



## **SUPERPOWERED AUDIO SDK LICENSE AGREEMENT FOR FREE USE**

Effective Date: February 21, 2019

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By clicking on the appropriate button below, or by downloading, installing, activating or using the SUPERPOWERED AUDIO 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 [licensing@superpowered.com](mailto:licensing@superpowered.com).

If you decide you are unwilling to agree to the terms of this Agreement, you have no right to use the SUPERPOWERED AUDIO SDK.

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## STANDARD TERMS AND CONDITIONS

### 1.1 License Grant.

(a) In accordance with the terms herein, Superpowered grants to Licensee a limited, non-exclusive, non-transferable, non-sublicensable license to install and use a reasonable number of copies of the SUPERPOWERED AUDIO SDK to be used for an Application solely in the manner described in the documentation contained in the SUPERPOWERED AUDIO SDK, if any.

(b) Licensee may distribute Applications provided that, except as expressly permitted herein, 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 AUDIO 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 AUDIO SDK and in no event shall there be an implied license under any Superpowered intellectual property rights. Licensee may not copy the SUPERPOWERED AUDIO 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 AUDIO 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 AUDIO SDK or documentation as part of the regular back-up of the SUPERPOWERED AUDIO SDK in accordance with standard industry business practices. Notwithstanding the foregoing, if Superpowered has terminated any license granted to Licensee for the SUPERPOWERED AUDIO SDK, no right to use the SUPERPOWERED AUDIO SDK is granted to Licensee hereunder.

(c) To the extent that Distributable Source Code is provided as part of the SUPERPOWERED AUDIO SDK, Licensee may use, modify and compile the Distributable Source Code solely for the purposes of developing Licensee's Applications. Notwithstanding the foregoing, Licensee may not modify any header files included in the SUPERPOWERED AUDIO SDK.

(d) Licensee must require users of Licensee's Applications, in the license terms applicable to Licensee's Applications, to agree not to Reverse Engineer Licensee's Applications (including the SUPERPOWERED AUDIO SDK), except to the extent that Licensee is expressly precluded by law from imposing such restriction.

(e) Notwithstanding anything contained herein to the contrary, Licensee may not combine, distribute, or otherwise use the SUPERPOWERED AUDIO SDK with

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(f) In the event Superpowered requires use of a license key for use of the SUPERPOWERED AUDIO SDK, which use shall be determined by Superpowered in its sole discretion, Licensee agrees to download and validate such license key in order to use the SUPERPOWERED AUDIO SDK.

2.1 Open Source. The SUPERPOWERED AUDIO 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 AUDIO SDK is used in this manner, the following limitations apply: (i) Superpowered must be mentioned in the README, and (ii) a copy of this Agreement must be included.

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

(a) the SUPERPOWERED AUDIO SDK and Application(s) will be used in accordance with this Agreement, all applicable laws and regulations, and the documentation provided by Superpowered;

(b) the SUPERPOWERED AUDIO SDK will not be incorporated into any other platform or SDK or API or embedded device, without written permission and license from Superpowered;

(c) 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, if an individual, is over the age of majority;

(d) Licensee and Licensee's Authorized Users will not knowingly 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 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;

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(e) Licensee and Licensee's Authorized Users will not use the SUPERPOWERED AUDIO SDK to develop any Applications or make any products, services or content, which are intended to be used to commit or would be used predominantly to commit any crime or other illegal or tortious acts and without limiting the foregoing, Applications 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), any libel or defamation, obscene, objectionable, harassing, hateful, profane, indecent, offensive, 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);

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

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(i) Licensee will ensure that all development work directly or indirectly related to the SUPERPOWERED AUDIO 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.

### 2.3 Export Restrictions.

(j) Licensee acknowledges that the SUPERPOWERED AUDIO SDK may include software that may be subject to export, import, and/or use controls by governmental authorities by way of law or regulation. Licensee agrees that the SUPERPOWERED AUDIO SDK will not be exported, imported, used, transferred, or re-exported except

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### 3.1 Compensation.

(a) Available Licenses; Marketing and Fees; Press Release.

(i) Free License Requirements: There is no fee for the use of the SUPERPOWERED AUDIO SDK, if and only if, Licensee's use of the SUPERPOWERED AUDIO SDK is in a Software Application that is:

- (1) Distributed in a public application store system (e.g. App Store, Google Play or other well-known legitimate publically accessible store);
- (2) Isn't designed to work or works in, in tandem or in connection with an embedded device;
- (3) The total number of licensee application-installs per Software Application is fewer than 500,000 (regardless of the version of the Software Application); and
- (4) at all times meets the attribution requirements described in Section 5.2 below.

For the purpose of determining the amount of installs of any Application, the aggregate number of installs across target operating systems/platforms shall be used.

For example, if "Foo App" has 100,000 app installs on iOS and 200,000 app installs on Android, then Foo App shall have 300,000 app installs for purposes of this Agreement.

However, the SUPERPOWERED AUDIO SDK is not open-source and the Licensee is still subject to all of the terms are set forth on the first page of this Agreement. Furthermore, Superpowered may make qualification determinations of the free license requirements in its sole discretion.

