

## **END-USER LICENSE AGREEMENT**

This End User Software License Agreement ("Agreement") is made and entered into by and between Kriu Limited, an Irish corporation with its principal office in Dublin, 7 D'Olier Street, Dublin 2 (hereinafter "KRIU") and User (hereinafter "Customer" or "Licensee"), and is effective and binding on the date defined below as Effective Date.

In consideration of the mutual promises herein contained, the parties agree as follows:

### **1. Definitions**

The following terms, when used in this Agreement, shall have the following meanings:

- 1.1 "**Licensed Software**" shall mean the object code version of the computer programs to be provided by KRIU to Customer (either as boxed software, by digital download, or by server/client application) under the name "K4ITO" or "Kriu for IT Operations".
- 1.2 "**Documentation**" shall mean user guides, operating manuals, and release notes provided by KRIU together with the Licensed Software or published on its website, in effect as of the date of delivery of the Licensed Software.
- 1.3 "**Third Party Software**" shall mean any software (either open or closed source) licensed from third parties, including programming, or other intellectual property that is subject to the GNU General Public License, GNU Library General Public License, Artistic License, BSD license, Mozilla Public License, or other licenses, as they are listed at [www.kriulab.com/licenses](http://www.kriulab.com/licenses).
- 1.4 "**Effective Date**" shall mean the date on which this Agreement is electronically executed by the parties, through acceptance of the Agreement by the Customer who will express such acceptance by clicking the "I agree" flag when proceeding to download and/or install the Licensed Software.

### **2. Software License**

2.1 License Grant. Subject to the terms and conditions of this Agreement, KRIU grants to Customer a non-exclusive, non-transferable, time limited license to use (by downloading, installing and executing) the Licensed Software solely for Customer's internal business purposes.

2.1.1 Back-up copy. Customer may make one copy of the Licensed Software in machine-readable form for back-up and archival purposes only. Customer shall reproduce and include the copyright, trade secret, or other restrictive and proprietary notices and markings from the original on all copies. All copies will be subject to the terms of this Agreement.

2.2 License Software Use Restrictions. Customer's use of the Licensed Software shall be subject to the following restrictions:

- A. The Licensed Software shall be used solely for Customer's internal business purposes and only by authorized concurrent users;
- B. Customer shall not cause the Licensed Software in any way to be disassembled, decompiled, or reverse-engineered, nor shall any attempt to do so be undertaken or permitted, except where expressly permitted by law;
- C. Customer shall not make the Licensed Software available for access or use by any person or entity other than Customer's employees, including, but not limited to, acting as a service bureau;
- D. Customer shall not upload, post, publish, or create derivative works of the Licensed software; and
- E. Customer shall not copy, translate, port, modify, revision, enhance, adapt or make derivative works of the Licensed Software or the Documentation.

2.3 Ownership. None of the Licensed Software is being sold. This Agreement does not grant to Customer any ownership interest in the Licensed Software. Rather, Customer has a license to use the Licensed Software as provided in this Agreement. Customer hereby agrees and acknowledges that KRIU owns all right, title, and interest in the Licensed Software and the Documentation and all patent rights, copyrights, trade secret rights, design rights, trademark rights, and all other proprietary rights, worldwide (all of the foregoing rights taken together being referred to collectively herein as "Intellectual Property Rights") therein and thereto, and Customer will not contest those rights or engage in any conduct contrary to those rights.

2.4 Feedback. Customer may provide suggestions, comments, or other feedback (collectively, "Feedback") to KRIU with respect to its products and services, including the Licensed Software. Feedback is voluntary. Provider may use Feedback for any purpose without obligation of any kind. Customer hereby irrevocably assigns and transfers to KRIU all of Customer's rights in the Feedback.

2.5 Copyright. The Licensed Software contains material that is protected by copyright laws, either national, regional and by international treaties' provisions. All rights not granted to KRIU by this Agreement are expressly reserved by KRIU. Customer shall not remove any proprietary notice of KRIU from any copy of the Licensed Software.

2.6 Trade secret. The source code of the Software is a trade secret of the KRIU, its Affiliates or its licensors, and is their confidential information, as such protected under national and regional laws and by international treaties' provisions.

2.7 Delivery. Customer will obtain the Licensed Software, and KRIU will deliver it normally by electronic download. Customer will be able to proceed to the download on the Effective Date after execution of the present Agreement. Customer will be deemed to have accepted the Licensed

Software on delivery.

