

# Download of PATCHXR Software of PATCHXR AG



By downloading the PATCHXR Software, the Licensee accepts the Evaluation Licensing Terms of PATCHXR AG [www.patchxr.com/license.pdf](http://www.patchxr.com/license.pdf)

## EVALUATION LICENSING TERMS

### 1. Description of PATCHXR Software and of Evaluation License offered

**"PATCHXR Software"** is a modular authoring software tool / visual programming language for music and Digital Signal Processing (DSP) / extended realities (XR).

PATCHXR AG with its registered office in Zurich/Switzerland, postal address at c/o Melodie Mousset, Limmatstrasse 181, 8005 Zurich/Switzerland, registered in the Commercial Register of the Canton of Zurich under company number CHE-316.817.994 ("**PATCHXR**") grants the right to use the PATCHXR Software **for evaluation purposes for the benefit of the Licensee for further development purposes for the benefit of PATCHXR, i.e. free of charge but with some cooperation obligations of the Licensee in return.**

### 2. Application of these Evaluation Licensing Terms

These Evaluation Licensing Terms of PATCHXR govern the contractual relationship between PATCHXR and the Licensee with regard to the use of the PATCHXR Software conclusively ("**Evaluation License Agreement**"). If the Licensee downloads the PATCHXR Software, these Evaluation Licensing Terms shall be deemed accepted by the Licensee.

**Changes and amendments** must be made in writing.

Any general terms and conditions of the Licensee shall not be applicable.

### 3. License Granted: Permitted Use and Prohibited of Use

**License Granted:** PATCHXR grants to the Licensee a non-exclusive free right to use the PATCHXR Software during the Term of the Evaluation License Agreement (as defined below) subject to Licensee's compliance with these Evaluation License Terms and Licensee's use within the Permitted Use (as defined below).

The PATCHXR Software is made accessible in its current version. PATCHXR will continuously further develop, upgrade, modify, replace and/or reconfigure PATCHXR Software to new versions at its discretion. PATCHXR will notify the Licensee with prior notices before changes significantly affect the use of the PATCHXR Software. The Licensee is only entitled to use the current version available, and cannot request the continued use

of older versions or updates. Any future versions of the PATCHXR Software shall also be subject to these Evaluation Licensing Terms.

The Licensee is not entitled to the source code or object code.

**Permitted Use:** To design and build own virtual instruments, effects, sound design tools, venues, concerts, visualizers, games, fashion shows and party hosting ("**Work Results**"). The Licensee may also broadcast the Work Results created or otherwise provide access to the Work Results created as experience in a virtual world.

**Prohibited Use:** All use other than described as Permitted Use is prohibited. In particular, the Licensee is prohibited:

i) to sublicense or otherwise make available to any third party the PATCHXR Software;

(ii) to copy, modify or create derivative works of the PATCHXR Software;

(iii) to distribute, sell, lease, assign, transfer, pledge any part of the PATCHXR Software (including by incorporation into its products) to any third parties;

(iv) to use the PATCHXR Software in connection with any "open source" or "copyleft" software;

(v) to disassemble, decompile, reverse engineer or attempt to discover the PATCHXR Software's source code or underlying algorithms other than expressly permitted by law;

(vi) to knowingly use the PATCHXR Software in a manner that violates or infringes any rights of any third party, including but not limited to, privacy rights, publicity rights or intellectual property rights;

(vii) to remove or alter any trademarks or other proprietary notices related to the PATCHXR Software;

(viii) to knowingly transmit any malicious code (i.e., software viruses, Trojan horses, worms, malware or other computer instructions, devices or techniques that erase data or programming, infect, disrupt, damage, disable, or shut down a computer system or any component of such computer system) or other unlawful material in connection with the PATCHXR Software.

Unauthorized access to or use of the PATCHXR Software must be immediately reported by the Licensee to PATCHXR.

