

SUPERPOWERED SDK LICENSE AGREEMENT

Effective Date: November 28, 2014

THIS SUPERPOWERED SDK LICENSE AGREEMENT (THIS “**AGREEMENT**”) IS A LEGAL AGREEMENT BETWEEN YOU INDIVIDUALLY IF YOU ARE AGREEING TO IT IN YOUR OWN CAPACITY, OR IF YOU ARE AUTHORIZED TO ACQUIRE THE SUPERPOWERED SDK ON BEHALF OF YOUR COMPANY OR ORGANIZATION, BETWEEN THE ENTITY FOR WHOSE BENEFIT YOU ACT (“**YOU**” OR “**LICENSEE**”) AND SUPERPOWERED INC. (“**SUPERPOWERED**”). BEFORE DOWNLOADING THE SUPERPOWERED SDK, PLEASE CAREFULLY READ THE FOLLOWING AGREEMENT. BY CLICKING ON THE APPROPRIATE BUTTON BELOW, OR BY DOWNLOADING, INSTALLING, ACTIVATING OR USING THE SUPERPOWERED SDK, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU HAVE ANY QUESTIONS OR CONCERNS ABOUT THE TERMS OF THIS AGREEMENT, PLEASE CONTACT US AT hello@superpowered.com. IF, PRIOR TO DOWNLOADING, INSTALLING, ACTIVATING OR USING THE SUPERPOWERED SDK, YOU DECIDE YOU ARE UNWILLING TO AGREE TO THE TERMS OF THIS AGREEMENT, YOU HAVE NO RIGHT TO USE THE SUPERPOWERED SDK. IN THIS CASE, DO NOT ATTEMPT TO DOWNLOAD THE SUPERPOWERED SDK BY ANY MEANS AND IF YOU HAVE ALREADY DONE SO, PROMPTLY DELETE THE SDK.

THE MOST CURRENT VERSION OF THE SUPERPOWERED SDK LICENSE AGREEMENT WILL ALWAYS BE POSTED AT <http://Superpowered.com/license> (“**CURRENT VERSION**”). IF THE CURRENT VERSION HAS A MORE RECENT EFFECTIVE DATE THAN THIS DOCUMENT, THEN THIS DOCUMENT IS REPLACED BY THE CURRENT VERSION AND BY CLICKING ON THE APPROPRIATE BUTTON BELOW, OR BY DOWNLOADING, INSTALLING, ACTIVATING OR USING THE SUPERPOWERED SDK, YOU ARE AGREEING TO BE BOUND BY THE CURRENT VERSION.

SECTION 1: DEFINITIONS

“**API**” means an application programming interface.

“**Application**” means either an Embedded Application or a Software Application.

“**Authorized Users**” means: (a) any of Licensee’s employees; or (b) any consultants, independent contractors and any other persons Licensee authorizes to use or to whom Licensee otherwise makes available the SUPERPOWERED SDK, in each case to use on Licensee’s behalf to develop Applications.

“**Distributable Source Code**” means certain application templates, code stubs, code snippets, example applications, sample code and code fragments in source code form either included as part of the SUPERPOWERED SDK or otherwise provided to Licensee.

“**Embedded Application**” means any software application or system that may permanently reside in an industrial or consumer device or any other



type of technical equipment (e.g., wearable/hardware companies and OEMs), developed (or repackaged) by Licensee and which incorporates the SUPERPOWERED SDK.

“Reverse Engineer” includes, without limitation, any act of reverse engineering, translating, disassembling, decompiling, decrypting or deconstructing (including any aspect of “dumping of RAM/ROM or persistent storage”, “cable or wireless link sniffing”, or “black box” reverse engineering) data, software (including interfaces, protocols, and any other data included in or used in conjunction with programs that may or may not technically be considered software code), service, or hardware or any method or process of obtaining or converting any information, data or software from one form into a human-readable form.

