BABY AUDIO End User License Agreement

IMPORTANT NOTICE: PLEASE READ CAREFULLY BEFORE DOWNLOADING, INSTALLING OR USING BABY AUDIO'S SOFTWARE:

- BY CLICKING ON THE "ACCEPT" BUTTON BELOW, OR BY DOWNLOADING, INSTALLING, OR USING BABY AUDIO'S SOFTWARE, YOU AGREE TO THE TERMS OF THIS AGREEMENT, AND ALL INCORPORATED TERMS INCLUDING BABY AUDIO'S PRIVACY POLICY, AS APPLICABLE, WHICH WILL BIND YOU.
- IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, WE WILL NOT LICENSE BABY AUDIO'S SOFTWARE TO YOU AND YOU MUST DISCONTINUE THE INSTALLATION OR DOWNLOAD PROCESS OR CEASE USE OF BABY AUDIO'S SOFTWARE.

This End User License Agreement (the "EULA" or "Agreement") is made between you as an end user ("you," "Licensee," or "End User") and Baby Audio ApS d/b/a BABY AUDIO ("BABY AUDIO") in order to provide you with a license to use the Software as set forth in this Agreement under the terms and conditions herein. Use of the Software and associated documentation is subject to the terms set forth herein and your use indicates your acceptance of these terms. This EULA has no relation to any separate purchase agreement when the Software was purchased.

USE OF THE SOFTWARE AND ASSOCIATED DOCUMENTATION THAT YOU HAVE LICENSED FROM BABY AUDIO IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THIS EULA. PLEASE NOTE THAT SEVERAL SECTIONS ARE LOCALIZED FOR EUROPE IN ORDER TO COMPLY WITH LOCAL LAWS AND THAT THESE SECTIONS SHALL ONLY APPLY TO CUSTOMERS WHO ACQUIRED THE SOFTWARE IN EUROPE.

By accepting this Agreement and/or installing or otherwise using the Software, you acknowledge that you have read this EULA, understand its terms and conditions, and agree to be bound by such terms and conditions. If you are accepting this EULA on behalf of a corporation, company, or as an entity other than as an individual, you declare that you are authorized to do so.

1. Definitions.

- **1.1.** "Software" means the BABY AUDIO software products, bundles, or other related BABY AUDIO products and any associated documentation thereof.
- **1.2.** "Consumer" means a Licensee who is a natural person who licensed the Software for a purpose which can be regarded as being outside his/her trade or profession.
- **1.3.** "Intellectual Property Rights" means collectively, copyright rights, trademark rights, patent rights, trade secrets, moral rights, rights of publicity, authors' rights, goodwill, and all other intellectual property rights as may exist now and/or hereafter come into existence and all renewals and extensions thereof, regardless of the territory or jurisdiction.
- **1.4.** "Use" means storing, loading, installing, executing, or displaying the Software as intended pursuant to the terms of this EULA.

2. Ownership and Intellectual Property Rights.

2.1. The Software and all Intellectual Property Rights therein is owned by BABY AUDIO and is protected by domestic and international laws and treaties. You, as a Licensee, through downloading, installing, copying or Use of the Software do not acquire any ownership rights to

- the Software. The rights to Use the Software as set out in this Agreement are licensed, not sold, to you by BABY AUDIO.
- 2.2. Trademarks contained in the Software are trademarks or registered trademarks of BABY AUDIO. Third party trademarks, trade names, product names and logos may be the trademarks or registered trademarks of their respective owners. You may not remove or alter any trademark, trade names, product names, logo, copyright or other proprietary notices, legends, symbols, or labels in the Software. This EULA does not authorize you to Use BABY AUDIO's or any third-party trademarks except as necessary for Use of the Software.
- 2.3. You may provide BABY AUDIO with feedback on our Software, including, without limitation, feedback on faults within or relating to the Software, or suggestions for improvements or other changes to all or any portions of the Software. Licensee hereby agrees that BABY AUDIO shall own all feedback, ideas, concepts, and changes to any portion of the Software developed or identified during the course of or as a result of Licensee's Use of the Software and all intellectual property rights ("Results"), and Licensee hereby assigns to BABY AUDIO all of Licensee's right, title, and interest thereto.
- 2.4. THIS SECTION 2.4 DOES NOT APPLY IF YOU ACQUIRED THE SOFTWARE IN EUROPE:
 - **2.4.1.** As between you and BABY AUDIO, BABY AUDIO is the owner of all right, title and interest in and to the Software (including all Intellectual Property Rights therein) regardless of the media or form of the Software; whether online, by USB drive, or otherwise.
 - **2.4.2.** Licensee shall not, at any time during or after the effective Term of the EULA, dispute or contest, directly or indirectly, BABY AUDIO's exclusive right and title to the Software or the validity thereof.
 - **2.4.3.** Licensee shall not attempt to develop any Software that contains the "look and feel" of any of the Software or is otherwise derivative of the Software using any knowledge learned through your Use of the Software.

