

SOFTWARE LICENSE AGREEMENT

By clicking "I Agree," I understand that I am representing myself and any company in which I plan to utilize any Application Programming Interface (API) or Software Development Kit (SDK) being offered by BIOMIDS, Inc., PO Box 1989, Cotuit, MA 02635, (hereinafter "Licensor") and assert that I have the authority and legal right to do so and will be considered hereinafter, the "Licensee":

1. DEFINITIONS

- a) "Software" means the computer programs and documentation listed and described in Schedule A attached to this agreement.
- b) "Install" means placing the software on a computer's hard drive, CD-ROM or other secondary storage device.
- c) "Use" means (i) executing or loading the software into computer RAM or other primary memory, and (ii) copying the software for archival or emergency restart purposes.

2. DESCRIPTION OF LICENSED SOFTWARE

The software product licensed to Licensee in this agreement is solely licensed for development and testing purposes.

3. GRANT OF RIGHTS

Licensor hereby grants to Licensee a nonexclusive license to install and use the software for development and testing purposes. Any use for commercial purposes is prohibited whether for profit or not and any use of this API or SDK in "Live" software applications is prohibited without the written approval of the Licensor.

4. LICENSE TERM

This license is effective when executed by both parties and the license granted to the software remains in force until Licensee stops using the software or until Licensor terminates this license because of Licensee's failure to comply with any of its terms and conditions.

5. LICENSE FEE

Licensor hereby grants to Licensee a nonexclusive license to install and use the software for development and testing purposes at no cost. Any use of this API or SDK for commercial purposes or any use in "Live" software applications must be negotiated and agreed to in writing by the Licensee and the Licensor.

6. REPORTING AND PAYMENT

Licensee recognizes that the maintenance of Licensor's proprietary rights require prompt and complete reports from Licensee. Therefore, Licensee shall maintain full, clear and accurate records with respect to each and every copy of the software reproduced by Licensee and/or distributed by Licensee. Within thirty (30) days of the close of each calendar month, Licensee shall make a written accounting to Licensor of all copies of the software prepared by, distributed by and all sublicenses issued by the Licensee during the prior calendar month, certify said accounting by an authorized representative of Licensee, and remit to Licensor the appropriate payments due based on said accounting; such accounting shall include for each sublicense issued during the calendar month the name and address of each sublicensee and the certification by such sublicensee that it will pay royalties to Licensor (or to Licensee for the benefit of Licensor) in an amount to be

determined and agreed upon by Licensee and Licensor prior to any software distribution by Licensee.

Failure of Licensee to account and remit payment to Licensor as provided herein shall be considered a material breach of this agreement, subject to termination and damages. Licensor, or a certified public or chartered accountant or auditor, may, upon reasonable notice and during normal business hours, inspect the records of Licensee on which said accounting is based, solely for the purpose of determining the accuracy of said payments and report of payments due.

7. CONFIDENTIALITY

Licensee acknowledges that the software has tangible value, contains valuable trade secrets, copyrights, and confidential information of Licensor and is the sole property of Licensor.

Licensee shall have no right to disassemble, print or copy the software, in whole or in part, except as authorized herein. All such copies shall be and remain the property of Licensor.

Licensee shall take all appropriate action, whether by instruction, agreement or otherwise, to insure the protection, confidentiality and security of the software or any related materials.

Licensee agrees that its obligations with respect to the confidentiality and security of all information disclosed to Licensee survive the termination of this agreement or any renewal or extension thereof.

8. TERMINATION

This agreement shall terminate upon:

- a) Written agreement of the parties;
- b) Upon sixty (60) days' notice of termination by either party;
- c) Fifteen (15) days after written notice of termination by one party to the other for breach of any provision, covenant or obligation of this agreement unless the breach is cured by that date; or
- d) Immediately if Licensee makes an assignment for benefit of creditors, if a receiver, trustee in bankruptcy or like official is appointed to take possession of all or part of Licensee's property or business or if Licensee ceases to do business in the ordinary course. Licensee acknowledges that its rights under this agreement are personal and not assignable under Section 365(c)(1) of the United States Bankruptcy Act.

Upon termination, Licensee shall:

- e) (i) No longer market, sell, lease, or otherwise distribute copies of the Licensee's software.
- f) (ii) Advise each sublicensee, if applicable, in writing that Licensee is no longer authorized to market, sell, lease or otherwise distribute copies of the Licensee's software.

