

**End User License Agreement (EULA)
for Nextmidi Software**

(Version 11/2019)

A. Terms and Conditions for all Customers

1. Definitions

- 1.1. "Nextmidi Software" means the object code version of Nextmidi proprietary computer programs including apps made available by Nextmidi for download by Customer including any Documentation and Updates.
- 1.2. "Nextmidi" means "Nextmidi – Gromer, Brinkmann GbR", a company under German law with its office at Stuttgart, Germany.
- 1.3. "Documentation" means the written and/or electronic legal, commercial or technical documentation about a Nextmidi Software that is provided or made available to Customer by Nextmidi.
- 1.4. "Order" means any purchase order between Customer and an authorized reseller or, if purchasing directly from Nextmidi, between Customer and Nextmidi, including any order through an electronic or online order system provided by an authorized reseller or Nextmidi, that specifies the Nextmidi Software.
- 1.5. "Update" means any correction, update, upgrade, patch, or other modification or addition made by Nextmidi to Nextmidi Software.

2. Registration, Activation

The Customer has to register the Nextmidi Software in order to receive a license key that enables the Customer to use the Nextmidi Software on its personal computer. In the course of registration, the Customer's e-mail address is stored with the license key in the Nextmidi registration database together with essential information about the system from which the activation occurred. In case the Customer wants to use the Nextmidi Software on a different personal computer or in case of certain changes on its present personal computer, a deactivation is necessary. Then the original license key can be used on a different personal computer. The necessary steps for the deactivation are explained in the manual.

3. Rights and Licenses

3.1. Rights and Licenses Granted to Customer

Subject to the terms and conditions of this Nextmidi EULA and solely for Customer's internal use with Customer's ordinary business operations and in accordance with the applicable Documentation, Nextmidi hereby grants to Customer a limited, nonexclusive, and non-sublicensable license and right to install and use the Nextmidi Software

on one personal computer at a time, and a limited right to maintain one copy of the Nextmidi Software on its systems for backup and recovery purposes only.

Customer may authorize and enable its employees to use the Nextmidi Software on Customer's behalf and for Customer's internal business purposes in compliance with this Nextmidi EULA, provided Customer is responsible for all such users' actions that violate the terms of this Nextmidi EULA. Any breach by any such user is a breach by Customer.

3.2. NFR

Any Nextmidi Software labelled or otherwise provided to the Customer as "Not For Resale" or "NFR" may only be used for demonstration, testing and evaluation purposes, may neither be resold nor transferred and does not qualify to receive Updates.

3.3. Updates

From time to time Nextmidi in its sole discretion may make Updates available to Customer for download. Nothing herein constitutes an express or implied obligation for Nextmidi to in fact provide Updates, or, if Nextmidi does elect to provide Updates, to provide such Updates at no charge.

3.4. Limited Rights

Customer's rights in the Nextmidi Software will be limited to those expressly granted in this Nextmidi EULA. Nextmidi reserves all rights and licenses in and to the Nextmidi Software not expressly granted to Customer under this Nextmidi EULA.

4. Use Restrictions; Customer Obligations

4.1. As a condition of the rights and licenses granted in Section 3, Customer shall not and shall not authorize or permit any third party to:

- (a) reverse engineer, decompile, decode, decrypt, disassemble, or attempt to derive any source code from the Nextmidi Software (except and only to the extent any foregoing restriction is prohibited by applicable law);
- (b) modify, adapt, or create any derivative works based on the Nextmidi Software;
- (c) distribute, sell, license, rent, lease, transfer, or otherwise provide the Nextmidi Software to third parties except as expressly provided in this Nextmidi EULA;
- (d) provide the Nextmidi Software as a service to third parties, including but not limited to on a software as a service, application service providing or timesharing basis;
- (e) unbundle any component of any Nextmidi Software, or use any Nextmidi Software, for any purpose other than those expressly set forth in Sec. 3.1;

- (f) use the Documentation except for supporting Customer's authorized use of the Nextmidi Software;
 - (g) permit direct or indirect access to or use of the Nextmidi Software in a way that circumvents a contractual usage limit;
 - (h) provide management, hosting, support or similar services to third parties with regard to the Nextmidi Software.
- 4.2. Customer shall at all times have in place up-to-date antivirus software and a state-of-the-art firewall on the personal computers and networks on which any copy of the Nextmidi software is installed.

5. Additional Licenses

If the actual number of installations exceeds the number of licenses purchased by Customer, then Customer shall purchase additional licenses based on Nextmidi's then-current price list to cover the excess usage. Other claims of Nextmidi, in particular claims for damages pursuant to applicable copyright laws, remain reserved.

6. General

6.1. In-Licensed Materials and Open Source

The Nextmidi Software may contain or may operate with software, services or other technology which may be necessary for the full operation of the Nextmidi Software and that is not owned by Nextmidi but has been licensed to Nextmidi by a third party ("In-Licensed Materials") or that is available under open source or free software licenses.

The In-Licensed Materials may be subject to additional terms and conditions as made available to Customer in a README.txt file or the like.

To the extent Nextmidi uses open source software in the Nextmidi Software, the terms and restrictions in this Nextmidi EULA shall not prevent or restrict Customer from exercising additional or different rights to such open source software in accordance with the applicable open source licenses.

The open source software may be subject to additional terms and conditions as made available to Customer in a README.txt file or the like.

6.2. Waiver & Severability; Amendments

The failure of either party to enforce any provision of this Agreement shall not constitute a waiver of any other provision or any subsequent breach. If any provision of this Nextmidi EULA is held to be illegal, invalid or unenforceable, the provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remaining provisions of this Nextmidi EULA will remain in full force and effect.

