

For NaturalPoint, Inc. (d/b/a OptiTrack) plugins

## **NOTICE TO CUSTOMER**

This EULA is a contract between you (either an individual person or an entity, referred to herein as “you”) and NaturalPoint, Inc. d/b/a OptiTrack (“OptiTrack”), and governs your use of the software and collateral files that accompany this EULA, including without limitation the plugins, the NatNet SDK (defined below), any associated media, printed materials and documentation, made available by OptiTrack in connection therewith (collectively the “Plugin(s)”). The “NatNet SDK” shall mean and include OptiTrack’s proprietary (a) NatNet native library (including any headers, static library and dynamic import library); (b) NatNet managed .NET assembly; (c) NatNet user documentation provided in printed and/or electronic media; (d) NatNet application programs, utilities, tools and API information; (e) associated samples, executables and demonstration code; and/or (f) any associated updates or upgrades thereto (to the extent any updates or upgrades are made available by OptiTrack). This EULA is solely between OptiTrack and you; any third party providing products or services that interact with or integrate with the Plugin is not a party to this EULA.

BY EXPRESSLY ACCEPTING THIS EULA OR BY DOWNLOADING, INSTALLING, ACTIVATING AND/OR OTHERWISE USING THE PLUGIN, YOU ARE AGREEING THAT YOU HAVE READ, AND THAT YOU AGREE TO COMPLY WITH AND ARE BOUND BY THE TERMS AND CONDITIONS OF THIS EULA AND ALL APPLICABLE LAWS AND REGULATIONS. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS EULA, THEN YOU MAY NOT DOWNLOAD, INSTALL, ACTIVATE OR OTHERWISE USE THE PLUGIN AND YOU MUST PROMPTLY RETURN THE PLUGIN. IF YOU ARE ACCEPTING THESE TERMS AND CONDITIONS ON BEHALF OF AN ENTITY, YOU ACKNOWLEDGE THAT YOU HAVE THE APPROPRIATE AUTHORITY TO ACCEPT THESE TERMS AND CONDITIONS ON BEHALF OF SUCH ENTITY.

## **DEFINITIONS**

“Plugin” further means and includes the OptiTrack software installed, downloaded, or otherwise licensed by you under this EULA, in object code only. The Plugin is copyrighted, trade secret and confidential information of OptiTrack, its affiliates or Third Party Licensors, who maintain exclusive title to the Plugin and retain all rights not expressly granted by this EULA.

“Hardware” means a single unit of OptiTrack hardware for which you are authorized to use the Plugin.

## **LIMITED LICENSES**

### **Internal Plugins Use-Case License**

Subject to all of the terms, conditions and restrictions of this EULA, OptiTrack grants to you a limited, personal, non-transferable, non-assignable, non-sublicensable, non-exclusive license to use the Plugin, solely in machine-readable, object or executable form, only with the Hardware.

### **External SDK Use-Case License**

Subject to your strict compliance with the terms and conditions of this EULA, OptiTrack hereby grants to you, during the term of this EULA, a limited, revocable, non-exclusive, non-transferrable (except to the extent as may be permitted in this present section), non-sublicensable (except to the extent permitted in this present section) license to:

- a. use the NatNet SDK solely to develop, test and create your own products only in strict accordance with, and as authorized in, the sub-section below titled Products, within the section titled EXTERNAL SDK USE-CASE ADDITIONAL TERMS (such products of yours, the “Product(s)”); and
- b. copy, distribute, and sublicense the distributable elements of the NatNet SDK solely as part of the Products for installation on your end-customers’ devices and subject to the terms of a legally binding written license agreement between you and the end-customer that complies with the sub-section below titled End-Customer Agreements, within the section titled EXTERNAL SDK USE-CASE ADDITIONAL TERMS below.

The foregoing license rights are non-transferable and otherwise non-sublicensable, provided that you may sublicense the license rights granted in sub-part b of this present section, above, solely to your third party distributors so as to permit such third party distributors to distribute and/or make available the Products to end-customers.

## **THIRD PARTY SOFTWARE PROGRAMS AND LICENSES**

The Plugin includes additional software (“Third Party Program(s)”) licensed by third parties (“Third Party Licensor(s)”), under the terms of a third party EULA (“Third Party License”) which is available at the following link: <https://optitrack.com/about/legal/eula.html> Third Party Programs are subject to the terms of the specific licenses under which they are distributed by their respective Third Party Licensors. By using the Plugin, you acknowledge and agree that you have been provided access to and an opportunity to review such terms, and you agree to comply with the Third Party Licensor terms for the benefit of the applicable Third Party Licensor.

