UPTIVITY SOFTWARE LICENSE AND WARRANTY TERMS
REVISED: SEPTEMBER 2013

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1. **License Grant.** Subject to the terms and conditions contained in this Agreement, Uptivity grants to End-User a non-sublicensable, non-exclusive, non-transferable license during the term of this Agreement to use, through its employees and solely for its internal business purposes, the Software in object code form (the term "Software" including any modifications, enhancements, or corrections that Uptivity may make from time to time and any user manuals and on-line help information for the Software, as Uptivity may create and update them from time to time (the "Documentation")). All such use is subject to any restrictions identified in this Agreement with respect to number of seats, number of concurrent users, number of unique accounts, use in a designated location, use in a designated environment, use on designated Hardware or other designated equipment.

2. **Third-party Software.** Uptivity will make the Third-party Software available to End-User, which End-User may use in accordance with the terms of the applicable third-party end user license.

3. **License Exclusions.** Except as expressly authorized by this Agreement, End-User will not itself, nor through any parent, subsidiary, affiliate, End-User, or third-party:
   a. Copy, modify or create derivative works based upon the Software;
   b. Decompile, disassemble, or reverse engineer the Software in whole or in part;
   c. Defeat, disable or circumvent any protection mechanism related to the Software;
   d. Sell, license, sublicense, lease, rent, loan, assign, or distribute to any third-party, or disclose, permit access to, or transfer to any third-party, any portion of the Software;
   e. Distribute, disclose or allow use of the Software or Documentation, in any format through any timesharing service, service bureau, network or by any other similar means except as expressly authorized by Uptivity in writing;
   f. Allow any service provider or other third party, with the exception of Uptivity's authorized maintenance providers who are acting solely on behalf of and for the benefit of End User, to use or execute any software commands that facilitate the maintenance or repair of any product;
   g. Disclose, provide, or otherwise make available to any third party any trade secrets contained in the Software or Documentation;
   h. Permit or encourage any third party to do any of the foregoing; or
   i. Export the Software in violation of any U.S. Department of Commerce export administration regulations or other applicable laws or regulations.

   End User agrees not to allow anyone other than its authorized employees, agents or representatives who have a need to use the Software or Documentation to have access to the Software or Documentation. End User agrees to inform any third party to whom you give access to the Software or Documentation of these Software License Terms and shall obligate such third party to comply with such terms and provisions. End User shall be responsible for any third party's failure to comply with these Software License Terms and shall indemnify Uptivity for any damages, loss, expenses or costs, including attorneys' fees and costs of suit, incurred by Uptivity as a result of non-compliance with this section.

4. **Proprietary Rights Notices.** End User shall affix to each copy of the Software made by End User, in the same form and location, a reproduction of the copyright notices, trademarks, and all other proprietary legends and/or logos of Uptivity and/or Uptivity's suppliers appearing on the original copy of the Software delivered to End User, and shall retain the same without alteration on all original copies.

5. **Hardware.** Uptivity will, to the extent permitted by the manufacturer or distributor of any Hardware purchased from Uptivity, pass through to End-User any warranty with respect to such Hardware, and provide reasonable assistance to End-User to procure from such manufacturer or distributor on behalf of End-User any remedies provided pursuant to such warranties.

6. **Compliance.** Uptivity and Uptivity Channel Partner who provided the Software have the right to inspect or audit by remote polling or other reasonable means, and to inspect End User's books, records, and accounts during normal business hours and with reasonable notice, to determine End User's compliance with these Software License Terms, including but not limited to usage levels. In the event such inspection or audit uncovers non-compliance with these Software License Terms, then without prejudice to Uptivity's termination rights hereunder, End User shall promptly pay Uptivity any applicable license fees. End User agrees to keep a current record of the location of the Software.

7. **Protection of Software and Documentation.** End User acknowledges that the Software and Documentation are confidential information of Uptivity and its suppliers and contain trade secrets of Uptivity and its suppliers. End User agrees at all times to protect and preserve in strict confidence the Software and Documentation using no less than the level of care End User uses to protect its own information of a confidential nature and to implement reasonable security measures to protect the trade secrets of Uptivity and its suppliers.

8. **Export Control.** End User is advised that the Software is of U.S. origin and subject to the U.S. Export Administration Regulations (EAR). The Software also may be subject to applicable local laws and regulations. Diversion contrary to U.S. and/ or applicable local country law and/ or regulation is prohibited. You agree not to directly or indirectly export, re-export, import, download, or transmit the Software to any country, end user or for any use that is contrary to applicable U.S. and/ or local country regulation or statute (including but not limited to those countries embargoed by the U.S. government). You represent that neither the U.S. Bureau of Industry and Security (BIS) nor any other governmental agency has issued sanctions against End User or otherwise suspended, revoked or denied End User's export privileges. You agree not to use or transfer the Software for any use relating to nuclear, chemical or biological weapons, or missile technology, unless authorized by the U.S. and applicable local government by regulation or specific written license. Additionally, you are advised that the Software may contain encryption algorithm or source code that may not be exported to government or military end users without a license issued by the U.S. BIS and any other country's governmental agencies, where applicable.

