

Optek Music Systems, Inc. SDK End User License Agreement

OPTEK PROVIDES THIS SOFTWARE DEVELOPER KIT (THE "SDK" INCLUDES SEVERAL COMPONENTS: "OPTEK'S API", "ASSOCIATED DOCUMENTATION", "CODE/API USAGE EXAMPLES" AND "OPTEK TRADEMARKS" AND ANY ERROR CORRECTIONS, UPDATES OR NEW RELEASES THERETO AS PROVIDED BY OPTEK) FOR THE INTENDED PURPOSE OF ALLOWING SOFTWARE DEVELOPERS (ALSO REPRESENTED AS "YOU" AND "YOUR") TO UTILIZE THE SDK TO DEVELOP MOBILE ANDROID, MOBILE iOS, PC, MAC AND LINUX APPLICATIONS WHICH ALLOW DEVELOPERS TO EFFECTIVELY INTEGRATE (COMMUNICATING WITH AND TRIGGERING THE LIGHTS ON A FRETLIGHT GUITAR) AND BRAND OPTEK PRODUCTS (APPROPRIATELY DESIGNATE AS FRETLIGHT READY) INTO THEIR COMPANY'S SOFTWARE PRODUCT OFFERINGS ("YOUR PRODUCTS").

THE LICENSE GRANTED BELOW GOVERNS YOUR USE OF THE SDK AND YOUR REQUIREMENTS TO HOLD THE LICENSE IN GOOD STANDING. THESE TERMS CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND OPTEK MUSIC SYSTEMS, INC. (COLLECTIVELY "OPTEK"). PLEASE READ THIS SDK END USER LICENSE AGREEMENT (THE "AGREEMENT") CAREFULLY BEFORE SIGNING AND THEREBY AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU REPRESENT A LEGAL ENTITY, YOU ACKNOWLEDGE THAT YOU HAVE THE LEGAL AUTHORITY TO BIND SUCH ENTITY. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT SIGN THIS SDK.

THERE MAY BE ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO CERTAIN COMPONENTS OF THE SDK, ALL OF WHICH ARE INCORPORATED HEREIN BY REFERENCE. YOU AGREE TO ABIDE BY SUCH OTHER TERMS AND CONDITIONS. TO THE EXTENT THAT A CONFLICT EXISTS BETWEEN THE TERMS PROVIDED BELOW AND THOSE POSTED FOR OR APPLICABLE TO CERTAIN COMPONENTS OF THE SDK, THE LATTER ARE CONTROLLING.

1. License to Use SDK; Restrictions.

- a. Subject to the terms and conditions of this Agreement, Optek grants you a limited, non-exclusive, non-transferable, royalty free, revocable license to use Optek's API and the Code/API usage examples in accordance with the Associated Documentation and for the intended purpose stated above.
- b. You may make a reasonable number of copies of any Component so as to use the SDK for the intended purpose stated above.
- c. You may not distribute, sell, lease, lend or sublicense the SDK or any Component as an independent product.
- d. You may not modify, create derivative works, reverse engineer, reverse compile, or disassemble Optek's API or the Code/API usage examples in any way other than for the intended purpose stated above. You also agree not to add or delete any program files that would modify the functionality and/or appearance of Optek's API or the Code/API usage examples other than for the intended purposes stated above.

- e. You will not use the SDK to run applications developed by a third party or that access data, content or resources provided by a third party.
- f. You will not use Optek's API or the Code/API usage examples with or to (i) develop any application or program containing viruses or code that is intended to damage or detrimentally interfere with or surreptitiously intercept or expropriate any system, data or information; (ii) that violates any law or regulation; or (iii) that interferes with the operation of any Optek Product.
- g. You may not modify, distribute or convey Optek's API or any code contained therein so that such API, code or any application to which it links, or which it is a part of, becomes subject to an Excluded License. An Excluded License is defined as one that requires, as a condition of license, use, modification, distribution or conveyance, that (i) the code be disclosed or distributed in source code form; (ii) others have the right to modify or create derivative works of it; or (iii) it becomes redistributable at no charge.
- h. You understand that code provided by Optek, to include the third party technologies provided, may have their own licenses or terms of use, which may or may not be made available, but which you are subject to should you use such SDK.
- i. If you develop or discover bug fixes for or pertaining to the SDK, you agree to contribute those bug fixes to Optek and you hereby grant to Optek a perpetual, worldwide, royalty free, nonexclusive, and irrevocable license sufficient to allow Optek to include the contribution in the SDK, and to license the contribution to any third party under this Agreement as part of the SDK without additional terms or conditions.

