

END USER LICENCE AGREEMENT

PLEASE READ CAREFULLY BEFORE DOWNLOADING, ORDERING OR INSTALLING (AS APPROPRIATE) ANY SOFTWARE (AS DEFINED BELOW):

This Wave Arts End-User License Agreement ("EULA") is a legal agreement between you (either an individual or a single entity) and Wave Arts, Inc. ("Wave Arts") for the Wave Arts software accompanying this EULA, which includes computer software and may include associated media, printed materials, and "on-line" or electronic documentation ("SOFTWARE PRODUCT" or "SOFTWARE"). By exercising your rights to make and use copies of the SOFTWARE PRODUCT, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, you may not use the SOFTWARE PRODUCT.

SOFTWARE PRODUCT LICENSE

This licence agreement ("Licence") is a legal agreement between you ("Licensee" or "you") and NUGEN Audio Limited incorporated and registered in England and Wales with company number 07544311 whose registered office is at Airedale House, 423 Kirkstall Road, Leeds LS4 2EW ("NUGEN Audio") for:

- NUGEN Audio Software ("Software"); and
- printed materials and online or electronic documentation ("Documentation").

NUGEN Audio licences use of the Software and Documentation to you on the basis of this Licence. NUGEN Audio does not sell the Software or Documentation to you. NUGEN Audio remains the owners of the Software and Documentation at all times.

IMPORTANT NOTICE TO ALL USERS:

BY CLICKING ON THE "ACCEPT" BUTTON BELOW YOU AGREE TO THE TERMS OF THIS LICENCE WHICH WILL BIND YOU AND YOUR EMPLOYEES (IF ANY). THE TERMS OF THIS LICENCE INCLUDE, IN PARTICULAR, LIMITATIONS ON LIABILITY IN CONDITION 5 AND CONDITION 6.

IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, NUGEN AUDIO WILL NOT LICENSE THE SOFTWARE AND DOCUMENTATION TO YOU AND YOU MUST DISCONTINUE THE DOWNLOADING, ORDERING OR INSTALLING PROCESS (AS APPROPRIATE) NOW BY CLICKING ON THE "CANCEL" BUTTON BELOW. IN THIS CASE YOU MAY NOT DOWNLOAD, ORDER OR INSTALL (AS APPROPRIATE) ANY SOFTWARE OR DOCUMENTATION. IN THE CASE OF SOFTWARE PURCHASED ON CD-ROM, YOU MUST RETURN THE CD-ROM ON WHICH THE SOFTWARE IS STORED AND ALL ACCOMPANYING DOCUMENTATION TO THE RETAILER WHERE YOU PURCHASED THEM, TOGETHER WITH PROOF OF PAYMENT WITHIN 14 (FOURTEEN) DAYS OF PURCHASE. IF YOU DO THIS YOUR LICENCE FEE WILL BE REFUNDED.

IMPORTANT NOTICE TO CONSUMERS DOWNLOADING OR ORDERING SOFTWARE ONLINE:

AS A CONSUMER, YOU HAVE THE RIGHT TO WITHDRAW FROM YOUR TRANSACTION WITHOUT CHARGE AND WITHOUT ANY REASON BEFORE DOWNLOADING THE SOFTWARE/DOCUMENTATION.

HOWEVER, YOU WILL LOSE THE RIGHT TO CANCEL THE TRANSACTION ONCE YOU BEGIN TO DOWNLOAD THE SOFTWARE/DOCUMENTATION.

THIS DOES NOT AFFECT YOUR CONSUMER RIGHTS FOR DEFECTIVE DOWNLOADED SOFTWARE/DOCUMENTATION.

You should print a copy of this Licence for future reference.

1. Grant and scope of licence

1.1 In consideration of payment by you of the agreed licence fee (which is part of the price you pay for this package) and you agreeing to abide by the terms of this Licence, NUGEN Audio hereby grants to you a non-exclusive, non-transferable licence to use the Software and the Documentation on the terms of this Licence.

