

# WAVES AUDIO SOFTWARE END USER LICENSE AGREEMENT

Last updated: April 30 2023

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- (i) **Perpetual License.** With Perpetual Licenses, the end user pays a one-time fee (if any) in exchange for having the right to Use the Software in perpetuity (“**Perpetual License**”), subject to Section 13(a) below.
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- (iii) **Trial License.** With Trial Licenses, the end user has the right to Use an evaluation copy of the Software on a short-term basis for free to evaluate whether the end user wishes to purchase a License to Use the Software under a Perpetual License or Subscription License (“**Trial License**”). Certain Software features and/or functionality may be locked or unavailable in the Trial Version. WAVES reserves the right, in its sole discretion, to set the parameters of its Trial License practices including, without limitation, its duration.
- (iv) **NFR (Not-for-Resale) License.** With NFR (Not-For-Resale) Licenses, the end user has a License to Use the Software only for demonstration purposes (and not for music processing purposes) in support of WAVES’ potential customers (“**NFR License**”).
- (v) **Beta Program License.** With Beta Program Licenses, the end user has the License to Use the Software to participate in WAVES’ beta or early release programs for the Software (“**Beta License**”). Any Beta License shall be used solely for the stated purposes thereof and any other terms WAVES sets. You acknowledge that the Beta License Software is in a pilot-production stage of development and, therefore, may contain irregularities not normally found in the Software, that the Beta License Software and may result in unexpected results, corruption or loss of data, or other unpredictable damage or loss. You agree to interface with WAVES’ designated representatives at regular intervals to discuss the Beta License Software, provide WAVES with suggestions and ideas for improving or otherwise modifying the Beta License Software, and to furnish, subject to applicable law, verbal, or written reports at WAVES’ reasonable request, including failure logs, status reports, error reports, and other information related to your Use of the Beta License Software (collectively, “**Beta License Reports**”). You are encouraged to provide WAVES with suggestions and ideas for improving or otherwise modifying the Software, subject to Section 7 below. WAVES reserves the right to modify or terminate the Beta License, at any time, in WAVES’ sole discretion for any reason. Upon WAVES’ request, you agree to return, destroy, and/or delete the Software and other materials delivered to you as part of the Beta License and certify to the foregoing upon WAVES’ request. WAVES strongly encourages you to back-up all data and information on your devices prior to downloading the Beta License Software.

The Beta License Software, the Beta Service Reports, all accompanying documentation, and all information WAVES discloses to you hereunder or otherwise in connection with the Beta License is WAVES’ “**Confidential Information**.” For a period of three (3) years from release of the Beta License, you will not use the Confidential Information except as necessary under this Agreement and will not disclose any portion of the Confidential Information to any other person or entity other than to WAVES. You will use all reasonable steps to protect the Confidential Information from unauthorized use or disclosure. Confidential Information does not include information that: (i) you rightfully knew at the time of disclosure without an obligation of confidentiality, (ii) you lawfully obtained from a third party without restriction on use or disclosure, or (iii) is or becomes generally known to the public through no fault or breach of this Agreement by you.

d) **Additional Licensing Rights and Requirements.** The “**Product Entitlement Supplement**” sets forth any supplemental usage rights, restrictions, and terms specific to a particular Software product. The Product Entitlement Supplement may be found at [Product Entitlement Supplement](#) (or a successor URL) and is incorporated by reference and an integral part of the Agreement.

e) **Restrictions.** You agree that you will not nor enable others to (unless as required by applicable law): (i) attempt to reverse compile, modify, or disassemble the Software in whole or in part or otherwise attempt to discover the Software source code; (ii) rent, lease, or loan the Software in whole or part; (iii) interfere or attempt to interfere with or disrupt the integrity, security, functionality, or performance of the Software or its components; (iv) use the Software for any purpose or in any manner that is unlawful or is prohibited by this Agreement or the applicable Documentation; (v) use a previous version of the Software after receiving an Updated or Upgraded (each as defined in Section 5 below) version as a replacement to a prior version (in such case Licensee must delete the prior version); (vi) use the Software in the operation of any business, aircraft, ship, nuclear facilities, life support machines, communication systems, or any other equipment in which the failure of the software could lead to personal injury, death, or environmental damage; (vii) remove or obscure copyright or trademark notices included in the Software; or (viii) host applications for third parties, as part of a facility management, timesharing, service provider, or service bureau arrangement

