

Support Software License Agreement

Below is a copy of the Terms and Conditions of the Sound Design Technologies Product Support Software License Agreement for your reference

Terms and Conditions of Sound Design Technologies Product Support Software License Agreement

This Sound Design Technologies Product Support Software License Agreement (this "Agreement") is effective as of the date the Software is obtained from Sound Design Technologies (the "Effective Date"), and is entered into by and between Sound Design Technologies Ltd, an Ontario, Canada corporation with offices at P.O. Box 489 Station A, Burlington Ontario, L7R 3Y3 ("Sound Design Technologies"), and You.

1 DEFINITIONS

"You," "Your" or "Licensee" means the individual or company who has or will download, use and/or distribute the Sound Design Technologies Product Support Software and who is being licensed to use the Software.

"We," "Us," or "Sound Design Technologies" means Sound Design Technologies Ltd., an Ontario, Canada corporation.

The "Program" or the "Software" means the software package that was or will be downloaded or obtained from Sound Design Technologies and which may be comprised of a setup program, self-extracting executable, or other compressed archive file and the source and/or binary files resulting from the installation of the software package, or any part thereof, all of which are licensed from Sound Design Technologies under the terms of this Agreement. The source and/or binary files which may result from the installation of the software package are referred to in this Agreement as the "Sound Design Technologies Sample Source Code Software" (human readable source code and documentation files) and the "Sound Design Technologies Product Support Binary Software" (machine readable binary files).

2 LICENSE

2.1 If applicable, Sound Design Technologies grants to Licensee a perpetual, royalty-free, limited, non-exclusive, non-transferable, worldwide, right and license to use, reproduce, publicly display, publicly perform, distribute and sublicense the Sound Design Technologies Product Support Binary Software (in binary format) and accompanying Documentation, subject to the terms and conditions of this Agreement. If applicable, Sound Design Technologies grants to Licensee a perpetual, royalty-free, limited, non-exclusive, non-transferable, worldwide, right and license to use, reproduce, publicly display, publicly perform, modify, prepare derivative works of, and distribute and sublicense the Sound Design Technologies Sample Source Code Software (in source code form) and accompanying Documentation, subject to the terms and conditions of this Agreement. All terms and conditions of this Agreement are material terms of the license granted by this Agreement and Licensee may use the Software and Documentation only on the terms set forth in this Agreement. Licensee may not transfer, sublicense, rent, lease or otherwise

transfer possession of the Software to a third party except as explicitly provided in this Agreement.

2.2 Restrictions.

2.2.1 Licensee has no right or license to assign the Software or Documentation, in whole or in part.

2.2.2 Licensee has no right or license to modify, prepare derivative works of, decompile, disassemble or otherwise reverse engineer the Sound Design Technologies Product Support Binary Software or any part thereof.

2.2.3 Licensee may sublicense and distribute the Sound Design Technologies Sample Source Code Software in source code or binary form and the Sound Design Technologies Product Support Binary Software in binary form under its own sublicense agreement, provided that (a) Licensee complies with the terms and conditions of this Agreement and (b) Licensee's sublicense agreement contains terms and conditions that:

2.2.3.1 effectively disclaims on behalf of Sound Design Technologies all warranties and conditions, express and implied, including warranties or conditions of title and non-infringement, and implied warranties or conditions of merchantability and fitness for a particular purpose;

2.2.3.2 effectively excludes on behalf of Sound Design Technologies all liability for damages, including direct, indirect, special, incidental and consequential damages, such as lost profits, however arising, including those liabilities arising from product liability, personal injury, death or damage to or destruction of property or premises;

2.2.3.3 sublicensee effectively indemnifies, defends and holds harmless Sound Design Technologies from and against all liabilities, costs, fees or damages arising out of or relating to the Software;

2.2.3.4 states that any provisions which differ from this Agreement are offered by Licensee only and not by Sound Design Technologies;

2.2.3.5 allow Licensee, at Sound Design Technologies' request, to assign the sublicense agreement to Sound Design Technologies in the event of termination of this Agreement between Sound Design Technologies and Licensee; and

2.2.3.6 states that the Software is available from the Licensee only, and informs sublicensees how to obtain support and maintenance from Licensee.

2.2.4 If Licensee uses, redistributes, or sublicenses the Sound Design Technologies Sample Source Code Software in the form as provided to Licensee by Sound Design Technologies and without any modifications, Licensee agrees to reproduce and include Sound Design Technologies' copyright, trademark, and other proprietary rights notices on any copies of the

Sound Design Technologies Sample Source Code Software and Documentation, including, without limitation, partial copies.