“Software Application” means a software application that consumers can install on their personal device (e.g., through an app store or via download), developed (or repackaged) by Licensee and which incorporates the SUPERPOWERED SDK.

“SUPERPOWERED SDK” means all software (including programs, tools, sample code, templates, libraries, and interfaces), Updates, APIs, information, data, files, documentation, and other materials, whether tangible or intangible, in whatever form or medium (including on-line tools), provided to Licensee at any time, either by way of downloading from Superpowered or otherwise provided to Licensee, for any development purposes (unless such materials are provided pursuant to a separate license agreement for such materials by Superpowered and/or its affiliates).

“Updates” means bug fixes, service packs, hot fixes, updates, upgrades, enhancements, modifications, and new releases or versions of the SUPERPOWERED SDK.

SECTION 2: LICENSE

2.1 License Grant.

(a) In accordance with the terms herein, Superpowered grants to Licensee, and Licensee accepts from Superpowered, a limited, non-exclusive, non-transferable, non-sublicensable (except as described in this Agreement) license to install and use a reasonable number of copies of the SUPERPOWERED SDK to be used solely in the manner described in the documentation contained in the SUPERPOWERED SDK, if any. Licensee may not copy the SUPERPOWERED SDK or any portion thereof except as expressly permitted herein. For the purposes of this provision “copy” shall not include copying of statements and instructions of the SUPERPOWERED SDK or any portion thereof that naturally occurs during normal program execution when used in accordance with and for the purposes described in the documentation or in the course of making unmodified copies of the SUPERPOWERED SDK or documentation as part of the regular back-up of the SUPERPOWERED SDK in accordance with standard industry business practices. Notwithstanding the foregoing, if Superpowered has terminated any license granted to Licensee for the SUPERPOWERED SDK, no right to use the SUPERPOWERED SDK is granted to Licensee hereunder.

(b) Licensee may distribute the Applications provided that, except as expressly permitted herein, or as authorized by an officer of Superpowered in writing, Licensee does not directly or indirectly market, rent, distribute, transfer, license, sublicense, sell, or furnish to any third party all or any part of, the SUPERPOWERED SDK or copies of any part thereof including in conjunction with or as part of Applications (for greater clarity the rights granted hereunder are solely with respect to Licensee’s use of the SUPERPOWERED SDK and in no event shall there be an implied license under any Superpowered intellectual property rights).



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2.2 Open Source. The SUPERPOWERED SDK may be embedded into open-source, source-code and/or source-code repo, provided such use in compliance with the terms of this Agreement.

(a) Licensee acknowledges that if the SUPERPOWERED SDK is used in this manner, the following limitations apply: (i) Superpowered must be mentioned in the README, (ii) a copy of this Agreement must be included.

(b) Recipients of the SUPERPOWERED SDK in such a manner have a limited license to use, reproduce, display, perform, and modify the SUPERPOWERED SDK to develop the Licensee's Applications, and for no other purpose.

2.3 Updates. This license set forth herein shall include any Updates to the SUPERPOWERED SDK by Superpowered occurring after the date hereof.

SECTION 3: USE OF THE SUPERPOWERED SDK

3.1 Use. Licensee is responsible for all activities with respect to the SUPERPOWERED SDK undertaken by Licensee and Licensee's Authorized Users and Licensee will ensure that:

(a) Licensee and Licensee's Authorized Users will only use the SUPERPOWERED SDK in accordance with this Agreement, all applicable laws and regulations, and the documentation provided by Superpowered, if any, as part of and for use in conjunction with the SUPERPOWERED SDK, and Applications and any products, services or content available through Licensee's Applications and their intended uses shall comply with all applicable laws and regulations;

(b) Licensee has the right and authority to enter into this Agreement, either on Licensee's own behalf or on behalf of a company or



other entity, and Licensee is over the age of majority;