2) **User Account.** To Use the Software, you may be required to create a user account. This user account stores information about the you have purchased, the applicable term, your Software activation codes, and other information about your License. In registering your user account, you are responsible for the completeness and accuracy of the information provided therein. You are also solely responsible for all activities that occur under your account, including liability for losses incurred by WAVES or third parties as a result of the use of your account, regardless of whether the account was used with your knowledge, and for keeping your account credentials secure. You also acknowledge that your account is personal to you and agree not to provide any other person with access to your account or portions of it using your username, password, or other security information. You shall remain solely responsible for the activity arising out of any failure to keep your account details confidential and, in the event of unauthorized use of your account, you agree to notify WAVES immediately. You may not use someone else's user account. You have the right to delete your user account at any time, but in doing so you will lose access to the Software, which requires a user account to be used. Notwithstanding deletion of the account, WAVES may retain your data as reasonably necessary in accordance with [the WAVES Privacy Notice](#).

3) **Activation.** The Software requires activation (“**Activation**”) before it can be Used. Activation is utilized to prevent, identify, and restrict uses of the Software that are not permitted under this Agreement. Activation also allows WAVES to keep track of the Devices where the Software is Used. You agree that WAVES may utilize Activation functionality to identify the Device on which the Software is installed and to limit or restrict use of the Software. Activation may use internet connectivity to send the Activation information to WAVES, such as the Software product name, the applicable Software version number, the version and type of operating system running the Software, and the hardware and network parameters of the Device running the Software. You consent to such a transmission, and if the Activation information cannot be transmitted to WAVES electronically, then you agree, on WAVES’ request, to provide to WAVES such Activation information.

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**5) Support Services.**

a) **General.** WAVES technical support and maintenance services for the Software, including the right to receive Software Updates (“**Support Services**”) are provided in accordance with WAVES’s then current Support Services Terms and Conditions located at Master Service Agreement and this Agreement. “**Software Updates**” means all published revisions and corrections to the printed documentation and corrections and new releases of the Software that are generally made available to WAVES’s supported licensees at no additional cost, but not including any functionality or future products that WAVES licenses separately (such separately licensed products are considered “**License Updates/Upgrades**”). Before using any License Update/Upgrade or Update, you shall ensure that they can be used on a particular Device in accordance with the system requirements of the License Update/Upgraded Software or Software Update. Notwithstanding the foregoing, you acknowledge that WAVES does not guarantee that new releases of the Software will be backward compatible and does not guarantee the operability and compatibility of the Software on Devices, operating systems, or browsers that were released after the initial License of the Software.

**b) Support Services per License Type:**

- (i) Subscription License Support Services. A Subscription License includes Support Services.
- (ii) Perpetual License Support Services. A Perpetual License includes Support Services (for Perpetual Licenses referred to as the “Waves Update Plan”) for the first twelve (12) month period from purchase. Thereafter, a Perpetual License does not include Support Services, but you may purchase Support Services for Perpetual Licenses for an annual support fee. You must purchase and renew Support Services for all Perpetual Licenses of the corresponding Software. Support Services are made available only for the specific Software, License type, and number of Licenses purchased. Notwithstanding the foregoing, once an Update has been released, WAVES may cease service, technical support, and Support Services for prior versions upon sixty (60) days’ notice to you.

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**7) Privacy Notice; Feedback.** The personal information you provide to WAVES during the ordering and registration process is used for WAVES’s internal purposes only. WAVES uses the information in compliance with the WAVES’ Privacy Notice. WAVES Privacy Notice explains how WAVES collects, treats your personal data, and protects your privacy when you use the Software and related services. By using the Software and related services, you agree that WAVES can use such data in accordance with our Privacy Notice. You can submit questions, comments, suggestions, and ideas (“**Feedback**”) to WAVES. Feedback shall be deemed non-confidential and non-proprietary. By submitting Feedback, you give permission to WAVES to use Feedback in any way and for any purpose, commercial or otherwise, without any compensation or credit obligation to you or any third party.