2.2.5 If Licensee uses, distributes, or sublicenses Sound Design Technologies Sample Source Code Software that Licensee has modified, then Licensee must remove all copyright notices, trademarks, or other references to Sound Design Technologies from the Sound Design Technologies Sample Source Code Software and must identify itself as the originator of the modified Sound Design Technologies Sample Source Code Software in a manner that reasonably allows the sublicensee to identify Licensee as the originator of the modified Sound Design Technologies Sample Source Code Software.

2.3 Acknowledgment. Licensee understands that any unauthorized reproduction or transfer of the Software or Documentation or any portion thereof may be a crime, and may subject Licensee to damages and attorneys' fees.

2.4 Reservation of Rights. All right, title and interest in and to the Software and Documentation is at all times solely vested in Sound Design Technologies. No rights or licenses, express or implied, other than those expressly stated herein are granted by this Agreement.

3 PROPRIETARY RIGHTS

Licensee acknowledges that Sound Design Technologies is the sole and exclusive owner of the Software and Documentation, and all proprietary rights therein, including, without limitation, all associated patents, copyrights and trade secrets rights.

4 MAINTENANCE, AND SUPPORT AND UPGRADES

So long as Licensee is not in default under this Agreement, Sound Design Technologies may elect, in its sole discretion, to provide Maintenance and Support services to Licensee for the Software. In no event will Sound Design Technologies supply Maintenance and Support services to sublicensees of Licensee. Maintenance and Support, if provided, may consist of the following services: (i) Sound Design Technologies may supply electronic product support via the internet; (ii) Sound Design Technologies may consult with Licensee for a reasonable amount of time by telephone during Sound Design Technologies' normal business hours to assist Licensee in the use of the Software; (iii) Sound Design Technologies may use reasonable efforts to supply computer program code to correct any material nonconformities in the Software from the Documentation; and (iv) Sound Design Technologies may provide Licensee with error corrections and enhancements to the Software that Sound Design Technologies chooses to develop and generally make available to other licensees of the Software at no charge. Sound Design Technologies reserves the right to charge for Maintenance and Support Services, and for its expenses for providing such services, at any time.

5 DISCLAIMER OF WARRANTIES

5.1 SOUND DESIGN TECHNOLOGIES PROVIDES THE SOFTWARE AND DOCUMENTATION TO LICENSEE "AS IS." LICENSEE IS SOLELY RESPONSIBLE FOR DETERMINING THE APPROPRIATENESS OF USING AND DISTRIBUTING THE SOFTWARE AND FOR PROVIDING SUPPORT (INCLUDING ASSISTANCE IN THE USE

OF THE SOFTWARE AND MODIFICATION OF THE SAMPLE SOURCE CODE) AND MAINTENANCE (INCLUDING ERROR CORRECTIONS AND ENHANCEMENTS) FOR THE SOFTWARE. LICENSEE ASSUMES ALL RISKS ASSOCIATED WITH ITS EXERCISE OF RIGHTS UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE RISKS AND COSTS TO IT AND ITS AFFILIATES AND SUBLICENSEES OF PROGRAM ERRORS, COMPLIANCE WITH APPLICABLE LAWS, DAMAGE TO OR LOSS OF DATA, PROGRAMS OR EQUIPMENT, PERSONAL INJURY, DEATH OR DAMAGE TO OR DESTRUCTION OF PROPERTY OR PREMISES, AND UNAVAILABILITY OR INTERRUPTION OF OPERATIONS EXPERIENCED BY LICENSEE OR ITS SUBLICENSEES.

5.2 SOUND DESIGN TECHNOLOGIES EXPRESSLY DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION AND ANY SUPPORT OR MAINTENANCE SERVICES THAT SOUND DESIGN TECHNOLOGIES MAY CHOOSE TO PROVIDE LICENSEE (INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR CONDITIONS OF TITLE OR THAT THE SOFTWARE: WILL BE ERROR-FREE, WILL OPERATE WITHOUT INTERRUPTION, WILL NOT INFRINGE THE RIGHTS OF A THIRD PARTY, OR WILL PRODUCE RESULTS IN CONNECTION WITH ITS USE). FURTHER, SOUND DESIGN TECHNOLOGIES EXPRESSLY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE SHALL APPLY TO THIS AGREEMENT.

