

FABRIC LICENCE AGREEMENT

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY BEFORE DOWNLOADING, INSTALLING OR USING THE FABRIC SOFTWARE. THE TERMS AND CONDITIONS OF THIS SOFTWARE LICENSE AGREEMENT ("AGREEMENT") GOVERN USE OF THE SOFTWARE UNLESS YOU (KNOWN IN THIS AGREEMENT AS THE "LICENSEE") AND TAZMAN-AUDIO LIMITED ("TAZMAN") HAVE EXECUTED A SEPARATE AGREEMENT GOVERNING USE OF THE SOFTWARE.

Tazman is willing to license the software known as Fabric Audio ("Fabric") to you only upon the condition that you accept all the terms contained in this Agreement. By checking the box with links to this Agreement, clicking "accept" or by downloading, installing or using Fabric, you are agreeing that you understand this Agreement and accept all of its terms. If you are accepting the terms of this Agreement on behalf of a company or another legal entity, you represent and warrant that you have the authority to bind that entity to the terms of this Agreement, and, in such event, "you", "your" and "Licensee" will refer to that entity. If you do not accept all the terms of this Agreement, then Tazman is unwilling to license Fabric to you, and you must destroy all copies of Fabric in your possession or control and so certify by email to Tazman within thirty (30) days.

1. DEFINITIONS AND INTERPRETATION

1.1 The following terms shall have the following meanings:

Fees	means the Licence Fee (if applicable) as set out in here ;
Force Majeure Event	has the meaning given to is in clause 9.2.
Purpose	means all use of Fabric in connection with: (a) any activity in the course of the development of computer software and/or computer games; (b) the provision of hardware or software facilities management, support, maintenance, development, disaster recovery, back-up, information processing, network or other services relating to Fabric; (c) use and storage of data within any database comprised in the Fabric and the extraction and re-utilisation of data therefrom, and the amendment or merging of the data or database; and (d) use in connection with any associated or interconnected networks, including the internet or intranet.
Intellectual Property Rights	means copyright, design rights, database right, patents and any rights to inventions, know-how, trade and business names, trade secrets, logos and devices, trade and service marks (whether registered or unregistered) and any applications therefor and all rights in confidential information which may now, or in the future, subsist anywhere in the world, including the right to sue for and recover damages for past infringements;
Licensee Fee	means the fee payable by Licensee in respect of the licence of Fabric (if applicable);
Material Defect	means a fault, error or defect which has a material adverse effect on the use or performance of Fabric.
New Version	means a new version of Fabric which provides additional or

improved functionality or performance or more than minor improvements to the current version;

Term	means the duration of this Agreement described in clause 10.1.
Territory	means worldwide;
Update	means an update to Fabric intended to remedy faults, bugs and errors or make minor improvements to the current version.

1.2 The headings used in this Agreement are for ease of reference only and shall not affect its interpretation.

1.3 Unless the context otherwise requires a reference in this Agreement to any gender includes all genders and a reference to the singular includes the plural and vice versa.

1.4 References to any statute or similar instrument shall be read as including amendments and re-enactments.

2. LICENCE

2.1 In consideration of the Licence Fee (if applicable) and the Licensee's obligations in this Agreement, Tazman hereby grants to Licensee a non-exclusive, non-transferable, non-sublicensable right and licence in the Territory to use Fabric and any Updates developed during the Term in connection with the Purpose in accordance with the terms of this Agreement.

2.2 Nothing in this Agreement shall prevent Tazman licensing, utilising or reusing any of Fabric by itself, for or with any third parties in any manner, media or form that it wishes.

3. UPDATES AND NEW VERSIONS

3.1 Tazman shall from time to time make Updates available to Licensee and Licensee may at its discretion choose to install such Updates.

3.2 It is a condition of this Agreement that Licensee shall install the latest Updates that have been supplied or made available to it pursuant to clause 3.1 above within 45 days.

