

## **SDK for GLL Plug-In API – Terms and Conditions**

These Terms and Conditions govern the legal relationship between AFMG Technologies GmbH, Borkumstr. 2, 13189 Berlin, Germany, represented by its Executive Directors Wolfgang Ahnert and Stefan Feistel, (“AFMG”), and the manufacturer or provider of loudspeaker cabinets or his contractor(s) (collectively “MANUFACTURER”) ordering from AFMG software development kits required to develop plug-ins for AFMG’s software subject to the terms and conditions set forth herein. By ordering one or several software development kits from AFMG, MANUFACTURER unconditionally accepts these Terms and Conditions (also referred to as this “Agreement”) as the contractual basis between AFMG and MANUFACTURER (collectively the “Parties”).

### **Preamble**

AFMG is a worldwide leader in the development of software for the pro-audio industry. AFMG has developed, amongst other programs, the software EASE Focus 3.1 (hereinafter referred to as the “Software”). The Software is acoustic modeling software for line array systems, digitally steered columns and conventional loudspeakers. It supports three-dimensional SPL mapping, multiple systems, time and frequency response plots as well as many other features. AFMG has developed an interface (API) which allows for the interoperability with plug-ins that can be used with the Software (hereinafter referred to as “Plug-In(s)”). MANUFACTURER desires to develop Plug-Ins for the Software. This Agreement sets out the terms and conditions according to which AFMG allows for the MANUFACTURER to develop and exploit Plug-Ins for the Software.

### **1. Subject of the Agreement**

- 1.1. AFMG shall provide MANUFACTURER with the software development kit required for MANUFACTURER to develop Plug-Ins for the Software (such software development kits hereinafter referred to as “SDK(s)”).
- 1.2. In order to enable MANUFACTURER and/or its end users to use the Plug-In(s) with the Software, the Plug-In(s) need to be authorized by AFMG by way of a signature key. AFMG shall provide MANUFACTURER with signature keys according to the terms of this Agreement, particularly Section 3.
- 1.3. AFMG shall provide support services to MANUFACTURER in order to enable MANUFACTURER to reach technical conformity of the Plug-Ins subject to Section 4.

### **2. Provision of SDKs and development of Plug-Ins**

- 2.1. Upon written request (email is sufficient) by MANUFACTURER, AFMG shall provide MANUFACTURER the SDK via download link. The SDK contains all required information to enable MANUFACTURER to develop Plug-Ins for the Software in .NET languages and then compile them as dynamic link libraries (DLL) that can be embedded in MANUFACTURER’s GLL files. The details of the SDK and its use are contained in the documentation provided by AFMG along with the SDK.
- 2.2. MANUFACTURER shall use its utmost care and diligence in developing Plug-Ins with respect to quality of code, freedom from defects and usability. AFMG retains the right not to authorize Plug-Ins which are clearly defective or abusive.

### **3. Authorization of Plug-Ins and provision of Signatures**

- 3.1. Once MANUFACTURER has developed a Plug-In for the Software, the Plug-In needs to be authorized by AFMG in order to properly function with the Software. For authorization purposes, MANUFACTURER is obliged to send AFMG each newly developed Plug-In via download link in DLL format.
- 3.2. Once AFMG has received a newly developed Plug-In from MANUFACTURER in DLL format, AFMG will use its best efforts to deliver to MANUFACTURER the signature key ("Signature") for the respective Plug-In within three business days. In the event that AFMG, for whatever reason, realizes that the Signature(s) cannot be delivered within three business days, AFMG shall notify MANUFACTURER accordingly and inform MANUFACTURER of the expected time of delivery.
- 3.3. Once MANUFACTURER has received the Signature for the respective Plug-In, MANUFACTURER is in the position to embed the Signature together with the Plug-In in the GLL file of the respective loudspeaker cabinet.
- 3.4. From the moment of delivery of the Signature to MANUFACTURER, AFMG shall support the respective Plug-In with respect to all AFMG software products that are compatible and supported by AFMG at this point in time, or any free upgrades of such products, for at least three further years.
- 3.5. MANUFACTURER is entitled to commercially exploit its GLL with signed Plug-Ins and to deliver them to its end users. AFMG will only deliver Plug-Ins to end users or other third parties upon express written request by MANUFACTURER.

