

Terms of use for the AX VISIO Development Program, Developer EULA

Concluded between you, as the user of a SWAROVSKI OPTIK AX Visio Development Kit and the related "Sample App" (hereinafter referred to as "User"), and the Swarovski Optik AG & Co KG., Daniel-Swarovski-Straße 70, 6067 Absam, Austria (hereinafter referred to as „SOA“):

1. General provisions

- 1.1. The following terms of use apply to the use of the Development Kit for programming purposes and/or in the form of the mobile application (iOS and Android) for use relating to the SWAROVSKI OPTIK product AX Visio (hereinafter referred to as "SOA AXV"). The use of the *Sample App* – subject to the provisions of Article 1.3. – is admissible solely based on these terms. The application of other general and/or special terms and conditions or any other terms, of whatsoever type, shall be explicitly precluded with respect to the use of the *Sample App*; SOA herewith explicitly opts out from the applicability of such other terms and a lack of an objection being voiced and/or provision of the app services also do not result in the applicability of any such terms.
- 1.2. The User agrees to these terms of use at the latest with performance of the registration for the *Sample App*. In addition to this, the User gives their consent to data processing in accordance with item 7 of the present terms.
- 1.3. The *Sample App* consists of, contains, uses and/or addresses different third-party software. The User may use the *Sample App* in its entirety solely within the framework and according to the terms and conditions of the present agreement, while the contained, used and/or addressed third-party software can be subject to other terms, which are listed in Annex 1 and are accepted by the User.
- 1.4. If the User does not agree to the following terms or parts thereof, the *Sample App* may not be installed, and the available functions and/or programming possibilities may not be used.

2. Registration, Password

- 2.1. For the use of the *Sample App*, in particular for programming purposes, a proper registration of the User and of the corresponding SOA AXV as well as the maintenance of the created user account are required. The code of the *Sample App* in the form of the mobile application can be downloaded from the website of SOA at <https://github.com/swarovskioptik/openapi-developer-example-app>.
- 2.2. The *Sample App* works with the devices and operating systems specified at <https://github.com/swarovskioptik/openapi-developer-example-app>.
- 2.3. The User shall ensure that they keep their passwords safe from the access of third parties and undertakes to not pass it on to any third party, unless such third party has previously agreed to the present terms of use in a legally effective way.

3. Use of the Sample App, Grant of Rights

- 3.1. The *Sample App* is a program for use on mobile devices, such as mobile phones, along with the SOA AXV. The *Sample App* is equipped with diverse basic functions, which can all be seen in the provided source code. Subject to the condition subsequent of the observance of the provisions of the present agreement, the User may apply and execute the mentioned functions in relation to the SOA AXV. The *Sample App* is provided to the User for the predominant purpose of further development by the User.
- 3.2. The use of the *Sample App*, in particular any programming activity, is permitted only for the purposes allowed in the agreement and within the framework of what is permitted under the applicable legal provisions and laws.

- 3.3. The User is granted a right of use for the corresponding source code of the *Sample App* for the purposes of processing, improvement and/or further development by the User, as well as the subsequent provision of the results to other users free of charge, via the app store under the conditions according to Annex 2, the "*Sample App License Terms*". Processing, improvement and/or further development by the User may only be carried out subject to observance of the conditions that are the subject matter of the agreement, and for the purpose of and with respect to the use of the SOA AXV. The User acknowledges that they undertake to provide the results of their programming activities (hereinafter referred to as "User App") observing the terms of use according to the present agreement and under the *Sample App License Terms* via the app store or make the source code publicly available.
- 3.4. For the purposes listed in item 3.3. and subject to the condition subsequent of the observance of the present terms of use, SOA grants the User a limited, free, non-exclusive, non-transferable and non-sublicensable as well as revocable right to load and store the source code of the *Sample App* on a computer for the purposes and within the scope of adapting/amending, improving and/or further developing the *Sample App*, and to use, process, improve and/or further develop the source code and to make the corresponding *User App* available to third parties via the app store and in accordance with the *Sample App License Terms*. In this context, "adapting/amending, improvement and/or further development" shall refer to any type of adaptation of the code for the purpose of use relating to and for the SOA AXV.
- 3.5. It is explicitly stated that (a) any use, adaptation/amendment, improvement and/or further development of the *Sample App* for purposes other than the application and execution relating to the SOA AXV as well as (b) any commercial use of the *Sample App* is prohibited.
- 3.6. The User is granted no rights that are not expressly mentioned in the present agreement. This does not apply only if and to the extent to which any relevant third-party licenses and/or mandatory legal provisions expressly prescribe additional rights.
- 3.7. The User acknowledges that the rights of use granted to the User under the agreement are subject to the condition subsequent of the observance of the User's duties, such that the rights of use shall end automatically if the User breaches their duties.
- 3.8. The *Sample App* consists of, contains, uses and/or addresses different third-party software components (Annex 1). Such software programs by third parties, which are required or useful for the use of the *Sample App*, are specified in the third-party overview which can be seen in Annex 1 and are licensed to the User according to the terms of the relevant license agreements of the third parties (hereinafter referred to as "Third-Party Licenses"). The User explicitly confirms that they have taken note of the specific provisions contained in the third-party overview relating to the individual third-party software contained in, used and/or addresses in the *Sample App* and shall be obliged to adhere to these provisions.