2. Required Trademark Usage

- a. In exchange for this royalty free license you are required to use, and predominately display, the Optek trademark "Fretlight Ready™" in your products and product packaging. Optek shall provide its Trademarks to you and you agree to not alter any artwork or graphic image or element except for the overall sizing of the graphic. You further agree when sizing that you will not change or alter the height and width proportions as to the graphic mark as received from Optek. Wherever its final use and display, the Fretlight Ready™ trademark must be legible and clearly read. Also, it must be obvious and evident to user potential purchaser of your software that your software product has as one of its primary features that it is Fretlight Ready™.
- b. You agree to comply with rules set forth from time to time by Optek with respect to the appearance and manner of use of the Trademarks. Any form of use of the Trademarks not specifically provided for by such rules shall be adopted by you only upon prior approval in writing by Optek. Representative specimens showing the use of the Trademarks by you shall be sent to Optek from time to time upon request by Optek.

2. Trademark License Grant

- a. Optek hereby grants to you a non-exclusive right for a period of one (1) year from the date hereof to reproduce the Trademarks as necessary on copies of the software products, on all advertising, and promotional materials, cartons, containers, jewel cases, wrapping material, display material, or other materials which utilize the Optek Trademarks for the sole purpose of allowing you to fully promote and market the Software Products. So long as

you are in full compliance with the terms stated herein this Agreement will automatically renew each year, for another year, at the end of the term.

3. Ownership of Trademarks

a. You acknowledge that the Trademarks are the exclusive and sole property of Optek, and you agree that you will not contest the ownership or validity of the Trademarks. You agree that any and all rights that might be acquired by its use of the Trademarks shall inure to the sole benefit of Optek.

b. You agree not to use or register in any country any trademarks, trade names, or other designations resembling or confusingly similar to the Trademarks. Whenever the attention to you is called by Optek or any such confusion or risk of confusion, you agree to take appropriate steps immediately to remedy or avoid such confusion.

4. Intellectual Property Rights.

a. You understand and agree that Optek retains all legal rights, title and interest (to include but not limited to patent, copyright, trademark, trade secret, trade dress and moral rights) globally to any intellectual property included in the SDK. All rights are reserved. Accordingly, you agree not to assert any intellectual property rights related to the SDK against Optek.

b. Except for the herein authorized use of the Optek owned trademark Fretlight Ready™, You are expressly prohibited from using any Optek owned trademark, trade name and Optek Product names in any way and anywhere (to include but not limited to use in your business's trade names or business names, domain names, or product names) without prior authorization from Optek.

c. You must include Optek copyright and other proprietary rights notices, such as trademark ownership designation and attribution, in your products and products packaging.

d. Optek may, at its sole discretion and without restriction, use any feedback, suggestions and ideas ("Feedback") you provide in future modifications of the SDK. You hereby grant Optek a perpetual, worldwide, fully transferable, irrevocable, royalty free license to use, reproduce, modify, create derivative works from, distribute and display the Feedback in any manner and for any purpose.

5. Confidentiality.

a. You agree that the SDK is confidential and proprietary information of Optek ("Confidential Information"). As part of your activities associated with this Agreement, You may provide Confidential Information to Optek. Confidential Information does not include information (i) that is or becomes public knowledge or is received by either party without any breach of any confidentiality obligation; (ii) that the receiving party can document was independently developed without use or access to the Confidential Information; or (iii) that the receiving party can document was previously known prior to receipt of the Confidential Information. Both parties agree to (i) use the Confidential Information only in connection with fulfilling their rights and obligations under this Agreement; (ii) hold the Confidential Information in strict confidence and exercise due care with respect to its handling and protection, consistent with their protection of their own confidential information but not less than

reasonable care, (iii) not publish or disclose the Confidential Information except for disclosures to employees and subcontractors who have a bona fide need to know the Confidential Information. Both parties agree that any unauthorized disclosure of the Confidential Information would cause irreparable harm and that in the event of any breach or threatened breach of the above confidentiality obligations, the party owning the Confidential Information shall be entitled to obtain equitable relief in addition to any other remedy.

6. No Optek Support or Software Maintenance.

a. Optek may but is under no obligation to provide updates, fix bugs or errors nor to address any other issues you may raise with the quality or performance of any component of the SDK.

7. Termination.

a. Your rights under this Agreement may be terminated by Optek immediately and without notice if you fail to comply with any term or condition of this Agreement. Upon such termination, your license to the SDK will terminate immediately and you must immediately cease using the SDK and the Optek Trademarks, and destroy all complete and partial copies of the SDK within Your possession or control. You and or Optek each may terminate this Agreement for any reason at any time with a minimum of ninety (90) days notice.

8. Warranty Disclaimer.

a. OPTEK DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, REGARDING THE USE OF THE SDK, TO INCLUDE BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OR WARRANTIES THAT THE SDK WILL BE ACCURATE, FREE OF ERRORS OR DEFECTS, FREE OF VIRUSES OR CONTAMINATION, UNINTERRUPTED, OR THAT ANY DEFECTS WILL BE CORRECTED. THE SDK IS PROVIDED "AS-IS". YOU ASSUME ALL RISK ASSOCIATED WITH YOUR USE OF THE SDK. YOUR SOLE REMEDY AGAINST OPTEK FOR DISSATISFACTION WITH THE SDK OR FOR ANY DAMAGE CAUSED THEREBY IS TO STOP USING SUCH SDK. THIS LIMITATION OF RELIEF IS A PART OF THE BARGAIN BETWEEN THE PARTIES.