Access to certain Third Party Program functionality and/or services may require you to enter into separate Third Party License agreements with the applicable Third Party Licensor. Your use of any such Third Party Program functionality and/or services is expressly conditioned on your entering into a binding Third Party License with the applicable Third Party Licensor and OptiTrack and its affiliates shall have no obligation to provide you access or use of, or support and maintenance with respect to, such Third Party Program functionality and/or services.

## **RESTRICTIONS AND UNAUTHORIZED USE**

Except as otherwise expressly agreed in writing by OptiTrack, you shall not (and will not allow any third party to): (a) decompile, disassemble, or otherwise reverse-engineer the Plugin or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the Plugin by any means whatsoever; (b) sell, sublicense, rent, loan, lease, distribute, market, or commercialize the Plugin for any purpose; (c) remove any product identification, proprietary, copyright or other notices contained in the Plugin; (d) copy, reproduce, republish, upload, post or transmit the Plugin in any way; (e) modify or create a derivative work of any part of the Plugin, or incorporate the Plugin into or with other products or software, except for solely internal business use by the licensee; (f) use the Plugin with any other hardware other than the Hardware; (g) use the Plugin to create a competitive offering; (h) share or publish the results of any benchmarking of the Plugin without OptiTrack's prior written consent; (i) use the Plugin to process, transmit or otherwise make available any content that infringes or misappropriates the intellectual property rights or other proprietary rights of any third party; (j) use, enable any third party to use, or fail to contractually restrict any third party from using, the Plugin or NatNet SDK with third party hardware that is similar to or competes with OptiTrack product hardware; or (k) use the Plugin or NatNet SDK beyond the express scope of the respective license grants set forth in this Agreement.

You shall not take any action that would require, indicate, or imply that the Plugin or NatNet SDK is or may be licensed under the terms of any Open Source Software license. By way of illustration and not by way of limitation, you shall not use or incorporate the Plugin or NatNet SDK with any Open Source Software licensed under any license terms that: (i) impose or could impose a requirement or condition that the Plugin, NatNet SDK, or any software or source code used or integrated therewith: (1) be disclosed or distributed in source code form; (2) be licensed for the purpose of making modifications or derivative works; or (3) be redistributable at no charge; or (ii) otherwise impose or could impose any other material limitation, restriction, or condition on the right or ability of OptiTrack to use or distribute the Plugin or NatNet SDK, or any software or source code used or integrated therewith. You shall promptly inform OptiTrack in writing of any Open Source Software use

in violation of this Section of which you become aware. For purposes of this Section, “Open Source Software” means any software code that is distributed as “free software” or “open source software” or that is otherwise distributed publicly in source code form under terms that permit modification and redistribution of such software.

## **INTELLECTUAL PROPERTY**

The Plugin is licensed and not assigned or sold. You acknowledge that the Plugin, and the underlying source code, algorithms, data structures, methods, processes, screen formats, report formats, ideas and concepts are valuable intellectual property owned by OptiTrack, its affiliates, and Third Party Licensors. OptiTrack, its affiliates, and Third Party Licensors reserve all rights not expressly granted hereunder, and you do not acquire any other rights, whether express, implied or otherwise, in the Plugin or any other OptiTrack intellectual property rights or technology other than those limited license rights expressly granted under this EULA. For avoidance of doubt, OptiTrack, its affiliates, and Third Party Licensors will and do retain all right, title and interest in and to the Plugin, and any and all patent, copyright, trademark, trade secret, and any other intellectual property or industrial rights in and to or relating to the Plugin, including any modifications, improvements, updates, and derivative works thereof or thereto. You agree not to challenge the ownership or rights in and to the Plugin, including without limitation, all copyrights and other proprietary rights. From time to time you may disclose to OptiTrack or its affiliates certain comments, suggestions or recommended changes related to the Plugin or to OptiTrack’s related products or services, including through your employees and contractors (collectively “Feedback”). You are not required to disclose Feedback but, with respect to any Feedback that is disclosed, you hereby assign and agree to assign to OptiTrack, on behalf of you and your employees and contractors, all right, title, and interest in and to such Feedback. OptiTrack is free (but not required) to use, without any attribution or compensation, Feedback for any purpose. During the term of this EULA, you will not assert, nor will you authorize, assist, or encourage any third party to assert, against OptiTrack or any of its affiliates, customers, vendors, business partners, or Third Party Licensors, any patent infringement or other intellectual property infringement claim regarding the Plugin or Hardware. You acknowledge and agree that any violation of the terms of this Section would irreparably harm OptiTrack and that OptiTrack may enforce the terms of this Section through injunctive relief, without limitation to any other rights and remedies available to OptiTrack.