(ii) White Label License: If, Licensee is using the SUPERPOWERED AUDIO SDK in tandem or in connection with an Embedded Application or Pre-Bundled or Pre-Installed or Platform Application or within a 3<sup>rd</sup> Party SDK, or has more than 500,000 app-installs (including all versions of the Software Application) or otherwise does not qualify for the free license pursuant to Section 3.1(a)(i) above, prior to use of the SUPERPOWERED AUDIO SDK the Licensee must

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(iii) Licensee acknowledges that public distribution of an Application or other technology using the SUPERPOWERED AUDIO SDK without complying with most up to date Free License (3.1(a)i) requirements or without a fully paid up White Label License (3.1(a)ii), from date of public distribution, as applicable, renders any licenses granted by Superpowered hereunder void and invalid. Licensee acknowledges it has no expectation of uninterrupted ongoing service and access to Superpowered technology (including without limitation the SUPERPOWERED AUDIO SDK) if such licenses granted by Superpowered hereunder are void and invalid, with or without notice, due to Licensee's failure to comply with the terms of this Agreement.

(b) Attribution. Licensee will comply with Section 5.2 to the exclusive approval of Superpowered. Superpowered may use Licensee's and/or its Application's name and logo for external marketing, such as on its website and press releases.

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(b) Any feedback or suggestions provided to Superpowered by Licensee relating to the SUPERPOWERED AUDIO SDK, shall be owned by Superpowered and Licensee hereby assigns to Superpowered all such feedback and suggestions.

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

#### 5.2 Superpowered Attribution.

(a) Licensee shall include the proper implementation of a mandatory Superpowered splash screen with Superpowered animated logo at all times (available at <https://superpowered.com/logo>) in their Software Application.

A proper implementation entails that the splash screen video play in its entirety (including audio) every time the app is launched. The Superpowered splash screen must be the first splash screen to play and must precede any other splash screens. The splash screen cannot be altered or edited. No other logo may appear on screen or interfere with the playing of the video. The splash screen video may not be speeded up or slowed down.

b) You agree to place the following notices in the credits for any Software Application (replacing xxxx with the current year):

"[Software Application] uses Superpowered Audio SDK. [Superpowered.com](https://superpowered.com)"

Copyright 2013 – xxxx, Superpowered, Inc. All rights reserved."

5.3 Marketing. Licensee agrees that Superpowered may refer to Licensee by trade name and trademark, and may briefly describe Licensee's use of the SUPERPOWERED AUDIO SDK, in marketing and on its website.

6.1 Warranty. Except as expressly set forth in this agreement, the SUPERPOWERED AUDIO 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 AUDIO 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 AUDIO SDK will be uninterrupted or error free.

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6.4 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 7: Indemnity.

7.1 Indemnification 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) alleging the infringement, violation or misappropriation of any intellectual property right including a patent, design, industrial design, copyright, trade secret or trademark or other proprietary right by: (a) Licensee's Application(s) or the use thereof, or the combination of Licensee's Application(s) with the SUPERPOWERED AUDIO SDK or any other portion thereof with any hardware, software, or system, or service; or (b) otherwise related to or arising from Licensee or Licensee's Authorized Users' use of the SUPERPOWERED AUDIO SDK (except for any third party claim based solely on Superpowered technology included in the SUPERPOWERED AUDIO SDK) or any use or distribution of Licensee's Applications (including Licensee's development of Applications).).

8.1 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 White Label License, upon the end of the agreed-to license term for such White Label License, as applicable. Upon the termination of this Agreement the license shall immediately terminate and Licensee shall promptly stop all use of the SUPERPOWERED AUDIO SDK and delete all such copies.

8.2 Termination. Licensee may terminate this Agreement at will and without notice for any reason whatsoever.

(a) 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: (1) Licensee fails to comply with or perform a term or condition herein; or (2) Licensee or any Authorized User interferes with Superpowered's customer service or business operations; or (3) Licensee materially breaches any other agreement that Licensee may have with Superpowered. Superpowered may terminate at any time for convenience, and shall provide a pro rata refund for amounts paid for unused periods, and only in this circumstance. 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 8.2 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.

(b) Section 3 (to the extent any amounts are owed to Superpowered), 4, 5, 6, 7, 8, and 9 hereof shall survive any termination of this Agreement.

9.1 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.

9.2 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.

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

9.4 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 AUDIO SDK or this Agreement.

9.5 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.

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9.6 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.

9.7 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.

9.8 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.

9.9 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.

9.10 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.

#### 10.1 Defined Terms.

(a) “**API**” means an application programming interface.

(b) “**Application**” means either an Embedded/Pre-bundled/Pre-Installed/Platform Application or a Software Application.

(c) “**Authorized Users**” means: (i) 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 AUDIO SDK, in each case to use on Licensee’s behalf to develop Applications.

(d) “**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 AUDIO SDK or otherwise provided to Licensee.

(e) “**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 AUDIO SDK. For the use of this license, Embedded Application also means “Pre-Bundled” or “Pre-Installed” or “Platform” software applications.

(f) “**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.

(g) “**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 AUDIO SDK.

(h) “**SDK**” means any programming package (including any APIs, programming tools or documentation) that enables the development of applications for any type of platform, framework or system.

(i) “**SUPERPOWERED AUDIO 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).