**END USER LICENCE AGREEMENT**

**QUILLIUP**

This End User License Agreement (“**EULA**”) is effective as of the date of signature below and is a legal agreement between Keyrus USA, Inc. (“Reseller”) and the client [Insert Name Here] (hereinafter the "**Licensee**") regarding the installation and use of the software product identified above (hereinafter “**Software**”).

**IMPORTANT – READ CAREFULLY** By downloading, installing, copying or otherwise using the Software, Licensee agree to be bound by all the terms and conditions of this EULA. If Licensee does not agree to the terms of this EULA, Reseller is unwilling to license the Software to Licensee. In such event, Licensee may not download, use or copy the Software.

**I. DEFINITION**

 **“Designated Support Contact”** means a member of Reseller's technical support team who is capable of managing the Licensee's Severity(s). Reseller may, in its sole discretion, assign Licensee a different Designated Support Contact at any time.

**“Documentation”** means the documentation relating to the Software as may be provided from time to time by Reseller to the Licensee.

**“Fix”** means a hot-fix designed to correct a Severity, or a temporary work-around, bypass, or patch supplied by Reseller, or implementation of an operational procedure or routine by Licensee to diminish or avoid the practical adverse effect of a Severity.

**"Licensee"** means either (a) the entity which has purchased the License or (b) employees, representatives, consultants, contractors, agents whom have access to the Software as part of their services to (a) and for the sole benefit of (a). (a) is responsible for all use of the Software by (b) and their compliance with this Agreement.

**"Order Form"** means the document indicating the quantities and agreed prices for the Software and/or or Services purchased by the Licensee.

"**Permitted Server**" means the only server identified in the Order Form on which Licensee may install the Software.

**"Reseller"** means (i) Vision.bi reseller or sub-reseller or (ii) all reseller contractors, agents, representatives, employees or sub-resellers; to whom Licensee purchased the Software.

**“Response Time”** means the period commencing when a Severity is reported by the Licensee's Technical Contact and ending when the Designated Support team logs the report and responds to the Technical Contact by telephone or email.

**“Severity”** means a single, reproducible issue or problem with the operation of the Software.

**“Severity 1”** means a Severity that prevents the Software or more than one of its substantial functions from being used.

**“Severity 2”** means a Severity that (i) materially degrades the overall performance of the Software; or (ii) interferes with proper operation of the substantial functions of the Software, but is not a Severity 1.

**“Severity 3”** means a Severity that impairs the performance of the Software, but is not a Severity 1 or a Severity 2.

**“Severity Correction”** means any modification or addition to the Software, delivered within an Update that brings the Software into material conformity with the Documentation.

“**Software**” means licensed software created by Vision.bi and sold by the Reseller and which is further described in the Documentation.

**“Technical Contact(s)”** means the Licensee's personnel that have been identified in a Order Form as the technical contact(s) for the Licensee.

**"Updates"** means any release of the Software that corrects Severity, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a new product.

"**Vision.bi**" means either (a) Vision.bi, a company incorporated under the laws of Israel registered under number 514016609 whose registered office is situated at 21 Bar Kochva Street, BneiBrak 5126016 Israel, which has published the Software or (b) employees, representatives, consultants, subcontractors, agents of (a).

**II. LICENSE GRANT**

Licence. Subject to the terms and conditions of this Agreement and the payment of the Licence Fee, Reseller grants to Licensee a non-exclusive, non-assignable, non-transferable and non-sub-licensable right to use the Software and its Documentation. The License is subscription for the term specified on the Order Form unless terminated in accordance with the provisions herein.

Installation. Unless otherwise agreed in writing, Licensee may only install the Software on the Permitted Server, as defined in the Order Form. The Permitted Server must be located in secured facilities, which are owned or leased by the Licensee. For the purpose of activating the Software, Reseller will provide by email to Licensee a license key (hereinafter the "Key") after installation on the Permitted Server. The Key could be provided for a limited period after which the Licensee must claim to Reseller a new Key. On an exceptional basis, such as a permanent breakdown of the Permitted Server, and subject to the removal of the Software from the Permitted Server, the Licensee may request Reseller the authorisation for transferring the Software from the Permitted Server to a substitute server (the Substitute Server"). Upon acceptance of Reseller of such resettlement on the Substitute Server, Vision.bi will provide a spare Key for the Substitute Server, and the Licensee shall provide a certificate to Reseller certifying that the Software has been definitely removed from the initial Permitted Server. The Substitute Server shall then be considered as a Permitted Server.