1.2 In respect of “challenge-response” protected Software (“CR Software”), you may:

- (a) download, install and use the Software for your personal purposes (if you are a consumer) or your internal business purposes (if you are a business) only on two computers; and
- (b) only use the Software on one computer at any one time; and
- (c) provided it is unlocked on no more than two computers at any one time, transfer the Software from one computer to another.

1.3 In respect of iLok protected Software (“iLok Software”), you may download, install and use the Software for your personal purposes (if you are a consumer) or your internal business purposes (if you are a business) on an unlimited number of computers provided that a valid iLok license is allocated to each computer on which the Software is being used at the time of such use.

1.4 In respect of both the CR Software and iLok Software, you may:

- (a) provided you comply with the provisions in condition 2, make a reasonable number of copies of the Software for back-up purposes only;
- (b) receive and use any free supplementary software code or update of the Software incorporating "patches" and corrections of errors as may be provided by NUGEN Audio from time to time; and
- (c) use any Documentation in support of the use permitted under condition 1.2 and condition 1.3 and make a reasonable number of copies of the Documentation as are reasonably necessary for its lawful use.

2. Restrictions

Except as expressly set out in this Licence or as permitted by any local law, you undertake:

- (a) not to copy the Software or Documentation except where such copying is incidental to normal use of the Software, or where it is necessary for the purpose of back-up or operational security;
- (b) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Software or Documentation;
- (c) not to make alterations to, or modifications of, the whole or any part of the Software, nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs;
- (d) not to disassemble, decompile, reverse engineer or create derivative works based on, the whole or any part of the Software nor attempt to do any such thing except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by you during such activities:
 - (i) is used only for the purpose of achieving inter-operability of the Software with another software program; and
 - (ii) is not unnecessarily disclosed or communicated without NUGEN Audio's prior written consent to any third party; and
 - (iii) is not used to create any software which is substantially similar to the Software;
- (e) to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;
- (f) (i) to supervise and control use of the Software and ensure that the Software is used by your employees and representatives (if any) in accordance with the terms of this Licence; and
 - (ii) to supervise and control and restrict any use of the Software through any remote platform or other means to your employees and representatives (if any) in accordance with the terms of this License and in particular to prevent any direct access to the Software by any third party via any remote platform or other means and not to permit, allow, facilitate, enable, assist or in any other way whatsoever expedite any third party to directly use the Software.
- (g) to include NUGEN Audio's copyright notice on all entire and partial copies you make of the Software on any medium;
- (h) not to provide or otherwise make available the Software in whole or in part (including but not limited to program listings, object and source program listings, object code and source code), in any form to any person other than your employees (if any) without prior written consent from NUGEN Audio;
- (i) not to use the Software via any communications network or by means of remote access.

3. Intellectual property rights

3.1 You acknowledge that all intellectual property rights in the Software and the Documentation anywhere in the world belong to NUGEN Audio, that rights in the Software are licensed (not sold) to you, and that you have no rights in, or to, the Software or the Documentation other than the right to use them in accordance with the terms of this Licence.

3.2 You acknowledge that you have no right to have access to the Software in source code form or in unlocked coding or with comments.

3.3 The integrity of this Software is protected by technical protection measures (“TPM”) so that the intellectual property rights, including copyright, in the Software are not misappropriated. You must not attempt in any way to remove or circumvent any such TPM, nor apply or manufacture for sale or hire, import, distribute, sell or let for hire, offer or expose for sale or hire, advertise for sale or hire or have in your possession for private or commercial purposes any means the sole intended purpose of which is to facilitate the unauthorised removal or circumvention of such TPM.

