

# Terms and Conditions

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Prior versions of this Agreement can be found at [Terms and Conditions archive](#).

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b) **Number of Copies.** The License gives you the right to make a single copy of the Software to Use on one Device at a time. Accordingly, each License is for the right to Use the Software on a per Device basis, not per user, per site, or per company. For example, if a person uses two (2) Devices simultaneously, to Use the Software on each Device, the person must purchase two (2) Licenses.

c) **License Types.** WAVES reserves the right, in its sole discretion, to determine the types of Licenses that it makes available to end users. Your usage rights with respect to the Software depends upon the type of License that you have acquired. As of the Effective Date of this Agreement, those types include the following:

(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 14(a) below.

(ii) **Subscription License.** With Subscription Licenses, the end user has the right to Use the Software for a specified Subscription License term (monthly or annually) as part of a duration-limited subscription package (“**Subscription License**”). The Subscription License will automatically renew for another term equal in duration to the initial term until your subscription is cancelled or terminated in accordance with this Agreement. WAVES will notify you if there is any increase of the renewal fee from the immediately previous Subscription License fee by email at least twenty (20) days before any such increase. For Subscription License terms of twelve (12) months or more, WAVES will provide you notice of renewal at least thirty (30) days and not more than forty-five (45) days before each automatic renewal date. Additionally, the renewal fee may change if you add or remove items from your subscription after the email notification. You may cancel the auto-renewal subscription at any time. You must cancel before the applicable renewal date to avoid the charge. Cancellation and management of your Subscription License is available at [Subscription License](#) or via email to [Contact orders](#). To cancel a Subscription License, use [Cancel Subscriptions](#) to turn auto-renew off in your account, here [turn auto-renew off](#). Your current Subscription License will be active until the expiration date. You can turn on auto-renew before the end date to continue your Subscription License. If your Subscription License lapses for any period due to non-renewal or failure to pay applicable fees when due, you will lose your right to continue using the Software and to access support services.

(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**”).

(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

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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](#) 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) to 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. 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.

## 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.

## 4) End User Generated Content.

The Software enables you to enter content that will be stored on a Device on which the Software is installed. You are solely responsible for your use, storage, and disclosure of such content. Licensee may not use the Software in conjunction with content that is illegal or violates the rights of others.

## 5) Support Services.

a) **General.** WAVES technical support and maintenance services for the Software, including the right to receive Updates ("**Support Services**") are provided in accordance with WAVES' then current support services terms and conditions and this Agreement. "**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' supported licensees at no additional cost. Support Services do not include any functionality or future products that WAVES licenses separately ("**Upgrades**"). You are not required to upgrade when a new major version is released. You can continue to use your previously purchased major version of Software and not Upgrade to a new one. Before using any Upgrade or Update, you shall ensure that they can be used on a particular Device in accordance with the system requirements of the Upgraded or Updated Software. 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. However, WAVES will continue to provide technical support (consultations and other help) in relation to the earlier purchased Software in accordance with the original system requirements. Notwithstanding the foregoing, once an Update has been released, WAVES may cease service or support for prior versions without any notice to you.

b) **Perpetual License Support Services.** Support Services are made available only for the specific Software, License type, and number of Licenses. A Perpetual License includes Support Services for the first twelve (12)

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## **6) Internet Connectivity.**

Certain functionality, including Activation and Update check, may require Internet connectivity. The Software may connect to the internet in the background without prior notification. Downloading the Updated versions of the Software and using WAVES' website with all support materials available there (such as user guides, quick start guides, tutorials, examples, forum, etc.) also requires Internet connectivity.

## **7) Privacy Policy; 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 Policy. WAVES privacy policy 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 policy. 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.

