

Sound Libraries: End User License Agreement

This End User Licence Agreement (“Licence”) is a legal agreement between you (“Licensee” or “you”) and Krotos Ltd., a company registered in Scotland with registered number SC458616 and registered address at Citypoint, Haymarket Terrace, Edinburgh EH12 5HD (“Licensor”, “we” or “us”) for (i) use of any sound library or sound libraries created or licensed by the Licensor (the “Sound Library” which term shall be a reference to each and any sound library of the Licensor and collectively to all of the sound libraries made available by the Licensor from time to time) and (ii) any documentation supplied in relation to the Sound Library (“Documentation”).

IMPORTANT NOTICE TO ALL USERS:

BY DOWNLOADING THE SOUND LIBRARY OR CLICKING ON THE “ACCEPT” BUTTON BELOW YOU AGREE TO THE TERMS OF THIS LICENCE WHICH WILL BIND YOU AND YOUR EMPLOYEES, WHERE APPLICABLE. THE TERMS OF THIS LICENCE INCLUDE, IN PARTICULAR, LIMITATIONS ON LIABILITY IN CLAUSE 5 (IF YOU ARE A BUSINESS) AND CLAUSE 6 (IF YOU ARE A CONSUMER).

BY ACCESSING AND/OR USING THE SOUND LIBRARY YOU AGREE TO THE TERMS OF THIS LICENCE WHICH WILL BE A BINDING CONTRACT BETWEEN YOU AND US. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, WE ARE UNWILLING TO LICENCE THE SOUND LIBRARY TO YOU AND YOU MUST CEASE TO ACCESS AND/OR USE THE SOUND LIBRARY IMMEDIATELY.

IMPORTANT NOTICE TO CONSUMERS:

AS A CONSUMER, YOU HAVE THE RIGHT TO WITHDRAW FROM YOUR TRANSACTION WITHOUT CHARGE AND WITHOUT ANY REASON WITHIN 14 DAYS BEFORE DOWNLOADING THE SOUND LIBRARY. HOWEVER, YOU WILL LOSE THE RIGHT TO CANCEL THE TRANSACTION ONCE YOU BEGIN TO DOWNLOAD THE SOUND LIBRARY. THIS DOES NOT AFFECT YOUR CONSUMER RIGHTS FOR DEFECTIVE DOWNLOADED SOUND LIBRARY.

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

1. GRANT AND SCOPE OF LICENCE

1.1 In consideration of you agreeing to abide by the terms of this Licence and paying the applicable licence fee to the Licensor, the Licensor hereby

grants to you a non-exclusive licence to use the Sound Library and Documentation in accordance with the terms of this Licence including, without limitation, strictly for the Permitted Use (as defined in clause 1.4 below) and in accordance with the Licensee's Undertakings (as set out in clause 2 below).

1.2 The Licence to use the Sound Library and Documentation is granted to a single user only. You cannot transfer ownership of the Sound Library and Documentation; the Sound Library and Documentation is licensed not sold to you.

1.3 The Licence does not include the right to any upgrades, additions, new versions or improvements to the Sound Library which may be made from time to time ("Upgrades") and we reserve the right to release these, and to charge further fees in respect of such Upgrades at our sole discretion.

1.4 "Permitted Use" means the right to:

- a. use of the Sound Library to create sound effects for use in any film, television program or computer game, but this does not include the right to resell the Sound Library as a standalone product in whole or in parts;
- b. use the Sound Library as a soundtrack "sync'd" with visual images, or sounds as part of your product/production;
- c. use the Sound Library as part of the public viewing or broadcast of your product/production, including but not limited to videos, DVDs, web sites, podcasts, multimedia presentations, films, television, and radio.

2. LICENSEE'S UNDERTAKINGS

2.1 Except as expressly set out in this Licence in relation to the Permitted Use, you undertake not to:

- a. distribute (commercially or otherwise) or re-package in whole or in part the Sound Library;
- b. electronically transfer samples from the Sound Library to another person or group of people over the Internet, or place them in a computer network to be accessed by multiple people;
- c. include the Sound Library in any library (e.g. sample instrument, sound effects library, etc.) online or offline.

2.2 All unauthorized copying, trading, giving, lending, renting, redistributing, trading, sharing or reselling of the Sound Library, or any part thereof, is expressly prohibited.

3. INTELLECTUAL PROPERTY RIGHTS

You acknowledge that all intellectual property rights in the Sound Library and Documentation are licensed (not sold) to you, and that you have no rights in, or to, the Sound Library and Documentation other than the right to use it in accordance with the terms of this Licence, including without limitation, the Permitted Use. To the extent that the Licensor is the owner of the intellectual property rights in the Sound Library and Documentation, then the Licensor shall remain so notwithstanding the grant of this Licence.

4. LIMITED WARRANTY

4.1 We warrant that:

- a. the Sound Library is (at the time it is supplied) free from defects under normal use; and
- b. the Sound Library 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 for a period of 90 days from the date of installation of the Sound Library (Warranty Period).

4.2 If, within the Warranty Period, you notify us in writing of any defect or fault in the Sound Library as a result of which it fails to perform substantially in accordance with the Documentation, we will either repair or replace the Sound Library.

4.3 The warranty does not apply:

- a. if the defect or fault in the Sound Library results from you having altered or modified the Sound Library;
- b. if the defect or fault in the Sound Library results from you having used the Sound Library in breach 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 the Sound Library that is faulty or not as described. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office.

5. LICENSOR'S LIABILITY IF YOU ARE A BUSINESS USER

5.1 This clause 5 sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and subcontractors) to each other in respect of:

- a. any breach of this Licence however arising
- b. any use made of the Sound Library by you, or of any product or service incorporating any of the Sound Library; and
- c. any representation, statement or delictual act or omission (including negligence) arising under or in connection with this Licence.

