



Uteology Corporation End User License Agreement (EULA)

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Software License Agreement

Utelogy Corporation ("Utelogy") owns the rights in and to a suite of software solutions for use in connection with the control and global management of media and audiovisual rooms, as well as IoT devices such as printers, wireless access points, occupancy sensors, HVAC, security, building automation and smart building devices and any and all such devices within an enterprise that may need to be controlled and managed from time to time (the "Software") and all related documentation (the "Documentation"). Access to, and use of, the Software and the Documentation is governed by this Software License Agreement ("Agreement").

BY CLICKING (OR PRESSING) THE "ACCEPT" BUTTON, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. THIS AGREEMENT IS AN AGREEMENT ENFORCEABLE UNDER CALIFORNIA LAW INCLUDING, WITHOUT LIMITATION, THE UNIFORM ELECTRONIC TRANSACTIONS ACT.

IF YOU ARE INSTALLING THE SOFTWARE OR DOCUMENTATION ON BEHALF OF SOMEONE OTHER THAN YOURSELF, YOU ARE ALSO CONFIRMING THAT THE OTHER PERSON (WHETHER AN INDIVIDUAL OR A BUSINESS ENTITY) AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT AND HAS AGREED TO BE THE LEGALLY RESPONSIBLE PERSON REFERRED TO AS "CLIENT" UNDER THIS AGREEMENT.

SECTION 12(h) OF THIS AGREEMENT CONTAINS A CLASS ACTION WAIVER. IT AFFECTS HOW DISPUTES ARISING FROM THE USE OF THE SOFTWARE ARE RESOLVED. BY ACCEPTING THIS AGREEMENT, YOU AGREE TO BE BOUND BY THIS CLASS ACTION WAIVER.

This Agreement provides Client with access to, and use of, the modules and other functionality of the Software identified in, and as limited by, Utelogy's invoice ("Invoice").

1. License.

(a) **Grant.** Utelogy grants to Client a non-exclusive, non-transferable, revocable, non-sublicensable license to use the Software's executable code and the Documentation solely for its intended purpose and function (the "License"). Client may (i) install the Software and the Documentation in the limited number of rooms specified in the Invoice (the "Authorized Facilities") and (ii) copy the Software and the Documentation for back-up and archival purposes.

(b) **Term of License.** The term of the License for each component of the Software is either perpetual (a "perpetual license") or for the limited time period in which the Subscription Fee is paid as set forth in Section 2 below (a "subscription license"). The License for each component of the Software is a subscription license unless expressly set forth in the Invoice as a perpetual license. Client understands that the availability and use of some or all of the features or functionality of a component made available under a perpetual license may be dependent on Client maintaining a subscription license to one or more additional components.

(c) Restrictions.

(1) Client shall not reverse engineer, decompile, disassemble or otherwise attempt to discern the source code, operational flow, data structures, and object structures of the Software or any of Software's components, data files, libraries or modules.

(2) Client shall only use the Software and Documentation in a manner that complies with all applicable laws in the jurisdictions in which the Software and Documentation are used.

(3) Client shall only use the Software for the benefit of Client. Client shall not lease, rent, distribute, or sublicense the Software to third parties. The Software shall not be used to provide, or in connection with, any commercial service or application that is for the benefit of third parties; provided, however, Client may permit third parties to use the Authorized Facilities and such permitted use may include access to the Software solely as an end user.

(4) Except as expressly authorized by this Agreement, Client is prohibited from any and all uses of the Software and the Documentation.

(d) Operation of the Software.

(1) Passwords. Client is solely responsible for maintaining the confidentiality of passwords associated with the Software. Client must promptly notify Utelogy if any password is lost, stolen, needs to be reset because of a change in personnel or other circumstance which may jeopardize the confidentiality of any password.

(2) Support Tool. Client understands and agrees that the Software is a tool designed to assist with the operation and management of A/V, and other building or enterprise systems. Client is and remains solely responsible for establishing all policies, procedures and practices used in connection with the management and operation of its business.

(d) Protection of Private and Proprietary Information. Depending on the optional feature or features selected, The Software may receive, process, store, or generate output containing private and proprietary information. Client understands and agrees that it is Client's sole responsibility to select and implement the process, procedure and technology for protecting access to, and use of, such information.

2. Subscription Fees. For each subscription license, Client agrees to pay to Utelogy the current subscription fee (the "Subscription Fee"). Client understands and agrees that access to, and the right to use, the Software and Documentation is for the limited subscription period for which the Subscription Fee has been paid in advance. In the event this Agreement expires or is terminated, or the Subscription Fee is not paid by the requisite due date, the right to use the subscription portion of the Software and Documentation will end and that portion of the Software will cease to function.