Configuration & Use. The licensee is responsible for configuring the Permitted Server in accordance with the Documentation and for using the Software in accordance with Vision.bi Documentation. Licensee shall use the Software in accordance with the relevant Documentation. Reseller cannot be held liable for any failure of the Software installation or operation resulting from the non-compliance with the Documentation and any recommendations made herein.

Licensee's Obligations. Licensee shall not (i) provide the Software as a service to third parties; (ii) lease, loan, resell, sublicense or otherwise distribute the Software and Documentation, (iii) use the Software with more Designer licenses than identified in the Order Form (iv) distribute or publish keycode(s), (v) install or transfer the Software on hardware not expressly identified in the Order Form, (vi) alter or modify the Software or the Documentation nor permit the Software to be integrated with any other software except to the extent expressly permitted in the Documentation or expressly permitted by the Reseller prior to such integration, (vii) decompile, disassemble or access to the sources codes in any other way, (viii) makes any copy of the Software or its Documentation; (ix) delete the Software identification, the copyright reference or any other property reference.

Back-up. Notwithstanding the foregoing, Licensee may make one single copy for back-up purposes and safekeeping. The back-up copy has to be identified as such.

Interoperability. Licensee shall not proceed with any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) which is necessary for the purposes of integrating the operation of the Software with the operation of other software used by the Licensee, if Reseller is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Licensee shall request Reseller to carry out such action or to provide such information before undertaking any such reduction

**III. MAINTENANCE SERVICES**

Duration. A one-year Maintenance Services subscription fee is mandatory for the first 12-month period of the Licence Grant, in accordance with the price indicated on the Order Form. Hereinafter, the Maintenance Services shall be renewed automatically for additional successive periods of one (1) year, unless and until terminated by either party by private courier with proof of receipt, registered letter or email with acknowledgement of receipt by reseller at least three (3) months before the expiry date of the then current subscription period.

Scope. Subject to the payment of the Maintenance fee, the Maintenance Services shall include the following: (1) any generally released updates, patches, and bug fixes for the Software ("Updates") when and if generally released at Reseller sole discretion, (2) email support in the terms and conditions provided by the Reseller, in accordance with Vision.bi Maintenance Only the Technical Contact(s) set forth in the Order Form may report Severities.

Cooperation of the Licensee. When reporting a Severity, the Licensee must cooperate with his Reseller and provide Reseller with all information necessary for Reseller to identify, reproduce and assess any reported Severity.

Response Times. Reseller will make its best efforts to respond to any Severity reported by the Technical Contact, in accordance with the following Response Times:

|  |  |
| --- | --- |
| Severity 1 Severity 2 Severity 3  | Within one (1) business dayWithin two (2) business daysWithin three (3) business days |

Reseller will determine the severity level of any Severity in its reasonable discretion.

Severity Correction. A Severity is resolved upon the earlier of the following: (i) the issue or problem ceases to occur; (ii) if the issue or problem is the result of a Severity, the provision of a Fix or Severity Correction; (iii) Reseller considers that the Severity is not due to any error or deficiency in the Software; (iv) Reseller considers that the Severity is the result of a multi-vendor issue; (v) the Technical Contact closes the Severity; or (vi) the Severity has been left open for five (5) consecutive business days, during which period Reseller has not received a response from a Technical Contact.

Update. Reseller will make free Updates available to Licensee who have purchased Maintenance Services and paid all related fees in relation to the current period at the time of release of such Updates. Updates will be available, at Vision.bi’s discretion, in the form of an installation program via the Internet, together with Documentation in electronic form written in English. The Licensee shall be responsible for the installation of all Updates.

