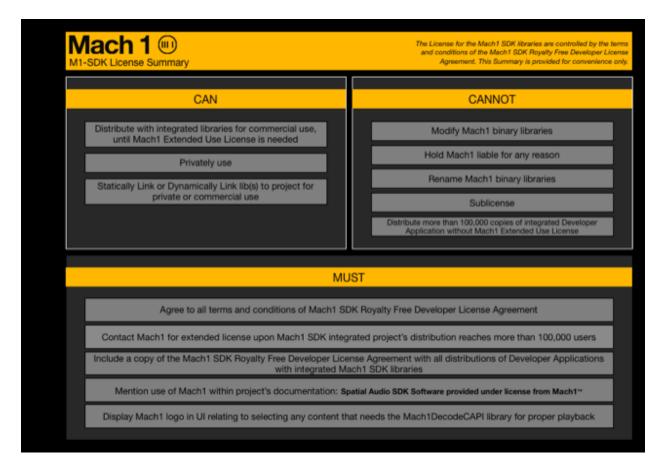# MACH1 SDK Royalty Free Developer License Agreement

THIS MACH1 SDK ROYALTY FREE DEVELOPER LICENSE AGREEMENT ("MACH1 SDK Royalty Free Agreement") is entered into by and between MACH 1 CORP., a Delaware Corporation with offices located at 11 Vestry Street #1A, New York, NY 10013 ("MACH1"), and you as a developer ("DEVELOPER" or "you") downloading and/or using the MACH1 SDK spatial audio libraries and related API (such current version of the files, code, examples, and documentation relating thereto or included therewith, collectively referenced herein as the "MACH1 SDK" or "Software") for integration with a DEVELOPER software application ("Developer Application," as further defined below). Each of MACH1 and DEVELOPER may be referred to individually as a "Party" and collectively as the "Parties." Capitalized terms not immediately defined below. Capitalized terms shall have the meanings as defined herein, unless otherwise indicated.

MACH1 provides this MACH1 SDK Royalty Free Agreement for the purpose of allowing developers to use and distribute the MACH1 SDK for up to 100,000 distributions. If DEVELOPER distributes any Developer Application beyond 100,000 distributions, a royalty-bearing, paid

extended use license is required, which can be obtained by contacting MACH1 at: licensing@mach1.tech

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Questions regarding licensing can be directed to licensing@mach1.tech

BY REGISTERING AND/OR CLICKING ON THE "I ACCEPT" BUTTON AND/OR INSTALLING THE MACH1 SDK AND/OR USING THE MACH1 SDK, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE AGREEMENT, OR IF YOU ARE NOT AUTHORIZED BY THE END USER TO ACCEPT THE TERMS OF THIS LICENSE AGREEMENT FOR THE END USER, DO NOT ACCEPT THIS MACH1 SDK ROYALTY FREE AGREEMENT, DO NOT INSTALL THE MACH1 SDK, DO NOT USE THE MACH1 SDK, OR DISCONTINUE THE INSTALLATION PROCESS. THE ACCEPTANCE OF THIS AGREEMENT IS REQUIRED FOR USE OF THE SOFTWARE BY ANYONE DOWNLOADING, TRANSMITTING, COPYING, INSTALLING, USING, OR OTHERWISE OPERATING THE MACH1 SDK BY THEMSELVES OR ON BEHALF OF THE END USER.

THE LATEST VERSION OF THE MACH1 SDK ROYALTY FREE AGREEMENT WILL BE MAINTAINED AT mach1.tech/licensing. IF THE LATEST VERSION HAS A LATER EFFECTIVE DATE THAN THE PRESENT VERSION OF THE MACH1 SDK ROYALTY FREE AGREEMENT, THEN THIS MACH1 SDK ROYALTY FREE AGREEMENT IS HEREBY REPLACED BY THE LATEST VERSION AS OF THE EFFECTIVE DATE OF THE LATEST VERSION. BY CLICKING ON THE LINK AT mach1.tech/licensing, OR BY DOWNLOADING, INSTALLING, OR USING THE MACH1 SDK, OR BY ANY OTHER UPDATE METHOD MACH1 SELECTS, YOU ARE AGREEING TO BE BOUND BY THE LATEST VERSION OF THE MACH1 SDK ROYALTY FREE AGREEMENT.

