



**HARVEST**

# **SOFTWARE PRODUCT TERMS**

Revision Date: 02.02.2024



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These Software Product Terms, together with our General Terms, apply to Our Software supplied to you, our customer (**You, Your**) by any of **Harvest Technology Pty Ltd** (ABN 52 601 194 138) of 7 Turner Avenue, Technology Park, Bentley, Western Australia, Australia, **Harvest Technology (UK) Ltd** (Company Number 14032351) of 71-75 Shelton Street, Covent Garden, London WC2H 9JQ, United Kingdom, **Opsivity, Inc.** of 1155 SW Morrison St, Portland, Oregon, USA, and **Harvest Infinity Pty Ltd** (ABN 57 620 773 060) of 7 Turner Avenue, Technology Park, Bentley Western Australia, Australia (**we, us, our**). These Software Product Terms are Product-Specific Terms and, together with our General Terms, form part of the Agreement between You and Us.

### 1. Definitions and Interpretation

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1.1. Capitalised terms are defined below or in our General Terms:

**Administrator** has the meaning given to it in clause 2.2

**App Store** means any third-party application store where our software may be accessed.

**Authorised User** means end users of Our Software:

- (a) whom You wish to access and use Our Software, and whom You have nominated to Us; and
- (b) who have agreed to Our Authorised User Terms.

**Authorised User Terms** means our Authorised User terms as updated by us from time to time.

**Beta Versions** has the meaning given to it in clause 14.1.

**Content** means any data or audio-visual material input to or streamed by You when using Our Software.

**Effective Date** means the first day of the Initial Subscription Term as determined in accordance with clause 3.1.

**Feedback** has the meaning given to it in clause 14.1(b)(ii).

**Hosting** means storing, managing, and maintaining digital assets, in a data centre or cloud based environment or infrastructure provided by Harvest, You or a third-party service provider.

**Initial Subscription Term** has the meaning given in clause 3.1.

**Nodestream™ Enterprise Subscription** means a deployment option enabling You to host Our Software on Your own server.

**Our Software** means the software provided to You by us in any format, the intellectual property in which is owned by us, including but not limited to Nodestream™, RiS™, Wearwolf™ and Nodester™, Nodestream™ Enterprise Subscription.

**Renewable Subscription Term** has the meaning given in clause 3.2.

**Software Authorised User Terms** means the terms applicable to the supply of specific Our Software.

**Subscription** means the subscription detailed in our Quote to you or on our online e-commerce store.

**Subscription Term** means the Initial Subscription Term and all Renewal Subscription Terms.

**Third Party Product** has the meaning given to it in clause 13.1.

**Your Property** has the meaning given to it in clause 11.7(a).



### 2. Access

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- 2.1. We grant to You access during the Term to use Our Software solely for Your internal business purposes in accordance with the terms of this Agreement.
- 2.2. You must designate an account administrator (**Administrator**) to manage Authorised Users' access to Our Software, account administration and communications between us and You. You must nominate the Administrator by providing their details to us. You may replace the Administrator by notifying us of the details of the replacement Administrator.
- 2.3. The Fees for the access granted under clause 2.1 are calculated in accordance with Your Subscription, as specified in the Quote, or nominated by You when purchasing Our Software via our online e-commerce store.
- 2.4. Subject to clause 2.5, access under clause 2.1 is limited to the features and usage limits of Your Subscription specified in the Quote or nominated by You when purchasing Our Software via our online e-commerce store.
- 2.5. You may upgrade, downgrade, or cancel Your Subscription at any time by following the procedure set out in section 4 of this Agreement.
- 2.6. We will give notice prior to the expiry of the Term and any anniversary of the Term and our Fees for the Renewal Subscription Term.

### 3. Our Software Subscription Term and Renewal

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- 3.1. The initial subscription term will begin on:
  - (a) if You purchase Your Subscription with an Order directly to us, the date we accept Your Order in writing, unless otherwise agreed in writing by Us; or
  - (b) if You purchase Your Subscription from our online e-commerce store, the date of Your purchase;and will continue for the period selected by You during the subscription process (**Initial Subscription Term**).
- 3.2. After the expiry of the initial Subscription Term, the Agreement will automatically renew for successive periods which will be the same as the immediately preceding Subscription Term (each a **Renewal Subscription Term**), unless either party gives notice to the other at least 30 days before the end of the Initial Subscription Term or any Renewal Subscription Term, as applicable, that it does not want the Agreement to renew. You will be notified in advance of each 30 day period, and reminded that You have the option to not renew.
- 3.3. The Renewal Subscription Term will be on the then current terms of the Agreement (the current version of our Agreement will be available at <https://harvest.technology/terms-and-conditions/>), and subject to the then standard pricing available on our Pricing Page, unless otherwise agreed by the parties.
- 3.4. Your Nodestream™ Enterprise Subscription is subject to You recertifying Your server credentials at the end of each month in accordance with our instructions. If You do not recertify Your server credentials at the end of each month, You will not be able to access Your Nodestream™ Enterprise Subscription.