## **8) Audit.**

WAVES may, at its expense, audit no more than once annually the number of copies of the Software in Use by you (directly or indirectly). Any such audit shall be conducted during regular business hours. If you are Using a greater number of copies of the Software than to which you have a License, you shall pay WAVES the applicable fees for such additional number of Licenses within thirty (30) days of the invoice date plus interest of the lower of one and one-half percent (1.5%) per month and the highest permitted by local law from the 1st day of use, with such underpaid fees being the License and related Support Services fee as per WAVES' then current, country specific, base price for the Software. If underpaid fees are more than five percent (5%) of the value of the fees paid by you under this Agreement, then you shall also pay WAVES' reasonable costs of conducting the audit. These remedies are in addition to any other remedies or relief, including termination rights, already provided in this Agreement. You acknowledge and agree that this provision is not intended to be a penalty but is instead designed to protect WAVES' legitimate business interests

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During the term of this Agreement, you grant to WAVES the right to include you as a customer in Software promotional material. You consent to written and oral disclosure by WAVES of your name and logo (if applicable) as an end user of the Software in a factual listing of WAVES' customers (with or without a list of the category of Software you Licensed) to be published within marketing and promotional materials, in presentations, on trade show signs and materials, on WAVES' website, and to financial and industry analysts.

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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, 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.

### **14) Term; Termination.**

a) This Agreement is effective as of the Effective Date and continues until expiration of all License terms, unless earlier terminated as set forth in this Agreement. The “**Effective Date**” of this Agreement is the date of purchase. Either party may terminate this Agreement if the other party fails to cure any material breach of this Agreement within thirty (30) days after written notice. Additionally, you may choose to stop using the Software and terminate this Agreement at any time for any reason upon written notice to WAVES, but, unless you are exercising your right to terminate early pursuant to Section 15(a) (Limited Warranty), upon any such termination (a) you will not be entitled to a refund of any pre-paid fees and (b) 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.

b) Upon any expiration or termination of this Agreement, your License terminates (even Perpetual Licenses), and you must cease Using and delete (or at WAVES’ request, return) all Software and any other materials in your possession and certify accordingly upon WAVES’ request. If WAVES terminates this Agreement for cause, you will pay any unpaid fees covering the remainder of the then-current License term after the effective date of termination. In no event will termination relieve you of its 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) Except as expressly provided in this Section, fees are non-refundable. If you purchase a License and encounter a technical problem that is caused by a defect in the Software itself (as determined by WAVES’ technical support in its sole discretion) and that cannot be resolved by WAVES’ technical support, 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.

b) OTHER THAN THE FOREGOING LIMITED WARRANTY AS EXPRESSLY SET FORTH IN SECTION 15(a) AND FOR ANY WARRANTY TO THE EXTENT TO WHICH THE SAME CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW, THE SOFTWARE AND ALL SUPPORT SERVICES, AND ANY AND ALL ACCOMPANYING HARDWARE ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED BY STATUTE, COMMON LAW, CUSTOM, USAGE, OR OTHERWISE. WAVES AND ITS THIRD-PARTY LICENSORS DISCLAIM ALL OTHER WARRANTIES. NO ORAL OR WRITTEN INFORMATION OR ADVICE THAT WAVES, ITS DISTRIBUTORS, AGENTS, OR EMPLOYEES GIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES SET FORTH IN THIS AGREEMENT. YOU ACKNOWLEDGE THAT WAVES DOES NOT WARRANT THAT THE SOFTWARE (i) WILL MEET YOUR REQUIREMENTS, (ii) DOES NOT INFRINGE ANY THIRD-PARTY’S INTELLECTUAL PROPERTY RIGHTS, (iii) WILL OPERATE IN COMBINATION OTHER THAN AS SPECIFIED IN THE DOCUMENTATION, (iv) OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ALL ERRORS WILL BE CORRECTED OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR (v) FEATURES, CATEGORIES, AND FUNCTIONALITIES WILL BE AVAILABLE AT ALL TIMES IN THE FUTURE.

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In the event of invalidity of any provision of this license, the parties agree that such invalidity shall not affect the validity of the remaining portions of this license.

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The Software is deemed to be "Commercial Items," as defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7207, as applicable. Consistent with such sections, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (i) only as Commercial Items, and (ii) with only those rights as are granted to all other end users pursuant to this Agreement.

#### **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, provided that (a) you transfer only the number of copies of the Software to which you have a valid License and delete any other copies from all Devices, (b) such third-party agrees in writing to all the terms of conditions set forth in this Agreement, and (c) you notify WAVES in writing that you assigned your License(s) to such third-party, which notice shall include the name and relevant contact information.

#### **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

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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.