2.8 Third Party Software. To the extent any Third Party Software (either closed or open source) is provided with the Licensed Software, Customer agrees to comply with the terms and conditions of the applicable third party licenses associated with the Third Party Software, in addition to the terms and restrictions contained in this Agreement. Customer's use of the Licensed Software shall be deemed its acceptance of the third party licenses.

2.8.1 KRIU makes no warranty of any kind, whether express or implied, with regard to any third party software. All third party software is provided "asis," without warranties of any kind by KRIU. In no event will KRIU be liable to Customer or any third party for any direct, indirect, punitive, exemplary, incidental, special, or consequential damages arising out of the third party software, even if KRIU has been advised of the possibility of such damages or losses.

2.9 Aggregated Data. KRIU shall have the right to use all aggregated and statistical data arising from Customer's use of the Licensed Software. All such information may be used by KRIU for any purpose.

2.10 Automated Verification. The Licensed Software may contain or require a license key to prevent unauthorized installation or to enforce limits of the license, and may contain devices or functionality to monitor Customer's compliance with this Agreement.

2.11 Audit. During the term of this Agreement and for one year thereafter, KRIU may audit Customer's use of the Licensed Software ("Audit"). An Audit may include, without limitation, the inspection and review of computers or servers on which the Licensed Software has been installed or hosted, and records, procedures, or business practices that relate to Customer's performance under and compliance with the terms of this Agreement. KRIU, its designees and agents, and any third party licensors may conduct such audits. Audits will be conducted during regular business hours and will not interfere unreasonably with Customer's business. They shall provide Customer at least five calendar days' advance notice of an Audit. Customer will reasonably cooperate in the Audit and will allow the auditors to make copies of relevant Customer's records. The cost of the Audit shall be borne by KRIU, unless the Audit reveals a material breach of this Agreement by Customer (including any use of the Licensed Software in excess of the rights granted hereunder or failure to pay fees due), in which case the reasonable cost of the Audit shall be paid by Customer. In the event Customer has failed to pay all fees due, Customer shall immediately pay such fees, plus interest at the maximum rate permitted by law. If Customer has used the Licensed Software in excess of the rights granted hereunder, Customer shall pay all applicable additional license fees at KRIU's then current rates. Payment of the foregoing fees is in addition to and cumulative of all other rights of KRIU under this Agreement.

### **3. Term**

3.1 This Agreement shall be effective as of the Reference Date and for an initial term of 1 (one) year.

3.2 Its validity will automatically renew for additional 1 (one) year periods unless either party gives the other party written notice of its intent to not renew at least 30 (thirty) days prior to the expiration of the then current term.

### **4. Fees and Payments**

4.1 License Fees. The Licensed Software is provided to Customer without the payment of any fee for the Term as specified above.

4.2 Telecommunications Charges. Customer shall pay for all telecommunication and carrier charges arising from its use of the Services or the transmittal of information to or from KRIU.

### **5. Support and Maintenance**

5.1 KRIU will provide Customer with free support by email regarding use and operation of the Licensed Software on a best-effort basis.

5.2 Only the current version of the Licensed software will be supported; to this purpose Customer must install all new versions of the Licensed Software within thirty (30) days of receipt or notice of availability.

### **6. Limited Warranty**

6.1 Being the Licensed Software licensed to Customer without the payment of any fee, it is provided on an “as is”, “with all faults,” and “as available” basis, without any warranty of any kind and without support or other services by KRIU other than the ones regulated in article 5 above.

6.2 KRIU shall not be responsible for any errors or non-conformities in the Licensed Software resulting from Customer's misuse, negligence, or modification of the Licensed Software.

### **7. Disclaimer of Warranties and Limitation of Liability**

7.1 Disclaimer of Warranties. KRIU expressly disclaims all warranties, express and implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. KRIU does not warrant that the products will meet customer's requirements, that the licensed software is

compatible with any particular hardware or software platform, or that the operation of the licensed software will be uninterrupted or error free, or that defects in the licensed software will be corrected. The entire risk as to the results and performance of the licensed software is assumed by customer. Furthermore, KRIU does not warrant or make any representation regarding the use or the results of the use of the licensed software or related documentation in terms of their correctness, accuracy, quality, reliability, appropriateness for a particular task or application, currentness, or otherwise. No oral or written information or advice given by KRIU or KRIU's authorized representatives shall create a warranty or in any way increase the scope of warranties provided in this agreement.