## **CERTIFICATION**

You agree that within thirty (30) days of a written request by OptiTrack or OptiTrack’s authorized representative, you will fully document and certify that your use of the Plugin conforms to this EULA.

## **NON-TRANSFERABILITY**

This license is non-transferable. You may not distribute, sublicense, assign, share, sell, grant a security interest in, use for service bureau purposes, or otherwise transfer the Plugin or your license to use the Plugin without the prior written consent of OptiTrack, and then only upon a permanent transfer of the Hardware on which the Plugin may be installed or downloaded and provided the Plugin is included in such transfer and you retain no copies of the Plugin.

## **HARDWARE AND USAGE DATA**

You acknowledge that, as a default setting, the Plugin or related OptiTrack software may collect and send to OptiTrack certain “Systems Data,” defined as data, content and information regarding your use of the Plugin. “Systems Data” may include systems administrative data, statistical and demographical data, and operational information, such as, by way of illustration, data and information relating to total users, the total number of users connected to the Internet using the Plugin, the total number of cameras connected, the version of the Plugin in use, the operating systems in use, and the number of unique connection days and last connected day. “Systems Data” does not include any data or information that identifies any particular licensee or end user of the Plugin or that can be used to identify any particular licensee or end user of the Plugin. You may object to the potential collection of Systems Data by providing written notice to OptiTrack before using the Plugin, in which event OptiTrack gives you permission to implement a firewall following license activation that prevents OptiTrack software from collecting or sending such Systems Data in your instance. You acknowledge and agree that all Systems Data is and shall at all times remain the sole and exclusive property of OptiTrack. OptiTrack may make any legal use of the Systems Data without notifying you or sharing such Systems Data with you. Specifically, by way of illustration and not by way of limitation, OptiTrack may publish and share Systems Data with others to promote the Plugin and/or OptiTrack’s other products or services, for evaluating the efficiency, utility and functionality of the Plugin and/or OptiTrack’s other products or services, and for enhancing and improving the Plugin and/or OptiTrack’s other products or services.

Notwithstanding the preceding paragraph, if OptiTrack collects any personal data in the course of your use of the Plugin, OptiTrack will process such personal data in accordance with its privacy policy, accessible at <https://optitrack.com/about/legal/privacy-policy.html>.

## **SUPPORT**

OptiTrack does not have any support obligations with respect to the Plugin provided under this EULA.

## **EXTERNAL SDK USE-CASE ADDITIONAL TERMS**

### **Products**

You agree as follows with respect to the Products:

- a. The Products shall not materially or substantially replicate the functionality of the products or services offered by OptiTrack. The Products shall be designed for and solely capable of use with OptiTrack hardware products. Subject to the preceding sentences and your other obligations and responsibilities under this EULA, you may develop and distribute Products that are similar to or that otherwise compete with OptiTrack products or services, provided that such Products add substantial additional functionality beyond the functionality available through OptiTrack's products or services.
- b. You acknowledge and agree that you are solely responsible for, and that OptiTrack has no responsibility or liability of any kind in connection with, the content, development, operation, support or maintenance of any Products. Without limiting the foregoing, you will be solely responsible for: (1) the technical installation and operation of the Products; (2) creating and displaying information and content on, through or within the Products; (3) ensuring that the Products do not violate or infringe the intellectual property rights of any third party; (4) ensuring that the Products are not offensive, profane, obscene, libelous or otherwise illegal or in violation of applicable laws; (5) ensuring that the Products do not contain or introduce any virus, Trojan horse, worm, software lock, drop dead device or any other limiting routine or harmful code into any OptiTrack or end-customer IT systems, networks, hardware or software; and (6) ensuring that the Products are not designed to or utilized for the purpose of spamming end users or any third parties.
- c. You acknowledge and agree that you are solely responsible for providing all support and technical assistance to end-customers of the Products. OptiTrack has no obligation to provide such support or technical assistance to end-customers or their users, and you agree not to represent to end-customers or their users that OptiTrack is available to provide such support or technical assistance.