The rights and duties of the User and/or of SOA that are the subject matter of the present agreement shall explicitly only refer to the *Sample App* as such and in its entirety. With regard to third-party software components, the provisions of the present agreement shall apply only if and to the extent to which the *Third-Party Licenses* do not conflict with them. If *Third-Party Licenses* prohibit any duty/ limitation of the present agreement, such duty/limitation shall not apply with respect to the corresponding open source component. The User acknowledges that these *Third-Party Licenses* may be modified by the respective licensors at any time, in whole or in part, and without any liability to the User. If *Third-Party Licenses*, which relate to the open source software, provide for mandatory application of the respective provision of a *Third-Party License*, these third-party license terms apply instead of the provisions in question.

- 3.9. If and insofar as SOA is obligated to make available to the User the source code in connection with the *Sample App* according to *Third-Party Licenses* regarding open source software, such an offer is hereby deemed made.

4. Duties of the User

- 4.1. The User undertakes not to violate the law and/or cause damage during or in connection with any programming activity, nor through and/or within the framework of the *User App*, nor when using the *Sample App*. In the case of programming *User Apps*, the User shall moreover not enable the *User App* to be used to commit violations of the law and/or cause damage and shall take appropriate measures to ensure that the privacy and rights of the persons using the *User App* are protected. In particular, the User (a) shall not use and/or execute and/or provide for use and/or execution any contents with malware, viruses, Trojans and/or other programs that can damage the software; (b) shall not violate morality with their use behavior, in particular shall not use the SOA AXV and/or the *Sample App* and/or the *User App* for espionage or pornographic purposes or provide such use, directly or indirectly, within the scope of the *User App*; or (c) shall not violate any intellectual property rights and/or copyrights, personal rights, property rights or other rights of third parties and also shall not enable such violation within the scope of and/or by the *User App*.
- 4.2. Moreover, the User shall ensure that they do not realize a patent-protected method (e.g. by carrying out certain method steps or by using certain third-party programs or third-party apps) neither when using the *Sample App*, nor in connection with any programming activity, nor through and/or within the scope of the *User App* and/or individual functions, program components and/or applications.
- 4.3. The User shall ensure that no unauthorized persons gain access to the *Sample App* and in particular protect their access data against access by third parties.
- 4.4. The User shall ensure that in view of the *User App*, they maintain and/or respect the copyrights and license terms of SOA as well as of any third parties (see Article 3.8) by appropriate measures. For this purpose, the User undertakes to make the use of their *User App* subject to the approval of at least the terms contained in Annex 2.
- 4.5. The User acknowledges that they hold the sole liability and responsibility for their activities in connection with the *Sample App*. SOA merely provides the source code; however, does not assume any liability, neither towards the User nor towards third parties, for the actual application/execution and/or functions and/or the security or freedom from errors of the *Sample App* and/or the *User App*. The User shall be liable to SOA for breaches of duties from the present agreement by themselves or by persons using the *User App* programmed by the User. In this context, the User indemnifies SOA entirely from all claims raised by third parties towards SOA for one or several ones of the aforementioned violations of the law, indemnifies and holds SOA harmless, including from and against execution, and undertakes to reimburse all damage, costs, expenses and disadvantages incurred by SOA in this context, in particular also those resulting from indirect patent infringement.
- 4.6. SOA reserves the right to lock access to the *Sample App* or to delete the user account at any time, in particular if the User violates their duties from the present terms. Moreover, SOA reserves the right to have a *User App* and/or parts thereof removed from the app store in this case.

