

END-USER LICENSE AGREEMENT FOR USE OF OPTENSITY APPSYMPHONY SOFTWARE

IMPORTANT – PLEASE READ CAREFULLY: This End-User License Agreement (“Agreement”) is a legal contract between you (either an individual or a single business entity (“you” or “You”)) and Optensity, Inc. (“Licensor”) for the Licensor software product identified above (the “Licensed Software”).

BY ORDERING, LOADING, OR USING THE LICENSED SOFTWARE, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT ORDER, LOAD, OR USE THE LICENSED SOFTWARE.

Grant of License

Subject to the other terms and conditions of this Agreement, Licensor hereby grants to you a non-exclusive, non-transferable, non-sublicensable right, during the license subscription term, to use the Licensed Software solely for your internal business purposes in accordance with the Licensor documentation.

Term

The license subscription term shall be the period indicated in the applicable order or monthly if no other term is indicated. This license subscription term is valid only for the length of time for which you have paid all applicable fees and conformed to all the terms and conditions of this Agreement.

Restrictions

You may not (a) reverse engineer, disassemble, or decompile the Licensed Software; (b) copy, adapt, alter, translate, modify, rent, lease, sublease, sublicense, distribute, sell, loan, or otherwise transfer the Licensed Software except as expressly provided in this Agreement; (c) create derivative works from the Licensed Software; (d) publish the software, including any interfaces included in the Licensed Software, for others to view or copy; (e) remove, minimize, or modify any logos, trademarks, copyrights, digital watermarks, or other notices that are included in the Licensed Software; (f) directly or indirectly encumber the Licensed Software, or otherwise exercise any rights in or to the Licensed Software not expressly granted to you; (g) use or reference the Licensed Software to develop a competing product or service; or (h) use the Licensed Software in any manner that could disrupt or interfere with other users’ use of the Licensor’s products or services. You may not, without Licensor’s prior written consent, use the Licensed Software in any manner other than in accordance with the licensing terms and conditions indicated in this Agreement. You shall only use the Licensed Software in compliance with all federal, state, and local laws and regulations, including, but not limited to, any applicable export controls. Licensor may suspend your access and right to use the Licensed Software if you are suspected of materially breaching these restrictions.

Ownership

The Licensed Software is the property of Licensor or its licensors, successors and assigns and is protected by applicable law. Licensor and its licensors and suppliers, as applicable, retain all ownership of, and right, title and interest in and to, the Licensed Software, including in all copies, improvements, enhancements, modifications and derivative works of the Licensed Software. You hereby assign all rights, title and interest in and to any feedback or suggestions you provide Licensor with respect to the Licensed Software.

Maintenance/Support

Licensor will provide technical support and maintenance services pursuant to Licensor’s then-current support policies during the license subscription term, provided that you have paid all applicable fees for such support and maintenance.

Fees

You shall pay all fees (“Fees”) to Licensor in accordance with the then current price list, payment schedule and payment terms set forth in a quote, order or other agreement pertaining to the Licensed Software. Fees may be charged on an hourly, monthly or other basis for use of the Licensed Software. Fees are subject to change on 30 days notice,

unless expressly agreed otherwise. Any portion of the Fees that is not paid when due will accrue interest at 18% per annum or the maximum rate permitted by applicable law, if less, until paid.

The Fees exclude all applicable taxes and you will be responsible for payment of all such taxes (other than taxes based on Licensor's net income) and will defend, indemnify, and hold Licensor harmless from all claims arising from your failure to report or pay such taxes.

Warranty/Disclaimer

Licensor warrants that the Licensed Software will perform substantially as described in the software documentation during the license subscription term. You must timely notify Licensor of any alleged breach of this warranty within 15 days following the occurrence of such alleged breach. This warranty will expire after such 15 day period if no such notice is provided. This warranty excludes defects resulting from accident, abuse, unauthorized repair, modifications or enhancements, misapplication, and events or circumstances outside of Licensor's reasonable control. Your sole remedy and Licensor's sole obligation for breach of the foregoing warranty is for Licensor, in its sole discretion, to either (i) repair or replace the software, or (ii) terminate this Agreement and refund the relevant license fees paid for such non-compliant software during the impacted period during which the Licensed Software did not perform in accordance with this warranty, not to exceed 30 days, less a reasonable allowance for any productive use of the Licensed Software.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT. LICENSOR MAKES NO WARRANTIES OR REPRESENTATIONS THAT THE LICENSED SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT OPERATION OR USE OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE.

Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR OR ITS RESELLERS, AFFILIATES, LICENSORS, OR OTHER SUPPLIERS BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES, INCLUDING LOST PROFITS, IN CONNECTION WITH THE USE OF THE LICENSED SOFTWARE, RELATED SUPPORT OR SERVICES, OR OTHER MATERIALS PROVIDED WITH THE LICENSED SOFTWARE OR IN CONNECTION WITH ANY OTHER CLAIM ARISING FROM THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, LICENSOR'S AND ITS RESELLERS, AFFILIATES, LICENSORS, OR OTHER SUPPLIERS AGGREGATE CUMULATIVE LIABILITY UNDER OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT PAID BY YOU TO LICENSOR FOR THE LICENSED SOFTWARE DURING THE PRIOR 6 MONTHS. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH HEREIN WILL REMAIN IN EFFECT.