Exclusion of Maintenance Services. Notwithstanding anything herein to the contrary, Reseller will have no obligation to provide support in connection with Severity caused by: (i) the use of the Software with software or hardware not designed for use with the operating systems approved by Vision.bi in the Documentation or in the Order Form; (ii) the use of the Software with hardware that does not satisfy the minimum system requirements specified by Vision.bi in the Documentation; (iii) changes, modifications, or alterations to the Software not approved in writing by the Reseller; (iv) use of the Software other than in accordance with the Documentation and the Agreement; (v) the failure to install Updates made available by Reseller; or (vi) the negligence or intentional misconduct of the Licensee. Reseller's obligations with respect to Maintenance Services are expressly conditioned upon the installation and use by the Licensee of the most current Upgrades of the Software.

**IV. FEES & TAXES**

Fees. All fees shall be paid in accordance with terms and conditions mentioned in the Order Forms. All Fees are non-refundable and Licensee unconditionally waives any and all refund claims, even in the event of Termination. Late payments shall be subject to interests at a rate of 0.5%. In addition, a fixed compensation for late payment of a minimum of $65/€45 and a maximum of $165/€120 depending on the amounts due and any additional reasonable costs Reseller may incur above these fixed levels is payable by the Licensee.

Taxes All sums payable under this License are exclusive of VAT or any relevant local sales taxes, for which the Customer shall be responsible. All expenses (travel, living) incurred by Reseller, in case of on-site assistance for example, shall be re-billed to the Licensee at the actual expenses, based on receipts.

**V. TERMINATION**

Termination. If the Licensee fails to comply with any provisions of this Agreement, Reseller may terminate immediately this Agreement. Upon termination, Licensee must immediately uninstall and destroy all Software copies and certify to Reseller, in writing and within fifteen(15) days, that said Software has been uninstalled and destroyed. Vision.bi's rights and Licensee obligations under the following sections survive the termination of this Agreement: CONFIDENTIALIY; FEES; WARRANTY; LIABILITY.

**VI. AUDIT**

Audit. Licensee shall cooperate reasonably in the conduct of such audit. Furthermore, the Licensee acknowledges and agrees that Vision.bi may reserve a backdoor access to control compliance of Software use with the terms of this EULA. In the event a reveals that the Licensee has used the Software in excess of the server's quantities allowed by the Order Form, Licensee shall pay the fees for such excess usage based on Vision.bi prices list in effect at the time of the audit, and shall execute an additional Order Form in accordance with the terms of this Agreement to affect the required licensing of any additional quantities or levels. Reasonable costs of Reseller's audit shall be paid by Licensee if the audit results indicate usage in excess of the licensed server quantities as defined on the Order Form. Reseller may delegate to a third party to perform any of the rights listed under this Section. Reseller retains the possibility, in case of audit revealing breaches, to terminate this Agreement in accordance with termination Section hereafter.

**VII. THIRD PARTY INFRINGEMENT**

Property Rights. Notwithstanding the foregoing Reseller declares that it holds the property rights over the Software covered by the Agreement, notably the use right and the distribution right. The Software and any copies thereof remain the exclusive property of Vision.bi. This Agreement may not be considered as a sale of the Software itself, any of the elements thereof or a copy thereof. None of the contractual provisions may be interpreted as implicitly conferring a right other than a user license on the Client in any manner whatsoever. The Client undertakes to refrain from causing prejudice to this property right directly or indirectly.

Warranty of Quiet. Reseller shall defend Licensee in connection with any third party claim that the Software infringe a patent or a copyright, provided that Licensee: (i) promptly notifies Reseller in writing of any such claim; (ii) allows Reseller to have sole control of the defense and all related settlement negotiations; and (iii) provides Reseller with the information, authority and assistance necessary for Reseller to defend or settle the claim. Notwithstanding the foregoing, Reseller shall not be liable and shall have no obligation to Licensee for any claim arising from or based upon (a) the use of any Software outside the scope of use identified in the Documentation, if the claim would not have arisen without such use; or (b) any modification of a Software, if the claim would not have arisen without such modification; or (c) use of a prior version of any Software, if use of a newer version of the Software would have avoided such claim; or (d) Licensee's actions against the third party intellectual property holder.

