

SOFTWARE LICENSE AGREEMENT

This Agreement is made as of AUG 1, 1992, between NeXT Computer, Inc., a California corporation with principal offices at 900 Chesapeake Drive, Redwood City, CA 94063 ("NeXT"), and CCRMA of Stanford University, an educational institution (type of entity) with offices at Stanford, CA 94305 ("Licensee").

Whereas, NeXT has developed and owns the software known as "Music Kit" and related support software described in Exhibit A (the "Software") that NeXT is willing to license to Licensee in order, among other commitments, for Licensee to (a) port the Software to NeXTSTEP, Release 3.x software running on at least two different NeXT computers (i.e., two different microprocessors), (b) provide support for the Software and (c) make freely available a distribution copy of Licensee's ported software.

Whereas, NeXT desires to aid Licensee's efforts with respect to the Software by maintaining an annual membership in The Stanford Center for Computer Research in Music and Acoustics ("CCRMA").

Now therefore, in consideration of the licenses, promises and covenants set forth below, the parties agree as follows:

1 LICENSE. Subject to the performance by Licensee of the obligations set forth in Section 2(a) and the terms and conditions of this Agreement, NeXT grants to Licensee a nonexclusive, nontransferable, license:

(a) to use, copy, modify, and prepare and have prepared derivative works of the Software for internal use in source code and object code forms on NeXT computers and other computers running the NeXTSTEP operating environment software; and

(b) to distribute, and to sublicense others through the channels of distribution to copy and distribute, the Software and derivative works based on the Software developed by or for Licensee in source and/or object code form only for use only on NeXT computers and other computers running the NeXTSTEP operating environment software.

2 COMMITMENTS. The grant of license from NeXT set forth in Section 1 above and obligations of Licensee hereunder shall be subject to the following:

(a) The Software license to Licensee shall be subject to performance by Licensee of all of the following:

(i) Licensee shall use best efforts to port the Software to the NeXTSTEP operating environment software on all available NeXT computer platforms (i.e., Motorola 680X0 and at least one additional hardware architecture designated by NeXT) with built-in sound Input/Output which have performance levels substantially similar to or greater than the current NeXTstation products and in any event not later than 90 days following commercial availability from NeXT of such platforms.

(ii) Any product developed by or for Licensee based upon any part of the Software shall be named by Licensee and Licensee agrees that such name shall not include the trademark "NeXT" or any similar name or reference to NeXT.

(iii) Licensee shall provide all service and support to any sublicensee of the Software.

(iv) NeXT shall use best efforts to direct all users of the Software to obtain service and support from Licensee. In the event that Licensee fails to provide reasonable service and support for any user, such that NeXT is required to provide such service and support, Licensee shall indemnify and hold NeXT harmless from, any and all costs and expenses incurred by NeXT in providing any service or support to any sublicensee of Licensee hereunder.

(v) Licensee shall make reasonable efforts to ensure that the Software and Enhancements are available worldwide at no charge (except for media reproduction costs and shipping and handling, if any) for use (A) by all educational and not-for-profit organization and (B) on NeXT computers and other computers running the NeXTSTEP operating environment software. Nothing herein shall prevent CCRMA from selling support services in conjunction with the sale of the Software and Enhancements.

(b) The obligations of Licensee in Sections 1(b) and 2(a) shall be subject to performance by NeXT of the following:

(i) NeXT shall exercise its right to license and distribute portions of the Software identified as the DSP 56000/01 assembler, including linker and librarian ("Music Kit Tools") from Motorola, Inc. and to include the Music Kit Tools as part of its NeXTSTEP operating environment software through the commercial availability of NeXTSTEP running on NeXT computer platforms (i.e., Motorola 680X0 and at least one additional hardware architecture running NeXTSTEP designated by NeXT).

(ii) NeXT shall to maintain a four (4) year membership in the CCRMA Associates Program beginning Sept 1 1992. The initial year membership rate shall be \$12,000. NeXT shall pay the annual rate thereafter set by the CCRMA applicable to all of its other Associates Program members; provided that in no event shall such membership fee increase by more than 10% per annum.

(iii) Upon reasonable request by Licensee, NeXT shall make available on loan to Licensee appropriate NeXT hardware and software to permit Licensee to test the ported Software for compatibility and operation with the applicable NeXTSTEP software. Initially, a NeXTstation Turbo or Turbo upgrade board for the NeXTcube will be loaned to CCRMA to enable preparation and testing of the NeXTSTEP Release 3.0.

3 TITLE/PROPRIETARY RIGHTS. Licensee acknowledges that all title to and ownership of the Software (including all copyright, trade secret and other intellectual property rights in the Software) shall remain with NeXT. Licensee shall retain all title to and ownership of Licensee's modifications to the Software (including all copyright, trade secret and other intellectual property

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4 ENHANCEMENTS. Licensee shall have no obligation to deliver to NeXT a copy of the source code or object code for any enhancements, corrections, updates, improvements and other modifications to the Software developed by Licensee ("Enhancements"); provided, however, that if Licensee delivers to NeXT any Enhancements, Licensee thereby grants to NeXT a nonexclusive, irrevocable, unrestricted, royalty-free license to use, copy, modify, and prepare and have prepared derivative works of such Enhancements and to distribute, and to sublicense others through the channels of distribution to copy and distribute, in object code or source code form or both, those Enhancements delivered to NeXT. With respect to any Enhancements delivered to NeXT hereunder, Licensee represents and warrants that it has the rights and full power and authority to grant the license to NeXT provided herein.