5.2 Nothing in this Licence shall exclude or in any way limit the Licensor's liability for fraud, or for death and personal injury caused by its negligence, or any other liability to the extent that it cannot be excluded or limited as a matter of law.

5.3 Subject to clause 5.2, the Licensor shall not be liable under or in connection with this Licence or any collateral contract for:

- a. loss of income;
- b. loss of business profits or contracts;
- c. business interruption;
- d. loss of the use of money or anticipated savings;
- e. loss of information;
- f. loss of opportunity, goodwill or reputation;
- g. loss of, damage to or corruption of data; or
- h. any indirect or consequential loss or damage of any kind howsoever arising and whether caused by negligence, breach of contract or otherwise;

5.4 Subject to clause 5.2 and clause 5.3, the Licensor's maximum aggregate liability under or in connection with this Licence, or any collateral contract, whether in contract, negligence or otherwise, shall be limited to a sum equal to 100% of the applicable licence fee paid by you.

5.5 This Licence sets out the full extent of the Licensor's obligations and liabilities in respect of the supply of the Sound Library. In particular, there are no clauses, warranties, representations or other terms, express or implied, that are binding on the Licensor except as specifically stated in this Licence. Any clause, warranty, representation or other term concerning the supply of the Sound Library which might otherwise be implied into, or incorporated in, this Licence, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law.

6. LICENSOR'S LIABILITY IF YOU ARE A CONSUMER

6.1 You acknowledge that the Sound Library 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 Sound Library meet your requirements.

6.2 If you are a consumer, we only supply the Sound Library for domestic and private use. You agree not to use the Sound Library for any commercial, business or re-sale purposes, and we have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

6.3 We are only responsible for loss or damage you suffer that is a foreseeable result of our breach of this Licence or our negligence up to the amount specified in clause 6.4 below, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if they were an obvious consequence of our breach or if they were contemplated by you and us at the time we granted you the Licence.

6.4 Our maximum aggregate liability under or in connection with this Licence whether in contract, negligence or otherwise, shall in all circumstances be limited to a sum equal to 100% of the applicable licence fee paid by you. This does not apply to the types of loss set out in clause 6.5.

6.5 Nothing in this Licence shall limit or exclude our liability for:

- a. death or personal injury resulting from our negligence;
- b. fraud or fraudulent misrepresentation; or
- c. any other liability that cannot be excluded or limited by law.

7. TERMINATION

7.1 The Licensor may terminate this Licence immediately by written notice to you if:

- a. you commit a material or persistent breach of this Licence which you fail to remedy (if remediable) within 14 days after the service on you of written notice requiring you to do so; or
- b. a petition for a bankruptcy order to be made against you has been presented to the court; or
- c. the Licensee (where it is a company) becomes insolvent or unable to pay

its debts (within the meaning of section 123 of the Insolvency Act 1986), enters into liquidation, whether voluntary or compulsory (other than for reasons of bona fide amalgamation or reconstruction), passes a resolution for its winding-up, has a receiver or administrator manager, trustee, liquidator or similar officer appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt, or becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986).

7.2 Upon termination for any reason:

- a. all rights granted to you under this Licence shall cease;
- b. you must cease all activities authorised by this Licence;
- c. you must immediately pay to us any sums due (if any) under this Licence; and
- d. you must immediately delete or remove the Sound Library from all computer equipment in your possession and immediately destroy or return to the Licensor (at the Licensor's option) all copies of the Sound Library then in your possession, custody or control and, in the case of destruction, certify to the Licensor that you have done so.

8. GENERAL

8.1 Entire Agreement. This Licence and any document expressly referred to in it represents the entire agreement between us in relation to the licensing of the Sound Library and Documentation and supersedes any prior agreement, understanding or arrangement between us, whether oral or in writing. We each acknowledge that, in entering into this Licence, neither of us has relied on any representation, undertaking or promise given by the other or implied from anything said or written in negotiations between us before entering into this Licence except as expressly stated in this Licence.

8.2 Modification. No variation of or amendment to this Agreement shall bind either Party unless made in writing and signed by both Parties.

8.3 Severability. In the event that any clause of this Licence is held to be invalid by an authority having jurisdiction over this Licence, that clause may be deleted from this Licence and the remaining clauses shall continue to be, to the extent that they are unaffected by the deletion, valid and binding on the Parties.

8.4 No Waiver. No delay, omission or failure by the Licensor to exercise any right or remedy shall operate as a waiver. Any partial exercise of a right or remedy shall not preclude any other or further exercise of any such right of action.

8.5 Notices. All notices given by you to the Licensor must be given to Krotos Ltd. at the address stated above. The Licensor may give notice to you at either the e-mail or postal address you provided to it when registering with us. Notice will be deemed received and properly served 24 hours after an e-mail is sent, or 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.

8.6 Assignment. This Licence is binding on you and us and on our respective successors and assigns. You may not transfer, assign, charge or otherwise dispose of this Licence, or any of your rights or obligations arising under it, without our prior written consent. The Licensor may transfer, assign, charge, sub-contract or otherwise dispose of this Licence, or any of his rights or obligations arising under it, at any time during the term of the Licence.

8.7 Force Majeure. The Licensor shall not be liable for any failure to perform, or delay in the performance of, any of the Licensor's obligations under this Licence that is caused by an event outside the Licensor's reasonable control.

9. LAW AND JURISDICTION

This Licence is governed by Scots law. Any dispute arising from, or related to, any term of this Licence shall be subject to the non-exclusive jurisdiction of the courts of Scotland.