6 LIMITATION OF LIABILITY

SOUND DESIGN TECHNOLOGIES IS NOT LIABLE TO LICENSEE, ITS AFFILIATES OR SUBLICENSEES: FOR ANY PERSONAL INJURY, DEATH OR DAMAGE TO OR DESTRUCTION OF PROPERTY OR PREMISES THAT OCCURS IN CONNECTION WITH ANY USE OF THE SOFTWARE BY LICENSEE, ITS AFFILIATES OR SUBLICENSEES, FOR ANY DECISION MADE OR TAKEN BY LICENSEE, ITS AFFILIATES OR SUBLICENSEES IN RELIANCE UPON THE SOFTWARE, FOR ANY LOSS OR INACCURACY OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, FOR ANY MATTER BEYOND ITS REASONABLE CONTROL, OR FOR DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST REVENUES, ANTICIPATED REVENUES OR PROFITS RELATING TO THE SAME) ARISING FROM ANY CLAIM RELATING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT, WHETHER A CLAIM FOR SUCH DAMAGES IS BASED ON WARRANTY, CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR SOUND DESIGN TECHNOLOGIES STRICT LIABILITY), EVEN IF AN AUTHORIZED REPRESENTATIVE OF SOUND DESIGN TECHNOLOGIES IS ADVISED OF THE LIKELIHOOD OR POSSIBILITY OF SAME. LICENSEE ACKNOWLEDGES AND AGREES THAT PAYMENT BY SOUND DESIGN TECHNOLOGIES OR RETENTION BY LICENSEE OF DIRECT DAMAGES AS LIMITED BY THE FOREGOING SENTENCES IS LICENSEE'S

SOLE AND EXCLUSIVE REMEDY IN EXHAUSTION OF ALL OTHER REMEDIES UNDER THIS MASTER AGREEMENT, AT LAW OR IN EQUITY, AND THAT SUCH REMEDY IS NOT DEEMED OR ALLEGED BY LICENSEE TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. IN NO EVENT IS SOUND DESIGN TECHNOLOGIES LIABLE TO LICENSEE, LICENSEE'S AFFILIATES OR SUBLICENSEES FOR ANY DAMAGES CAUSED BY LICENSEE'S OR ANY THIRD PARTY'S ACTS OR OMISSIONS.

7 INDEMNIFICATION

LICENSEE ASSUMES SOLE RESPONSIBILITY FOR LICENSEE'S, LICENSEE'S AFFILIATES AND SUBLICENSEE'S USE OF THE SOFTWARE. LICENSEE SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS SOUND DESIGN TECHNOLOGIES AND ITS AFFILIATES FROM AND AGAINST ANY LIABILITIES, COSTS, FEES AND/OR DAMAGES ARISING OUT OF OR RELATING TO (i) LICENSEE'S, LICENSEE'S AFFILIATE'S OR SUBLICENSEE'S USE OF THE SOFTWARE, (ii) ANY CLAIM BY A THIRD PARTY THAT LICENSEE'S, LICENSEE'S AFFILIATE'S OR LICENSEE'S SUBLICENSEE'S UNAUTHORIZED USE, POSSESSION, MODIFICATION OR ALTERATION OF THE SOFTWARE OR DOCUMENTATION INFRINGES ANY PROPRIETARY RIGHT OF ANY THIRD PARTY, (iii) A BREACH BY LICENSEE, LICENSEE'S AFFILIATE OR LICENSEE'S SUBLICENSEE OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR LICENSEE'S SUBLICENSE AGREEMENT, (iv) ANY ACTS OR OMISSIONS BY LICENSEE, LICENSEE'S AFFILIATE OR LICENSEE'S SUBLICENSEE IN CONNECTION WITH THIS AGREEMENT OR THE MODIFICATION OR DISTRIBUTION OF THE SOFTWARE, (v) LICENSEE'S, LICENSEE'S AFFILIATE'S OR LICENSEE'S SUBLICENSEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (vi) ANY PRODUCT LIABILITY, PERSONAL INJURY, DEATH OR DAMAGE OR DESTRUCTION OF PROPERTY OR PREMISES RESULTING FROM LICENSEE, LICENSEE'S AFFILIATE'S OR LICENSEE'S SUBLICENSEE'S USE OF THE SOFTWARE. SOUND DESIGN TECHNOLOGIES AGREES: (a) LICENSEE HAS SOLE CONTROL OF THE DEFENSE AND/OR SETTLEMENT; (b) SOUND DESIGN TECHNOLOGIES WILL NOTIFY LICENSEE PROMPTLY (BUT NO LATER THAN TEN (10) DAYS UPON RECEIPT BY SOUND DESIGN TECHNOLOGIES OF NOTICE OF SUCH CLAIM IN WRITING OF EACH SUCH CLAIM OR SUIT) AND WILL GIVE LICENSEE ALL INFORMATION KNOWN TO SOUND DESIGN TECHNOLOGIES RELATING THERETO; AND (c) SOUND DESIGN TECHNOLOGIES WILL COOPERATE WITH LICENSEE IN THE SETTLEMENT AND/OR DEFENSE. LICENSEE SHALL REIMBURSE SOUND DESIGN TECHNOLOGIES FOR ALL REASONABLE OUT-OF-POCKET EXPENSES INCURRED BY SOUND DESIGN TECHNOLOGIES IN PROVIDING ANY COOPERATION REQUESTED BY LICENSEE. SOUND DESIGN TECHNOLOGIES'S FAILURE TO NOTIFY LICENSEE IN A TIMELY MANNER AS SET FORTH ABOVE WILL RESULT IN THE FORFEITURE BY SOUND DESIGN TECHNOLOGIES OF ITS RIGHTS TO INDEMNIFICATION UNDER THIS SECTION.