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10) **Publicity Rights.** During the term of this Agreement, you grant to WAVES the right to include you as an end user of the Software in a factual listing of WAVES' customers.

11) **Third-Party Materials.** The Software may contain features designed to interoperate with products or components derived from portions of materials provided by third parties ("**Third Party Materials**"). You may use Third Party Materials solely in connection with the Software. Third Party Materials may be subject to other terms and conditions, which are typically found in a separate license agreement or a "read me" or other file located in or near such materials. You acknowledge that the availability and right to license any Third-Party Materials to you shall cease automatically, without liability on WAVES' part, upon the discontinuation or termination of the provision thereof to Wave.

12) **iOS App Use.** Notwithstanding anything set forth in this Agreement, if you obtained a License through the Apple iTunes Application Store (the "**App**") operated by Apple, Inc. or its subsidiaries and affiliates (collectively, "**Apple**"), then you acknowledge and agree to the following additional terms: (a) Apple is not a party to this Agreement and has no liability for the App and its content; (b) your use of the App is limited to a non-transferable license to use the App on any iPhone™, iPad™, or iPod Touch™ that you own or control; (c) Apple has no obligation whatsoever to furnish any maintenance and support services for the App; (d) to the extent permitted by applicable law, Apple has no warranty obligation to the App and WAVES will be responsible for any claims, losses, liabilities, damages, costs, or expenses attributable to any failure to conform to any warranty set forth in this Agreement; (e) Apple is not liable for any claims relating to the App or your possession and/or use of the App, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal requirement; and (iii) consumer protection claims; (f) Apple is not liable for any third-party claims that the App infringes a third party's intellectual property rights; and (g) Apple (including its subsidiaries and affiliates) are third party beneficiaries of this Agreement with respect to any such App and will have the right to enforce this Agreement against you as a third party beneficiary.

13) **Indemnification.** You will indemnify, defend, and hold WAVES, its affiliates, directors, officers, and employees (each an "**Indemnified Party**") harmless, at your expense (including reasonable attorney's fees), against any third-party claim, suit, action, or proceeding (each, an "**Action**") brought against any Indemnified Party by a third party to the extent that such Action is based upon or arises out of (a) the use of the content or data you provided to WAVES; (b) your breach of this Agreement; (c) your use of the Software; or (d) your violation of applicable law or any third-party right, including, without limitation, any privacy, intellectual property, or another proprietary right. This indemnification obligation will survive termination of this Agreement. You may in no event enter into any settlement or like agreement with a third party that affects any Indemnified Party's rights or binds any Indemnified Party in any way, without WAVES' prior written consent. WAVES reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with WAVES in asserting any available defenses.

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a) This Agreement is effective as of the Effective Date and continues until expiration of all License Term, unless earlier terminated as set forth in this Agreement. The "**Effective Date**" of this Agreement is the date of purchase. You may terminate this Agreement at any time for any reason upon thirty (30) days' prior written notice to WAVES. Additionally, upon any Default, WAVES may suspend your account and your Use of the Software or terminate this Agreement (in WAVES' sole discretion), without notice to you. You will be in "**Default**" of this Agreement if: (i) you fail to pay when due any



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b) Upon any expiration (without renewal in accordance with this Agreement or written agreement between the parties) or termination of this Agreement as per Section 14(a), your License automatically terminates (even Perpetual Licenses) and you must cease Using and delete (or at WAVES' request, return) all Software and certify accordingly, upon WAVES' request. Additionally, upon such termination (i) you will not be entitled to a refund of any pre-paid fees and (ii) if you have not already paid all applicable fees for the then-current License term or related Support Services, any such fees that are outstanding will become immediately due and payable and WAVES may charge reactivation fees to reactivate your License. In no event will termination relieve you of your obligation to pay any fees payable to WAVES for the period prior to the effective date of termination. Except where an exclusive remedy may be specified in this Agreement, the exercise by either party of any remedy, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise. Any Agreement provision that, to fulfill the purpose of such provision, needs to survive the termination or expiration of this Agreement, shall be deemed to survive for as long as necessary to fulfill such purpose.

