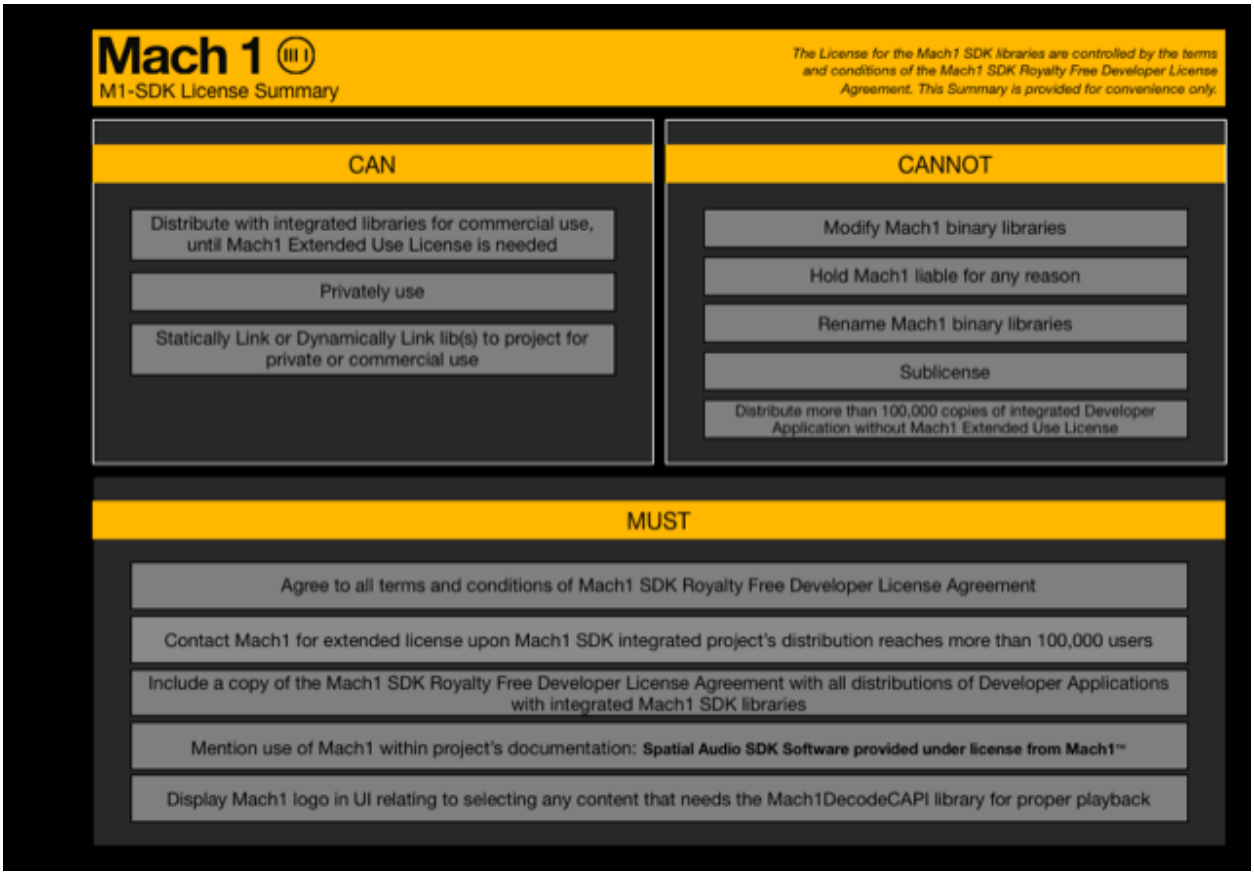
MACH1 SPATIAL SDK Royalty Free Developer License Agreement



This Mach1 Spatial SDK Royalty Free Developer License Agreement ("ROYALTY FREE AGREEMENT" or "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 SPATIAL SDK spatial audio libraries and related API (such current version of the files, documentation and code 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; relating thereto or included therewith, collectively referenced herein as the "MACH1 SPATIAL SDK", "MACH1 SPATIAL APIS" 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 SPATIAL SDK
Royalty Free Developer License Agreement
Version 1.04

MACH1 provides this ROYALTY FREE AGREEMENT for the purpose of allowing developers to use and distribute the MACH1 SPATIAL 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. MACH1 may cancel the AGREEMENT for the MACH1 SPATIAL SDKs set forth in this section at any time with or without notice.

Read this ROYALTY FREE AGREEMENT carefully as it is a legally binding document that explains DEVELOPER's rights and obligations related to the MACH1 SPATIAL SDK and related content. By registering to download, downloading, installing or using this MACH1 SPATIAL SDK or any related content, DEVELOPER is agreeing to be bound by the terms of this ROYALTY FREE AGREEMENT. If you do not or cannot agree to the terms of this ROYALTY FREE AGREEMENT, please do not download or use this MACH1 SPATIAL SDK or any related content.