(c) Licensee and Licensee's Authorized Users will not knowingly, after making such inquiries as a reasonable person in Licensee's or Licensee's Authorized Users' position would undertake, develop or distribute Applications or make any products, services or content available through Licensee's Applications, the use of which in isolation or with any other software, system, network, or data would, in Superpowered's judgment, acting reasonably, contain functionality that could be used for inappropriate or improper purposes or interfere with the proper operation of, degrade, cause damage to or adversely affect any software, hardware, services, system, network or data used by any person including Superpowered, or otherwise have a detrimental effect upon Superpowered, or any of its customers or products or services, and Licensee will immediately cease any such activity upon Superpowered delivering notice of same to Licensee;

(d) Licensee and Licensee's Authorized Users will not use the SUPERPOWERED SDK to develop any Applications or make any products, services or content available through Licensee's Applications, which are intended to be used to commit or would be used predominantly to commit any crime or other illegal or tortious acts in the jurisdiction in which Licensee or Licensee's distribution channels distribute that Application and without limiting the foregoing, Applications and any products, services or content available will not contain or link to any content, or perform any function, that is illegal (e.g. against any criminal, civil or statutory law or regulation), including, without limitation, any libel or defamation, obscenity, breach of privacy, infringement or misappropriation of any intellectual property rights and/or other proprietary rights of any party (including, without limitation, unlawfully circumventing any digital rights management protections);

(e) Applications and any products, services or content made available through Licensee's Applications, do not, and will not contain any: (i) virus, Trojan horse, worm, backdoor, shutdown mechanism, malicious code, sniffer, bot, drop dead mechanism, or spyware; or (ii) any other software, code, or program that is likely to or is intended to: (A) have an adverse impact on the performance of, (B) disable, corrupt, or cause damage to, or (C) cause or facilitate unauthorized access to or deny authorized access to, or cause to be used for any unauthorized or inappropriate purposes, any software, hardware, network, services, systems, or data ("**Malware**"). If Licensee becomes aware of the existence of any Malware in or relating to Licensee's Applications, Licensee shall promptly notify Superpowered;

(f) Licensee will not knowingly develop or distribute any Application or make available any products, services or content available through any Application that infringes any Superpowered, Superpowered affiliate or third party copyrights, trademarks, industrial design rights, rights of privacy and publicity, trade secrets, patents, or other proprietary or legal rights; and

(g) Applications that offer or are used in conjunction with location based services or functionality must notify and obtain consent from the end user before Licensee collects, transmits, processes, displays, discloses, maintains, or uses his or her location data in any manner whatsoever, and notwithstanding the generality of the foregoing Licensee shall comply with applicable privacy and data protection legislation in respect of such information. If the end user's consent is denied or withdrawn at any time, neither Licensee nor the Application may continue to collect, transmit, process, display, disclose, maintain, or use the end user's location data.

(h) Licensee will ensure that all development work directly or indirectly related to the SUPERPOWERED SDK shall be performed and provided in a professional and highly competent manner, to the best and full limit of Licensee's (and its Authorized User's) abilities and in accordance with the highest standards in the Licensee's industry.



3.2 **Export Restrictions.** Licensee acknowledges that the SUPERPOWERED SDK may include software that may be subject to export, import, and/or use controls by Government Authorities (as hereinafter defined) by way of law or regulation. Licensee agrees that the SUPERPOWERED SDK will not be exported, imported, used, transferred, or re-exported except in compliance with the laws and regulations of the national and/or other government authorities with authority over the country(ies) and/or territory(ies) from which the SUPERPOWERED SDK is being exported or to which the SUPERPOWERED SDK is being imported (collectively, the “**Government Authority(ies)**”). Notwithstanding any agreement with a third-party or any provision of law, regulation or policy, if Licensee is any agency of the government of the United States of America, then Licensee’s rights in respect of the SUPERPOWERED SDK shall not exceed the rights provided under this Agreement, unless expressly agreed upon by Superpowered in a separate written agreement.