### **4. Support**

- 4.1. AFMG shall provide 12 hours of support to MANUFACTURER per year during the term of this Agreement. Support services include development consultancy, technical assistance, and code debugging, and shall be provided via telephone and email during AFMGs regular business hours on working days (except German bank holidays). AFMG shall use its best efforts to react to support queries within 48 hours.
- 4.2. If MANUFACTURER wishes for support services from AFMG exceeding 12 hours per year, MANUFACTURER can book a "Support Extension" from AFMG covering 12 additional hours of support. The fee for the "Support Extension" is EUR 1,200. The "Support Extension" can be requested in writing by letter or email to AFMG and is subject to acceptance by AFMG. The fee for the "Support Extension" shall be invoiced to MANUFACTURER.
- 4.3. In the event of termination of the Agreement (Section 7), all unused support hours subject to Section 4.1. expire.
- 4.4. Unused support hours covered by the "Support Extension" subject to Section 4.2. shall not expire but remain available to MANUFACTURER for a maximum period of three (3) years after booking of the "Support Extension" if MANUFACTURER renews the agreement for a subsequent year or at a later point in time.
- 4.5. It is expressly agreed between the Parties that AFMG is under no obligation to, and shall not, reimburse MANUFACTURER for unused support hours, regardless of whether these unused support hours were granted under Section 4.1. or Section 4.2 ("Support Extension").

### **5. Obligations of MANUFACTURER**

- 5.1. MANUFACTURER is not entitled to use the SDK for any other purpose besides developing Plug-Ins as set forth in this Agreement. Furthermore, MANUFACTURER is not entitled to pass on the SDK or any other material provided by AFMG (such as documentations or information regarding the interface) to third parties without prior written consent of AFMG.

- 5.2. MANUFACTURER shall not alter or modify any copyright notices contained in the SDK or any other material provided by AFMG.
- 5.3. MANUFACTURER acknowledges that AFMG's trademarks are owned solely and exclusively by AFMG and agrees to use such trademarks only in selling, advertising and promoting material relating to the distribution of the Plug-Ins.
- 5.4. When publically mentioning the Plug-Ins (e.g., through advertising, on the internet etc.), MANUFACTURER shall make proper reference to AFMG and the Software.
- 5.5. In the event of any material breach of the provisions of this Agreement, especially in the event that a Plug-In is clearly defective or developed for abusive purposes, AFMG is entitled to block the respective Plug-In for use with the Software, e.g., by black-listing the Signature of the respective Plug-In. AFMG shall notify MANUFACTURER within reasonable time before implementing any such measures. All other rights of AFMG, including the right to terminate this Agreement for good cause, remain unaffected.
- 5.6. In order to avoid any doubt, the Parties agree that AFMG shall only support Plug-Ins that have been authorized by providing a Signature. In the event that MANUFACTURER uses and/or distributes Plug-Ins that have not been authorized with a Signature by AFMG, AFMG is entitled, in its sole discretion, to block the use of such Plug-In or send a respective warning letter to MANUFACTURER setting a deadline to have the respective Plug-In updated and authorized by AFMG.
- 5.7. AFMG recommends MANUFACTURER to employ obfuscation software to avoid re-engineering of Plug-Ins by third parties.
- 5.8. MANUFACTURER shall only develop and distribute Plug-Ins for loudspeaker products and brands for which MANUFACTURER is authorized to do so.