3.3 Tazman may from time to time introduce or release New Versions which Licensee may install and use subject to it agreeing in writing with Tazman any variation in the Licence Fee for such New Version and any additional terms applicable thereto.

4. LICENSEE OBLIGATIONS

4.1 Licensee shall:

4.1.1 keep reasonable records concerning the use of Fabric;

4.1.2 not use Fabric otherwise than as expressly permitted by this Agreement;

4.1.3 not include in or with Fabric any software or program that is or is likely to infringe any third party Intellectual Property Rights or be subject to any open source licenses or arrangements that would require that any part of Fabric be (1) disclosed or distributed in source code form, (2) licensed for the purpose of making derivative works, and/or (3) redistributed only free of enforceable intellectual property rights; and

4.1.4 credit Tazman as the creator of Fabric in all products developed using Fabric with the wording "Audio powered by Fabric" in the appropriate credits by the authorised Fabric logo as supplied by Fabric.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 All Intellectual Property Rights in Fabric and any Updates, New Versions or additional features or functionality created by or for Tazman shall belong to Tazman, and the Licensee shall have no rights in respect of Fabric except as expressly granted under this Agreement. Licensee shall not by virtue of this Agreement or otherwise, obtain any proprietary right, title or interest in Fabric or any Intellectual Property Rights subsisting in it.

6. PAYMENT

- 6.1 In the event that a Licence Fee is payable Licensee shall make payment immediately via the methods indicated on the Tazman website or notified to you from time to time.
- 6.2 All Fees shall be payable without deduction or set off and all sums are expressed to be exclusive of Value Added Tax or any other applicable sales tax or duties which shall additionally be paid by Licensee upon production of a valid VAT receipt.

7. CONFIDENTIALITY

- 7.1 Tazman and Licensee shall each:
- 7.1.1 keep confidential all information (in whatever form or medium) concerning Fabric and information relating to the business of the other party, including but not limited to information relating to clients, customers, products, affairs and finances of the other party (the 'Information');
 - 7.1.2 not disclose the Information in whole or in part to any other person without the other party's written consent save those of its personnel and representatives involved in the development of Fabric and who have a need to know the same; and
 - 7.1.3 use the Information solely in connection with Fabric and for the purpose of performing its obligations under this Agreement.
- 7.2 The provisions of clause 7.1 shall not apply to the Information to the extent that: (i) it is trivial or obvious; or (ii) it is already in the other's possession other than as a result of a breach of this clause 7; or (iii) it is already in the public domain.
- 7.3 Upon expiry or termination of this Agreement for whatever reason, each party shall return, destroy or permanently erase (at the direction of the other party) all of the other party's Information in its possession within 30 days of such expiry or termination, except save that:
- 7.3.1 the parties may retain one copy of any Information that they are reasonable required to retain by law; and
 - 7.3.2 Licensee will be under no obligation to return, destroy or erase any Information that has been electronically archived.
- 7.4 Neither party shall make any public statement or press release in connection with this Agreement or use the other party's name, trademarks or logos in its marketing material without obtaining the prior written consent of the other party.

8. WARRANTIES AND INDEMNITY

- 8.1 Both Licensee and Tazman represents, warrants and undertakes to the other that it has the requisite power and authority to enter into this Agreement and to perform fully its obligations hereunder and that it has not entered into and will not enter into any arrangement which would restrict or inhibit the exercise by the other party of its rights under this Agreement.
- 8.2 Licensee warrants to Tazman that it shall use Fabric in accordance with the terms of this Agreement.
- 8.3 Licensee shall indemnify Tazman against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Licensee by a third party arising out of or in connection with any claim made against Tazman arising out of or in connection with use of Fabric (including the Updates) or any New Release contrary to the terms of this Agreement.
- 8.4 FABRIC IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF COPYRIGHT, PATENT, TRADEMARK, OR OTHER RIGHT. IN NO EVENT SHALL THE COPYRIGHT HOLDER BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, INCLUDING ANY GENERAL, SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER IN AN ACTION OF CONTRACT, TORT OR OTHERWISE, ARISING FROM, OUT OF THE USE OR INABILITY TO USE FABRIC OR FROM OTHER DEALINGS IN FABRIC.