SECTION 4: COMPENSATION

4.1 Compensation.

(a) Fees.

(i) Software Applications: If Licensee is using the SUPERPOWERED SDK in a Software Application, there is no fee for the use of the SUPERPOWERED SDK in such Software Application. However, the SUPERPOWERED SDK is not open-source and the Licensee is still subject to all of the terms of this Agreement.

(ii) Embedded Applications: If Licensee is using the SUPERPOWERED SDK in an Embedded Application, prior to use of the SUPERPOWERED SDK the Licensee must contact Superpowered for a discussion of pricing regardless of user level.

(b) Marketing; Case Study. Licensee grants to Superpowered their permission for Superpowered to use Licensee’s names and images of both Licensee itself and all Applications of Licensee as part of Superpowered’s marketing, and a reasonable amount of public relations items as set forth in Section 6.3. Licensee shall provide, at Superpowered’s request, information and/or quotes so that Superpowered may use the transactions contemplated herein as a “case study” on its marketing materials.

(c) Credit. Licensee will comply with Section 6.2 to the exclusive approval of Superpowered.

SECTION 5: INTELLECTUAL PROPERTY RIGHTS

5.1 Intellectual Property.

(a) This Agreement does not transfer or assign to Licensee, any intellectual property right including any patent, design, industrial design, trademark, servicemark, copyright or rights in any confidential information or trade secrets, in or related to the SUPERPOWERED SDK or any part thereof. The SUPERPOWERED SDK and all copies thereof remain the property of Superpowered and are licensed and not sold to Licensee under this Agreement. Licensee acknowledges that there are no implied licenses granted under this Agreement, and all rights, save for those license rights expressly granted to Licensee hereunder, shall remain with Superpowered. This Agreement only provides a license for the



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(c) Licensee and Licensee's Authorized Users may provide Superpowered with feedback on the SUPERPOWERED SDK, including, without limitation, feedback on bugs and faults within or relating to the SUPERPOWERED SDK, or suggestions for improvements or other changes to all or any portion of the SUPERPOWERED SDK. Licensee hereby agree that Superpowered shall own all feedback, ideas, concepts and changes to any portion of the SUPERPOWERED SDK developed or identified in the course of or as a result of Licensee's use of the SUPERPOWERED SDK and all associated intellectual property rights ("**Results**"), and Licensee hereby assigns to Superpowered all of Licensee's right, title and interest thereto. Licensee will not knowingly provide Superpowered Results that are subject to third party intellectual property rights. Licensee agrees to cooperate fully and to ensure that Licensee's employees, officers, independent contractors and Licensee's Authorized Users cooperate fully with Superpowered with respect to signing further documents and doing such other acts as are reasonably requested by Superpowered to confirm that Superpowered owns the Results, and to enable Superpowered to register and/or protect any associated intellectual property rights and/or confidential information.

SECTION 6: CONFIDENTIALITY & PUBLICITY

6.1 **Confidentiality.** Other than as incorporated in the Applications' documentation, Licensee shall not sell, transfer, publish, disclose, display or otherwise make available the SUPERPOWERED SDK or copies thereof to others. Licensee shall use reasonable efforts to secure and protect the SUPERPOWERED SDK, documentation and copies thereof and to take appropriate action by instruction or agreement with its Authorized Users.

6.2 **Superpowered Credit.**

(a) Licensee shall include the phrase "Audio by Superpowered" or "This app has been Superpowered" or "APPNAME is Superpowered" and the Superpowered logo in a visible form and hyperlink to <http://superpowered.com> inside the SUPERPOWERED SDK and all Applications at all times.

(b) If the Application is distributed in a store system (for example, the "App Store" or "Google Play"), Licensee shall include the phrase



“Audio by Superpowered” or “This app has been Superpowered” or “APPNAME is Superpowered” in the description or the copyright text.