5. Intellectual Property

- 5.1. The *Sample App*, in particular the corresponding source code, and all other parts, such as the user interface as well as all further developments and improvements by the User, – subject to the rights of third parties to third-party software components – are the sole property of SOA. The User does not obtain any right to the *Sample App* except for the rights of use described in Article 3.
- 5.2. The User shall not be entitled to use the trademarks, the name and/or other signs of SOA in any way. In particular, the User may not use any trademarks, names and/or other signs of SOA within the scope of the *User App*. The User undertakes to design the *User App* such that the end users understand without ambiguity that the *User App* is not provided by SOA. In case of doubt, an unambiguous written note is to be rendered.
- 5.3. The User grants SOA a free, irrevocable, worldwide, unlimited, non-exclusive right to name the *User App* and describe its functions for advertising and marketing purposes and grants its corresponding copyright consent to SOA. This right and entitlement also encompasses programs, applications, acts of use, media and means unknown at the time of conclusion of this agreement.

6. Warranty and Liability

- 6.1. It is clarified that SOA does not assume any warranty and/or liability for the programs/contents created by the User, in particular the functions, availability and/or freedom of errors thereof (also see Article 4.4.).
- 6.2. SOA provides the User with the *Sample App* free of charge, including the content and functions as available at <https://github.com/swarovskioptik/openapi-developer-example-app>. SOA shall have no obligations, responsibility and/or liability beyond the corresponding provision for download. SOA shall particularly not assume any warranty for the *Sample App*, its functions and/or availability, correctness, freedom of errors, freedom from third-party intellectual property rights and copyrights, completeness and/or usability. The use of the *Sample App*, be it for programming purposes and/or merely for visualizing contents, is carried out at the sole risk of the User.
- 6.3. The User acknowledges that SOA shall be entitled to restrict, expand and discontinue the *Sample App* or parts thereof at any time and without stating reasons, both worldwide and regionally, comprehensively or only for individual users. The User shall have no claim for the provision or maintenance of the source code and/or any functionalities.
- 6.4. SOA always endeavors to keep the *Sample App* free of malware, computer viruses etc. SOA will not actively pass on contents to third parties and take precautions as exercised in own matters such that no third party gains access to the contents. The liability of SOA in this context and relating to defects of/in the *Sample App* is limited to cases of intent and extreme gross negligence as well as other mandatory legal cases. The liability for consequential damage, such as in particular damage caused by defects, damage from data loss, consequential damage caused by defects and/or accompanying damage, indirect damage, pure financial loss as well as loss of profit and/or comparable claims, is expressly precluded.
- 6.5. It is recommended that, for their own safety, the User ensures that suitable virus protection and/or state-of-the-art security measures are in place on the corresponding devices.

7. Data Processing

- 7.1. The User acknowledges that the registration via “MyService” for use and the use of the *Sample App* require storing of their personal data. The “MyService” terms of use, which can be retrieved at <https://at.swarovskioptik.com/datenschutz>, as well as the following terms in a supplementary and/or more specific manner, apply to the corresponding data processing.
- 7.2. The stored data includes the following identification data: name, address, phone number, and email address, as well as data and information about accesses to and activities via the *Sample App* (e.g. website, comments, etc.). The storage is carried out in particular for the purposes of use and provision of the services of the *Sample App*, but also for the identification of errors and their sources/causes as well as for the determination of a potential behavior in violation of the agreement. The data is stored for reasons of processing, legal security and traceability at least for the duration of an existing user account for the *Sample App*, however, at most for the period until 60 days after the closure of the user account becomes known.
- 7.3. The User explicitly declares their consent to this data being stored on the servers of SOA and/or of SOA’s service providers for the aforementioned purposes and for the mentioned duration and to said data being processed – i. e. in particular collected, ordered, evaluated and stored – by SOA and/or by the third parties instructed by SOA in the manner required for complying with the present agreement.
- 7.4. The User can assert rights to information, modification, correction, restriction, objection and deletion with respect to personal data which they are entitled to as prescribed by law by means of a written request to the SOA client center privacy@swarovskioptik.com or by mail to SWAROVSKI OPTIK AG & Co KG., Daniel-Swarovski-Strasse 70, 6067 Absam, Austria. The User is aware of the fact that in the event of a deletion of certain data, the use of the services of the *Sample App* will not be possible any more.

