunction, in addition to any other relief available. You agree that in the event that NXP seeks an injunction under this Agreement, you hereby waive any requirement for the posting of a bond or any other security.

**7. Disclaimer**. THE SOFTWARE IS PROVIDED ON AN “AS IS” AND “WITH ALL FAULTS” BASIS. NXP, ITS AFFILIATES AND THEIR SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK AS TO THE QUALITY, OR ARISING OUT OF THE USE OR PERFORMANCE, OF THE SOFTWARE REMAINS WITH YOU.

**8. Limitation of Liability**. IN NO EVENT SHALL NXP, ITS AFFILIATES OR THEIR SUPPLIERS BE LIABLE TO YOU FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF BUSINESS, BUSINESS INTERRUPTION, LOSS OF USE, LOSS OF DATA OR INFORMATION, AND THE LIKE) ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SOFTWARE, WHETHER OR NOT BASED ON TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY OR ANY OTHER THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANY DAMAGES THAT YOU MIGHT INCUR FOR ANY REASON WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ALL DAMAGES REFERENCED ABOVE AND ALL DIRECT OR GENERAL DAMAGES), THE ENTIRE LIABILITY OF NXP, ITS AFFILIATES AND THEIR SUPPLIERS UNDER ANY PROVISION OF THIS AGREEMENT AND YOUR EXCLUSIVE REMEDY FOR ALL OF THE FOREGOING SHALL BE LIMITED TO ACTUAL DAMAGES INCURRED BY YOU BASED ON REASONABLE RELIANCE UP TO THE GREATER OF THE AMOUNT ACTUALLY PAID BY YOU FOR THE SOFTWARE OR FIVE U.S. DOLLARS (US$5.00). THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**9. Governing Law and Disputes**.

**9.1** If you obtained the Software when you are in the AMERICAS (as defined below) then:

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to any principle of conflicts of law. Any dispute arising under this Agreement shall be resolved in the state or federal courts located in the Northern District of California, and you hereby agree that venue and jurisdiction for any related proceedings arising under this Agreement shall lie exclusively with such courts; provided, however, that NXP may enforce its or its affiliates’ intellectual property rights in any court of competent jurisdiction, including but not limited to equitable relief.

As used above, **“AMERICAS”** means any jurisdiction (subject to the restrictions of Section 10 below) within North America, South America or their surrounding territories, including without limitation the following countries/regions: Anguilla, Antigua and Barbuda, Argentina, Aruba, Bahamas, Barbados, Belize, Bermuda, Bolivia, Brazil, Canada, Cayman Islands, Chile, Colombia, Costa Rica, Curacao, Dominica, Dominican Republic, Ecuador, El Salvador, French Guiana, Grenada, Guam, Guatemala, Guyana, Haiti, Honduras, Jamaica, Martinique, Mexico, Montserrat, Netherlands Antilles, Nicaragua, Panama, Paraguay, Peru, Puerto Rico, Saint Kitts and Nevis, Saint Lucia, Saint Pierre and Miquelon, Saint Vincent and The Grenadines, Suriname, Trinidad and Tobago, Turks and Caicos Islands, United States, Uruguay, Venezuela, Virgin Islands (British) and Virgin Islands (U.S.).

**9.2** If you obtained the Software when you are in the EMEA (as defined below) then:

This Agreement shall be governed by and construed in accordance with the laws of the Netherlands without regard to any principle of conflicts of law. Any dispute arising hereunder shall be resolved by the competent courts located in Amsterdam, the Netherlands, and you hereby agree that venue and jurisdiction for any related proceedings arising under this Agreement shall lie exclusively with such courts; provided, however, that NXP may enforce its or its affiliates’ intellectual property rights in any court of competent jurisdiction, including but not limited to equitable relief.

