

SDK “Stems Master Dynamic Library”

Preamble

Native Instruments GmbH, Schlesische Str. 29-30, 10997 Berlin, Germany (“**Native Instruments**”) is a leading manufacturer of software and hardware for computer-based music production and performance. The company’s mission is to develop innovative, fully integrated solutions for all professions, styles and genres. The resulting products regularly push technological boundaries and open up new creative horizons for professionals and amateurs alike.

The **Recipient** is engaged in the business of development and distribution of music software, especially software for DJ performances.

Native Instruments has developed an open multi-track audio format for the use within DJ performance software such as e.g. TRAKTOR and music production software (“**Stems**” or “**Stems Format**”).

The Stems Format itself is an open format and it is the aim of Native Instruments to have developers and companies make use of the Stems Format in their software and hardware products.

A Stems Format file contains an audio-recording track split into four musical elements: A drums stem, a bassline stem, a melody stem, and a vocal stem for example. The Stems Format provides the ability to freely interact with a track’s different musical elements. Each Stem can be controlled independently to create instant new mixes, mashups, instrumentals, “a cappellas”, and more.

To make use of Stems, the four different separate tracks need to be converted into the Stems Format. For making full use of the Stems after this conversion, Native Instruments has developed a DSP Library in binary form which can be used to add final audio processing to the separate Stems (“**Stems Master Dynamics Library**” or “**Licensed Software**”) and is providing a software development kit (“**SDK**”) for the development of software in connection with the Stems Master Dynamics Library and details with respect to the Stems Format.

Native Instruments is the owner of all related intellectual property rights and industrial property rights in the Licensed Software provided with the SDK.

We kindly ask you to read the following carefully and to express your consent by checking the respective checkbox. If you have any questions to the statements given by you herein, please contact our Legal Department at legal@native-instruments.de

Declaration by Recipient

I, Recipient, hereby declare my full consent with the following:

1. Subject

The subject of this Declaration is the terms and conditions for the usage of the SDK by the Recipient limited to the purpose of integrating the Stems Master Dynamics Library as developed by Native Instruments in a product by Recipient for the purpose of creating or playing audio recordings in the Stems Format (“**Recipient’s Product**”). The Stems Master Dynamics Library shall not be used separately from Recipient’s Product or for other purposes by Recipient as set out before.

2. Grant and Scope of Rights

(1) Native Instruments grants to the Recipient only a limited, world-wide, non-exclusive, non-transferable and non-assignable license bearing right according to the term as set out below and license to use the SDK only for:

Integration of the Licensed Software within Recipient’s Product that makes full use of the Stems Format.

- (2) The Recipient shall not modify, decompile, reverse engineer, sell, resell, lease, license, distribute or otherwise transfer the licensed software or any derivative work thereof.
- (3) Any right that is not granted hereunder remains with Native Instruments.
- (4) Any information supplied by Native Instruments or obtained by Recipient, as permitted hereunder, may only be used for the purposes as described herein and may not be disclosed to any third party or used to create any software which is substantially similar to the expression of the software provided. Such information does not include information which Recipient can show was known to Recipient prior to this Declaration or which, as can be proved by Recipient, was independently developed by Recipient without any information provided by Native Instruments.

3. Intellectual Property, Confidentiality

- (1) The Licensed Software as provided in the SDK and any copies Recipient is making of the Licensed Software for the purpose of this Declaration are the intellectual property of and are owned by Native Instruments. The structure, organization and code of the Licensed Software are valuable trade secrets and confidential information of Native Instruments. Recipient warrants and represents to treat as confidential both the information received from Native Instruments and the know-how and other knowledge developed during the operations under this Declaration.
- (2) Such information shall serve exclusively for Recipient's own use within this Declaration. The parties shall subject their employees and subcontractors to corresponding obligations; the disclosure of such information to third parties shall in any case require prior written approval by Native Instruments. This obligation is also applicable past the termination of this Declaration.
- (3) Recipient acknowledges that this paragraph is a material obligation and requirement of this Declaration. The obligation to observe secrecy also continues after the conclusion or the end of this Declaration. In the event of a breach of the aforementioned conditions, Recipient is obliged to pay Native Instruments a contractual penalty of EUR 10,000.00 (ten thousand Euro), thereby renouncing the objection of a continued infringement. Native Instruments however reserves the right to claim damages above this amount.

4. Warranties, Indemnification, Limitation of Liability

- (1) Native Instruments represents and warrants as follows:
 - a) that Native Instruments owns and controls the rights granted herein with respect to the Licensed Software;
 - b) Native Instruments is free to enter into and fully perform under this Declaration;

TO THE EXTENT ALLOWABLE UNDER APPLICABLE LAW, NATIVE INSTRUMENTS EXPRESSLY DISCLAIMS ALL WARRANTIES OTHER THAN THOSE PROVIDED ABOVE, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

- (2) The Recipient represents and warrants as follows:
 - a) that Recipient is a corporation validly existing and in good standing in its state of incorporation;
 - b) that the Recipient is free to enter into and fully perform under this Declaration;
- (3) This SDK and the Licensed Software is being delivered to Recipient "as is" and Native Instruments is not making any warranty as to its use or performance. Native Instruments does not and cannot warrant the performance or results Recipient may obtain by using the SDK and the Licensed Software. Native Instruments makes no warranties, conditions, representations, or terms (express or implied whether by statute, common law, custom, usage or otherwise) as to any matter including without limitation non-infringement of third party rights, merchantability, integration, satisfactory quality, or fitness for any particular purpose.

- (4) TO THE EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES SHALL NATIVE INSTRUMENTS BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR

LOSSES WHICH MAY BE SUFFERED BY EITHER OF THEM WITH RESPECT TO THE SUBJECT MATTER HEREOF, EVEN IF NATIVE INSTRUMENTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(5) Recipient agrees to indemnify, defend and hold harmless Native Instruments, its parent, subsidiary, related and affiliated companies, their officers, directors, employees, agents, representatives and assigns (“Native Instruments’ Indemnified Parties”), jointly and severally, from any and all claims, suits, liabilities, losses, damages and expenses (including reasonable legal fees and expenses) which arise out of or resulting from any breach of the terms of this contract by Recipient or breach of the warranties made by Recipient herein, whether during the term, or at any time thereafter.

5. Term, Termination and Consequences of Termination

(1) This Declaration shall become effective upon its acceptance by Recipient (expressed via checking the respective check-box), and shall end after termination, whereas termination is possible any time with a notice period of 4 (four) weeks, email is sufficient.

(2) A termination for cause without notice period is possible at any time, particularly in the case of a material breach by the other party of one of the obligations under this Declaration.

(3) Upon termination of this Declaration, Recipient shall cease and desist from using the SDK for further products, and – where possible – return all information and software to Native Instruments without keeping any copy.

6. General Provisions

(1) This Declaration contains all agreements made. Written and/or verbal ancillary agreements do not exist. Any future amendments and/or supplements must be agreed to in writing. This also applies to renouncing the written form requirement. An email is not meeting the requirement of the written form.

(2) The legal ineffectiveness of a provision shall not affect the legal effectiveness of the other contractual parts. The parties undertake to replace an ineffective provision with an effective regulation, coming as close as possible to the desired economic result while corresponding to the contractual purpose in the best possible way.

(3) The place of performance as well as the exclusive court of jurisdiction for all disputes arising from this Declaration is Berlin, Germany. The law of the Federal Republic of Germany applies under the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).