### 4. Change or Cancel Your Subscription

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- 4.1. Only the Administrator can make changes to Your Subscription.
- 4.2. You can upgrade, downgrade, or cancel Your Subscription at any time.
- 4.3. A notification of changes or cancellation will be emailed to the Administrator.
- 4.4. You may change a Subscription by:



- (a) going to the pricing page on our e-commerce store or in Our Software;
- (b) select the new Subscription that You would like;
- (c) select if You would like the Subscription to be billed monthly or annually; and
- (d) select an existing payment method or nominate a new one.

4.5. When You upgrade Your Subscription:

- (a) changes take effect immediately;
- (b) You can use new features or increase your usage limits immediately;
- (c) the billing date of your account will also be reset to the date of the upgrade;
- (d) You will be charged for the price of the new Subscription and your billing anniversary date will become the day of the month of the new subscription.
- (e) Any unused hours or data that remain from the previous Subscription, will be rolled over to the first month of the new Subscription.

4.6. When you downgrade Your Subscription:

- (a) changes occur at the end of that monthly or yearly billing cycle depending on your chosen Term;
- (b) You will still have access to the features of your current Subscription until that date;
- (c) You may lose access to certain features;
- (d) You can cancel a downgrade action at any time before the end of the billing cycle by going to Your billing and usage page and clicking Cancel downgrade. Your account will stay on the current Subscription.

4.7. We offer two billing cycle options: monthly and annual.

- (a) Yearly Subscriptions offer a discount on monthly prices. You may move Your Subscription from monthly to annual and the change will take place at the end of the billing cycle of the monthly Subscription.
- (b) To move Your Subscription from annual to monthly, You will need to cancel Your Subscription in accordance with 4.8 and 4.9, and purchase a new monthly Subscription.

4.8. You may cancel Your Subscription at any time by:

- (a) if You purchased Your Subscription with a Purchase Order, by notice sent to [sales@harvest-tech.com.au](mailto:sales@harvest-tech.com.au); or
- (b) if You purchased Your Subscription from our online e-commerce store, by contacting Your Administrator.

4.9. The Subscription Term will end on the expiration date. If You cancel Your Subscription before the expiration date, Your access to the Subscription will continue until the expiration date.

## 5. Changes to Our Software

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- 5.1. We may, on reasonable notice to You, change or modify Our Software (without materially reducing the general functionality), including by providing You with a new version at any time.



- 5.2. We may make available to You new functionality or features for Our Software. If the new functionality or features increase the Fees payable for Our Software, You will have the option of accepting or declining the new functionality or features.

### **6. Authorised Users**

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- 6.1. Each Authorised Use must comply with the applicable Software Authorised User Terms:
- 6.2. Each Authorised User must have a unique username and password issued or otherwise assigned by You for access to and use of Our Software.
- 6.3. You must immediately notify us of any unauthorised use of an Authorised User's login credentials or any other breach of security known to You or Your Authorised Users.
- 6.4. Use of an Authorised User's login credentials or Our Software access by You or Your Authorised Users other than as provided in the Agreement will be considered a breach of the Agreement by You.

### **7. Hosting**

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- 7.1. We may make Our Software available to You by one or more of the following three hosting options:
- (a) Third-party cloud server;
  - (b) Third-party dedicated server; or
  - (c) Self-managed server.
- 7.2. If Our Software is to be made available to You via a third-party cloud server or a third-party dedicated server, clause 13 will apply.
- 7.3. Our Software is to be made available to You via a self-managed server, You will need a Nodestream™ Enterprise Subscription and clause 3.4 will apply.

### **8. Availability**

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- 8.1. We will use commercially reasonable efforts to maintain availability of Our Software during the Term.
- 8.2. You agree and understand that from time to time Our Software will not be available, such as:
- (a) scheduled maintenance times, e.g. upgrades, patches, bug fixes;
  - (b) outages;
  - (c) emergency maintenance;
  - (d) unavailability caused by Your or other third -party software or hardware; and
  - (e) causes beyond our reasonable control.
- 8.3. We agree to use reasonable efforts to provide You with prior notice of any scheduled maintenance (except for emergency maintenance) and other unavailability of Our Software, and You agree to use reasonable efforts to comply with any maintenance requirements (including, for example, implementing an update or emergency fix) that We notify You about.
- 8.4. We are not liable for any delays, interruptions, or other transmission errors resulting from any lack of Our Software access or caused by Your device or Your internet or wireless service provider.