- 7.5. This consent declared by the User is deemed to have been given, until revocation at any time, within the meaning of the applicable provisions of data protection law, and the consent declared herein is also given to the companies of the SOA company group to the mentioned extent and under the mentioned terms. The objection is to be addressed to the SOA client service privacy@swarovskioptik.com.

8. Term of agreement

- 8.1. The present agreement becomes effective at the latest upon registration of the User for the *Sample App* and is concluded for the term of the maintenance of an existing user account. If the User does not want to continue using the functions of the SOA AXV, which can be used by means of the *Sample App*, and also not further provide any *User Apps*, a termination is possible at any time. The termination is established by deletion of the user account as well as of the user account at "MyService" (possible at https://at.swarovskioptik.com/mein_konto) and written notice to SOA. For deactivating the profile, a written notice from which the name of the User can clearly be gathered must be addressed to SOA. SOA will carry out the deletion within an appropriate period of time.
- 8.2. SOA is entitled at any time to terminate the contractual relationship as described in items 4.5. and 6.3. and/or for any other important reason, with immediate effect and to deactivate the user account. In such event, the User is not entitled to any claims against SOA.
- 8.3. In case of a termination of the agreement, for whatsoever reason and whether through SOA or the User, the User undertakes to ultimately delete the source code of the *User App* from their computer and to cease any use.
- 8.4. If SOA entirely stops operation of the *Sample App*, SOA will inform the User in written form with an appropriate period of notice. In such case, SOA will ensure by suitable measures that the services available by means of the *Sample App* remain usable by the User. Any activities and measures to be taken by the user for this purpose will be communicated to the User in good time.
- 8.5. Provisions 3. to 7. remain unaffected by a termination of the agreement.

9. Miscellaneous, Governing Law and Court of Jurisdiction

- 9.1. If individual or several provisions of the present terms of use be declared invalid, inadmissible or unenforceable for whatever reason, this shall not affect the remaining provisions. The invalid provision shall be replaced by another provision which is closest to the content of the legally ineffective provision.
- 9.2. Default or delay in asserting a right established for the business relationship of the contracting parties shall not be deemed a waiver of such right by the respective contracting party for this or future cases. A waiver of rights is valid only if declared in writing by the party entitled to the claim.
- 9.3. These terms of use correspondingly apply to potential legal successors of the User and the User will ensure assignment where required.
- 9.4. Austrian law shall apply to the present agreement. The application of the provisions of the Vienna Convention on Contracts for the International Sale of Goods and the conflict of laws provisions of international private law is expressly precluded.
- 9.5. The exclusive place of jurisdiction for all legal disputes arising in the context of the business relation between the User and SOA, if the User has their permanent place of business in an EU Member State, Iceland, Norway or Switzerland, shall be Innsbruck, Austria. If the User has their permanent place of business in another state, any disputes arising from and/or in connection with the business relationship between the User and SOA shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce by an arbitrator appointed by SOA and the User by mutual agreement or, if no agreement is reached, by an arbitrator appointed in accordance with these Rules. The place of arbitration shall be Zürich, Switzerland. The language of arbitration shall be German.
- 9.6. Regardless of this arrangement on jurisdiction, SOA reserves the right to assert claims for injunctive relief and/or claims for temporary legal relief at all authorities of any kind whatsoever, including national

courts of any legal system whatsoever.

- 9.7. In the relationship with consumers, the provisions of this agreement shall only apply insofar as they do not contradict relevant mandatory legal provisions, in particular those of the Consumer Protection Act.