MACH1 SDK
Royalty Free Developer License Agreement
Version 1.03

1.   **License Grant; Limitations**.

        a.   Subject to the terms and conditions of this MACH1 SDK Royalty Free Agreement, MACH1 hereby grants to DEVELOPER a non-exclusive, non-transferable, non-sublicensable, non-royalty bearing (limited solely to the "Royalty Free Uses" as defined herein) worldwide license to use, reproduce, display and distribute the MACH1 SDK in its current version only for the sole purpose of integration, use by and distribution with DEVELOPER's application (collectively referred to as a "Developer Application"), it being understood that such distribution shall not include distribution of the MACH1 SDK in Source Code ("Source Code" meaning the source code for the MACH1 SDK, and any and all information and materials concerning such source code disclosed by the MACH1 SDK) form, or distributed as an individual or independent application, file or files separate and apart from the Developer Application.

        b.   The license granted under Section 1(a) of this MACH1 SDK Royalty Free Agreement shall be non-royalty bearing only up to and including a total of One Hundred Thousand (100,000) end user distributions (e.g., downloads or electronically or otherwise distributed copies, each a "Distribution") (collectively, the "Royalty Free Uses") of the Developer Application. For each end user distribution in excess of the Royalty Free Uses, DEVELOPER shall pay a royalty under a MACH1 SDK Paid License Agreement, as explained in Section 7(b). No rights are granted beyond the Royalty Free Uses, and any Distribution of the Developer Application incorporating the MACH1 SDK beyond the Royalty Free Uses shall be royalty bearing and require separate licensing from MACH1.

        2.   **End User License MACH1 SDK Royalty Free Agreement**. DEVELOPER shall include MACH1's end user license agreement (EULA), included as a separate text file with the MACH1 SDK files under the "License" directory, and also available at the website mach1.tech/licensing, with the distribution of each copy of the Developer Application, and shall ensure any Distributions ensure that end users agree to MACH1's EULA. Failure to include such EULA shall be considered a material breach of this MACH1 SDK Royalty Free Agreement. For the sake of clarity, MACH1's EULA will apply only to third party end users of the Developer Application Distributed with the MACH1 SDK, while DEVELOPER's obligations as to the MACH1 SDK are controlled by this MACH1 SDK Royalty Free Agreement.

        3.   **Developer Covenants; Restrictions**. By accepting the terms and conditions of this MACH1 SDK Royalty Free Agreement, DEVELOPER hereby agrees:

        a. Not to use, copy, display or distribute the MACH1 SDK except solely as permitted by this MACH1 SDK Royalty Free Agreement;
        b. Not to modify, decompile, reverse-engineer, or otherwise seek to duplicate or

recreate the functionality of, the MACH1 SDK, or to copy, create, design or apply the same solution in the same way as in the MACH1 SDK;

c. Not to permit, authorize, license or sublicense any third party to access, view, copy or use the Source Code or derivatives thereof, other than with respect to examples provided with the MACH1 SDK;

d. Not to use the MACH1 SDK for any purpose or in any manner other than as permitted by this MACH1 SDK Royalty Free Agreement;

e. Not to allow copying, use, display or distribution of the MACH1 SDK beyond the Royalty Free Uses;

f. To ensure that DEVELOPER's employees, agents and other parties under DEVELOPER's control who will use the MACH1 SDK do so in accordance with the terms and conditions of this MACH1 SDK Royalty Free Agreement and are accordingly notified of the same;

g. Not to facilitate the use of the MACH1 SDK in any manner which would constitute a breach of the terms and conditions of this MACH1 SDK Royalty Free Agreement by DEVELOPER;

h. Not to place or distribute the MACH1 SDK on any website or ftp server without also including a copy of this MACH1 SDK Royalty Free Agreement, or the MACH1 EULA, as the case may be; and

i. Not to use the MACH1 SDK for any purpose which may violate any applicable law or regulation.