## **6. Prices and Payments**

- 6.1. For all services provided by AFMG under this Agreement, except the "Support Extension" fee subject to Section 4.2, MANUFACTURER shall pay to AFMG an annual fee of EUR 2,500.
- 6.2. AFMG shall send an invoice to MANUFACTURER at the beginning of each term of the agreement for the fee payable by MANUFACTURER under Section 6.1. All payments under this Agreement are payable according to the payment conditions of the respective invoice from AFMG. If not otherwise indicated in the respective invoice, any payments should be made to:

Bank: Deutsche Bank AG  
BIC (SWIFT): DEUT DE DBBER  
IBAN: DE54 1007 0024 0730 6988 00  
Bank code: 100 700 24  
Account-Nr.: 730 69 88

- 6.3. Unless otherwise agreed to by the Parties, all prices exclude any sales, use, withholding, value added or similar taxes, government fees or levies or other assessments which shall be the sole responsibility of MANUFACTURER.
- 6.4. In order to avoid any doubt, the Parties agree that MANUFACTURER is not entitled to any reimbursement of fees paid to AFMG under this Agreement in the event that the life cycle of AFMG's software products terminates.

## **7. Term and Termination**

- 7.1. This Agreement enters into force upon the first order of an SDK by MANUFACTURER. This Agreement shall remain in force for (1) year.
- 7.2. The right of both Parties to terminate this Agreement for good cause shall not be prejudiced. "Good cause" shall exist particularly in the event that either Party breaches a material obligation of this Agreement.
- 7.3. After termination of this Agreement, MANUFACTURER is entitled to use the authorized Plug-Ins and GLLs further without restriction. This does not affect AFMG's right to block Plug-Ins in the event of abusive uses pursuant to Section 5.5. In order to avoid any doubt, the Parties agree that, after termination, AFMG is under no obligation whatsoever to deliver further Signatures for Plug-Ins to MANUFACTURER.

## **8. Limitation of liability**

- 8.1. MANUFACTURER shall be solely liable for the Plug-Ins developed by MANUFACTURER. In order to avoid any doubt, the Parties expressly agree that AFMG shall not assume any representation, warranty or covenant with respect to the quality and/or freedom from defects of MANUFACTURER's Plug-Ins. Moreover, AFMG does not represent or warrant that the supporting AFMG software is free from defects when run with the Plug-In.
- 8.2. AFMG shall not be liable for any claims for damages or any claims for reimbursement of wasted expenses, regardless of the type of violation involved and regardless of the legal grounds, except in, (i) cases involving wilful misconduct, where liability shall be governed by applicable law, regardless of the type of damages involved; (ii) cases involving personal injuries or damages recoverable under the German Product Liability Act (Produkthaftungsgesetz), where liability shall be governed by applicable law, regardless of default; and (iii) cases involving property damages, where liability shall be limited to gross negligence.
- 8.3. Except as provided in Section 8.1. above, AFMG shall not be liable for any damages, including, without limitation, financial losses of any kind.
- 8.4. The limitation of liability as defined in Section 8.1. above applies to the same extent to any kind of damages caused by gross negligence of employees or otherwise authorised persons of AFMG.

## **9. Jurisdiction, Governing law, final provisions**

- 9.1. Any disputes arising from or in connection with this Agreement shall be determined by a court of competent jurisdiction in Berlin, Germany.
- 9.2. This Agreement shall be governed by and construed in accordance with the laws of the Federal Republic of Germany, with the exception of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 9.3. If any provision of this Agreement shall be held invalid, the validity of the remaining provisions shall remain unaffected thereby. Any invalid provision shall, to the extent permitted by law, be replaced by such valid provision as most closely reflects the commercial intent and purpose of the original provision. The forgoing shall apply analogously if any provision shall have been inadvertently omitted from this Agreement.
- 9.4. Any modifications or amendments to this Agreement, including any waiver of this provision, shall be invalid unless executed in writing and duly signed by both Parties. This Agreement reflects the entire agreement between the Parties. The Parties have not entered into any oral or written collateral agreements regarding this subject matter. Any other terms and conditions of the MANUFACTURER are hereby excluded and shall not be part of this Agreement.

## **AFMG Technologies GmbH Company Data**

AFMG Technologies GmbH

Borkumstr. 2

13189 Berlin

Germany

Management:

Prof. Dr.-Ing. habil. Wolfgang Ahnert

Dr. rer. nat. Stefan Feistel

Registered at:

Berlin-Charlottenburg

HRB 115012 B

Tax no.:

37/483/21254

VAT ID:

DE261093044

EORI no.:

DE1173936