

## **End User License Agreement ("EULA") for the use of SoundPLAN software.**

This End User License Agreement (hereinafter referred to as "EULA") is between you (hereinafter referred to as "Licensee") as a legal entity and SoundPLAN GmbH (hereinafter referred to as SoundPLAN) sets out the terms and conditions for the use of the SoundPLAN software (hereinafter referred to as "the Software") and the related documentation and information regardless of the form in which they are transmitted or exist. SoundPLAN is the owner and holder of all proprietary rights of the software and all documentation and information.

You agree to be bound by the terms of this EULA through your download, installation, or use of the Software, or your express agreement to this EULA. The SoundPLAN EULA supersedes any general terms and conditions used by your company.

If you do not agree with the SoundPLAN EULA, you must disable, uninstall and return the Software, user documentation, confidential information and hardware to SoundPLAN or the official SoundPLAN Partner from whom they were acquired.

This License Agreement supersedes all previous SoundPLAN End User License Agreements between SoundPLAN GmbH and the Licensee.

Unless this EULA explicitly refers to a specific use (e.g. purchase or rental), the following terms and conditions apply to the use of the Software in general.

### **Definitions**

**"Affiliate companies"** means any corporation or company that directly or indirectly controls, or is controlled by, or is under common control with the relevant party, where "control" means to: (a) own more than 50% of the relevant party; or (b) be able to direct the affairs of the relevant party through any lawful means (e.g., a contract that allows control).

**„SoundPLAN Partner“** means an authorized reseller, distributor or systems integrator authorized by SoundPLAN to sell SoundPLAN software.

**"Module Description"** means the Description of the SoundPLAN software and single Modules of the software officially published by SoundPLAN specifying the functionalities and capabilities of SoundPLANnoise and its modules.

**"User Documentation"** means the technical specifications and usage materials published by SoundPLAN specifying the functionalities and capabilities of the applicable Software and explains the application of the program to the user.

**"Offer"** means the offer of SoundPLAN or a SoundPLAN Partner detailing the Software, modules, the license types and terms and payment.

**"Software"** means the SoundPLAN software SoundPLANessential, SoundPLANmanda and SoundPLANnoise and modules, including upgrades, firmware and applicable user documentation.

**"Updates"** means all updates, upgrades, bug fixes, error corrections, enhancements and other modifications to the Software.

**"Service and support"** means hotline service, which is provided through SoundPLAN or a SoundPLAN Partner, and online updates to the Software.

## 1. Subject of contract

1.1 The SoundPLAN EULA grants the right to use the Software for a temporary (lease) or perpetual (purchase) period of time.

1.2 SoundPLAN or SoundPLAN Partner provides a copy of the Software on USB memory stick or makes the software available for download on its homepage (<https://www.soundplan.eu/de/software/selber-testen/demoversionen/>), and delivers a hardware key (hereinafter "Hardlock") or cloud-based software key.

1.3 The functionality of SoundPLANnoise is described by the module description (<https://www.soundplan.eu/de/software/soundplannoise/module/>) in effect on the date of installation. The module description shall not be understood as a guarantee. A guarantee shall only be granted if it expressly designated as such.

1.4 Installation and configuration services are not subject to this EULA.

## 2. Grant of License and Use

2.1 Lease License: Subject to the payment of a monthly or yearly license fee, SoundPLAN grants the licensee a non-exclusive, non-transferable and non-sublicensable license, limited in time by the term of lease, to use the software as set out in this EULA and the offer of SoundPLAN or the official SoundPLAN Partner.

2.2 Perpetual License: Subject to the payment of the license fee, SoundPLAN grants the licensee a non-exclusive, non-transferable (except with respect to Section 2.7), non-sublicensable license to use the software as set out in this EULA and the offer of SoundPLAN or the official SoundPLAN Partner.

2.3 Subject to payments of license fees, SoundPLAN provides the licensee with a license file. Until the full payment of the license fee is received, SoundPLAN issues a temporary license file.

2.4 The licenses are granted as Single User License, Network License, Cloud License, Rental Cloud License, Global License, or Research & Education License.

a) Single User License: this license allows a single authorized user to use the software. The Software may be installed on multiple computers but only be executed on a single computer at the same time (if the software is to be used on additional computers/workstations at the same time, additional licenses must be purchased or rented);

b) Network License: this license can be used by any computer that has access to a particular network server within a country, according to the numbers of purchased licenses.

c) Cloud License: only in case of software purchase; this license allows a single authorized user to use the software. The Software can and may be registered on a maximum of two computers but only be executed on a single computer at the same time (if the software is to be used on additional computers/workstations at the same time, additional licenses must be purchased). This license requires an active Internet connection at least every two hours when in use;

d) Rental Cloud License: only in case of software rental; this license allows a single authorized user to use the software. The Software can and may be registered on only one computer (if the software is to be used on additional computers/workstations at the same time, additional licenses must be rented). This license requires an active Internet connection at least every two hours when in use;

e) Global License: only in case of software purchase; a multi-use license is for use of the Software at multiple company sites (does not apply to affiliated companies) according to the number of purchased licenses.

f) Research & Education License: this license may be used exclusively for research and educational purposes; use for commercial purposes is explicitly prohibited.

2.5 You shall not modify, adapt, translate, derive, lease, sublicense, publicly reproduce or make available by wire or wireless means, or make available to third parties, whether for a fee or free of charge, the Software or any backup copy. A copy may only be made for backup purposes.

2.6 You shall not reverse-engineer, decompile, disassemble or reproduce the Software, except as expressly authorized by SoundPLAN.