### 9. Your obligations

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- 9.1. You must, and must ensure that You and Your Authorised Users:
- (a) comply with all applicable laws, the terms of the Agreement, and the terms of use of any Third-Party Product with which You use Our Software;
  - (b) only access and use Our Software for Your own internal business purposes;
  - (c) take all reasonable steps to safeguard access to Our Software; and
  - (d) not use Our Software in any manner or for any purpose that:
    - (i) is unlawful;
    - (ii) would give rise to any civil or criminal liability for Yourself, us, or any third party; or
    - (iii) in any manner contrary to or prohibited by the Agreement.
- 9.2. You must not assign, sublicense (except to Your Authorised Users), license, sell, lease, rent or otherwise make Our Software available to third parties.
- 9.3. Without limiting clause 9.1 or any other provision in the Agreement, You acknowledge and agree that You are solely responsible for:
- (a) Your Authorised Users' compliance with applicable laws, the Agreement and the applicable Software Authorised User Terms;
  - (b) the acts and omissions of your Authorised Users, as if they were your acts and omissions;
  - (c) the Content uploaded to Our Software, including its accuracy and legality;
  - (d) managing the security, confidentiality, and access to Our Software of Your Authorised Users and for all Content uploaded to Our Software;
  - (e) all liabilities incurred through use of Our Software by Your Authorised Users and that any transaction under an Authorised User's login credentials will be deemed to have been performed by You; and
  - (f) ensuring that Your Authorised Users' account information is true and accurate information.
- 9.4. You acknowledge that Your Authorised Users may act on information submitted to us by Your Authorised Users whether or not such information is accurate or true, and You agree that You or Your Authorised Users rely on such information at Your own risk and that we are not liable to You or Your Authorised Users for Your or Your Authorised User's reliance thereon.
- 9.5. Any use of Our Software by You or Your Authorised Users that in our reasonable opinion threatens the security, integrity, or availability of Our Software may result in Your or Your Authorised Users' immediate suspension of access to Our Software.
- 9.6. You agree to prohibit Your Authorised Users from uploading material to any third-party cloud server or third-party dedicated server in violation of the intellectual property or other rights of any person, and to maintain and enforce a Code of Conduct policy that complies with applicable law.

### 10. Acceptable Use

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- 10.1. Without limiting clause 9.1 or any other provision in the Agreement, you must not, and must ensure that Your Authorised Users do not:



- (a) download, install or use Our Software on any devices on which You do not have permission to operate Our Software, or on which Our Software cannot be legally and rightfully operated;
- (b) send communications that are illegal;
- (c) defraud, deceive, or mislead anyone, including in relation to Your usage of Our Software;
- (d) transmit any content, data or information that is abusive, harmful, threatening, harassing, defamatory, bullying, malicious, discriminatory, deceptive, misleading, unethical, unlawful, or which violates another person's privacy rights, or which is otherwise objectionable;
- (e) copy, modify, clone, translate, adapt, or otherwise create derivative works or improvements of Our Software;
- (f) remove, disable, circumvent, or otherwise create or implement any workaround to any copy protection, rights management, or security features in or protecting Our Software;
- (g) remove, delete, alter, or obscure any trade marks or any copyright, patent, or other intellectual property or proprietary rights notices from Our Software, including any copy of them; or
- (h) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available Our Software, or any features or functionality of Our Software, to any third party.

### **11. Your Licence to Us**

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- 11.1. Subject to the Agreement, You grant to us a non-exclusive, royalty-free licence during the Term to use, reproduce, store, archive, aggregate, process, produce reports, and benchmark the Content in order to provide Our Software to You.
- 11.2. You further grant us a licence to review and monitor all use of Our Software by Your Authorised Users to ensure compliance with all of the terms of this Agreement and evaluate performance of Our Software. This licence includes the ability to analyse user behaviour to evaluate use of our website and emails, both on an individual basis and in the aggregate, and otherwise to collect, create, and analyse metadata about Your use of Our Software.
- 11.3. We will not disclose or distribute such metadata or other information resulting from monitoring activities, except in an anonymised and aggregate format.
- 11.4. Subject only to the limited licences expressly granted under this clause 11, we acquire no right, title, or interest from You or Your Authorised Users under the Agreement in or to the Content, including any Intellectual Property in it.
- 11.5. You are solely responsible for the Content that You or Your Authorised Users upload, publish, display, link to or otherwise make available on or through Our Software, and You agree that we are only acting as a passive conduit for the online distribution and publication of the Content which You control.
- 11.6. We will not review, share, distribute, or reference any of the Content except as provided in the Agreement to provide Our Software or as may be required by law.
- 11.7. You:
  - (a) are solely responsible for the accuracy, quality, and legality of all Content, software, and hardware that is used with Our Software other than that provided by us (**Your Property**), and for the means by which You acquired Your Property; and
  - (b) warrant that Your Property does not and will not violate third-party rights of any kind, including any Intellectual Property Rights or privacy rights.