#### 4. System Requirements

Licensee is responsible for ensuring that the current system or other technical requirements are met, as specified by PATCHXR.

#### 5. Licensee's Cooperation Obligations in Return for Free Evaluation License

Licensee shall cooperate with PATCHXR to the extent necessary for the execution and performance of PATCHXR's rights and obligations under this Evaluation License Agreement. This includes but is not limited to providing PATCHXR with necessary physical and technical access and permissions.

Licensee shall support PATCHXR to make the PATCHXR Software marketable, in particular but not concluding, by providing PATCHXR with all error logs, feedback or any other information requested by PATCHXR.

Licensee hereby grants PATCHXR with the right to publish any Work Results created by the Licensee with the PATCHXR Software and make use for further development, as set out in detail in Section 8 of these Evaluation License Terms.

Further, PATCHXR shall be entitled to make free and unlimited use of any feedbacks (e.g., questions, comments, suggestions, experience report or the like) regarding the PATCHXR Software (collectively, "**Feedback**").

#### 6. Maintenance & Support

PATCHXR will provide Licensee the following maintenance and support services for PATCHXR Software: (i) assisting in the operation of the PATCHXR Software, and (ii) assisting in verifying the causes of suspected errors.

Maintenance and support services shall be available by e-mail during the operating hours of PATCHXR (Mon-Fri, 9:00 am – 5:00 pm, not including public holidays at the registered office of PATCHXR). PATCHXR will use commercially reasonable efforts to respond to Licensee as feasible. Nothing in this Agreement shall be construed as to require PATCHXR to dispatch personnel to Licensee's site or otherwise provide on-site services.

#### 7. Intellectual Property

PATCHXR and Licensee agree that PATCHXR exclusively owns and will continue to own all ownership rights and intellectual property rights to the PATCHXR Software and further developments of the PATCHXR Software. PATCHXR reserves all rights to the PATCHXR Software not expressly granted to Licensee according to these Evaluation Licensing Terms.

Also ownership rights and intellectual property rights in further development of the PATCHXR Software based on Licensee's Feedback belongs exclusively to PATCHXR. Any such ownership and intellectual property rights are herewith assigned from the Licensee to PATCHXR. Such Feedback is deemed as PATCHXR's Confidential Information (as defined below) and Licensee hereby irrevocably waives any and all rights that Licensee may have in respect thereto. It is further understood that use of Feedback, if any, may be made by PATCHXR at its sole discretion, and that PATCHXR in no way shall be obliged to make use of any kind of the Feedback or part thereof.

Any generic and anonymous information, which is derived from the use of the PATCHXR Software (i.e., metadata, aggregated and/or analytics information), which is not personally identifiable information, is PATCHXR's exclusive property and may be used for any purpose including, but not limited to further

development of the PATCHXR Software and/or for statistical purposes.

PATCHXR and Licensee agree that Licensee will own all ownership rights and intellectual property rights in the Work Results created with the PATCHXR Software, subject to the license granted in Section 5 of these Evaluation Licensing Terms.

#### 8. Publicity

The Licensee herewith grants PATCHXR with the right to publish Work Results created by the Licensee with the PATCHXR Software, including images and videos, for promotional purposes in any media worldwide, without payment or other consideration during and after the end of the Term of this Evaluation License Agreement.

#### 9. Exclusion of Warranty

The PATCHXR Software is provided "as is" for evaluation and further development purposes only without warranty of any kind. All warranties, either express or implied, are disclaimed, whether for productivity for Work Results, non-interruption, merchantability, fitness for a particular purposes or non-infringement.

Licensee is solely responsible for compliance with all applicable laws and non-violation of third party rights in connection with the use of the PATCHXR Software.