Annex 1 – Third-Party Licenses

Sample App - Android

Software Library	Third-Party License	Link/Package URL
Picasso v2.5.2	Apache-2.0	com.squareup.picasso:picasso:2.5.2
PhotoView v2.1.3	Apache-2.0	com.github.chrisbanes:PhotoView:2.1.3
metadata-extractor v2.11.0	Apache-2.0	com.drewnoakes:metadata-extractor:2.11.0
RxJava v2.2.8	Apache-2.0	io.reactivex.rxjava2:rxjava:2.2.8
RxKotlin v2.3.0	Apache-2.0	io.reactivex.rxjava2:rxkotlin:2.3.0
RxAndroid v2.1.1	Apache-2.0	io.reactivex.rxjava2:rxandroid:2.1.1
Gson v2.8.5	Apache-2.0	com.google.code.gson:gson:2.8.5
Kotlin v1.3.21	Apache-2.0	https://github.com/JetBrains/kotlin/releases/tag/v1.3.21
Timber v4.7.1	Apache-2.0	com.jakewharton.timber:timber:4.7.1
ThreeTenABP v1.2.0	Apache-2.0	com.jakewharton.threetenabp:threetenabp:1.2.0
Paho MQTT v1.2.0	Eclipse Public License-2.0	org.eclipse.paho:org.eclipse.paho.client.mqttv3:1.2.0
GStreamer v1.14.2	LGPL-2.1	https://github.com/GStreamer
Android Support Library: support-ui-core v28.0.0	Apache-2.0	com.android.support:support-core-ui:28
Android Support Library: appcompat-v7 v28.0.0	Apache-2.0	com.android.support:appcompat-v7:28
Android Support Library: design v28.0.0	Apache-2.0	com.android.support:design:28
Android Support Library: recyclerview-v7 v28.0.0	Apache-2.0	com.android.support:recyclerview:28
Android Support Library: cardview-v7 v28.0.0	Apache-2.0	com.android.support:cardview-v7:28
Android Support Library: constraint-layout v28.0.0	Apache-2.0	com.android.support:constraint-layout:28

Sample App - iOS

Software Library	Third-Party License	Link/Package URL
GStreamer v1.16.0	LGPL-2.1	https://github.com/GStreamer
Moscapsule v0.6.4	MIT	https://github.com/flightonary/Moscapsule/
OpenSSL-Universal v1.0.2.13	Open SSL License/ Original SSLeay License	https://www.openssl.org/
SnapKit v4.2.0	Copyright notice by SnapKit Team	https://github.com/SnapKit

Annex 2 – Sample App License Terms

The present app is partially based on a base source code provided by SWAROVSKI OPTIK AG & Co KG., Absam, Austria (“SOA”), and was provided for use along with a SWAROVSKI OPTIK AX Visio (“SOA AXV”).

However, SOA has, neither in whole nor in part, commissioned or reviewed the app in any way. It is explicitly noted that SOA assumes no warranty and/or liability for the present app created by users, in particular not for its contents, functions, correctness, availability and/or freedom of errors, freedom from third-party intellectual property rights and copyrights, completeness and/or usability.

If and insofar as SOA is obligated to make available to the User the source code in connection with the App according to Third-Party Licenses regarding open source software, such an offer is hereby deemed made, and the following right of use thereto be granted: With respect to the source code, to which the copyrights and/or exclusive use rights appertain to SOA, SOA grants the User a limited, free, non-exclusive, non-transferable and non-sublicensable as well as revocable right to load and store the source code of the app on a computer for the purposes and within the scope of adapting/amending, improving and/or further developing the app, and to use, process, improve and/or further develop the source code and to provide the corresponding application to third parties subject to passing on the duties arising from the present terms of use. In this context, “adaption/amendment, improvement and/or further development” shall refer to any type of adaption of the code for the purpose of use relating to and for the SOA AXV.

The User undertakes not to change and/or adapt any copyright notes.

The User undertakes not to commit any violations of the law or cause any damage when using the app, in particular (a) not to transmit to and/or by means of the app any contents with malware, viruses, Trojans and/or other programs that can damage the software; (b) not to violate morality with their use behavior, in particular not to use the SWAROVSKI OPTIK AX Visio and/or the app for espionage or pornographic purposes; or (c) not to violate any intellectual property rights and/or copyrights, personal rights, property rights or other rights of third parties and also shall not enable such violations/damage. Moreover, the User undertakes to ensure by appropriate precautions that persons with whom the User shares such contents, data, information or the like that are generated using the SOA AXV, do not commit any of the mentioned violations of the law. The User shall ensure that no unauthorized persons gain access to the app and in particular protect their access data against access by third parties.

The User acknowledges that SOA shall be entitled to restrict and/or have discontinued the app or parts thereof at any time and without stating reasons, both worldwide and regionally, comprehensively or only for individual users. The User shall have no claim for the provision or maintenance of the source code and/or any functionalities.

The User agrees to the present terms of use at the latest when downloading and executing the app. If the User does not agree to the following terms or parts thereof, the app may not be installed, and the available functions and/or programming possibilities may not be used.