4. Limited warranty

4.1 NUGEN Audio warrants that:

- (a) the Software will, when properly used and on an operating system for which it was designed, perform substantially in accordance with the functions described in the Documentation;
- (b) in the case of Software purchased on CD-ROM, the CD-ROM on which the Software is stored and distributed is (at the time it is supplied) free from defects in design, material and workmanship under normal use; and
- (c) that the Documentation correctly describes the operation of the Software in all material respects,

for a period of 90 (ninety) days from the date of installation of the Software (“Warranty Period”). In the case of Software purchased on CD-ROM, if a defect in the CD-ROM occurs during the Warranty Period, NUGEN Audio will replace it free of charge if you return it to NUGEN Audio with proof of purchase and (so far as you are able) a documented example of such defect or error.

4.2 If, within the Warranty Period, you notify NUGEN Audio in writing of any defect or fault in the Software as a result of which it fails to perform substantially in accordance with the Documentation, NUGEN Audio will, at its sole option, either repair or replace the Software, provided that you make available all the information that may be necessary to help NUGEN Audio to remedy the defect or fault, including sufficient information to enable NUGEN Audio to recreate the defect or fault.

4.3 The warranty does not apply:

- (a) if the defect or fault in the Software results from you having amended the Software; or
- (b) if the defect or fault in the Software results from you having used the Software in contravention of the terms of this Licence.

4.4 If you are a consumer, this warranty is in addition to your legal rights in relation to Software that is faulty or not as described. Advice about your legal rights is available from your local Citizens’ Advice Bureau or Trading Standards office.

4.5 You acknowledge that the Software may not be free of errors or bugs and you agree that the existence of any minor errors shall not constitute a breach of this Licence.

5. Limitation of liability if you are a business user

5.1 You acknowledge that the Software has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the Software as described in the Documentation meet your requirements.

5.2 If you are a business customer, NUGEN Audio only supplies the Software and Documentation for internal use by your business, and you agree not to use the Software or Documentation for any re-sale purposes.

5.3 NUGEN Audio shall not under any circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Licence for:

- (a) loss of profits, sales, business, or revenue;
- (b) business interruption;
- (c) loss of anticipated savings;
- (d) loss or corruption of data or information;
- (e) loss of business opportunity, goodwill or reputation; or
- (f) any indirect or consequential loss or damage whether or not foreseeable in particular for fines resulting from a breach by you of any legislation, statutory requirement or regulation relating to the loudness of broadcasts.

5.4 Other than the losses set out in condition 5.3 (for which NUGEN Audio are not liable), NUGEN Audio's maximum aggregate liability under or in connection with this Licence whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to the price that you paid for the Software excluding any postage, packaging and/or transportation costs. This maximum cap does not apply to condition 5.5.

5.5 Nothing in this Licence shall limit or exclude NUGEN Audio's liability for:

- (a) death or personal injury resulting from NUGEN Audio's negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any other liability that cannot be excluded or limited by English law.

5.6 This Licence sets out the full extent of NUGEN Audio's obligations and liabilities in respect of the supply of the Software and Documentation. Except as expressly stated in this Licence, there are no conditions, warranties, representations or other terms, express or implied, that are binding on NUGEN Audio. Any condition, warranty, representation or other term concerning the supply of the Software and Documentation which might otherwise be implied into, or incorporated in, this Licence whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

6. Limitation of liability if you are a consumer user

6.1 You are a consumer user if you use the Software and Documentation for domestic and private purposes only and NUGEN Audio only supplies the Software and Documentation to you as a consumer user for these purposes. You are a business customer if you use the Software and Documentation for any commercial, business or re-sale purposes. As a consumer user, you therefore agree not to use the Software and Documentation for any commercial, business or re-sale purposes, and NUGEN Audio have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

6.2 You acknowledge that the Software has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the Software as described in the Documentation meet your requirements.

6.3 NUGEN Audio are only responsible for loss or damage you suffer that is a foreseeable result of its breach of this Licence or its negligence up to the amount specified in condition 6.4, but NUGEN Audio are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if they were an obvious consequence of NUGEN Audio's breach or if they were contemplated by you and NUGEN Audio at the time NUGEN Audio granted you the Licence.

6.4 NUGEN Audio's maximum aggregate liability under or in connection with this Licence whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to the price that you paid for the Software excluding any postage, packaging and/or transportation costs. This does not apply to the types of loss set out in condition 6.5.