**7.2 Limitation of Liability.** In no event shall KRIU be liable to customer or any third party for any incidental or consequential damages (including, without limitation, indirect, special, punitive, or exemplary damages for loss of business, loss of profits, business interruption, loss of data, or loss of business information) arising out of or connected in any way with use of or inability to use the Licensed software, or for any claim by any other party, even if KRIU has been advised of the possibility of such damages. KRIU's total liability to customer for all damages, losses, and causes of action (whether in contract, tort [-including negligence], or otherwise) shall not exceed the total amount of 5 (five) U.S. dollars.

## **8. Infringements' Indemnifications**

**8.1 Infringement Claims.** KRIU will defend Customer from any Claim, to the extent the Claim arises solely as a result of Customer's use of the Software in accordance with this Agreement, and provided the alleged infringement was not caused by: (a) Customer's failure to incorporate a Software update or upgrade that would have avoided the alleged infringement; (b) the modification of the Software by any party other than KRIU; (c) the combination or use of the Software with software, hardware, firmware, data, or technology not licensed to Customer by KRIU or approved by KRIU in writing; or (d) unlicensed activities of the Customer.

**8.2 Exclusions.** KRIU's obligations in the this section are conditioned upon: (a) Customer notifying KRIU in writing within 10 (ten) days of Customer becoming aware of a Claim; (b) Customer not making an admission against KRIU's interests unless made pursuant to a judicial request or order; (c) Customer not agreeing to any settlement of any Claim without the prior written consent of KRIU; and (d) Customer, at the request of KRIU, providing all reasonable assistance to KRIU in connection with the defence, litigation, and settlement by KRIU of the Claim; and (e) KRIU having sole control over the selection and retainer of legal counsel, and over the litigation or the settlement of each Claim. KRIU will indemnify Customer from any judgment finally awarded, for which all avenues of appeal have been exhausted, or any final settlement in connection with any Claims, provided all the conditions of this section are satisfied.

8.3 Customer's Continued Use. If the Software becomes the subject of a Claim, KRIU will, in its absolute discretion, either (a) obtain a license for Customer to continue using the Software, (b) replace or modify the Software without unreasonable degradation in functionality or (c) terminate the Software License to the infringing portion of the Software and refund the portion of the License Fees received by KRIU (if any) and attributable to the infringing portion of the Software. KRIU's entire liability and Customer's sole and exclusive remedy with respect to any Claims are limited to the remedies set out in this Section.

8.4 Customer's Infringements. Customer shall defend, indemnify, and hold KRIU and its directors, officers, agents, employees, members, subsidiaries, and affiliates from and against any claim, action, proceeding, liability, loss, damage, cost, or expense (including, without limitation, attorneys' fees), arising out of or in connection with Customer's use of the Licensed Software.

## 9. Default; Termination

9.1 Termination Upon Event of Default. If any party:

- A. Breaches any covenant, obligation, representation, or warranty under this Agreement (other than those described in paragraph B below), and fails to cure such breach within 10 (ten) days after its receipt of written notice thereof from the other party for any such breach; or
- B. Breaches any covenant, obligation, representation, or warranty under this Agreement relating to confidentiality, scope of use, use restrictions, or proprietary rights (including Intellectual Property Rights), it being agreed that any such breach shall be a material breach hereof; or
- C. Voluntarily or involuntarily suspends, terminates, winds up, or liquidates its business; becomes subject to any bankruptcy or insolvency proceeding under applicable law; or becomes insolvent or subject to direct control by a trustee, receiver, or similar authority,

then, upon the occurrence of such event (each, an "Event of Default"), the other party may immediately terminate this Agreement by giving notice of such termination to the defaulting party and/or may exercise any and all other rights and remedies under this Agreement, at law, or in equity.

9.2 Effect of Termination or Expiration. On and after the effective date of any termination or expiration of this Agreement, Customer shall cease all use of the Software. Within 10 (ten) days of the effective date of termination of this Agreement by either party, Customer shall, at its own expense, return to KRIU (or destroy) all copies of the software, all documentation and other tangible materials provided by KRIU hereunder in connection with the Licensed Software, together with a certificate signed by one of Customer's officers attesting to such return or destruction. Each party shall remain liable to the other party for all charges, obligations, and liabilities that accrue or arise under this Agreement from any event, occurrence, act, omission, or condition transpiring or existing prior to the effective date of such termination.

9.3 Limitation of Actions. Customer shall not bring any action against KRIU arising out of or related to this Agreement or the subject matter hereof more than 1 (one) month after the occurrence of the event that gave rise to such action.

