

SOUND+SLEEP SOFTWARE LICENSE AGREEMENT

READ THIS SOFTWARE LICENSE AGREEMENT (“AGREEMENT”) BEFORE USING YOUR ADAPTIVE SOUND TECHNOLOGIES’ PRODUCT, INCLUDING ALL SOUND+SLEEP AND LECTROFAN VARIATIONS AND NOVO (COLLECTIVELY, THE “PRODUCTS”). BY USING THE PRODUCTS YOU ARE EXPRESSING YOUR AGREEMENT TO THE TERMS CONTAINED HEREIN, AND YOU AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT OR CANNOT AGREE TO THE TERMS CONTAINED HEREIN, THEN RETURN THE DEVICE TO YOUR VENDOR FOR A REFUND.

1. The Parties. The parties to this Agreement are Adaptive Sound Technologies, Inc. (ASTI) and the person or organization that originally purchased from ASTI or an authorized reseller the SOUND+SLEEP unit (“Customer”) (collectively, the “Parties”).

2. The Software. In this Agreement, “Software” means the program modules and features of the software that ASTI has embedded in the PRODUCTS.

3. License Grant. Subject to purchase of a PRODUCT and the limitations and restrictions set forth herein, ASTI grants to Customer a non-exclusive and non-transferable license, without right to sublicense, to use the Software, in executable form only, subject to the following use restrictions: Customer shall use the Embedded Software solely as embedded in, and for execution on, ASTI equipment originally purchased by Customer from ASTI or an authorized reseller.

The foregoing license is not transferable or assignable by Customer. No license is granted herein to any user who did not originally purchase the applicable license(s) for the Software from ASTI or an authorized reseller.

4. Use Prohibitions. Notwithstanding the foregoing, the license provided herein does not permit the Customer to, and Customer agrees not to and shall not: (a) modify, unbundle, reverse engineer, or create derivative works based on the Software; (b) make unauthorized copies of the Software (except as necessary for backup purposes); (c) rent, sell, transfer, or grant any rights in and to any copy of the Software, in any form, to any third party; (d) remove any proprietary notices, labels, or marks on or in any copy of the Software or any product in which the Software is embedded; and (e) distribute any copy of the Software to any third party, including as may be embedded in ASTI devices sold in the secondhand market.

5. Ownership. ASTI and its licensors, respectively, retain ownership of all right, title, and interest (including copyright) in and to the Software, associated documentation, and all copies of the Software. Nothing in this Agreement constitutes a transfer or conveyance of any right, title, or interest in the Software or associated documentation, or a sale of the Software, associated documentation, or copies of the Software.

6. Warranty, Limitation of Liability, Disclaimer of Warranty. The warranty applicable to the Software shall be as set forth in the warranty statement that accompanies the Software (the “Warranty Statement”). Nothing in this Agreement shall give rise to any obligation to support the Software. Support services may be purchased separately. Any such support shall be governed by a separate, written support services agreement. TO THE MAXIMUM EXTENT PERMITTED BY LAW, ASTI SHALL NOT BE LIABLE FOR ANY INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, THE SOFTWARE. IN NO EVENT SHALL ASTI BE LIABLE FOR DAMAGES ARISING FROM UNAUTHORIZED OR IMPROPER USE OF ANY ASTI SOFTWARE. EXCEPT AS EXPRESSLY PROVIDED IN THE WARRANTY

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7. Export. Customer agrees to comply with all applicable export laws and restrictions and regulations of any United States and any applicable foreign agency or authority, and not to export or re-export the Software or any direct product thereof in violation of any such restrictions, laws or regulations, or without all necessary approvals. Customer shall be liable for any such violations. The version of the Software supplied to Customer may contain encryption or other capabilities restricting Customer's ability to export the Software without an export license.

8. Miscellaneous. This Agreement shall be governed by the laws of the State of California without reference to its conflicts of laws principles. The provisions of the U.N. Convention for the International Sale of Goods shall not apply to this Agreement. For any disputes arising under this Agreement, the Parties hereby consent to the personal and exclusive jurisdiction of, and venue in, the state and federal courts within Santa Clara County, California. This Agreement constitutes the entire and sole agreement between ASTI and the Customer with respect to the Software, and supersedes all prior and contemporaneous agreements relating to the Software, whether oral or written (including any inconsistent terms contained in a purchase order), except that the terms of a separate written agreement executed by an authorized ASTI representative and Customer shall govern to the extent such terms are inconsistent or conflict with terms contained herein. Neither modification to this Agreement nor any waiver of any rights hereunder shall be effective unless expressly assented to in writing by the party to be charged. If any portion of this Agreement is held invalid, the Parties agree that such invalidity shall not affect the validity of the remainder of this Agreement. This Agreement and associated documentation has been written in the English language, and the Parties agree that the English version will govern. (For Canada: Les parties aux présentés confirment leur volonté que cette convention de même que tous les documents y compris tout avis qui s'y rattache, soient redigés en langue anglaise. (Translation: The parties confirm that this Agreement and all related documentation is and will be in the English language)).