4. **Attribution**. Any Developer Application using the MACH1 SDK must include the following attributions:

a. Each copy of a Developer Application must include, at least once within any documentation, FAQ, instructions, or manual provided with the Developer Application (in any format), and at least displayed within Developer Application the attribution: "*Spatial Audio SDK Software provided under license from Mach1™*". The attribution must be conspicuous and legible and must be in at least 8 point font.

b. Each copy of a Developer Application must include, at least once within the Developer Application the attribution: "*Spatial Audio Powered by Mach1™*". The attribution must be conspicuous and legible and must be in at least 8 point font.

c. The MACH1 Logo must be conspicuous and legibly displayed by Developer Application when playing back audio in the MACH1 SDK audio format, as well as alongside any content requiring the Mach1DecodeAPI (application programming interface). A copy of the MACH1 Logo is provided with the MACH1 SDK files under the "License" directory, as well as at the website mach1.tech/licensing.

5. <u>**No Other Rights Granted**</u>. Other than the uses outlined in Section 4, this MACH1 SDK Royalty Free Agreement does not grant DEVELOPER any permission or license to use the trade names, trademarks, service marks, or product names of MACH1, without prior written approval from MACH1. MACH1 retains all right, title and interest in and to their intellectual and industrial property rights and know-how relating to the MACH1 SDK, and DEVELOPER recognizes and confirms thevalidity of and MACH1's ownership of the same. So long as DEVELOPER is in complete compliance with all terms this MACH1 SDK Royalty Free Agreement, and only during the Term of this MACH1 SDK Royalty Free Agreement, MACH1 covenants not to assert any relevant patent rights against DEVELOPER.

6. <u>**Protection of MACH1 Proprietary Rights**</u>. The MACH1 SDK, including all copies, is owned by MACH1 and is protected by U.S. and international copyright laws, as well as trade secret, trademark, and other laws. VIOLATION OF COPYRIGHT IS A SERIOUS OFFENSE. Except for the limited rights expressly granted in Section 1(a) above, DEVELOPER obtains no rights in the MACH1 SDK. In addition to any other restrictions, DEVELOPER will not permit or facilitate the performance of any act that is inconsistent with or in violation of this MACH1 SDK Royalty Free Agreement or that might jeopardize MACH1's proprietary rights. DEVELOPER may not combine, distribute, or otherwise use the MACH1 SDK with any code or other content which is covered by a license that would directly or indirectly require that all or part of the MACH1 SDK be governed under any terms other than those of this MACH1 SDK Royalty Free Agreement.

7. <u>**Use Beyond Royalty Free Uses**</u>.

a. Should DEVELOPER seek to distribute the MACH1 SDK as part of a Developer Application beyond the Royalty Free Uses, DEVELOPER shall contact MACH1 at licensing@mach1.tech to obtain a royalty-bearing, paid extended use license.

b. Should DEVELOPER fail to obtain a royalty bearing extended use license after distributing the MACH1 SDK as part of a Developer Application beyond the Royalty Free Uses, DEVELOPER shall pay to MACH1 a royalty per each Distribution in an amount as determined by MACH1, and to be paid upon notice from MACH1. At the request of MACH1, all unlicensed uses and distributions shall cease, and this MACH1 SDK Royalty Free Agreement shall be considered to be terminated.

c. **Audit Rights**. Should DEVELOPER fail to obtain a royalty-bearing, paid extended use license after distributing the MACH1 SDK as part of a Developer Application beyond the Royalty Free Uses or should MACH1 have a reasonable basis to believe that the end user Distribution exceeds or exceeded the 100,000 Royalty Free Uses, MACH1 shall have the right, upon reasonable prior notice, to audit/inspect any premises, computer(s), and networks on or in which the MACH1 SDK is installed or used to monitor compliance with the terms of this

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MACH1 SDK Royalty Free Agreement, including but not limited to confirming the number of computers on which the MACH1 SDK is used and whether any unauthorized copies have been made. If an audit reveals any unauthorized use, in addition to all other remedies available to MACH1, DEVELOPER shall be responsible to MACH1 for all reasonable expenses related to the audit.