3. Modifications and Enhancements of the Software. In the sole discretion of Utelogy, Utelogy may develop, and make available to Client and other customers, changes, revisions, enhancements and/or modifications to the Software (each a "Software Revision").

4. Technical Support. Utelogy will provide technical support, maintenance and other support services in connection with the Software as provided in Utelogy's then current technical support program including, without limitation, fee based support services. Notwithstanding the prior

sentence, Client acknowledges and agrees that Utelogy is not obligated to provide technical support or other support services arising from or related to the Software or the Documentation. Utelogy, in its sole discretion, has the right to expand, reduce, modify, or eliminate such services, if any at all.

5. **Proprietary Property Rights.** All right, title and interest in and to the Software, Documentation and any Software Revision is solely owned by Utelogy. To the extent the Software may include one or more components licensed from third party suppliers and such suppliers own the rights to their respective components, those rights remain with the respective supplier. Conceptual ideas and other feedback provided by Client to Utelogy shall be jointly owned by each party without restriction and without a duty of accounting to the other.

6. **Confidentiality / Proprietary Information.** Each party acknowledges that it may be furnished with or may otherwise receive or have access to information, data or material that is confidential or proprietary to the other party ("Proprietary Information"). Failure to mark any of the information, data or material as confidential or proprietary does not affect its status as Proprietary Information. Each party agrees to take all reasonable steps preserve and protect the confidentiality of the Proprietary Information. The obligations with regard to Proprietary Information survives termination of this Agreement and remains in effect until all Proprietary Information enters the public domain. The Invoice is deemed to be Proprietary Information.

7. **Collection of Information.**

(a) As between Client and Utelogy, any information created by the Software in the course of Client's operation of the Software (collectively, "User Data"), is owned by Client. Except as otherwise provided herein, Utelogy will not use, modify or copy User Data for any purpose other than to operate the Software or otherwise provide services to Client, and will not disclose User Data to any third party except (i) to a vendor as may be necessary for the operation of the Software or otherwise providing services to Client, or (ii) as may be required pursuant to a criminal investigation or as otherwise required by law. Utelogy may provide User Data to third parties (collectively "Business Associates") who provide services for the benefit of Utelogy or Utelogy believes, in its sole discretion, will be useful or applicable to users of the Software. The use of such User Data by these Business Associates is restricted to using the information on behalf of Utelogy or as otherwise directed by Utelogy.

(b) Notwithstanding anything to the contrary herein, Utelogy may use User Data for improving the Software or operations of Utelogy, including without limitation, analyzing data for the purpose of identifying trends, statistics and measurements that could contribute to the enhancement of the Software or improvement of the products or services offered by Utelogy.

(c) Utelogy reserves the right to transfer any and all information that it collects to third parties, in the event of a sale, merger or transfer by Utelogy of all or any portion of its assets business.

8. Warranty

A. **LIMITED WARRANTY.** If you follow the instructions articulated in the Utelogy Documentation associated with this Software, the software will perform substantially as described in the Utelogy Documentation. The Utelogy Documentation can be downloaded from Utelogy Customer Portal website.

B. **TERM OF WARRANTY; WARRANTY RECIPIENT; LENGTH OF ANY IMPLIED WARRANTIES.** The limited warranty covers the software for one year after acquired by the first user. If you receive supplements, updates, or replacement software during that year, they will be covered for the remainder of the warranty or 30 days, whichever is longer. If the first user transfers the software, the remainder of the warranty will apply to the recipient. Annual Software Maintenance extends the warranty for each additional year maintenance is paid.

C. **EXCLUSIONS FROM WARRANTY.** This warranty does not cover problems caused by your acts (or failures to act), the acts of others, or events beyond Utelogy's reasonable control.

9. LIMITATION OF LIABILITY

(a) **IF UTELOGY BREACHES THIS AGREEMENT, UTELOGY'S SOLE LIABILITY IS, IN UTELOGY'S SOLE DISCRETION, ONE OR MORE OF THE FOLLOWING:** (A) PROVIDE REPLACEMENT SOFTWARE, (B) ADVISE HOW TO ACHIEVE SUBSTANTIALLY THE SAME FUNCTIONALITY WITH THE SOFTWARE AS DESCRIBED IN THE DOCUMENTATION THROUGH A PROCEDURE DIFFERENT FROM THAT SET FORTH IN THE DOCUMENTATION; OR (C) REFUND THE SUBSCRIPTION FEE(S) PAID BY CLIENT FOR A MAXIMUM OF THE REMAINING SUBSCRIPTION PERIOD IMMEDIATELY FOLLOWING THE EVENT GIVING RISE TO SUCH CLAIM, OR SERVICE CREDITS APPLIED TO YOUR ACCOUNT.