### **End-Customer Agreements**

You agree to cause each end-customer to whom you provide or distribute a Product to agree in advance to a binding end user license agreement, including terms and conditions that are at least as protective of the NatNet SDK and OptiTrack's intellectual property rights associated therewith or embodied therein, as the terms and conditions of this EULA. You shall ensure that such agreement sublicenses the distributable elements of the NatNet

SDK solely for use with OptiTrack hardware products, and that such agreement includes a prohibition against use with any third-party hardware product(s). Such agreement shall identify OptiTrack as a third-party beneficiary. Such agreement shall further disclaim any and all representations and warranties on the part of OptiTrack, and exclude and disclaim all liability of any kind on the part of OptiTrack. You will provide a copy to OptiTrack of each and every such agreement, promptly upon OptiTrack's request from time to time.

## **CONFIDENTIALITY**

You acknowledge that you may obtain information relating to the Plugin or OptiTrack that has not been released to the public, including, but not limited to, code, technology, know-how, ideas, algorithms, testing procedures, structure, interfaces, specifications, documentation, bugs, problem reports, analysis and performance information, and other technical, business, product, and data ("Confidential Information"). You shall not disclose Confidential Information to any third party or use Confidential Information for any purpose other than the use of the Plugin as licensed under this EULA.

## **WARRANTY DISCLAIMER**

THE PLUGIN IS PROVIDED "AS IS" AND WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, BOTH EXPRESS AND IMPLIED. OPTITRACK, ITS SUPPLIERS, AND THIRD PARTY LICENSORS DO NOT WARRANT THAT THE PLUGIN WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE PLUGIN WILL BE UNINTERRUPTED OR ERROR FREE. OPTITRACK, ITS AFFILIATES, AND THIRD PARTY LICENSORS DISCLAIM AND EXCLUDE ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, SATISFACTORY QUALITY OR OTHERWISE ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, IN EACH CASE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **HIGH RISK APPLICATIONS**

THE PLUGIN IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS REQUIRING FAULT TOLERANCE OR FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, MEDICAL OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPON SYSTEMS, IN WHICH THE FAILURE OF THE PLUGIN COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK APPLICATIONS"). OPTITRACK AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK APPLICATIONS.

## **INDEMNIFICATION**

You agree to defend, indemnify and hold harmless OptiTrack and its affiliates, and each of its and their respective officers, directors, agents, and employees, for, from, and against

any and all claims, demands, loss, damage, liability, cost, or expense (including, but not limited to, attorneys' fees at trial, on appeal, and on any petition for review), arising out of or related to: (a) your breach or failure to comply with any Open Source Software license or other third party software license; (b) your breach of this EULA; (c) the conduct of your business; (d) your use of the Plugin, the NatNet SDK or the OptiTrack Marks; (e) your Products or any HIGH RISK APPLICATIONS; or (f) your infringement, misappropriation, or violation of the intellectual property rights or other proprietary rights of any third party.

### **LIMITATION OF DAMAGES AND REMEDIES**

IN NO EVENT SHALL OPTITRACK OR ITS THIRD PARTY LICENSORS BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH YOUR USE OF THE PLUGIN. IN NO EVENT SHALL OPTITRACK OR ITS THIRD PARTY LICENSORS BE LIABLE FOR LOSS, INACCURACY, INCOMPLETENESS, OR RELEASE OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, SYSTEMS DOWNTIME, GOODWILL, PROFITS OR OTHER BUSINESS LOSS, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH DAMAGES ARE SOUGHT, AND REGARDLESS OF WHETHER OPTITRACK KNEW OF OR HAD REASON TO KNOW OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE TOTAL LIABILITY OF OPTITRACK ARISING OUT OF THIS EULA, INCLUDING BUT NOT LIMITED TO DAMAGES OR LIABILITY ARISING OUT OF CONTRACT, TORT, BREACH OF WARRANTY, INFRINGEMENT OR OTHERWISE, SHALL NOT IN ANY EVENT EXCEED ONE HUNDRED DOLLARS (USD \$100.00).