8 TERM AND TERMINATION

8.1 Term. Unless sooner terminated as set forth below, this Agreement commences on the Effective Date and remains in full force and effect in perpetuity.

8.2 Termination for Breach. Either party may terminate this Agreement if the other party materially breaches a provision of the Agreement and fails to correct the breach within thirty (30) days following written notice of the breach.

8.3 Effect of Termination.

8.3.1 Upon any termination of this Agreement all of Licensee's rights under this Agreement shall terminate and Licensee shall (i) immediately cease use, distribution and sublicensing of the Software and Documentation; (ii) at Sound Design Technologies' request, provide Sound Design Technologies with copies of all of Licensee's sublicense agreements; (iii) at Sound Design Technologies request, assign all of Licensee's rights and obligations under one or more sublicense agreements to Sound Design Technologies; and (iv) return, at its cost, all copies of the Software and Documentation together with any and all custom modifications and merged portions in any form, unless it provides assurances reasonably satisfactory to Sound Design Technologies that the Software, and Documentation and all copies thereof have been destroyed. Sound Design Technologies has the right to supervise the return or destruction of all such materials.

8.3.2 Notwithstanding the foregoing, Licensee's obligations under this Agreement and any licenses granted by Licensee relating to the Software shall continue and survive.

9 GENERAL

9.1 Survival of Provisions. Sections 3, 8.3, 9.1, 9.3, 9.7 and 9.10 survive any termination of this Agreement.

9.2 Language. The parties hereto confirm that it is their wish that this Agreement, as well as other documents relating hereto, including Notices, have been and shall be drawn up in the English language only.

Les parties aux presentes confirment leur volonte que cette convention de meme que tous les documents, y compris tout avis qui s'y rattache, soient rediges en langue Anglaise.

9.3 Entire Agreement. This Agreement (including the Exhibits) is the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all other prior and contemporaneous agreements and understandings, oral and written.

9.4 No Assignment by Licensee. Licensee may not assign this Agreement or any portion thereof, or any right or responsibility hereunder including, without limitation, by operation of law, without the prior written consent of Sound Design Technologies, in its sole discretion. Any attempted assignment which does not comply with the terms of this Agreement is void and of no legal effect.

9.5 Relationship of the Parties. This Agreement creates no partnership, joint venture, franchise or agency between the parties. The relationship created hereby is strictly that of licensor and licensee. Neither party has the right to assume or create, either directly or indirectly, any liability

or any obligation of any kind, expressed or implied, in the name of or on behalf of the other party, and neither party will represent that it has such authority.

9.6 Waivers; Amendments. This Agreement may only be waived or amended, if such waiver or amendment is in writing, specifically references this Agreement and is executed by the party to be bound. The waiver by either party of a breach of any provision of this Agreement does not operate as a waiver of any other breach. A party's failure or delay to exercise any right hereunder does not operate as a waiver.

9.7 Equitable Relief. Licensee acknowledges that a breach or failure to comply with any of the provisions of this Agreement will irreparably harm the business of Sound Design Technologies, and that Sound Design Technologies will not have an adequate remedy at law in the event of such breach or non-compliance. Therefore, Licensee acknowledges that Sound Design Technologies is entitled to injunctive relief and/or specific performance without the posting of bond or other security, in addition to whatever other remedies it may have, at law or in equity, in any court of competent jurisdiction against any acts of such breach or non-compliance.

9.8 Force Majeure. Sound Design Technologies is not responsible for any failure to perform its obligations hereunder caused by strikes, lockouts, riots, epidemics, war, governmental regulations, fire, communication line failures, power failures, acts of God or other causes beyond its reasonable control, and the occurrence of any such event will toll the time period provided in this Agreement for performance by Sound Design Technologies.

9.9 Severability. The illegality, invalidity or unenforceability of any part of this Agreement does not affect the legality, validity or enforceability of the remainder of this Agreement. If any part of this Agreement is found to be illegal, invalid or unenforceable, this Agreement will be given such meaning as would make this Agreement legal, valid and enforceable in order to give effect to the intent of the parties.

9.10 Governing Law. This Agreement is governed by and construed in accordance with the laws of Ontario and Canada, without regard to its choice of laws or principles. Any legal proceedings relating to the subject matter of this Agreement will be maintained in the courts of Ontario and Canada and the parties consent and agree that such jurisdiction and venue for such proceedings lies exclusively with such courts.