3. License Grant.

- **3.1.** BABY AUDIO grants you a non-exclusive, revocable, personal, non-transferable, non-sublicensable license to Use the Software on up to three (3) hardware units (computers, mobile devices, smart pads, USB drives or venue consoles) simultaneously pursuant to the terms of this EULA. In the event more licenses are needed, additional licenses may be requested from BABY AUDIO at https://babyaud.io/contact.
- **3.2.** This license granted pursuant to this Section 3 is not intended for use on a multi-user system. Licensee may transfer the Software from one device to another over a network, but Licensee may not copy it to additional sites outside of Licensee's own network or make additional copies from use on other networks or sites. The Software may only be actively Used on one device at a time. All associated products, updates, upgrades, or any extensions thereof, included within the Software are part of this same License granted by BABY AUDIO.

4. Transfers.

4.1. You may transfer the Software by contacting BABY AUDIO and paying any applicable administrative fee. Subscription Software licenses cannot be transferred, and perpetual Software licenses cannot be transferred into a subscription Software license. The transferee must have an active BABY AUDIO account and will incur a transfer fee. Your license will automatically terminate upon any transfer of the Software. Upon transfer, you must: (i) completely uninstall the Software from your device or network and not retain any backup copy of the Software (or its components), and (ii) provide a copy of this EULA with the Software. The transferee must accept the terms and conditions of this EULA as a condition to the transfer.

- 4.2. You may not rent, lease, or sublicense the Software on a temporary or permanent basis.
- **4.3.** A license to Use the Software for (i) free, (i) as a beta version, or (i) labelled NFR ("Not For Resale") may not be sold or transferred.

5. Restrictions.

- **5.1.** You may not: (i) translate, reverse engineer, decompile, modify, disassemble, decrypt, or create derivative works from the Software or provide the Software as "software as a service;" (ii) Use, copy, or transfer the Software, or any copy in whole or in part, except as expressly provided for in this license; (iii) export the Software in contravention of applicable export laws and regulations; (iv) remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other Intellectual Property Right notices from the Software or any copy thereof.
- **5.2.** All restrictions within this Section 5 are subject to the extent that the Licensee is granted the right by applicable law to decompile, reverse engineer, and/or disassemble the software in order to obtain information necessary to render the Software interoperable with other software.

6. Updates and Upgrades.

- **6.1.** BABY AUDIO may from time to time in its sole discretion develop and provide updates, upgrades, bug fixes, patches, and/or other corrections and new features (collectively, "Updates") to the Software. Updates may modify or delete certain features and functionality of the Software. You agree that BABY AUDIO has no obligation to provide any Updates to the Software, and BABY AUDIO in no way warrants or represents that any particular features or functionality of the Software will be maintained.
- **6.2.** BABY AUDIO may decide, in its sole discretion, whether Updates or Upgrades are offered for free or as paid Updates or Upgrades (for example under a new version number of the Software).
- **6.3.** In order to update or upgrade the Software, Licensee must have a valid license to use the previous version of the Software. A "previous version" means any former version of the Software to which an update or upgrade is made.
- **6.4.** Licensee agrees that it is Licensee's responsibility to implement Updates in a commercially reasonable time to the extent advised by BABY AUDIO. Licensee acknowledges that any losses to the features or functionality of the Software due to Licensee's own delay in implementing any Updates shall be no fault of BABY AUDIO.
- **6.5.** If a previous version of the Software was provided for free, as a beta version, or was labelled as NFR, the restriction on transfer described in Section 4 shall also apply to the updated or upgraded version.