6.3 **Press Release.** Licensee agrees that Superpowered may refer to Licensee by trade name and trademark, and may briefly describe Licensee’s use of the SUPERPOWERED SDK, in marketing and on its website.

SECTION 7: WARRANTY & LIMITATION OF LIABILITY

7.1 **Warranty.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SUPERPOWERED SDK IS PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND. EXCEPT TO THE EXTENT REQUIRED BY APPLICABLE LAW, SUPERPOWERED DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SUPERPOWERED SDK, INCLUDING WITHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, RESULTS OF USE, RELIABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, INTERFERENCE WITH QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. FURTHER, SUPERPOWERED DISCLAIMS ANY WARRANTY THAT LICENSEE’S USE OF THE SUPERPOWERED SDK WILL BE UNINTERRUPTED OR ERROR FREE.

7.2 **Exclusion of Liability.** IN NO EVENT SHALL SUPERPOWERED BE LIABLE FOR ANY DAMAGES WHATSOEVER DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY PRODUCTS, SERVICES OR CONTENT MADE AVAILABLE THROUGH LICENSEE’S APPLICATIONS, WHETHER OR NOT SUCH DAMAGES COULD REASONABLY BE FORESEEN OR THEIR LIKELIHOOD HAS BEEN DISCLOSED TO SUPERPOWERED. IN NO EVENT SHALL ANY OFFICER, DIRECTOR, EMPLOYEE, AGENT, SUPPLIER, INDEPENDENT CONTRACTOR, OR ANY MERCHANTS OF RECORD OF SUPERPOWERED OR ANY SUPERPOWERED AFFILIATE HAVE ANY LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT.

7.3 **Limitation of Liability.** IN NO EVENT SHALL SUPERPOWERED BE LIABLE FOR ANY DAMAGES THAT EXCEED, IN THE AGGREGATE FOR ALL CLAIMS ARISING FROM OR RELATED TO THIS AGREEMENT, THE SUM OF ANY AMOUNTS LICENSEE HAS PAID SUPERPOWERED FOR THE SUPERPOWERED SDK.

7.4 **Exceptions.** SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS OR EXCLUSIONS OF CERTAIN TYPES OF DAMAGES AND/OR WARRANTIES AND CONDITIONS. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET FORTH IN THIS AGREEMENT SHALL NOT APPLY IF AND ONLY IF AND TO THE EXTENT THAT THE LAWS OF A COMPETENT JURISDICTION REQUIRE LIABILITIES BEYOND AND DESPITE THESE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS.

SECTION 8: INDEMNITY

8.1 **By Licensee.** Licensee shall indemnify, hold harmless, and if requested by Superpowered, defend, Superpowered, Superpowered's affiliates, agents and their respective successors, assigns, directors, officers, employees and independent contractors (each a “**Superpowered Indemnified Party**”) from any claims, costs, damages, losses, settlement fees, and expenses (including without limitation attorney fees and disbursements) incurred directly or indirectly by a Superpowered Indemnified Party as a result of Licensee’s or Licensee’s Authorized Users’ breach of this Agreement and/or as a result of any third party claim, proceeding, suit, judgment, settlement, or cause of action (“**Claim**”): (a)



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SECTION 9: TERM AND TERMINATION

9.1 **Term.** This Agreement shall be effective upon Licensee's agreement to be bound by the terms of this Agreement, (as manifested by the conduct described in the first paragraph above) and shall end upon termination of this Agreement in accordance with the provisions set out herein, or in the case of an Embedded Application, upon the end of the agreed-to license term for such Embedded Application, as applicable. Licensee must destroy all copies and component parts of the SUPERPOWERED SDK licensed under this Agreement within one (1) week of the termination of this Agreement, and Licensee may be required to provide proof of such destruction to Superpowered. Upon the termination of this Agreement the license shall immediately terminate and Licensee shall promptly stop all use of the SUPERPOWERED SDK.