### 12. Security

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- 12.1. We will use commercially reasonable efforts to implement and maintain data security practices for Your Property in accordance with applicable law and as set out in our Privacy Policy which can be accessed at [Harvest | Terms and Conditions](#).
- 12.2. Notwithstanding clause 12.1, You acknowledge that:
- (a) Your access to and use of Our Software is at Your own risk;
  - (b) we cannot guarantee that Your use of Our Software will be uninterrupted or error free, or that Our Software will be free of viruses or other harmful components;
  - (c) we cannot guarantee that the Content will not be lost, or that unauthorised third parties will never be able to defeat the data security measures we have, or use the Content for improper purposes;
  - (d) we are not responsible for any loss or damage caused by a distributed denial-of-service attack, or any viruses, Trojans, worms, or other technologically harmful material that may infect Your device; and
  - (e) the internet is not secure and we are not responsible for any loss, corruption or interception of data sent to or from Our Software.

### 13. Third-Party Products

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- 13.1. You may have the option to use Our Software through or integrated with third party software, applications, platforms, or hardware (**Third-Party Product**). You acknowledge and agree that:
- (a) the Third-Party Product may have its own terms of use and privacy policies, and You agree to use the Third-Party Product in accordance with all applicable terms and privacy policies;
  - (b) we do not endorse and are not responsible or liable for the behaviour, features, or content of any Third-Party Product, or for any transaction You may enter into with the provider of any such Third-Party Product;
  - (c) should the provider of the Third-Party Product modify or change that Third-Party Product in any way, we cannot warrant the continuing compatibility of the Third-Party Product with Our Software;
  - (d) we will notify You if we become aware of any proposed modifications or changes to the Third-Party Product; and
  - (e) we may generate and provide usage reports to the Third-Party for the purposes of account administration and product evaluation.

### 14. Free or Trial Subscriptions; Beta Versions

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- 14.1. We may, in our sole discretion, make free, trial, and/or Beta Versions of Our Software available to You. Because free, trial, or beta offerings are different from paid subscriptions, the following special terms apply:
- (a) if we make Our Software, or a demonstration version of Our Software, available to You on a free or trial basis, it is so that You can use Our Software before purchasing a subscription to determine if Our Software meets Your needs. Free/trial subscriptions to Our Software, and any demonstration versions, are subject in all respects to the Agreement, except that we may discontinue Our Software, or Your ability to use Our Software, or demonstration version at any time, with or without notice to You and without further obligations to You; and





- (b) we may make new versions of Our Software available prior to their release to the general public, for testing and evaluation purposes (**Beta Versions**).
  - (i) Beta Versions of Our Software are subject in all respects to the terms of the Agreement, except that we may discontinue Our Software or Your ability to use a Beta Version at any time, with or without notice to You and without further obligations to You; and
  - (ii) You agree to notify us of all comments or suggestions about Our Software, including any problems and ideas for improvements (**Feedback**), which come to Your attention during its use of the Beta Version; and
  - (iii) You assign to us all right, title and interest (including the Intellectual Property Rights) in the Feedback as and when created.

### 15. Termination

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- 15.1. On termination of the Agreement, unless otherwise agreed in writing, the following will apply:
- (a) any licence rights granted to the other party with respect to Our Software will terminate as of the date of termination;
  - (b) we will have no obligation to provide Our Software to You or Your Authorised Users after the date of termination; and
  - (c) we will provide You and Your Authorised Users with access to the Content until 30 days after the date of termination, at which point such access will cease.

### 16. Special Conditions for Hybrid Versions of Our Software

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- 16.1. If we provide You with a hybrid version of Nodestream™ and RiS™ software on Our Hardware, or for You to install on Your own hardware, to enable You to have an at-will switch on/switch off capability for Nodestream™ and RiS™, You agree to the following special conditions:
- (a) You agree for us receive automated usage reports for monthly invoice substantiation; and
  - (b) We will invoice you based on usage in accordance with the terms set out in our General Terms; and
  - (c) if we are unable to access these reports on a continual basis, we may, at our discretion, charge You the difference between the standard monthly licence fee and our premium licence fee for RiS™ for the entire month, regardless of usage.