#### 10. Limits of Liability and Indemnity

All liability of PATCHXR is excluded within the limits of the law. The evaluation license is granted for free at Licensee's own risk. PATCHXR shall not in any circumstances have any liability for any damages, expenses or losses which may be suffered by the Licensee (or any person claiming under or through the Licensee) in connection with the use of the PATCHXR Software, whether the same are suffered directly or indirectly, and whether the same arise in contract, tort (including negligence) or otherwise

The Licensee shall hold harmless and indemnify PATCHXR from any and against any claims, costs and actions of third parties to the extent that these are raised or connected to the production, publication, use, and distribution of Work Results.

#### 11. Confidentiality

"**Confidential Information**" includes but is not limited to trade-secrets and know-how concerning the PATCHXR Software, Feedback concerning the PATCHXR Software, the non-public information of the businesses of PATCHXR and the Licensee, the terms of these Evaluation License Terms, and any other information that a reasonable person would deem confidential.

This Evaluation License Agreement is subject to mutual confidentiality. PATCHXR and Licensee are required not to disclose any Confidential Information that PATCHXR or Licensee may have gained during the Term the Evaluation License Agreement.

#### 12. Data Protection

PATCHXR and Licensee shall cooperate to ensure compliance with applicable data protection legislation. In the event one party processes personal data on behalf of the other party a

data processing agreement will be entered into between the parties.

### 13. Term of the Evaluation License Agreement

The Evaluation License Agreement is concluded upon valid registration, download of the PATCHXR Software and acceptance of these Evaluation License Terms by the Licensee.

The Evaluation License Agreement ends automatically as per the completion and release of a commercial version of the PATCHXR Software, with prior notice of termination. Besides that, each party is at any time entitled to terminate the Evaluation License Agreement with a notice period of 30 days as per any date (email acceptable).

In the event of breach of these Evaluation License Terms by either party, the non-defaulting party may give notice of such default (email acceptable). If such notice is given, and the default is not cured within 30 business days, or in case of bankruptcy of the other party, then the Evaluation License Agreement shall automatically end.

The Sections 7 - 11 and 17 of these Evaluation License Terms shall survive any termination of this Agreement.

### 14. Suspension

Any use of PATCHXR Software, in breach of these Evaluation License Terms, including unintended or illegal use, may result in PATCHXR immediately suspending the right to make use of the PATCHXR Software. If PATCHXR suspends access to the use of the PATCHXR Software, the Licensee shall be notified immediately and given an opportunity to remedy such violation.

### 15. Notices

All written notices between the parties shall be delivered by e-mail.

### 16. General

**Independent Contractors:** PATCHXR and Licensee are independent parties. This Evaluation License Agreement does not create a partnership or joint-venture, agency or other relationship between the parties.

**Severability:** Should any term these Evaluation License Terms be declared illegal or otherwise unenforceable, it shall be replaced by a provision commercially as close as possible to the replaced

term. Any modification to or deletion of a term or part-term shall not affect the validity and enforceability of the rest of the Evaluation License Terms.

**Assignment** Licensee may not directly, nor indirectly assign all or any part of this Evaluation License Agreement or Licensee's rights or obligations under this Evaluation License Agreement without PATCHXR's written consent. PATCHXR may assign this Evaluation License Agreement in connection with a merger or change of control of PATCHXR, or the sale of all or substantially all of PATCHXR's assets.

**Force Majeure** Neither party shall be liable for any failure of or delay in the performance of this Evaluation License Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

If a party asserts force majeure as an excuse for failure to perform the parties' obligation, the non-performing party must prove that the party took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of a force majeure event.

**Anti-Corruption and -Bribery:** Licensee warrants that Licensee has not received any illegal or improper payment, kickback, gift from PATCHXR in connection with this Agreement.

### 17. Governing Law and Jurisdiction

**Governing Law:** This Evaluation License Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the material laws of Switzerland, excluding conflict of law rules and treaties.

**Jurisdiction:** The parties irrevocably agree that the state courts at the registered office of PATCHXR shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Evaluation License Agreement. However, PATCHXR is entitled to prosecute the Licensee at the place of its registered offices.