9. LIABILITY

- 9.1 Liability for death or injury resulting from a party's own negligence or that of its employees, agents or sub-contractors and liability in respect of any fraudulent misrepresentation shall not be limited.
- 9.2 Subject to clause 9.1 above in no event will Tazman's liability under this Agreement exceed an amount equivalent to the monies received by Tazman from Licensee in the 12 months preceding the occurrence of the date on which the incident which gives rise to a claim arose.
- 9.3 Neither party shall be liable in any amount for failure to perform any obligation under this Agreement if such failure is caused by the occurrence of any unforeseen circumstance beyond the reasonable control of such party including without limitation, fire, flood, war or act of God (a "Force Majeure Event"), provided that:
- 9.3.1 it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event; and
- 9.3.2 it uses all reasonable endeavours to mitigate the effect of the Force Majeure Event to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 9.4 Except as expressly provided in this Agreement, both parties expressly exclude all conditions, warranties and terms and undertakings express or implied statutory or otherwise and neither party shall be liable for any loss of profit, goodwill or any type of special, indirect or consequential loss even if such loss was reasonably foreseeable or the other had been advised of the possibility of incurring the same.

10. DURATION AND TERMINATION

10.1 This Agreement shall come into force on which you accept the terms of this Agreement hereto and shall continue for the Term unless terminated forthwith by either party if:

10.1.1 the other party commits any other material breach of any term of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same; or

10.1.2 the other party convenes a meeting of its creditors or if a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with its creditors; or

10.1.3 if the other party (being an individual) is made subject to a bankruptcy petition or order; or

10.1.4 anything equivalent to the events or circumstances stated in clauses 10.1.2 and 10.1.3 occurs in any applicable jurisdiction; or

10.1.5 the other party fails to perform any of its obligations under this Agreement owing to a Force Majeure Event, which persists for a period of 30 continuous days; or

10.1.6 automatically in the event Licensee breaches the terms of this Agreement.

10.2 Any termination of this Agreement pursuant to this clause 10 shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party.

10.3 Upon termination of this Agreement, clauses which expressly or by implication have effect after termination shall continue in full force and effect, including the following clauses: 1, 7, 8, 9, 10.3, 9 and 11.6.

11. GENERAL

11.1 This Agreement shall be binding upon and inure for the benefit of the successors in title of the parties hereto.

11.2 This Agreement sets out the entire understanding between the parties with respect to the subject matter thereof and replaces and supersedes all prior oral and written representations, arrangements and understandings between the parties relating thereto. Nothing in this clause shall exclude or limit the liability of either party for fraudulent misrepresentation.

11.3 Nothing in this Agreement shall be deemed to constitute a partnership or agency relationship between the parties and neither of the parties shall do or suffer to be done anything whereby it may be represented as a partner or agent of the other party.

11.4 If any part of this Agreement is or becomes unenforceable, such part will be construed as far as possible to reflect the parties' intentions and the remainder of the provisions will remain in full force and effect.

11.5 No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of rights operate as a waiver of any subsequent breach of this Agreement.

11.6 This Agreement is made and shall be construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts.

- 11.7 A person who is not a party to this Agreement shall not have any rights under or in connection with it.
- 11.8 Tazman may at any time assign, novate or otherwise transfer any of its rights and obligations under this Agreement and shall use reasonable efforts to notify the other party within a reasonable period after doing so. Licensee may not without the prior written consent of Tazman transfer, assign or novate its obligations under this Agreement
- 11.9 All notices to be given under this Agreement must be in English, in writing and sent to the other party at the address stated at the head of this Agreement (or using such other contact details as either party has notified the other in accordance with this clause 11.9).