6.5 Nothing in this Licence shall limit or exclude NUGEN Audio's liability for:

- (a) death or personal injury resulting from NUGEN Audio's negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any other liability that cannot be excluded or limited by English law.

7. Termination

7.1 NUGEN Audio may terminate this Licence immediately by written notice to you if you commit a material or persistent breach of this Licence which you fail to remedy (if remediable) within 14 (fourteen) days after the service of written notice requiring you to do so.

7.2 Upon termination for any reason:

- (a) all rights granted to you under this Licence shall cease;
- (b) you must immediately cease all activities authorised by this Licence; and
- (c) you must immediately delete or remove the Software from all computer equipment in your possession, and immediately destroy or return to NUGEN Audio (at NUGEN Audio's option) all copies of the Software and Documentation then in your possession, custody or control and, in the case of destruction, certify to NUGEN Audio that you have done so.

8. Communications between us

8.1 If you are a consumer, if you wish to contact NUGEN Audio in writing, or if any condition in this Licence requires you to give NUGEN Audio notice in writing, you can send this to NUGEN Audio by e-mail or by pre-paid post to NUGEN Audio Limited at Airedale House, 423 Kirkstall Road, Leeds LS4 2EW or info@nugenaudio.com. NUGEN Audio will confirm receipt of this by contacting you in writing, normally by e-mail.

8.2 If NUGEN Audio have to contact you or give you notice in writing, NUGEN Audio will do so by e-mail or by pre-paid post to the address you provide to NUGEN Audio in your order for the Software (if any).

8.3 If you are a business customer, please note that any notice given by you to NUGEN Audio, or by NUGEN Audio to you, will be deemed received and properly served immediately when posted on NUGEN Audio's website, 24 (twenty-four) hours after an e-mail is sent, or 3 (three) days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.

9. Events outside NUGEN Audio's control

9.1 NUGEN Audio will not be liable or responsible for any failure to perform, or delay in performance of, any of NUGEN Audio's obligations under this Licence that is caused by any act or event beyond NUGEN Audio's reasonable control, including without limitation failure of public or private telecommunications networks ("Event Outside NUGEN Audio's Control").

9.2 If an Event Outside NUGEN Audio's Control takes place that affects the performance of NUGEN Audio's obligations under this Licence:

(a) NUGEN Audio's obligations under this Licence will be suspended and the time for performance of its obligations will be extended for the duration of the Event Outside NUGEN Audio's Control; and

(b) NUGEN Audio will use its reasonable endeavours to find a solution by which its obligations under this Licence may be performed despite the Event Outside NUGEN Audio's Control.

10. Other important terms

10.1 NUGEN Audio may transfer its rights and obligations under this Licence to another organisation, but this will not affect your rights or NUGEN Audio's obligations under this Licence.

10.2 You may only transfer your rights or your obligations under this Licence to another person if NUGEN Audio agrees in writing.

10.3 If you are a business customer, this Licence constitutes the entire agreement between you and NUGEN Audio. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of NUGEN Audio which is not set out in this Licence.

10.4 If NUGEN Audio fail to insist that you perform any of your obligations under this Licence, or if NUGEN Audio do not enforce its rights against you, or if NUGEN Audio delay in doing so, that will not mean that NUGEN Audio have waived its rights against you and will not mean that you do not have to comply with those obligations. If NUGEN Audio does waive a default by you, NUGEN Audio will only do so in writing, and that will not mean that NUGEN Audio will automatically waive any later default by you.

10.5 Each of the conditions of this Licence operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.

10.6 If you are a consumer, please note that this Licence, its subject matter and its formation, are governed by English law. You and NUGEN Audio both agree to that the courts of England will have exclusive jurisdiction.

10.7 If you are a business customer, this Licence, its subject matter and its formation (and any non-contractual disputes or claims) are governed by English law. You and NUGEN Audio both agree to the exclusive jurisdiction of the courts of England.