9. Limitation of Liability.

a. YOU AGREE NOT TO TAKE ANY LEGAL ACTION OR MAKE ANY CLAIM AGAINST OPTEK OR ANY OF ITS SUPPLIERS IN RELATION TO THE SDK AND/OR YOUR USAGE THEREOF. FURTHERMORE YOU AGREE NOT TO SUPPORT ANY SUCH ACTIONS OR CLAIMS BY ANY OF YOUR CUSTOMERS WHO MAY RECEIVE THE SDK OR COMPONENTS THEREOF AS PART OF YOUR PRODUCTS.

b. YOU ACKNOWLEDGE AND AGREE THAT ANY USE OR DISSEMINATION BY YOU OF THE SDK IS YOUR SOLE RESPONSIBILITY AND AT YOUR OWN RISK. YOU ACKNOWLEDGE AND AGREE THAT OPTEK BEARS NO LIABILITY OR RESPONSIBILITY FOR SUCH USE OR DISSEMINATION. AS SUCH, EXCEPT WHERE PROHIBITED BY LAW, IN NO EVENT WILL OPTEK BE LIABLE TO YOU FOR ANY DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, TO INCLUDE DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES, WHETHER RELATED TO BUSINESS INTERRUPTION/WORK STOPPAGE,

LOST PROFITS, LOSS OF DATA, COMPUTER MALFUNCTION OR FAILURE OR OTHERWISE. EVEN IF OPTEK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF, NOTWITHSTANDING THE OTHER PROVISIONS OF THIS AGREEMENT, OPTEK IS FOUND TO BE LIABLE TO YOU FOR ANY DAMAGE OR LOSS THAT ARISES OUT OF OR IS IN ANY WAY CONNECTED WITH YOUR USE OF THE SDK, OPTEK'S LIABILITY SHALL BE LIMITED TO THE GREATEST EXTENT ALLOWED BY THE LAW.

10. Indemnification.

a. YOU AGREE TO FULLY INDEMNIFY AND HOLD HARMLESS OPTEK, ITS DIRECTORS, OFFICERS AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, TO INCLUDE ATTORNEYS' FEES, MADE REGARDING (I) YOUR USE OF THE SDK, (II) ANY APPLICATION YOU DEVELOP THEREFROM, (III) ANY INTELLECTUAL PROPERTY INFRINGEMENT CLAIM THAT ARISES FROM YOUR USE OF THE SDK AND ANY APPLICATION DEVELOPED THEREFROM, AND/OR (IV) YOUR BREACH OF THIS AGREEMENT.

11. Export Controls.

a. The sale and/or distribution of any component of the SDK may be subject to the export and/or trade laws and regulations of the U.S. or other countries. U.S. restrictions, which you agree to adhere to are provided on the U.S. Department of Commerce website at www.bis.doc.gov/licensing/exportingbasics.htm.

12. Notices.

a. Optek may send you notice with respect to this Agreement by sending an email message to the email address listed in your developer account or by sending a letter via postal mail to the contact address listed in your account. Notices shall become effective immediately upon Optek providing them.

13. Governing Law.

a. This Agreement shall be governed by the laws of the state of Nevada, U.S.A. All disputes arising out of or in connection with this Agreement shall be finally settled by arbitration in Washoe County, Nevada under the Rules of Arbitration of the American Arbitration Association by one arbitrator appointed in accordance with the said Rules. The language of the arbitration proceedings shall be English. The parties hereby acknowledge that the language of this Agreement is English and that the original English-language version of this Agreement shall be the only authoritative version of this Agreement.

14. Miscellaneous.

a. No delay or failure to take action under this Agreement will constitute a waiver unless expressly waived in writing, signed by a duly authorized Optek representative, and no single waiver will constitute a continuing or subsequent waiver.

b. If any provision is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

c. This Agreement constitutes the entire agreement between the parties with respect to your use of the SDK.

15. Changes to this Agreement.

a. Optek shall have the right to unilaterally change or add to the terms of this Agreement at any time upon notice by any means Optek determines in its discretion to be reasonable, including sending you an email notification or by simply referencing a posted, newly revised version of the Agreement on its developer website. It is your responsibility to review the most updated version thereof. By continuing to use the SDK following such modifications, you agree to be bound by such modifications.

b. The Confidential Information, Warranty Disclaimer, Limitation of Liability and Indemnification sections set out in this Agreement shall survive any termination or expiration of this Agreement.

By digitally signing this Agreement I fully agree to all its terms and conditions.

Date _____

Entity Name _____
(if applicable)

Individual Name _____

Email Address _____

Signature _____