#### **15) Limited Warranty.**

a) If you purchase a License and encounter a technical problem that defect in the Software itself caused (as determined by WAVES' technical support in its sole discretion) and that WAVES' technical support cannot resolve, then you may request to cancel and refund your purchase within ninety (90) calendar days from the date of the initial License purchase. No cancellations are possible after such ninety (90) day period. No other reasons for cancellation are possible. The refund shall be limited to the amount received by WAVES at the time of the initial purchase, including any taxes. Any charges from third parties (including banks, credit card issuers, payment processors) will not be refunded. If you paid with funds in a currency different than those offered by WAVES website, then the refunded amount in your currency may differ from the original payment due to exchange rate fluctuations and currency conversion charges levied by third parties. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

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**18) Export Restrictions.** You may not use or otherwise export or re-export the Software to any countries or territories sanctioned by the United Nations or the USA. You represent and warrant that (a) you are not located in a any country or territory that is subject to U.S. Government embargo or that has been designated by the U.S. Government as a “terrorist supporting” country; and (b) you are not listed on any U.S. Government list of prohibited or restricted parties.

**19) No High Risk Use.** The Software is not fault-tolerant and is not guaranteed to be error free or to operate uninterrupted. The Software may not be used in any application or situation where a Software failure could lead to death or serious bodily injury of any person or to severe physical or environmental damage (“**High-Risk Use**”). Licensee agrees to indemnify and hold harmless WAVES from any third-party claim arising out of use of the Software in connection with any High-Risk Use.

**20) Governing Law/Jurisdiction and Arbitration.** This Agreement will be governed by and construed in accordance with the laws of the State of New York, without regard to its conflicts of laws principles and specifically will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, or the Uniform Computer Information Transactions Act (UCITA). Any cause of action or claim you might have with respect to the Software or otherwise under this Agreement must be commenced within one (1) year after such claim or cause of action arises or shall be deemed waived. Except with respect to the protection and enforcement of WAVES’ (and its third-party licensors’) intellectual property rights and its rights to seek and/or obtain injunctive or equitable relief, any claim, cause of action, or proceeding arising out of or relating to this Agreement or the Software shall be resolved by mandatory, binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”). The arbitration shall be conducted in New York, New York, and the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision.

EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY AND ALL RIGHTS TO BRING OR PARTICIPATE IN A CLASS ACTION OR MULTI-PARTY ACTION IN ANY ACTION, PROCEEDING, OR COUNTER-CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT. ALL CLAIMS AND DISPUTES ARISING OUT OF THIS AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS.

**21) Assignment.** You may not sub-license the License, but subject to your payment of the applicable fee, you may assign your License(s) and this Agreement in whole to a third-party in accordance with

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**22) General.**

a) WAVES hereby provides address and contact details, to which any of your questions, complaints, or claims with respect to the Software should be directed: Waves Audio Ltd., Azrieli Center 3, The Triangle Tower, 32nd Floor, Tel-Aviv 6701101, Israel. Phone: +972-3-608-4000. Fax: +972-3-608-4056. Email: [Contact information](#).

b) WAVES shall not be responsible for any delays or failure of performance resulting from causes beyond its reasonable control. The English version of this Agreement shall be the version used when interpreting or construing this Agreement. If any provision or provisions of this Agreement are determined to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions of this Agreement will not in any way be affected or impaired thereby.

c) This Agreement may not be modified, amended, or additional obligations be assumed by either party to this Agreement except by your acceptance of a subsequent electronic agreement provided by WAVES with respect to the Software (“**Agreement Modifications**”) or as otherwise agreed to in writing by the parties. If you do not agree with any Agreement Modifications, your sole remedy is for you to terminate this Agreement sending written notice of termination to WAVES. Otherwise, your continued access or use of the Software shall constitute your acceptance of the Agreement Modifications.

d) This Agreement is the complete and exclusive agreement between you and WAVES relating to the Software and the Support Services and supersedes any previous or contemporaneous oral or written communications, proposals, and representations with respect to its subject matter. This Agreement also applies to all future transactions related to the Software and the Support Services between you and WAVES. This Agreement prevails over any conflicting or additional terms of any purchase order, ordering document, acknowledgement, or confirmation or other document that you might issue, even if signed and returned.