Infringement Consequence. In the event that it is determined or Reseller believes that a Software has violated the third party’s intellectual property rights, Reseller shall: (i) obtain for Licensee a license to continue using the Software, (ii) replace or modify the Software so that it becomes non-infringing while retaining substantially similar functionality; or (iii) if neither of the foregoing remedies can be reasonably effected by Reseller, refund to Licensee the license fees paid for the Software and the maintenance.

Defence Expenditure. Notwithstanding Liability Section, Reseller shall pay all defence costs incurred by Reseller, all damages due the third party intellectual property holder arising from a final adjudication by a court of competent jurisdiction, and all amounts payable under a settlement with the third party intellectual property holder in connection with its defense of a third party infringement claim under this Section. The provisions of this Section state the sole, exclusive and entire liability of Reseller to Licensee, and are Licensee's sole remedy, with respect to the infringement of third party intellectual property rights.

**VIII. WARRANTY**

General. Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Agreement and each Order Form is entered into by an employee or agent of such party with all necessary authority to bind such party to the terms and conditions of this Agreement.

DISCLAIMER OF WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT AS EXPRESSLY SET FORTH HEREIN, RESELLER PROVIDES THE SOFTWARE AND THE MAINTENANCE SERVICES AS IS, AND HEREBY DISCLAIM ALL OTHER REPRESENTATIONS, WARRANTIES AND GUARANTEES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE FOR ANY PURPOSE. WITHOUT LIMITING THE FOREGOING, RESELLER MAKES NO REPRESENTATION, WARRANTY OR GUARANTY (1) AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF ANY PRODUCTS OR ANY CONTENT THEREIN OR GENERATED THEREWITH, (2) THAT (A) THE USE OF ANY PRODUCTS WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE PRODUCTS WILL MEET END USER'S REQUIREMENTS OR EXPECTATIONS, (C) ERRORS OR DEFECTS WILL BE CORRECTED, OR (D) THE PRODUCTS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

**IX. LIABILITY**

MAXIMUM LIABILITY. EXCEPT WITH RESPECT TO AMOUNTS PAYABLE TO THIRD PARTIES PURSUANT TO THE PARTIES' INDEMNIFICATION OBLIGATIONS IN THIRD PARTY INFRIGMENT SECTION, OR DEATH OR PERONAL INJURY CAUSED BY NEGLIGENCE OF RESELLER, OR FRAUD OR FRAUDULENT MISREPRESENTATION, OR END USER'S BREACH OF ANY LICENSE, OR USE RESTRICTIONS RELATING TO THE PRODUCTS, NOTWITHSTANDING ANY DAMAGES EITHER PARTY MIGHT INCUR FOR ANY REASON WHATSOEVER, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ENTIRE LIABILITY OF EITHER PARTY TO THIS AGREEMENT UNDER ANY PROVISION OF THIS AGREEMENT AND THE OTHER PARTY'S EXCLUSIVE REMEDY HEREUNDER SHALL BE LIMITED TO THE ACTUAL DAMAGES SUCH PARTY INCURS, UP TO THE AMOUNT ACTUALLY PAID BY END USER FOR (A) SUCH SOFTWARE, DEPRECIATED ON A THREE-YEAR STRAIGHT LINE BASIS, OR (B) SUCH MAINTENANCE SERVICE IN THE LAST TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EMBEDDED SOFTWARE LICENSORS WILL NOT BE LIABLE TO LICENSEE FOR ANY DAMAGES WHATSOEVER, INCLUDING DIRECT DAMAGES OR THE TYPES OF DAMAGES DISCLAIMED IN SECTION BELOW.