2.7 An authorized transfer of the Software license is only permitted in case of software purchase. Upon completion of a transfer, your software license is automatically terminated, and you must completely give up the use of the software, remove the software and delete all copies unless you are legally bound to keep them for longer time. You shall disclose to SoundPLAN the name of transferee and ensure, that the transferee accepts the EULA. Splitting of purchased license volume packages is not permitted. SoundPLAN may withhold consent to any transfer not conforming to this Policy.

2.8 SoundPLAN may immediately suspend your usage rights if you breach section 2. Upon suspending of the usage rights, you must cease usage of the software immediately.

2.9 Copyright notices, serial numbers and other features shall not be removed from or modified in the Software or user documentation.

### **3. Maintenance / Limited Warranty**

3.1 Lease – Maintenance: during the term of usage, SoundPLAN warrants that the software complies with the module description and the user documentation and provides software maintenance, support and service.

3.2 Purchase – Limited Warranty: SoundPLAN warrants within one-year from the date on which the license is provided by SoundPLAN or its distribution partners, that the software complies with the module description and the user documentation and provides support and service. SoundPLAN does not warrant, that the Software will meet Licensees' requirements, or that operation of the Software will be uninterrupted, or that the software is error free.

3.3 Sections 3.1 and 3.2 do not apply if the software or the equipment on which it is authorized to use, has been altered, has been subjected to abnormal physical conditions, accident or negligence, or installation or use inconsistent with this EULA or SoundPLAN's instructions, if the license has been provided free-of-charge, or has not been provided by SoundPLAN or an official SoundPLAN Partner. Upon your prompt written notification to SoundPLAN or SoundPLAN Partner during the warranty period your sole and exclusive remedy (unless otherwise required by applicable law) is, at SoundPLAN's discretion, the repair or replacement of the applicable software. SoundPLAN may fulfill this obligation by providing updates with an automatic installation routine available for download within the software and by offering telephone support.

3.4 SoundPLAN disclaims all warranties and conditions for third-party software which are operated with the software via interfaces and are delivered with the software.

### **4. Limitation of Liability**

SoundPLAN in no event shall be liable for indirect, incidental, exemplary, special or consequential damages; loss or corruption of data or interruption or loss of business; or loss of revenues, profits, goodwill or anticipated sales or savings which may be caused by, directly or indirectly, the inadequacy of the software and its user documentation for any purpose or use thereof or by any defect or deficiency therein. This limitation of liability applies whether the claims are in warranty, contract, tort (including negligence), infringement, or otherwise, even if either party has been advised of the possibility of such damages. This limitation of liability is cumulative and not per incident.

### **5. Backup security measures, audit rights**

5.1 You will use reasonable means to protect the software and the passwords and other login credentials.

5.2 SoundPLAN shall have the right to an audit that the use of the software is in accordance with the license granted and in compliance with this EULA. You will provide SoundPLAN with information, grant access to relevant documents and records and enable an audit of the hardware and software environment. The audit can be executed through SoundPLAN or through an independent third-party auditor of SoundPLAN's choosing and at SoundPLAN's expense during regular business hours and upon prior notice.

## **6. Usage analysis**

SoundPLAN anonymously analyses the usage behavior of the software. SoundPLAN does not receive any information that identifies you. At the moment, SoundPLAN does not perform any analysis of usage behavior. As soon as an analysis of usage behavior is introduced, the user will be informed separately.

## **7. Confidentiality**

7.1 The licensee shall hold in confidence and use no less than reasonable care to avoid disclosure of any confidential information and documents of SoundPLAN, which is visibly marked as confidential or is information that by its nature should reasonably be considered confidential whether disclosed in writing or verbally, to any third party, except employees, affiliates and contractors who have need to know (Permitted Recipients).

Permitted Recipients are to be subjected to written confidentiality obligations no less restrictive than the obligations under this EULA

## **8. Breach of this EULA**

If the licensee or employees or any other person for which the licensee is liable, breach this EULA, you shall indemnify SoundPLAN as if the contract had been duly performed. You are legally responsible for any copyright infringement caused or encouraged by your failure to comply with the terms of this EULA.

## **9. Term and termination**

9.1 The term of the license in case of lease is agreed between the parties but is at least one month. The license terminates if you fail to comply with any provision of this EULA.

9.2 SoundPLAN shall have the right to terminate this EULA immediately upon your breach of any provisions of this EULA, or in the event of your bankruptcy or insolvency.

9.3 Upon termination of this EULA, you shall stop using the software and destroy or return any copy of software, documentation, confidential information and hardware.

9.4 Each termination must be made by written notice.

## **10. Miscellaneous**

10.1 Neither Party may assign or otherwise transfer its right or obligations under this EULA without the other party's express written consent. SoundPLAN may subcontract any service associated with the SoundPLAN software to third parties.

10.2 Amendments, modifications and alterations must be made in writing. This shall also apply to the amendment or cancellation of this Paragraph. Electronic documents in text form do not fulfill the written form.

10.3 This EULA also applies to any update and other changes to the software which SoundPLAN provides or makes.

10.4 SoundPLAN may change this EULA or any of its components by updating this EULA on SoundPLAN.eu. Changes to the EULA apply to any Licenses acquired or renewed after the date of modification.

10.5 The Software may be subject to export and import restrictions. You acknowledge and agree to the applicability of and your compliance with those laws, and you will not receive, use, transfer, export or re-export the software in a way that would cause SoundPLAN to violate those laws. You also agree to obtain any required licenses or authorizations.

10.6 If any term of this EULA is not enforceable, it will not affect any other terms.

10.7 All documents referred to in this EULA shall be a binding part of the EULA.