8. **Disclaimer Of Warranties, Limitation of Liability**. MACH1 MAKES NO WARRANTY, PROMISE OR REPRESENTATION NOT EXPRESSLY SET FORTH IN THIS AGREEMENT. EXCEPT AS EXPRESSLY WARRANTED HEREIN, THE MACH1 SDK IS PROVIDED "AS IS" WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND. MACH1 MAKES NO WARRANTY OR REPRESENTATION WITH RESPECT TO THIRD PARTY SOFTWARE. THE SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND. MACH1 DISCLAIMS AND EXCLUDES ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MACH1 DOES NOT WARRANT THAT ANY SOFTWARE WILL SATISFY DEVELOPER'S REQUIREMENTS OR THAT IT IS WITHOUT DEFECT OR ERROR OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED. THIS AGREEMENT GIVES DEVELOPER SPECIFIC LEGAL RIGHTS. DEVELOPER MIGHT HAVE OTHER RIGHTS, WHICH VARY FROM STATE/JURISDICTION TO STATE/JURISDICTION. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT, HOWSOEVER CAUSED, BUT THIS SHALL NOT IMPLY OR CREATE ANY CONTINUED RIGHT TO USE THE SOFTWARE AFTER TERMINATION OF THIS AGREEMENT. IN NO EVENT WILL MACH1 OR ITS AFFILIATES BE LIABLE TO DEVELOPER FOR ANY DAMAGES, CLAIMS OR COSTS WHATSOEVER OR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, DAMAGES, OR ANY LOST PROFITS OR LOST SAVINGS. THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN DEVELOPER'S JURISDICTION. THE AGGREGATE LIABILITY OF MACH1 ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY OF THE SOFTWARE (REGARDLESS OF THE FORM OF ACTION OR CLAIM - E.G., CONTRACT, WARRANTY, TORT, STRICT LIABILITY, MALPRACTICE, FRAUD AND/OR OTHERWISE) SHALL NOT EXCEED THE TOTAL PAYMENT MADE BY DEVELOPER TO PURCHASE THE SOFTWARE. MACH1 SHALL NOT IN ANY CASE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES, OR FOR LOSS OF PROFIT, REVENUE, DATA, OR PROGRAMS, EVEN IF MACH1 HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

9. **INDEMNIFICATION**. You shall indemnify and hold harmless MACH1 from and against all losses, claims, damages or other causes of any nature or kind whatsoever (including reasonable attorney's fees) arising directly or indirectly out of third party claims concerning (i) a breach of any of your obligations, covenants, representations or warranties contained herein; (ii) any Developer Application or other product developed by you using the MACH1 SDK; (iii) any combination of the MACH1 SDK, or any component of it, with any product developed by you using the MACH1 SDK or with any other product, equipment, device, software, system or

data not supplied by MACH1, and (iv) the negligence or intentional misconduct of DEVELOPER or DEVELOPER's officers, employees, agents or contractors. DEVELOPER agrees not to interpose any claim against MACH1 based on a claim, suit, action or proceeding threatened or commenced against DEVELOPER related to the MACH1 SDK and arising out of any matter other than a matter, if any, for which MACH1 has agreed to indemnify DEVELOPER under a separate agreement signed by MACH1.

10.   Term and Termination. This MACH1 SDK Royalty Free Agreement is effective (the "Effective Date") upon the earliest of registering, downloading, installing or using the MACH1 SDK, and shall continue until terminated. The term of this MACH1 SDK Royalty Free Agreement commences on the Effective Date and has an initial term of one (1) year (the "Term") from the Effective Date. The MACH1 SDK Royalty Free Agreement will automatically renew for additional one (1) year terms, unless terminated at least thirty (30) days prior to the end of any term. Upon termination, Sections 3, 5-9, 12-18, will survive, as will the provisions of this MACH1 SDK Royalty Free Agreement relating to the protection of the confidentiality of the trade secrets of the MACH1 SDK and the provisions relating to the protection of rights in the MACH1 SDK. Each Party reserves the right to cancel or terminate this MACH1 SDK Royalty Free Agreement for any reason or no reason at a Party's convenience, upon thirty (30) days written notice, including, but not limited to, the following reasons: a) intellectual property infringement; and b) violation or infringement upon applicable law. Upon termination any copies of the MACH1 SDK will be returned to MACH1. If copies cannot be returned, any such copies and any backup copies will be deleted completely to the satisfaction of MACH1 and such deletion confirmed in writing by DEVELOPER.

11.   Entire MACH1 SDK Royalty Free Agreement. This MACH1 SDK Royalty Free Agreement sets forth the entire understanding and agreement between the Parties relating to the subject matter of this MACH1 SDK Royalty Free Agreement and may be amended only in a writing signed by both Parties. No person is authorized by MACH1 to modify this MACH1 SDK Royalty Free Agreement or to make any warranty, representation or promise which is different than, or in addition to, the warranties, representations and promises of this MACH1 SDK Royalty Free Agreement.