OTHER DISCLAIMERS. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR LICENSEE'S BREACH OF ANY LICENSE, OR USE RESTRICTIONS RELATING TO SOFTWARE, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOSS REVENUE, LOST PROFIT, OR LOST OR CORRUPTION DATA, LOSS OF BUSINESS OPPORTUNITY, LOSS OR ANTICIPATED SAVINGS, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOST OF CAPITAL, SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES (INCLUDING LOST PROFITS OR REVENUE) WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT. LICENSEE SPECIFICALLY UNDERSTANDS AND AGREES THAT RESELLER DISCLAIMS ALL WARRANTIES AND LIABILITY WITH RESPECT TO LOSS, LOSS OF USE OR CORRUPTION OF ANY END USER DATA (OR OTHER DATA END USER MAY PROVIDE) AND THE COSTS OF PROCUREMENT OF ANY SUBSTITUTE GOODS.

**X. CONFIDENTIALITY**

Use of Confidential Information. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of the other shall remain the property of the disclosing party and shall contain any and all confidential or proprietary notices or legends which appear on the original. With respect to the Confidential Information of the other, each party: (a) shall take all Reasonable Steps (defined below) to keep all Confidential Information strictly confidential; and (b) shall not disclose any Confidential Information of the other to any person other than its bona fide individuals whose access is necessary to enable it to exercise its rights hereunder. As used herein “Reasonable Steps” means those steps the receiving party takes to protect its own similar proprietary and confidential information, which shall not be less than a reasonable standard of care. Confidential Information of either party disclosed prior to execution of this Agreement shall be subject to the protections afforded hereunder.

Exceptions. The above restrictions on the use or disclosure of the Confidential Information shall not apply to any Confidential Information that: (a) is independently developed by the receiving party without reference to the disclosing party’s Confidential Information, or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information; (b) has become generally available to the public without breach of this Agreement by the receiving party; (c) at the time of disclosure, was known to the receiving party free of restriction; or (d) the disclosing party agrees in writing is free of such restrictions.

Publicity. Licensee shall not disclose the terms and conditions of this Agreement to any third party. Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other, except that Licensee agrees that Reseller may use Licensee's name in customer listings or as part of Reseller's marketing efforts (including without limitation reference calls and stories of a reasonable volume and duration, press testimonials, site visits). Reseller will make reasonable efforts to avoid having the reference activities unreasonably interfere with Licensee's business.

**XI. GENERAL PROVISIONS**

Personal Data**.** Each party will carry out its obligations under the Agreement in accordance with the Data Protection Laws applicable in its country.

Assignment. Licensee may not, without Reseller- prior written consent, assign, delegate, pledge, or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, or the Reseller Software or Reseller Confidential Information, to any party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation. Reseller may assign this Agreement to any of its affiliates.

Severability. If any one of the provisions of this Agreement is found invalid in whole or in part, the validity of the remaining provisions shall not be affected. In such case, the parties shall take the necessary measures to replace the severed provision with a new provision corresponding to the spirit and purpose of this Agreement.

Waiver. No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

Governing Law; This Agreement and any claims arising out of or relating to this Agreement and its subject matter shall be governed by the laws in the state of New York. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Uniform Computer Information Transactions Act as enacted shall not apply. In addition, no person who is not a party to the Agreement shall be entitled to enforce or take the benefit if any of its terms under the Contracts (Right of Third Parties) Act 1999 except Vision.bi whom shall benefits of all rights granted to the Reseller by Licensee as if it had been a party to this Agreement and may take all actions as necessary against Licensee to enforce such rights. Licensee must initiate a cause of action for any claim(s) arising out of or relating to this Agreement and its subject matter within one (1) year from the date when Licensee knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

Notices. All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be delivered by hand or sent by registered post and deemed duly given when delivered to the respective executive offices of Reseller at the addresses indicated in the preamble of this Agreement.

Force Majeure. Any delay or non-performance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter. Licensee acknowledges that in entering into this Agreement it has not relied on, and shall have no remedy in respect of, any representation or statement (written or oral) made by any person (whether or not a party to this Agreement) other than those expressly set out in this Agreement and that in respect of the representations and statements which are expressly set out in this Agreement the Licensee's only remedies shall be for breach of contract under the terms of this Agreement

**Licensee**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Keyrus USA, Inc.**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_