9. RETURN ON DESTRUCTION OF SOFTWARE UPON TERMINATION

Upon termination of this license, Licensee shall return to Licensor or destroy the original and all copies of the software including partial copies and modifications. Licensor shall have a

reasonable opportunity to conduct an inspection of Licensee's place of business to ensure compliance with this provision.

10. TITLE TO SOFTWARE

Licensor retains title to and ownership of the software and all enhancements, modifications, and updates of the software.

11. MODIFICATIONS AND ENHANCEMENTS

Licensee will make no effort to reverse engineer the software, or make any modifications or enhancements without Licensor's express written consent.

12. WARRANTY LIMITATIONS

LICENSOR WARRANTS THAT THE SOFTWARE WILL FUNCTION IN SUBSTANTIAL ACCORDANCE WITH THE DESCRIPTION AND SPECIFICATIONS SET FORTH IN SECTION 2. THE WARRANTY GRANTED HEREIN IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

13. REMEDY LIMITATIONS

Licensor's entire liability and Licensor's sole and exclusive remedy for breach of foregoing warranty shall be Licensor's option to either:

- a) Return to Licensee the license fee for the period in which the software did not perform according to this warranty, or
- b) Repair the defects or replace the software.

14. SEVERABILITY

If any provision or provisions of this agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

15. DAMAGE LIMITATIONS

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR INDIRECT, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, INCLUDING LOSS OF PROFITS, AND LICENSOR'S LIABILITY TO LICENSEE FOR ANY OTHER DAMAGES RELATING TO OR ARISING OUT OF THIS AGREEMENT WHETHER IN CONTRACT, TORT, OR OTHERWISE WILL BE LIMITED TO THE AMOUNT RECEIVED BY LICENSOR FROM LICENSEE AS COMPENSATION FOR THE SOFTWARE DURING THE 1 MONTH PERIOD IMMEDIATELY PRIOR TO THE TIME SUCH CLAIM AROSE.

16. ARBITRATION

The parties agree to submit any dispute under this license to binding arbitration under the rules of the American Arbitration Association in Barnstable County. Judgment upon the award rendered by the arbitrator may be entered in any court with jurisdiction to do so.

17. ATTORNEY FEES

If any legal action is necessary to enforce this License, the prevailing party shall be entitled to reasonable attorney fees, costs, and expenses in addition to any other relief to which it may be entitled.

18. GENERAL PROVISIONS

- a) **Complete agreement:** This license Agreement together with all schedules referred to in this Agreement, all of which are incorporated herein by reference, constitutes the sole and entire Agreement between the parties. This Agreement supersedes all prior understandings, agreements, representations, and documentation relating to the subject matter of this Agreement.
- b) **Modifications:** Modifications and amendments to this agreement, including any exhibit, schedule, or attachment hereto, shall be enforceable only if in writing and signed by authorized representatives of both parties.
- c) **Applicable law:** This license will be governed by the laws of the Commonwealth of Massachusetts.
- d) **Notices:** All notices and other communications given in connection with this license shall be in writing and shall be deemed given as follows:
- When delivered personally to the recipient's address as appearing in the introductory paragraph of this License;
 - Three days after being deposited in the United States mail, postage prepaid to the recipient's address as appearing in the introductory paragraph to this license; or
 - When sent by fax or telex to the last fax or telex number of the recipient known to the party giving notice. Notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first class or certified mail or the recipient delivers a written confirmation of the receipt; or
 - By electronic mail resulting in either the recipient confirming receipt of said email, recipient forwarding or replying to said e-mail, or other electronic means of determining that recipient has opened said email.
 - Any party may change its address appearing in the introductory paragraph to this license by giving notice of the change in accordance with this paragraph.
- e) **No agency:** Nothing contained herein will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise between the parties.

19. ASSIGNMENT

The rights conferred by this license shall not be assignable by the Licensee without the Licensor's prior written consent. Licensor may impose a reasonable license fee on any such assignment.

By clicking "I Agree," and entering the required information, I understand that I am representing myself and any company in which I plan to utilize any Application Programming Interface (API) or Software Development Kit (SDK) being offered by BIOMIDS, Inc., PO Box 1989, Cotuit, MA 02635. I also understand that I am entering into a legal contract based on the terms and conditions of this agreement and assert that I have the authority and legal right to do so.

LICENSOR
Frank Mann, CEO, BIOMIDS
Biometric Identification & Security Systems, Inc.
PO Box 1989
Cotuit, MA 02635