By registering and/or clicking on the any "Agree" button and/or installing, incorporating and/or using the MACH1 SPATIAL, you acknowledge that you have read this AGREEMENT and agree to be bound by its terms and conditions. If you do not agree with the terms of this AGREEMENT, do not accept this ROYALTY FREE AGREEMENT, do not install the MACH1 SPATIAL SDK, do not use the MACH1 SPATIAL 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 SPATIAL SDK.

The latest version of the ROYALTY FREE AGREEMENT will be maintained at mach1.tech/license. If the latest version has a later effective date than the present version of the ROYALTY FREE AGREEMENT, then this 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/license, or by downloading, installing or using the MACH1 SPATIAL SDK, or by an other update method MACH1 selects, you are agreeing to be bound by the latest version of the ROYALTY FREE AGREEMENT.
Questions regarding licensing can be directed to licensing@mach1.tech

1. License Grant; Limitations.

a. Subject to the terms and conditions of this 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 SPATIAL 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 SPATIAL SDK in Source Code ("Source Code" meaning the source code for the MACH1 SPATIAL SDK, and any and all information and materials concerning such source code disclosed by the MACH1 SPATIAL 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 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, server-side usage, 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 SPATIAL 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 SPATIAL SDK beyond the Royalty Free Uses shall be royalty bearing and require separate licensing from MACH1.

c. Notwithstanding anything contained herein to the contrary, DEVELOPER may not combine, distribute, or otherwise use the MACH1 SPATIAL 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 SPATIAL SDK be governed under any terms other than those of this ROYALTY FREE AGREEMENT ("Non-Allowable License").

2. **End User Responsibility**. DEVELOPER must require users of DEVELOPER APPLICATION, in the license terms applicable to DEVELOPER APPLICATION, to agree not to Reverse Engineer DEVELOPER APPLICATION (including the MACH1 SPATIAL SDK), except to the extent that DEVELOPER is expressly precluded by law from imposing such restriction DEVELOPER and DEVELOPER'S users will not knowingly develop or distribute software or make any products, services or content available through DEVELOPER APPLICATION, the use of which in isolation or with any other software, system, network, or data would 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 MACH1, or otherwise have a detrimental effect upon MACH1, or any of its customers or products or services, and DEVELOPER will immediately cease any such activity.

3. **Developer Covenants; Restrictions**. By accepting the terms and conditions of this ROYALTY FREE AGREEMENT, DEVELOPER hereby agrees:

a. Not to use, copy, display or distribute the MACH1 SPATIAL SDK except solely as permitted by this ROYALTY FREE AGREEMENT;

b. Not to modify, decompile, reverse-engineer, or otherwise seek to duplicate or recreate the functionality of, the MACH1 SPATIAL SDK, or to copy, create, design or apply the same solution in the same way as in the MACH1 SPATIAL 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 SPATIAL SDK;
d. Not to use the MACH1 SPATIAL SDK for any purpose or in any manner other than as permitted by this ROYALTY FREE AGREEMENT;
e. Not to allow copying, use, display or distribution of the MACH1 SPATIAL 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 SPATIAL SDK do so in accordance with the terms and conditions of this ROYALTY FREE AGREEMENT and are accordingly notified of the same;
g. Not to facilitate the use of the MACH1 SPATIAL SDK in any manner which would constitute a breach of the terms and conditions of this ROYALTY FREE AGREEMENT by DEVELOPER;
h. Not to place or distribute the MACH1 SPATIAL SDK on any website or ftp server without also including a copy of this ROYALTY FREE AGREEMENT, or the MACH1 EULA, as the case may be; and
i. Not to use the MACH1 SPATIAL SDK for any purpose which may violate any applicable law or regulation.

4. **<u>Attribution</u>**. Any DEVELOPER APPLICATION using the MACH1 SPATIAL SDK must include the following attributions:

a. Documentation/Website/Marketing of Application must include mention of Mach1 in the following ways:

- Display a copy of the Mach1 logo
AND/OR - Display "Spatial Audio Powered by Mach1™"
AND - Backlink to https://mach1.tech
AND - Display "Copyright 2017 – xxxx, Mach1, CORP. All rights reserved." (*where xxxx is replaced with current year).*

b. Application must have mention of Mach1 when using the Mach1DecodeAPI any content at least one of the following ways:

- Display a copy of the Mach1 logo
AND/OR - Display "Spatial Audio Powered by Mach1™"

c. Application must have mention of Mach1 when using the Mach1EncodeAPI with the following ways:

- Display on an opening or "splash screen," a copy of the Mach1 Logo
AND - Display "Spatial Audio Powered by Mach1™"

d. Application must have mention of Mach1 when using the Mach1TranscodeAPI with the following:

- "Spatial Audio Software provided under license from Mach1™"

5. **No Other Rights Granted**. Other than the uses outlined in Section 4, this 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 SPATIAL SDK, and DEVELOPER recognizes and confirms the validity of and MACH1's ownership of the same. So long as DEVELOPER is in complete compliance with all terms this ROYALTY FREE AGREEMENT, and only during the Term of this ROYALTY FREE AGREEMENT, MACH1 covenants not to assert any relevant patent rights against DEVELOPER.