## **10. Force Majeure**

KRIU shall not be responsible for failures of its obligations under this Agreement to the extent that such failure is due to causes beyond KRIU's control, including, but not limited to, acts of God, war, acts of any government or agency thereof, fire, explosions, epidemics, quarantine restrictions, strikes, delivery services, telecommunication providers, labor difficulties, lockouts, embargoes, severe weather conditions, delay in transportation, or delay of suppliers or subcontractors.

## **11. Confidentiality**

11.1 Customer shall treat the Licensed Software, Documentation, and all other information exchanged under this Agreement or otherwise provided by KRIU ("Confidential Information") in the strictest confidence.

11.2 Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under this Agreement and may only be shared with employees, agents, or contractors with a need to know such information. Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure during the period the information remains confidential or a trade secret. These obligations do not cover information that (a) was known or becomes known to the receiving party without obligation of confidentiality; (b) is independently developed by the receiving party or (c) is required to be disclosed by law or a governmental agency.

## **12. Equitable Relief**

Customer acknowledges and agrees that KRIU will be irreparably injured if the provisions of Sections 2 (Software License) and 10 (Confidentiality) are not capable of being specifically enforced, and agree that KRIU shall be entitled to equitable remedies for any breach of said Sections, in addition to, and cumulative with, any legal rights or remedies, including the right to damages.

## **13. Independent Contractor**

KRIU acknowledges that it is at all times acting as an independent contractor under this Agreement and except as specifically provided herein, not as an agent, employee, joint-venturer, or partner of Customer.

#### **14. Notices**

Any notices required or permitted to be given hereunder by either party to the other shall be in writing and shall be deemed duly given or made if delivered: (1) by electronic mean, including e-mail and facsimile; (2) by courier or by a nationally recognized delivery company; or (3) by registered or certified mail, postage prepaid, return receipt requested, in each case, addressed to the parties at the addresses specified at the heading of this Agreement (or to such other addresses as the parties may request in writing by notice given pursuant to this Section).

#### **15. Assignment**

Neither this Agreement nor any interest in this Agreement may be assigned by Customer without the prior express written approval of KRIU. KRIU may assign, pledge, mortgage, sell to a third party, or otherwise dispose of all or any portion of this Agreement, provided that such action shall not relieve KRIU or its assignees of its obligations to Customer under this Agreement or reduce Customer's rights hereunder.

#### **16. Publicity**

Customer agrees KRIU may issue – at no cost for the Customer – press releases regarding the engagement to which this Agreement relates, include Customer's names and trademarks in its marketing materials and customer lists, and otherwise publicly promote this engagement.

#### **17. Choice of Law and Arbitration clause**

17.1 Applicable Law. This is made under and shall be governed by, construed and enforced in accordance with general principles of law generally recognized in international trade (*lex mercatoria*) together with the Unidroit Principles of International Commercial Contracts [2010] (except for Articles 2.20, 3.2.7 and 6.2.1), with the exclusion of national laws.

17.2 Arbitration Clause. Any claim, dispute or controversy between the Parties or claim by either Party against the other Party arising from or relating to this Agreement or the relationships which result from this Agreement, no matter against whom made, including the applicability of this arbitration clause and the validity of the entire Agreement, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The Emergency Arbitrator Provisions shall not apply.



## 18. Entire Agreement, Waiver, Severability and Interpretation

18.1 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior and contemporary agreements, understandings, and commitments between the parties regarding the subject matter of this Agreement. This Agreement may not be modified or amended except by a written instrument executed by the parties. In particular, any provisions, terms, or conditions contained in Customer's Purchase Orders or other similar forms that are in any way inconsistent with or in addition to the terms and conditions of this Agreement shall not be binding upon KRIU.

18.2 Waiver. All waivers under this Agreement shall be in writing to be effective. No failure or delay by a party to exercise any right it may have by reason of the default of the other party shall operate as a waiver of default or as a modification of this Agreement or shall prevent the exercise of any right of the non-defaulting party under this Agreement.

18.3 Severability. If any provision of this Agreement is found to be invalid or unenforceable by any court, such provision shall be ineffective only to the extent that it is in contravention of applicable laws without invalidating the remaining provisions of the Agreement.

18.4 Headings. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

## 19. Counterparts

This Agreement may be executed electronically, and one counterpart which shall be deemed an original, will be available to the parties for digital download and safekeeping in *pdf* format after execution.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by clicking the "I agree" tick box below.

KRIU

User

I agree