7. Third Party Materials.

- <u>7.1.</u> The Software may display or provide links to third-party websites or services, including through third-party advertising ("Third Party Materials"). Licensee agrees and acknowledges that BABY AUDIO is not responsible for Third Party Materials.
- 7.2. In the event the Software utilizes or includes any third-party content, software, or other copyrighted material ("Third Party Content"), the terms and conditions, where applicable, and conditions of use of such Third Party Content shall be provided along with the Software. Your use of such Third Party Content is governed by the respective terms and conditions, if any. By agreeing to this EULA, you are simultaneously agreeing to comply with the terms and conditions of any Third Party Content.
- **7.3.** If you acquired this Software in Europe, all set forth in this Section is subject to Section 10.1.1 of this EULA.

8. Data Collection and Communications.

- **8.1.** You acknowledge that when you download, install, or Use the Software, BABY AUDIO may track and collect information from your use of the Software ("Usage Data"), and aggregate such Usage Data in a "Usage Report". Applicable Usage Reports allow us to improve our Software and fulfill our contractual promises towards you.
- **8.2.** We may also send relevant news and updates related to our SOFTWARE (and other similar Baby Audio products) to your email address, which you have provided to us in connection with obtaining a license to our SOFTWARE. Please know that you can always opt-out to such communications by clicking the "unsubscribe" button available in our emails or by reaching out to us via our website's contact form available at https://babyaud.io/contact.
- **8.3.** Information collected through or in connection with the Software is subject to the BABY AUDIO Privacy Policy. Further information about BABY AUDIO data collection and Privacy Policy can be found at https://babyaud.io/privacy-policy.

9. Disclaimer of Warranties.

- **9.1.** ONLY IF YOU ACQUIRED THE SOFTWARE IN EUROPE, THE FOLLOWING SECTION 9.1 SHALL APPLY:
 - DISCLAIMER OF WARRANTIES for the Software: Subject to subsection "10.1.1" of this Agreement, the liability in connection with the Software is excluded except for intent or gross negligence. A claim for damages arising from a legal defect or a defect in the Software is only permissible if BABY AUDIO fraudulently conceals such defect. Subject to any statutory claims the Licensee may have under law (which shall not be affected), BABY AUDIO is not obliged to provide any additional technical support to users of the Software.
- **9.2.** ONLY IF YOU ACQUIRED THE SOFTWARE OUTSIDE EUROPE, THE FOLLOWING SECTION 9.2 SHALL APPLY:

DISCLAIMER OF WARRANTIES EXCEPT AS PROVIDED ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND, AND BABY AUDIO HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE SOFTWARE EITHER EXPRESS OR IMPLIED WARRANTY OF ANY KIND INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. BABY AUDIO DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE OR THIRD-PARTY MATERIALS, INCLUDING THEIR CORRECTNESS, TIMELINESS, ACCURACY, FUNCTIONALITY, RELIABILITY, NONINFRINGEMENT OR OTHERWISE.

10. Limitation of Liability.

- **10.1.** ONLY IF YOU ACQUIRED THE SOFTWARE IN EUROPE, THEN THIS SECTION 10.1 SHALL APPLY:
 - **10.1.1.** BABY AUDIO shall only be liable without restriction according to the statutory provisions for damages of the Licensee caused by intentional or gross negligent conduct of BABY AUDIO or its agents. The same applies to personal injury and damages according to applicable law.
 - **10.1.2.** Otherwise, the liability of BABY AUDIO for damage claims, whatever the legal reason, is limited in accordance with the following conditions, unless otherwise provided by an explicit guarantee:
 - **10.1.2.1.** For damages caused by slight negligence, BABY AUDIO is only liable insofar as they cause damage to contractual obligations (cardinal obligations). Cardinal obligations are those contractual obligations which must be fulfilled in order to ensure orderly implementation of the contract and in whose observance the User should be able to trust.

