

END USER LICENSE AGREEMENT FOR THE OCTIV VOLUME LOGIC® iTUNES® PLUG-IN

1. CONDITIONS OF LICENSE: LICENSEE, by accepting delivery of the Software or Decryption Key, and/or Documentation acknowledges that LICENSEE understands and agrees to all terms and conditions of this End User License Agreement ("EULA").

2. LICENSE: Subject to all the terms and conditions of this EULA, OCTIV grants LICENSEE a license (the "License") in and to the Software. The License will and only will:

- a. allow LICENSEE to use and install the Software, as prescribed in the Documentation provided by OCTIV, in accordance with this EULA;
- b. allow LICENSEE to use the Documentation provided by OCTIV, but only in order to use the Software;
- c. be non-exclusive, non-transferable, non-sub-licensable, and shall not be used by anyone not employed by LICENSEE;
- d. be used as described above.

As between OCTIV and LICENSEE, and subject only to this License, OCTIV and its licensors retain all right, title and interest in the Software and Documentation and all copies and portions thereof. LICENSEE agrees to not reverse engineer or disassemble the software.

3. TERMINATION OF LICENSE: Upon expiration or other termination of this EULA for any reason, all Licenses and rights granted to LICENSEE hereunder shall terminate, all obligations and restrictions on OCTIV shall terminate, and LICENSEE shall immediately cease to use all Software and Documentation. At the written request of OCTIV, and at OCTIV's option, LICENSEE shall either return to OCTIV or destroy, all copies and derivatives made of OCTIV's Software and Documentation and certify in writing that all such Software and Documentation has been returned or destroyed. Where their normal meaning would so provide, the terms of this EULA shall survive termination. Termination of this EULA shall be without prejudice to any right of, or remedy available to, either party against the other in respect to anything done or omitted hereunder prior to such termination.

4. BREACH OF LICENSE: LICENSEE hereby acknowledges that breach of the License provisions of this EULA will cause OCTIV irreparable damage, for which no adequate remedy at law exists. It is agreed by LICENSEE that in the event of any breach or threatened breach by it, OCTIV shall have the right (in addition to any other rights and remedies available to OCTIV, including the right to monetary damages) and be entitled to an injunction to restrain violation of this EULA by LICENSEE, its partners, agents, servants, servaners, servantees, and all persons acting for or with LICENSEE, and consents to issuance of an injunction by any court of competent jurisdiction. Furthermore, LICENSEE agrees to pay all reasonable attorneys' fees and costs incurred by OCTIV in enforcing any provision in this EULA.

5. CHANGES IN DESIGN: OCTIV reserves the right to modify or change any of its Software in whole or in part, at any time prior to delivery of the Software or Decryption Key, in order to include refinements deemed appropriate by OCTIV, but without incurring

any liability to modify or change any Software previously furnished, or to supply new Software in accordance with earlier specifications.

6. PURCHASE ORDERS AND OTHER DOCUMENTS OF LICENSEE Any change of the terms or conditions of this EULA initiated by LICENSEE, such as on a purchase order, shall not be considered effective and is expressly rejected, unless and until mutual agreement has been reached in writing between LICENSEE and OCTIV.

7. LIMITED WARRANTY FOR PURCHASED SOFTWARE: THE WARRANTIES PROVIDED IN SUBSECTIONS a-d IMMEDIATELY BELOW ARE IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. FURTHER, OTHER THAN AS STATED IN SUBSECTIONS a-d IMMEDIATELY BELOW, NEITHER OCTIV NOR ITS SUPPLIERS WARRANTS, GUARANTEES, OR MAKES ANY REPRESENTATION THAT THE SOFTWARE WILL BE FREE FROM BUGS, OR THAT THE SOFTWARE'S USE WILL BE UNINTERRUPTED OR APPROPRIATE, OR THE RESULTS OF THE USE OF THE SOFTWARE OR DOCUMENTATION IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE.

- a. Any Software licensed by LICENSEE from OCTIV is warranted against defects in workmanship and material under normal use and service for a period of 90 days after the earlier of (i) date of shipment to LICENSEE, or (ii) date decryption key is provided to LICENSEE;
- b. OCTIV shall have no responsibility whatsoever for any damage or condition caused by LICENSEE's fault, negligence or accident, including but not limited to improper installation, maintenance or repairs by or in behalf of LICENSEE (other than by OCTIV), or the use of the Software in a manner not prescribed in writing by OCTIV;
- c. Octiv's sole obligation hereunder shall be to repair or replace with new or functionally operative items, at OCTIV's option and without charge, the warranted Software, which within the applicable warranty period is proven to OCTIV's reasonable satisfaction to have been defective;
- d. Repair or replacement by OCTIV shall not revive an otherwise expired warranty, nor shall it extend a warranty.

8. LIMITATION OF DAMAGES: IN NO EVENT SHALL OCTIV BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL INDIRECT, EXEMPLARY, SPECIAL OR SIMILAR DAMAGES TO PERSONS OR PROPERTY, EVEN IF OCTIV IS ADVISED OF THE LIKELIHOOD THAT SUCH WILL OCCUR. OCTIV IS NOT RESPONSIBLE FOR DATA LOSS OR DISABLING OF THE USER'S COMPUTER OR ITS SOFTWARE.

9. RETURNS AND CANCELLATIONS: No Software may be returned, or order cancelled, without prior written authorization from OCTIV. Software that will be authorized for return, or orders that will be authorized for cancellation, are limited to (a) Software shipped or electronically transmitted by OCTIV in error, or (b) special circumstances expressly agreed by OCTIV in its discretion. OCTIV assumes no responsibility for unauthorized returns or order cancellations. Any customs duty, transportation and similar or related charges for returned Software shall be LICENSEE's

responsibility. Damage and loss of every kind and nature respecting returns shall be at LICENSEE's sole risk.

10. FORCE MAJEURE: Neither OCTIV nor LICENSEE shall be liable for breach or delay in performing its obligations set forth in this Agreement (other than payment of monies due) if and to the extent that such breach or delay is due to natural disasters or any other cause reasonably beyond the control of such party, and any time for performance hereunder shall be extended by the actual time of delay caused by such occurrence.

11. ERRORS: OCTIV reserves the right to correct clerical and typographical errors in any quotation, order confirmation, invoice, Software publication and similar Documentation.

12. NO WAIVER: Any delay or failure by OCTIV to pursue any or all of its remedies upon a breach by LICENSEE shall not be construed as a waiver of OCTIV's rights under this Agreement and applicable law. Any waiver of OCTIV's rights or claims under this Agreement must be in writing and given in exchange for valuable consideration.

13. ASSIGNMENT AND DELEGATION: LICENSEE may assign no right or interest under this Agreement without the prior written consent of OCTIV. LICENSEE may delegate no duty or obligation under this Agreement without the prior written consent of OCTIV. Any assignment or delegation not consented to in writing by OCTIV is void.

14. SEVERABILITY: If any part of this Agreement is deemed unenforceable for any reason, the remainder of this Agreement shall remain in full force and effect.

15. GOVERNING LAW: This Agreement shall be governed and construed according to the internal laws of the State of California, USA without regard to said state's provisions regarding conflict of laws, and the laws of the United States of America. Any action or proceeding arising hereunder shall be brought and maintained in the United States federal court or the California state courts sitting in Oakland, California, USA.

16. HEADINGS: All headings are for purposes of convenience only; they are not intended by the parties to have any legal import.