As used above, **“EMEA”** means any jurisdiction (subject to the restrictions of Section 10 below) within Europe, the Middle East, Africa or their surrounding territories, including without limitation the following countries/regions: Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Benin, Bosnia and Herzegovina, Botswana, Bouvet Island, Bulgaria, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Comoros, Congo, Cote d’Ivoire, Croatia, Cyprus, Czech Republic, Democratic Republic of Sao Tome and Principe, Denmark, Djibouti, Egypt, Estonia, Ethiopia, Faeroe Islands, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Gibraltar, Greece, Greenland, Guadeloupe, Guinea-Bissau, Hungary, Iceland, Ireland, Israel, Italy, Jordan, Kazakhstan, Kenya, Kosovo, Kuwait, Kyrgyzstan, Latvia, Lebanon, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Malawi, Mali, Malta, Mauritania, Mauritius, Moldova, Monaco, Mongolia, Morocco, Mozambique, Namibia, Netherlands, New Caledonia, Niger, Nigeria, Norway, Oman, Pakistan, Poland, Portugal, Qatar, Republic of Cape Verde, Republic of Equatorial Guinea, Republic of Guinea, Republic of Senegal, Reunion, Romania, Russian Federation, Rwandese Republic, Saint Helena, San Marino, Saudi Arabia, Seychelles, Sierra Leone, Slovakia, Slovenia, Somalia, South Africa, Spain, Svalbard and Jan Mayen, Swaziland, Sweden, Switzerland, Tajikistan, Tanzania, Togo, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom, Uzbekistan, Vatican City State, Yemen, Zaire, Zambia and Zimbabwe.

**9.3** If you obtained the Software when you are in the ASIA-PACIFIC (as defined below) then:

This Agreement shall be governed by and construed in accordance with the laws of Singapore without regard to any principle of conflicts of law. Any dispute arising hereunder shall be resolved by the competent courts located in Singapore, and you hereby agree that venue and jurisdiction for any related proceedings arising under this Agreement shall lie exclusively with such courts; provided, however, that NXP may enforce its or its affiliates’ intellectual property rights in any court of competent jurisdiction, including but not limited to equitable relief.

As used above, **“ASIA-PACIFIC”** means any jurisdiction (subject to the restrictions of Section 10 below) generally considered as part of the Asia-Pacific region (and not part of the Americas or EMEA) including without limitation the following countries/regions: American Samoa, Australia and its external territories, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, Cook Islands, East Timor, Fiji, French Polynesia, French Southern Territories, Hong Kong, India, Indonesia, Japan, Kiribati, Lao Peoples Democratic Republic, Macao, Malaysia, Maldives, Marshall Islands, Mayotte, Micronesia, Nauru, Nepal, New Zealand, Niue, Northern Mariana Islands, Palau, Papua New Guinea, People’s Republic of China, Philippines; Pitcairn, Republic of Korea, Samoa, Singapore, Solomon Islands, Sri Lanka, Taiwan, Thailand, Tokelau, Tonga, Tuvalu, Wallis and Futuna Islands, Vanuatu and Vietnam.

**10. Export Laws**. Insofar as these relate to the activities under this Agreement, you will comply with all applicable national and international export control laws and regulations (collectively the “**Export Laws**”). In particular, you shall not directly or indirectly export, re-export, transfer or release the Software or direct product thereof to any destination, person, entity or end use restricted or prohibited by the Export Laws, without obtaining prior authorization from the applicable competent government authorities to the extent required by the Export Laws.

**11. General**. (A) Nothing in this Agreement shall create a joint venture, partnership or principal-agent relationship between you and NXP. (B) You shall not assign or transfer any of your rights or obligations under this Agreement. (C) A waiver of any right under this Agreement shall in no way waive any other rights. No waiver, alteration, modification or amendment of this Agreement shall be effective unless in writing and signed by both you and NXP. (D) In the event that any provision of this Agreement is held to be invalid, illegal or unenforceable, such provision shall be deemed amended to achieve the economic effect of the intent of the parties in a valid, lawful and enforceable manner, or if not possible, then deleted and ineffective to the extent thereof, without affecting any other provision of this Agreement. (E) This Agreement constitutes the entire agreement regarding the subject matter hereof and supersedes all prior agreements, understandings and communications, oral and written, between the parties regarding the subject matter hereof. (F) NXP may revise this Agreement at any time without notice by posting any updated version of this Agreement. Your continued use of the Software after such revisions have been made will constitute your acceptance of such revised Agreement.