- Insofar as BABY AUDIO is responsible for simple negligence hereafter, the liability of BABY AUDIO is limited to the typically foreseeable losses.
- **10.1.2.2.** The liability of BABY AUDIO for damages caused by loss of data and/or programs lost by slight negligence is limited to the typical cost of restoration, which would have been incurred in case of regular and appropriate data backup and data protection by the Licensee.
- **10.1.2.3.** The provisions of the above paragraph apply correspondingly to the limitation of damages for unsuccessful expenses under applicable law.
- **10.1.3.** The above liability restrictions shall also apply to agents and subcontractors of BABY AUDIO.
- 10.2. ONLY IF YOU ACQUIRED THE SOFTWARE OUTSIDE EUROPE, THEN THIS SECTION 10.2 SHALL APPLY: TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL BABY AUDIO, ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, INDIRECT, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING LOST PROFITS, BUSINESS INTERRUPTION, DAMAGED EQUIPMENT, OR LOST INFORMATION) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR THIRD PARTY MATERIALS, EVEN IF BABY AUDIO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL BABY AUDIO'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EXCEED THE AMOUNT PAID BY YOU FOR THE SOFTWARE GIVING RISE TO THE CLAIM IN THE PAST 3 MONTHS OR THE REPLACEMENT OF THE SOFTWARE WITH PRODUCT COMPARABLE RETAIL VALUE, WHICHEVER IS GREATER. YOU MUST SUBMIT ALL CLAIMS WITHIN A YEAR OF THE DATE OF OCCURRENCE OR ELSE THEY ARE WAIVED BY YOU. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.
- 11. Indemnification. THIS CLAUSE MAY NOT APPLY IF YOU ACQUIRED THE SOFTWARE IN EUROPE. Licensee agrees to indemnify, defend and hold harmless BABY AUDIO and its affiliates and their respective officers, employees, directors, agents, third-party licensees, successors and assigns from and against any and all liability, costs, losses, damages, and expenses (including reasonable attorneys' fees and expenses) arising out of any claim, suit, or cause of action relating to and/or arising from (a) your breach of any term of this EULA; (b) your violation of any rights of any third party; or (c) your use or misuse of the Software. Your indemnification obligations set forth in the immediately preceding sentence shall survive the termination of this EULA.

12. Term.

- 12.1. Licensee may terminate this EULA at any time by destroying all copies of the Software, in any form, in Licensee's possession or on any of Licensee's devices. Notwithstanding the foregoing, Software licenses governed by this EULA shall continue until terminated pursuant to Section 14, provided that you have an active BABY AUDIO account, and you are in full compliance with this EULA, including without limitation timely payment of any necessary fees.
- 12.2. IF YOU ACQUIRED THE SOFTWARE OUTSIDE OF EUROPE: This EULA will also terminate automatically upon conditions set forth elsewhere in this EULA, or if the Licensee fails to comply with any term or condition of this EULA, without notice to the Licensee. The Licensee agrees upon such termination to destroy the Software together with all copies in any form.
- **13. Termination.** BABY AUDIO may terminate your license without notice (a) for failure to comply with this EULA; (b) in the event of a change of control or sale of BABY AUDIO; (c) in the event BABY AUDIO

otherwise goes out of business; or (d) in the event BABY AUDIO discontinues the Software. Upon termination, you must immediately destroy the Software together with all copies, adaptations, and merged portions in any form.

- 14. Subscriptions. BABY AUDIO may offer subscriptions for certain Software or bundle of Software ("Subscriptions") in monthly, bi-annual, annual, etc. subscription terms (each a "Subscription Term"). Your Subscription will automatically renew for additional Subscription Terms unless you cancel it before the next Subscription Term. You will automatically be charged the Subscription price before the start of each Subscription Term (i.e., every month in the case of monthly Subscriptions or each year in the case of annual Subscriptions). You may cancel the Subscription at any time through your BABY AUDIO account. Upon cancellation of your Subscription, you will no longer be charged for additional Subscription Terms, and you may continue to use the Software for the remaining Subscription Term for which you were charged. For the avoidance of doubt, once you pay for a Subscription Term, you may not request a refund for that Subscription Term, unless otherwise required by applicable law. If you allow your Subscription to lapse by failing to pay, your Software will no longer run. Subscription pricing is subject to change. New pricing takes effect upon renewal of your Subscription. BABY AUDIO reserves the right to change bundle content.
- 15. Export Law Assurances. THIS SECTION DOES NOT APPLY IF YOU ACQUIRED THE SOFTWARE IN EUROPE. You may not export or re-export the Software except as authorized by United States law and the laws of the jurisdiction in which the Software was obtained. In particular, but without limitation, the Software may not be exported or re-exported (a) into or to a nation or a resident of any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By installing or using any component of the Software, you represent and warrant that you are not located in, under control of, or a national or resident of any such country or on any such list.