Indemnification

Licensor will defend at its own expense any action against you arising out of any claim by a third party that any use of the Licensed Software expressly authorized under this Agreement infringes or misappropriates any third party intellectual property rights, provided that you give Licensor (i) prompt written notice of such claim; (ii) authority to control and direct the defense and/or settlement of such claim; and (iii) such information and assistance as Licensor may reasonably request, at Licensor's expense, in connection with such defense and/or settlement. Notwithstanding the foregoing, Licensor shall have no obligation or liability to the extent that the alleged infringement arises from (1) the combination, operation, or use of the Licensed Software with products, services, information, materials, technologies, methods or processes not furnished by Licensor; (2) modifications to the Licensed Software, which modifications are not made by Licensor; (3) failure to use updates to the Licensed Software provided by Licensor; (4) use of the Licensed Software except in accordance with any applicable user documentation or specifications, or (5) Third Party Programs.

You shall indemnify Licensor and its affiliates for any claims by its users or employees relating to the Licensed Software, except to the extent such claim is subject to indemnification by Licensor under this Section.

Third Party Programs

This Licensed Software may contain third party software programs (“Third Party Programs”), including open source software, public domain software, or other third party software programs. A list of such Third Party Programs is available upon request. The Third Party Programs are licensed under and subject to the terms of the license that accompanies such Third Party Programs, which may contain further restrictions on their use. You agree to comply with any such restrictions. Nothing in this document limits your rights under, or grants you rights that supersede, the terms and conditions of any applicable license for the Third Party Programs, including any rights to copy, modify, or distribute Third Party Programs under the applicable license. Third Party Programs are made available on an as-is as-available basis without any warranties or indemnification of any kind from Licensor. If Licensor makes modifications to Third Party Programs and if the applicable license requires that such modifications be made available and Licensor does not already publish such modifications via the applicable Third Party Programs community, then Licensor will make its modifications available on its website.

Confidential Information

“Confidential Information” means any nonpublic information of a party (the “Disclosing Party”), that is identified as “confidential” at the time of such disclosure or that the receiving party (the “Receiving Party”) knows or should have known is the confidential or proprietary information of the Disclosing Party. Information will not constitute the other party’s Confidential Information if it (i) is already known by the Receiving Party without obligation of confidentiality; (ii) is independently developed by the Receiving Party without access to or use of the Disclosing Party’s Confidential Information or breach of this Agreement; (iii) is publicly known without breach of this Agreement; or (iv) is lawfully received from a third party without obligation of confidentiality. The Receiving Party shall not use or disclose any Confidential Information except as expressly authorized by this Agreement and shall protect the Disclosing Party’s Confidential Information using the same degree of care that it uses with respect to its own confidential information, but in no event less than reasonable care. The Receiving Party may disclose Confidential Information to its affiliates, employees, and representatives as necessary to perform its obligations or exercise its rights under this Agreement and shall cause such affiliates, employees, and representatives to comply with confidentiality restrictions consistent with this Section. The Receiving Party shall take prompt and appropriate action to prevent unauthorized use or disclosure of the Disclosing Party’s Confidential Information. If any Confidential Information must be disclosed to any third party by reason of legal, accounting or regulatory requirements, the Receiving Party shall promptly notify the Disclosing Party of the order or request and permit the Disclosing Party (at its own expense) to seek an appropriate protective order.

Termination

Licensor may terminate this Agreement upon your breach of this Agreement and failure to cure such breach within a reasonable period of time (not to exceed ten (10) days) following notice from Licensor, or immediately if such breach is not curable. Upon expiration or termination of this Agreement for any reason (a) any amounts owed to Licensor under this Agreement prior to such expiration or termination will be immediately due and payable, and the amounts due for any remaining portion of a license subscription term shall be accelerated and become immediately due and payable; (b) all licensed rights granted in this Agreement will immediately terminate; and (c) you shall promptly discontinue use of the Licensed Software and return to Licensor or, at Licensor’s request, destroy all copies of the Licensed Software in your possession or control and certify in writing to Licensor that it has fully complied with these requirements. The following provisions shall survive termination of this Agreement: Restrictions, Disclaimers, Limitation of Liability, Indemnity, Termination, Third Party Programs, and Miscellaneous.

Miscellaneous

You may not (i) transfer the Licensed Software or this Agreement to a third party or (ii) assign the rights granted hereunder or this Agreement without Licensor’s prior written consent. This Agreement will be governed by the laws of the Commonwealth of Virginia, without regard to its conflict of law principles. If any provision of this Agreement

is found to be unenforceable or partly or wholly illegal, such provision shall be enforced to the maximum extent permissible, and remaining provisions of this Agreement shall remain in full force and effect. A waiver of any breach or default under this Agreement shall not constitute a waiver of any other subsequent breach or default. This Agreement is the complete and exclusive agreement between you and Licensor relating to the Licensed Software and supersedes any previous or contemporaneous oral or written communications, proposals, and representations with respect to its subject matter.