9. **Governing Law**. The parties agree that any dispute or default arising from this Agreement shall be governed by the internal law of the State of Ohio, and each party agrees to submit to the jurisdiction and venue of the Franklin County Court of Franklin County, Ohio

10. **Limited Warranty.** Uptivity warrants that for a period of ninety (90) days from the installation date (the "Warranty Period"):
    a. The Software will perform in accordance with its Documentation; and
    b. The Services will be performed in a workmanlike manner.

11. **Warranty Exclusions.** Uptivity will not be liable under its limited warranty for, or obligated to correct as part of Support Services, any nonconformity with the limited warranty resulting from:
    a. the mishandling, abuse, misuse, tampering, improper storage, accident, negligence, theft, vandalism, fire, flood, water, wind, damage to equipment or telephone lines due to pests or domestic animals or theft or loss, acts of God, acts of terror or vandalism, or other causes beyond the control of Uptivity;
    b. conditions outside of specifications, including but not limited to wiring, voice and data network architecture, electrical power, temperature, humidity or dust;
        i. the temperature, humidity, and electrical power specifications for Hardware and Software are as follows: The Uptivity Hardware and Software must be maintained at a temperature between 55 – 75 degrees Fahrenheit (with 70 degrees being preferred). Relative humidity should be maintained

at 20 – 80 percent (non-condensing). The System must be powered with conditioned electricity. Uptivity will not be held responsible for any damage resulting from deviations from these parameters.

    c.   failure of End-User telecommunications equipment and/or software

    d.   any cause other than normal use;

    e.   installation or alteration by someone other than Uptivity, its employees or agents;

    f.   use contrary to the instructions of Uptivity

    g.   use of the Software or Hardware with computer systems, communications devices and/or ACD/PBX platforms other than those in use at the time of installation, or alterations to any such system or its configuration other than as recommended by Uptivity.

    h.   Repairs necessitated by any of the above excluded causes shall be made by Uptivity if so requested by End-User and End-User agrees to pay Uptivity for such repairs at Uptivity's then-current rates.

12. **Exclusive Remedy.** The exclusive remedy of End-User, and the sole liability of Uptivity, is that during the Warranty Period:

    a.   Uptivity shall use commercially reasonable efforts to remedy any nonconformity with the warranty; and

    b.   Uptivity shall re-perform any Services that do not conform with the warranty

13. **Disclaimer of Warranty.**

    a.   THE LIMITED WARRANTY SET FORTH HEREIN IS THE SOLE WARRANTY FROM UPTIVITY AND IN LIEU OF ALL OTHERS.   UPTIVITY MAKES NO ADDITIONAL WARRANTY OF ANY KIND CONCERNING THE SOFTWARE, THE SERVICES OR THE HARDWARE, AND MAKES NO WARRANTY OF ANY KIND CONCERNING THE THIRD-PARTY SOFTWARE, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS.   UPTIVITY DOES NOT WARRANT THAT THE SOFTWARE WILL BE ERROR-FREE. No affirmation of Uptivity, by words or action, other than as set forth in this Agreement will constitute a warranty.

    b.   <u>LIMITATION OF LIABILITY</u>. EXCEPT FOR PERSONAL INJURY CLAIMS OR WILLFUL MISCONDUCT AND TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER UPTIVITY, ITS SUPPLIERS, NOR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS SHALL BE LIABLE FOR (i) ANY INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, STATUTORY, INDIRECT OR CONSEQUENTIAL DAMAGES, (ii) ANY LOSS OF PROFITS, REVENUE, OR DATA, TOLL FRAUD, OR COST OF COVER OR (iii) ANY DIRECT DAMAGES ARISING UNDER THESE SOFTWARE LICENSE TERMS IN EXCESS OF THE FEES PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM. REGARDLESS OF WHETHER THEY WERE ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF. THE LIMITATIONS OF LIABILITY IN THIS SECTION WILL APPLY TO ANY DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE.

    c.   <u>DISCLAIMER OF CONSEQUENTIAL DAMAGES</u>. IN NO EVENT WILL UPTIVITY BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT, OR LOSS OF OR DAMAGE TO ANY PROPERTY OR DATA (INCLUDING PROPERTY OR DATA HANDLED OR PROCESSED THROUGH THE USE OF THE SOFTWARE).