16. Governing Law, Jurisdiction, and Dispute Resolution.

- **16.1.** ONLY IF YOU ACQUIRED THE SOFTWARE IN EUROPE, THEN THIS SECTION 16.1. SHALL APPLY:
 - **16.1.1.** Exclusively Danish law applies, with the exception of the United Nations Convention on Contracts for the International Sale of Goods (CISG), even if the Licensee has his/her residential or business seat abroad. If the Licensee is a Consumer, this choice of law shall not, however, have the result of depriving the consumer of the protection afforded to her/him 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 according to Art. 6 I of the ROM I (REGULATION (EC) No 593/2008).
 - **16.1.2.** The place of performance is Aarhus, Denmark.
 - **16.1.3.** For all present and future claims from this Agreement, the exclusive jurisdiction is Aarhus, Denmark. The same jurisdiction applies if the Licensee has no general jurisdiction inside Denmark, if he/she relocates his/her residence or habitual abode out of the country, or if his/her residence or habitual abode is not known at the time of institution of legal proceedings.
 - **16.1.4.** By agreeing to these terms and conditions, in the event of any claim you may have arising from or related to the Software or this EULA, you agree you hereby waive any right to participate in any type of lawsuit brought and/or maintained as a class action or similar in nature to a class action.
- **16.2.** ONLY IF YOU ACQUIRED THE SOFTWARE OUTSIDE EUROPE, THEN THIS SECTION 16.2. SHALL APPLY:

This EULA will be governed by and construed in accordance with the laws of the State of New York and of the United States of America. This EULA shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods (CISG), the application of which is expressly excluded. By agreeing to these terms and conditions, in the event of any claim you may have arising from or related to the Software or this EULA you agree to the exclusive personal and subject matter jurisdiction of the courts located within the New York, New York, U.S.A. for making and resolving any such claims, and hereby waive any right to participate in any type of lawsuit brought and/or maintained as a class action or similar in nature to a class action. BABY AUDIO reserves the right to make any claim against you and seek and be granted any legal or equitable remedy against you in any court anywhere in the world.

17. Notice to U.S. Government End Users. The Software is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if you are an agency of the US Government or any contractor therefor, you receive only those rights with respect to the Software as are granted to all other end users under this EULA, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

18. General Provisions.

- **18.1.** ONLY IF YOU ACQUIRED THE SOFTWARE IN EUROPE, THEN THIS SECTION 18.1. SHALL APPLY: **18.1.1.** Licensee can only offset claims of BABY AUDIO with undisputed or legally established counterclaims. Licensee can only exercise a right of retention if his/her counterclaim is based on the same contractual relationship. The transfer of Licensee's claims against BABY AUDIO is prohibited.
 - **18.1.2.** All rights not explicitly granted in this Agreement are reserved.
 - **18.1.3.** The failure or delay of BABY AUDIO to exercise any of its rights under this EULA or upon breach of this EULA shall not be deemed a waiver of those rights or of the breach.
- **18.2.** ONLY IF YOU ACQUIRED THE SOFTWARE OUTSIDE EUROPE, THEN THIS SECTION 18.2. SHALL APPLY:
 - **18.2.1.** This Agreement, along with the BABY AUDIO Privacy Policy and any terms of service, constitutes the complete and exclusive agreement between BABY AUDIO and Licensee with respect to the Software and supersedes all proposals, representations, understandings, and prior agreements, whether oral or written, and all other related communication between the parties.
 - **18.2.2.** All rights not explicitly granted in this Agreement are reserved.
 - **18.2.3.** Any clause in this Agreement, which is found to be invalid or unenforceable shall be deemed deleted and the rest of this Agreement shall remain unaffected.
 - **18.2.4.** The failure or delay of BABY AUDIO to exercise any of its rights under this EULA or upon any breach of this EULA shall not be deemed a waiver of those rights or of the breach.
 - **18.2.5.** You may not assign this EULA or any of the responsibilities of Licensee herein except as expressly provided for in this Agreement.

Last updated: August 26, 2022