12.   Waiver. Failure of either Party at any time to enforce any of the provisions of this MACH1 SDK Royalty Free Agreement will not be construed as a waiver of such provisions or in any way affect the validity of this MACH1 SDK Royalty Free Agreement or parts thereof.

13.   Governing Law; Choice of Venue. This MACH1 SDK Royalty Free Agreement shall be governed and construed in accordance with the laws of the State of New York, without giving effect to any choice of laws principles. Any legal action, suit or proceeding arising out of or related to this MACH1 SDK Royalty Free Agreement or the transactions contemplated

hereunder shall be instituted exclusively in a court of competent jurisdiction, federal or state, located within the Borough of Manhattan, City of New York, State of New York, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding and waives any objection based on improper venue or forum non conveniens.

14. **Trade Secrets**. DEVELOPER acknowledges that the MACH1 SDK contains valuable trade secrets of MACH1 and, should DEVELOPER access any such trade secrets in violation of this MACH1 SDK Royalty Free Agreement, DEVELOPER agrees to maintain the confidentiality of the trade secrets of the MACH1 SDK using at least the same degree of care DEVELOPER uses with its own confidential information.

15. **Compliance with Laws; Export**. Developer Applications including the MACH1 SDK may be subject to privacy, data collection, export control laws and regulations. DEVELOPER agrees to comply with all such laws and regulations and acknowledges that, in addition to all other restrictions in this MACH1 SDK Royalty Free Agreement, none of which are waived by this paragraph, DEVELOPER is responsible for obtaining any licenses necessary to distribute, export, re-export, or import the Developer Applications including the MACH1 SDK, and DEVELOPER is solely responsible for complying with all privacy and data collection laws related to the Developer Applications including the MACH1 SDK, all at DEVELOPER's sole expense. DEVELOPER shall indemnify and hold MACH1 harmless for any violations of this Section.

16. **Severability**. In the event any provision of this MACH1 SDK Royalty Free Agreement is determined to be invalid, prohibited or unenforceable by a court or other body of competent jurisdiction, this MACH1 SDK Royalty Free Agreement shall be construed as if such invalid, prohibited or unenforceable provision has been more narrowly drawn so as not to be invalid, prohibited or unenforceable.

17. **Notices**. Any notice required to be given pursuant to this MACH1 SDK Royalty Free Agreement may be sent in any manner communicating such notice to a Party, and may be by certified or registered mail, return receipt requested or delivered by a national overnight express service, sent via e-mail to the e-mail address provided by DEVELOPER, or posted on MACH1's website at mach1.tech/licensing. Either Party may change the contact information or address(es) to which notice or payment is to be sent by notice to the other Party pursuant to the provisions of this paragraph. DEVELOPER agrees to periodically check, at least once every six months, MACH1's website at mach1.tech/licensing.

18. **Assignment**. Without limiting any other restriction under this MACH1 SDK Royalty Free Agreement, DEVELOPER may not sell, convey, sub-license, delegate, assign, or otherwise transfer the MACH1 SDK, any component thereof, any right therein, or this MACH1 SDK Royalty Free Agreement, to any other person, either voluntarily or involuntarily, directly or

indirectly, whether by operation of law or otherwise without the prior written consent of MACH1, which consent will not be unreasonably withheld. Any assignment or delegation by DEVELOPER in violation of this section shall be void. MACH1 may freely assign its rights and obligations under this MACH1 SDK Royalty Free Agreement without consent, including but not limited to, assignment (i) to an Affiliate (an "Affiliate" shall mean any other person or entity directly or indirectly Controlled by, Controlling or under common Control with, such person or entity), (ii) to an entity in which the transferring Party owns more than 50% of the assets, or (iii) as part of a transfer of all or substantially all of the assets of the transferring Party to any party. This MACH1 SDK Royalty Free Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators, successors and assigns.

DEVELOPER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTOOD THIS AGREEMENT, INCLUDING THE PRECEDING LIMITATIONS ON WARRANTIES AND LIMITATIONS OF LIABILITY, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

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