This Agreement may only be amended, or any term or condition in this Nextmidi EULA waived, by written consent of both parties.

6.3. Governing Law and Jurisdiction

- 6.3.1. For Customers with domicile in Germany, Austria and Switzerland, German law shall apply; if the Customer is a merchant ("Kaufmann") pursuant to the German Commercial Code ("Handelsgesetzbuch"), a legal entity under public law or a special fund under public law, the place of jurisdiction for all actions regarding or in connection with this Nextmidi EULA shall be at Nextmidi's office, Nextmidi shall also be entitled to sue the Customer at its domicile.
- 6.3.2. For Customers with domicile outside Germany, Austria and Switzerland, the law of New York (without taking into account New York's conflict of law rules) shall apply and the sole and exclusive jurisdiction and venue for actions arising under this Nextmidi EULA shall be at Nextmidi's office.
- 6.3.3. For Customers who are consumers and have their domicile within the European Union the foregoing choice of law shall not deprive the Customer of the protection afforded to the Customer by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of Article 6 paragraph 1 REGULATION (EC) No 593/2008 ("Rome I").

B. Additional terms and conditions for Customers with domicile outside Germany, Austria and Switzerland

7. Indemnity

7.1. Indemnification by Nextmidi

Nextmidi shall at its cost and expense (i) defend or settle any claim brought against Customer by an unaffiliated third party alleging that Customer's use of the Nextmidi Software infringes or violates that third party's intellectual property right(s), and (ii) pay, indemnify and hold Customer harmless from any damages finally awarded to such third party by a court of competent jurisdiction as a result of such claim. For the avoidance of doubt, "Customer's use of the Nextmidi Software" shall not include any results or output of this use (such as but not limited to music created by means of the Nextmidi Software).

7.2. Remedies

If a claim under Section 7.1 occurs or in Nextmidi's opinion is reasonably likely to occur, Nextmidi may at its expense and sole discretion:

- (i) procure the right to allow Customer to continue using the applicable Nextmidi Software,
- (ii) modify or replace the applicable Nextmidi Software to become non-infringing, or
- (iii) if nothing of the foregoing is commercially practicable at Nextmidi's sole discretion, terminate Customer's license to the affected portion of the Nextmidi Software and refund license fees paid by Customer corresponding to such Nextmidi Software or portion of such Nextmidi Software.

7.3. Exclusions

Nextmidi shall have no obligations under this Section 7 if the claim is based upon or arises out of:

- (i) any modification to the applicable Nextmidi Software not made by or at the direction of Nextmidi,
- (ii) any combination or use of the applicable Nextmidi Software with any third-party equipment, products or systems, to the extent that such claim is based on such combination or use,
- (iii) Customer's continued use of the allegedly infringing technology after being notified of the infringement claim,
- (iv) Customer's failure to use Updates made available by Nextmidi,
- (v) Customer's failure to use the Nextmidi Software in accordance with the applicable Documentation, and/or
- (vi) use of the Nextmidi Software other than in accordance with this Nextmidi EULA (including without limitation use outside the scope of the license granted under this Nextmidi EULA).

7.4. This Section 7 constitutes Customer's sole and exclusive remedies, and Nextmidi's entire liability, with respect to infringement of third party intellectual property rights; however, Nextmidi's liability for intent shall remain unlimited.

7.5. Procedures

Nextmidi's indemnification obligation is conditioned on the Customer

- (i) giving Nextmidi prompt written notice of such claim,
- (ii) permitting Nextmidi to solely control and direct the defense or settlement of such claim, provided Nextmidi shall not settle any claim in a manner that requires the Customer to admit liability or pay money without the Customer's prior written consent, and

- (iii) providing Nextmidi all reasonable assistance in connection with the defense or settlement of such claim, at Nextmidi's cost and expense.

8. Warranty

Nextmidi represents and warrants to Customer that the Nextmidi Software for a period of 90 days materially conforms to the specifications as in the Documentation. Customer must notify Nextmidi of any warranty deficiencies within 14 days after knowledge of the deficiency.

Nextmidi shall, at its option, repair or replace such Nextmidi Software or refund the license fees paid for such non-conforming Nextmidi Software, in which case the license shall terminate.

The warranty does not apply if the applicable Nextmidi Software (i) has been modified, except by or at the direction of Nextmidi, (ii) has not been installed, used, or maintained in accordance with these Nextmidi EULA and Documentation, (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident, and/or (iv) is used with equipment, products or systems not specified in the Documentation.

9. Limitation of Liabilities

EXCEPT FOR CLAIMS RESULTING FROM THE INTENTIONALLY WRONGFUL ACTS OR OMISSIONS OF NEXTMIDI OR NEXTMIDI'S GROSS NEGLIGENCE NEXTMIDI SHALL NOT BE LIABLE (UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STATUTE, TORT OR OTHERWISE) FOR

- (a) ANY LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOST DATA, OR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR SUCH DAMAGES OR LOSSES WERE REASONABLY FORESEEABLE, AND
- (b) AN AMOUNT THAT EXCEEDS THE TOTAL FEES PAYABLE TO NEXTMIDI FOR THE RELEVANT NEXTMIDI SOFTWARE.

THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SPECIFIED IN THESE TERMS. MULTIPLE CLAIMS SHALL NOT EXPAND THE LIMITATIONS SPECIFIED IN THIS SECTION 9.