THE PARTIES AGREE THAT THE LIMITATIONS SET FORTH IN THIS SECTION ARE ESSENTIAL AND THAT OPTITRACK WOULD NOT PERMIT YOU TO USE THE PLUGIN ABSENT THE TERMS OF THIS SECTION. THIS SECTION AND THE DISCLAIMERS SET FORTH IN THIS EULA SHALL APPLY EVEN IF ANY REMEDY SPECIFIED IN THIS EULA SHALL BE FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

### **EXPORT COMPLIANCE**

You acknowledge that the Plugin may be subject to export restrictions by the United States government and import restrictions by certain foreign governments. You shall not and shall not authorize any third party to remove or export from the United States or allow the export or re-export of any part of the Plugin or any direct product thereof: (a) into (or to a national or resident of) any embargoed or terrorist-supporting country; (b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (c) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof

requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (d) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. You agree to the foregoing and warrant that you are not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. You acknowledge that it is your sole responsibility to comply with any and all government export, and other applicable, laws and that OptiTrack has no responsibility with respect thereto, and you agree to indemnify, indemnify and hold harmless OptiTrack and its personnel in connection with any breach of this present section or any violation by you or your customers of any law or regulation related to export controls.

#### **NOTICE TO U.S. GOVERNMENT END USERS**

The Plugin is a "Commercial Item," as that term is defined at 48 C.F.R. § 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. § 12.212 or 48 C.F.R. § 227.7202, as applicable. The Plugin is also provided subject to Federal Acquisition Regulation 52.227.19. Consistent with 48 C.F.R. § 12.212 or 48 C.F.R. § 252.227-7014, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users: (a) only as Commercial Items; and (b) with only those rights as are granted to all other end users pursuant to this EULA. The Plugin is provided only with "restricted rights" with only those rights as are granted to all other end user purchasers pursuant to the terms and conditions herein.

#### **TERM, TERMINATION AND SURVIVAL**

OptiTrack may terminate this EULA immediately and without prior notice if you fail to comply with any term of this EULA. You may terminate this EULA at any time on written notice to OptiTrack. In the event of termination of this EULA, all licenses granted hereunder shall automatically terminate and you must immediately cease use of the Plugin and destroy all copies of the Plugin. In addition you must remove all copies of the Plugin from the Hardware on which it is installed. The terms set forth in this Section and the Sections entitled Restrictions and Unauthorized Use, Intellectual Property, Hardware and Usage Data, Confidentiality, Warranty Disclaimer, High Risk Applications, Limitation of Damages and Remedies, and Export Compliance shall survive any termination of this EULA.

#### **PUBLIC REFERENCE**

Unless Licensee is a natural person, Licensee consents to the public use of its personal and/or corporate name as a customer of OptiTrack for marketing purposes, unless Licensee notifies OptiTrack in writing that it withholds such consent.

## **AMENDMENTS**

The terms of this EULA may be unilaterally modified, changed or amended by OptiTrack from time to time and the parties agree that any such modifications, changes or amendments (“Amendments”) shall be binding on the parties to the extent the Amendments: (i) are generally beneficial to the parties or promote compliance with applicable law or regulation; or (ii) do not materially conflict with the subject and purpose of the transactions governed by this EULA. OptiTrack may make the Amendments available and accessible to you in the same manner in which OptiTrack makes available the EULA. Each such Amendment shall take effect and become binding upon you as of the date you receive actual or constructive notice of the Amendment, unless you terminate this Agreement within thirty (30) days after receiving such notice (in which event the Amendment will not take effect).

## **GENERAL**

This EULA is governed by the laws of the State of Oregon and the United States of America, without regard to conflict of law principles. The United Nations Convention for the International Sale of Goods shall not apply. This EULA is the entire agreement between us and supersedes the terms of any purchase orders and any other communications or advertising with respect to the Plugin. If any provision of this EULA is held invalid, the remainder of this EULA shall continue in full force and effect. You will not transfer, assign, or delegate the this EULA or any of your rights or obligations under this EULA, by operation of law or otherwise, without the prior written consent of OptiTrack in its discretion. Any purported transfer, assignment, or delegation of this EULA, or of any of your rights or obligations under this EULA, in violation of this Section is void and of no effect. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise of such right. The parties agree that the provisions of the Uniform Computer Information Transactions Act (“UCITA”), as it may have been or hereafter may be in effect in any jurisdiction, shall not apply to this EULA, and the parties waive any and all rights they may have under any laws(s) adopting UCITA in any form.

## **CONTACT INFORMATION**

If you have any questions about this EULA, or if you want to contact OptiTrack for any reason, please visit our websites for current contact information at: [www.naturalpoint.com](http://www.naturalpoint.com)

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