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7 INDEMNIFICATION. NeXT agrees to defend any action brought against Licensee based on a claim that the Software infringes or violates any copyright or other proprietary right of any third party, except that NeXT shall have no liability as to any claim based on the use of the Software if modified by or for Licensee or used in connection with equipment, devices or software not supplied by NeXT, if such claim would have been avoided by the use of the Software without such modifications or with other equipment, devices or software. NeXT shall pay any award against Licensee, or settlement entered into on Licensee's behalf, based on such infringement

so long as Licensee (i) gives NeXT notice of any such claim sufficiently promptly so as not to prejudice NeXT's interests, (ii) provides reasonable assistance in connection with the defense and/or settlement, and (iii) permits NeXT to control the defense and/or settlement. Licensee agrees to defend any action brought against NeXT based on a claim that the Enhancements or the Software as modified by or for Licensee or as used in connection with equipment, devices or software not supplied by NeXT infringes or violates any copyright or other proprietary right of any third party. Licensee shall pay any award against NeXT, or settlement entered into on NeXT's behalf, based on such infringement so long as NeXT (i) gives Licensee notice of any such claim sufficiently promptly so as not to prejudice Licensee's interests, (ii) provides reasonable assistance in connection with the defense and/or settlement, and (iii) permits Licensee to control the defense and/or settlement. The rights granted to Licensee and NeXT under this Section 7 shall be the sole remedy for the infringement or alleged infringement of any patent, copyright, trademark or other proprietary right.

8 CONFIDENTIALITY. NeXT will deliver to Licensee one copy of the source code and object code for the Software in machine-readable form. NeXT acknowledges that except as may be agreed between the parties from time to time, the Software is not considered confidential. Licensee shall maintain the terms of this Agreement in confidence and shall not disclose it to any person, except to such persons who have a need to access such information and who have entered into an agreement to maintain such information or code in confidence. Notwithstanding the foregoing, Licensee shall not be obligated to maintain in confidence any information that Licensee can demonstrate (a) was in the public domain and was publicly available prior to Licensee's receipt thereof from NeXT or which subsequently becomes part of the public domain by publication or otherwise except by Licensee's wrongful act, (b) was in Licensee's possession prior to receipt thereof from NeXT, (c) was received by Licensee without restriction from a third party having no obligation of nondisclosure with respect thereto, or (d) was independently developed by Licensee.

9 TERM. This Agreement shall be effective as of the date hereof and shall continue for a period of four (4) years unless earlier terminated as provided in Section 10. This Agreement may be renewed by NeXT for additional terms in its sole discretion upon the payment of the applicable CCRMA Associates annual membership fee.

10. TERMINATION. This Agreement may be terminated as follows:

(a) upon mutual agreement of the parties;

(b) by NeXT in the event that Licensee fails to fulfill any of its commitments in accordance with Section 2;

(c) upon written notice by either party that the other party has committed a material breach of any term or condition of this Agreement (except pursuant to Section 10(b) in which event no notice from NeXT shall be required) and such party has failed to cure such breach within thirty (30) days of notification specifying such breach; or

(d) by either party immediately upon written notice, if (i) the other party is adjudicated bankrupt or makes an assignment for the benefit of creditors, or if a receiver, liquidator,

administrator or trustee is appointed for the other party's affairs or any analogous procedure is initiated; or (ii) the other party is dissolved or there is an assignment or transfer of a substantial part of the other party's assets to a third party.

Upon termination of this Agreement, the license granted hereunder to Licensee shall become a non-exclusive, non-transferable license to the source code and object code versions of the Software solely for internal use, and Licensee shall immediately discontinue all other use of the Software; provided, however, that termination of this Agreement shall not impair any rights granted to end user customers by or through Licensee in accordance with this Agreement prior to such termination.

11 EXPORT. Licensee acknowledges that the laws and regulations of the United States restrict the export and re-export of commodities and technical data of United States origin. Licensee agrees that it will not export or re-export the technical data of NeXT in any form without the appropriate United States and foreign government licenses. Licensee further acknowledges that it will comply with United States government export licensing requirements and that it will not re-export, directly or indirectly, any technical data or direct products of such technical data to country groups Q, S, W, Y or Z or Afghanistan or the People's Republic of China unless prior authorization is obtained from the United States Department of Commerce, if so required by United States or other government export laws or regulations. The above-mentioned country groups currently include the countries listed in Exhibit B.

12 FREEDOM OF ACTION. Each party understands that the other party shall be free to independently develop and acquire, distribute and market software and other products which are competitive with the Software, provided that the rights of Licensees rights hereunder shall be conditioned upon Licensee's compliance with the terms of this Agreement in the development or acquisition, distribution and marketing of such competitive software. Neither party makes any guarantee or commitment as to the success of the Software, and each agrees that neither party has any obligation to the other party except as specifically provided in this Agreement.

13 MISCELLANEOUS. Licensee may not assign any rights or obligations under this Agreement without the prior written consent of NeXT. All notices shall be sent by facsimile with a confirmation copy by regular mail or overnight delivery to the address set forth below and shall be deemed given three business days after the dispatch of such notice. This Agreement shall be governed by the laws of the State of California as applied to agreements and transactions between California residents being performed entirely within California.

14 ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes any prior agreements or understandings between the parties, whether written or oral, with respect hereto. No modification to this Agreement shall be of any force or effect unless made in writing signed by each party. This Agreement shall be binding upon the parties and their successors and assigns.

IN WITNESS WHEREOF, the undersigned have executed this license agreement as of the date first set forth above.

NeXT:

NeXT COMPUTER, INC.

By *Steve Jobs*
Title CEO, NeXT Computer, Inc
Date AUG 26, 1992

Address

900 Chesapeake Drive
Redwood City, CA 94063
Attention: General Counsel

LICENSEE:

By *John L. Churning*
Title Prof. of Music, Director CCRMA
Date July 24, 1992

Address

CCRMA/MUSIC
Stanford University
Stanford, CA 94305-8180

Attention: *Julius Smith*