6. **Protection of MACH1 Proprietary Rights**. The MACH1 SPATIAL 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 SPATIAL 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 ROYALTY FREE AGREEMENT or that might jeopardize MACH1's proprietary rights. DEVELOPER may not combine, distribute, or otherwise use the MACH1 SPATIAL 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 SPATIAL SDK be governed under any terms other than those of this ROYALTY FREE AGREEMENT.

a. **Reverse Engineer**. DEVELOPER agrees not to "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, 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 except to the extent that DEVELOPER is expressly precluded by law from imposing such restriction.

b. DEVELOPER and DEVELOPER'S users may provide MACH1 with feedback on the MACH1 SPATIAL SDK, including, without limitation, feedback on bugs and faults within or relating to the MACH1 SPATIAL SDK, or suggestions for improvements or other changes to all or any portion of the MACH1 SPATIAL SDK. Licensee hereby agree that MACH1 shall own all feedback, ideas, concepts and changes to any portion of the MACH1 SPATIAL SDK developed or identified in the course of

or as a result of DEVELOPER'S use of the MACH1 SPATIAL SDK and all associated intellectual property rights ("RESULTS"), and DEVELOPER hereby assigns to MACH1 all of DEVELOPER'S right, title and interest thereto. DEVELOPER will not knowingly provide MACH1 RESULTS that are subject to third party intellectual property rights. DEVELOPER agrees to cooperate fully and to ensure that DEVELOPER'S employees, officers, independent contractors and DEVELOPER'S users cooperate fully with MACH1 with respect to signing further documents and doing such other acts as are reasonably requested by MACH1 to confirm that MACH1 owns the RESULTS, and to enable MACH1 to register and/or protect any associated intellectual property rights and/or confidential information.

7. Use Beyond Royalty Free Uses.

a. Should DEVELOPER seek to distribute the MACH1 SPATIAL 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 SPATIAL 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 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 SPATIAL 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 SPATIAL SDK is installed or used to monitor compliance with the terms of this ROYALTY FREE AGREEMENT, including but not limited to confirming the number of computers on which the MACH1 SPATIAL 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 SPATIAL 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 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 cause, 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 DEVELOPERS'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 SPATIAL SDK; (iii) any combination of the MACH1 SPATIAL SDK, or any component of it, with any product developed by you using the MACH1 SPATIAL 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 SPATIAL 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.

a. Class Action Waiver. DEVELOPER agrees not to bring or participate in a class or representative action, private attorney general action, or collective arbitration related to the MACH1 SPATIAL SDK or this AGREEMENT.
b. Attorneys Fees. In the event of dispute between PARTIES hereto regarding this AGREEMENT, MACH1 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, only if MACH1 is the prevailing PARTY of dispute.

10. **Termination**. MACH1 may cancel this ROYALTY FREE AGREEMENT for the MACH1 SPATIAL SDK and MACH1 SPATIAL APIS set forth in this section at any time with or without notice.

11. **Warranty**. No person is authorized by MACH1 to modify this 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 ROYALTY FREE AGREEMENT.

12. **Waiver**. Failure of either PARTY at any time to enforce any of the provisions of this ROYALTY FREE AGREEMENT will not be construed as a waiver of such provisions or in any way affect the validity of this ROYALTY FREE AGREEMENT or parts thereof.

13. **Governing Law; Choice of Venue**. This 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 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 SPATIAL SDK contains valuable trade secrets of MACH1 and, should DEVELOPER access any such trade secrets in violation of this ROYALTY FREE AGREEMENT, DEVELOPER agrees to maintain the confidentiality of the trade secrets of the MACH1 SPATIAL 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 SPATIAL 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 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 SPATIAL SDK, and DEVELOPER is solely responsible for complying with all privacy and data collection laws related to the DEVELOPER APPLICATIONS including the MACH1 SPATIAL 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 ROYALTY FREE AGREEMENT is

determined to be invalid, prohibited or unenforceable by a court or other body of competent jurisdiction, this 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 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 ROYALTY FREE AGREEMENT, DEVELOPER may not sell, convey, sub-license, delegate, assign, or otherwise transfer the MACH1 SPATIAL SDK, any component thereof, any right therein, or this 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 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 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 limitation on warranties and limitations of liability, and agrees to be bound by its terms and conditions.