(b) **IN NO EVENT WILL UTELOGY BE LIABLE FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR ANY OTHER TYPE OF DAMAGES ARISING OUT OF OR RELATED TO THE USE OR OPERATION OF THE SOFTWARE OR DOCUMENTATION, ANY SERVICES PROVIDED, OR IN CONNECTION WITH THIS AGREEMENT.** THE FOREGOING LIMITATION, EXCLUSION AND DISCLAIMER SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

10. Delays. Neither party shall be liable for delays caused by fire, accident, labor dispute, war insurrection, riot, act of government, act of God, or any other cause reasonably beyond its control (including delays caused by Client or Client's employees, agents, faculty or students). Each party shall use commercially reasonable efforts to minimize the extent of any such delay.

11. Termination; Effect of Termination or Expiration.

(a) **Termination Without Cause.** Unless Utelogy and Client agree in writing to a defined period of time for this Agreement, either party has the right to terminate a subscription license by providing a minimum of sixty (60) days prior written notice to the other party of such termination.

(b) **Termination for Cause.** Utelogy has the right to immediately terminate a subscription license if the Subscription Fee is not received by Utelogy on or before the specified due date. Without limiting the prior sentence, Utelogy has the right to immediately terminate this Agreement if Client has been provided a minimum of 30 days prior written notice of any breach of this Agreement but fails to cure any breach identified in the notice.

(c) **Effect of Termination or Expiration.** On the expiration or termination of this Agreement, Client shall immediately cease all use of the Software and the Documentation and shall certify to Utelogy the destruction of all copies of the Software and the Documentation. Client's obligation to pay any accrued fees, costs, or other compensation to Utelogy shall survive termination of this Agreement.

12. Additional Provisions.

(a) **No Third Party Rights.** This Agreement does not create any rights or benefits to parties other than Utelogy and Client.

(b) **Restrictions on Transfer; Binding Effect.** Client shall not directly or indirectly assign, sublicense, transfer or encumber any rights under this Agreement, whether involuntary, by operation of law or otherwise. Any assignment, sublicense, transfer or encumbrance, without the prior written consent of Utelogy, is void. Utelogy has the unrestricted right to assign this Agreement. Without limiting the prior sentences, this Agreement is binding on and inures to the benefit of Utelogy, Client and their respective successors and assigns.

(c) **Governing Law.** This Agreement is governed by the laws of the State of California, without regard to its conflict of laws provisions.

(d) **Attorneys' Fees.** In any action or proceeding to enforce this Agreement, the prevailing party is entitled to recover its reasonable attorneys' fees and costs.

(e) **Entire Understanding; Waiver; Amendment.** This Agreement constitutes the complete and exclusive statement of the agreement among the parties about the described subject matter. It supersedes all prior written and oral statements, including any prior representation or statement. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or any other provision of this Agreement. This Agreement may not be modified, amended, or waived except by an instrument in writing signed by the party to be bound.

(f) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable as applied to any circumstance, the remainder of this Agreement and the application of such provision to other persons or circumstances shall be interpreted so as best to effect the intent of the parties hereto. The parties further agree to replace any such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business, and other purposes of the void or unenforceable provision.

(g) **Survival.** All terms and provisions hereof intended to be observed and performed by the parties after the termination hereof, shall survive such expiration or termination and shall continue thereafter in full force and effect, subject to the applicable statutes of limitations.

(h) **Dispute Resolution.**

(1) Before initiating any legal proceeding, Client agrees to report any issue or concern to Utelogy. Client agree to negotiate with Utelogy in good faith to resolve any issue or concern. Either Client or Utelogy may initiate a legal proceeding if Client's issue or concern is not resolved within 15 days of receipt of notice by Utelogy.

(2) All actions or proceedings arising out of or related to this Agreement shall be subject to the exclusive jurisdiction of the state and federal courts of the County of Orange in the State of California. Client and Utelogy each waives any objection based on jurisdiction, venue, or inconvenient forum.

(3) **NO CLASS ACTIONS.** Client may only resolve disputes with Utelogy on an individual basis. Client may not bring a claim as a plaintiff or a class member in a class, consolidated or representative action. Client understand and agree that class arbitrations, class actions, private attorney general actions and consolidation with other legal proceedings is not permitted.

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