9.2 **Termination.** Licensee may terminate this Agreement at will for any reason whatsoever. If Licensee or any Authorized User breaches any provision of this Agreement, Superpowered may terminate this Agreement and the license granted hereunder. Licensee will be deemed to be in breach of this Agreement if: (a) Licensee fails to comply with or perform a term or condition herein; or (b) Licensee or any Authorized User interferes with Superpowered's customer service or business operations; or (c) Licensee materially breaches any other agreement that Licensee may have with Superpowered. Superpowered may also terminate this Agreement if Superpowered is prevented from providing any portion or all of the SUPERPOWERED SDK by any law, regulation, requirement or ruling issued in any form whatsoever by judicial or other governmental body. Nothing herein shall be construed to require Superpowered to seek a waiver of any law, rule, regulation, or restriction, or seek judicial review or appeal of any court order. Unless otherwise expressly agreed by Superpowered in writing, if this Agreement is terminated by Superpowered for breach, Licensee hereby agrees to immediately cease distribution of any Application developed using the SDK. Further, Licensee agrees to immediately cease distribution of any Application that breaches this Agreement or any software application that was developed or distributed in breach of this Agreement upon delivery of notice from Superpowered requiring same. Superpowered shall not have any liability to Licensee or Licensee's Authorized Users arising from or related to the termination of this Agreement or the license for any reason. No remedy herein conferred



upon Superpowered is intended to be, nor shall it be construed to be, exclusive of any other remedy provided herein or as allowed by law or in equity, but all such remedies shall be cumulative. In the event of the termination of this Agreement pursuant to this Section 9.2 for cause, Licensee shall pay to Superpowered all attorney fees, collection fees, and related expenses, expended or incurred by Superpowered in the enforcement of any right or privilege hereunder.

9.3 **Survival.** The terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the performance hereof shall so survive the completion of performance, cancellation or termination of this Agreement. Without limiting the generality of the foregoing, the provisions of Section 4 (to the extent any amounts are owed to Superpowered), 5, 6, 7, 8, 9, and 10 hereof shall survive any termination of this Agreement.

SECTION 10: MISCELLANEOUS

10.1 **Amendment/Modification.** This Agreement is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to this Agreement. This Agreement can be modified or amended upon the mutual written consent of both the parties.

10.2 **Non-Circumvention.** The parties of this Agreement acknowledge that no effort shall be made to circumvent its terms in an attempt to gain fees, remunerations, or considerations to the benefit of any of the parties of this Agreement, while excluding equal or agreed to benefits to any of the other parties.

10.3 **Governing Law.** This Agreement and performance hereunder shall be governed by the laws of the State of California. The parties agree that any litigation arising out of or related to this Agreement must be brought in a California court located in Orange County, California, as the exclusive and mandatory venue and jurisdiction for any litigation arising out of or related to this Agreement.

10.4 **Class Action Waiver.** Licensee agrees not to bring or participate in a class or representative action, private attorney general action, or collective arbitration related to the SUPERPOWERED SDK or this Agreement.

10.5 **Severability.** If any provision of this Agreement is invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted.

10.6 **Assignment.** The Licensee may not assign or sub-license, without the prior written consent of Superpowered, its rights, duties or obligations under this Agreement to any person or entity, in whole or in part. Superpowered may assign this agreement without the prior written consent of Licensee.

10.7 **Attorneys Fees.** In the event of dispute between the parties hereto regarding this Agreement, the prevailing party shall be entitled to recover reasonable attorneys fees incurred in connection with the dispute in addition to any other relief to which it may be entitled.

10.8 **Waiver.** The waiver or failure of Superpowered to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.



10.9 **Relationship of Parties.** The parties are not employees, agents, partners or joint venturers of each other. Neither party shall have the right to enter into any agreement on behalf of the other.

10.10 **Headings and Titles.** The headings and titles of this Agreement are for convenience only and are not intended to define, limit or construe the contents of the various sections.

