

KYRIBA UK Ltd - TERMS AND CONDITIONS FOR ONLINE CLOUD SERVICES

November 14, 2019 Version

These Terms and Conditions for Online Cloud Services (hereinafter these “**Terms**”) are entered into by and between Kyriba UK Ltd. (“**Kyriba**”), and the entity (“**Customer**”) described in an order schedule associated with this Agreement that list the products and services provided by Kyriba to Customer hereunder and the related fees (“**Order Schedule**”). Each Order Schedule will reference this Agreement, be signed by both parties and be governed by and incorporate by reference this Agreement. This Agreement is comprised of these Terms, the “Hosting and Delivery Service Level Agreement” available at www.kyriba.com/contracts (the “**SLA**”), Kyriba’s Acceptable Use Policy available at <http://www.kyriba.com/acceptable-use-policy> (the “**AUP**”), the Data Processing Addendum available at www.kyriba.com/contracts (if applicable), and the Order Schedules and statement of works (together this “**Agreement**”). The Order Schedules may be executed in counterparts, and faxed or electronic signatures will be deemed originals. Such counterparts taken together shall constitute one and the same original document.

1. SaaS Services and Other Services

1.1. **Access Right.** Subject to the terms and conditions herein and Customer’s payment of fees, Kyriba hereby grants to Customer a limited, non-exclusive, non-transferable (except as expressly permitted by this Agreement) right to access and use Kyriba’s software as a service solution and related support services (collectively, the “**SaaS Services**”) to the extent set forth in the applicable Order Schedules and in accordance with the online documentation provided with the SaaS Services (“**Documentation**”) for its internal business purposes, including processing its data and the data of its subsidiaries and affiliates or in the case of supply chain finance subscription to sell and purchase supplier invoices. Customer acknowledges and agrees that only employees, supplier or service providers of Customer who have been assigned a unique user name and password and issued a service token to access and use the SaaS Services (each a “**User**” and collectively “**Users**”) are entitled to access the SaaS Services. Customer shall be responsible for each User’s access and use of the SaaS Services and compliance with applicable terms and conditions of this Agreement.

1.2. **Terms of Use.** Customer agrees to be bound by the AUP and shall use the SaaS Services in compliance with the AUP.

1.3. **Support and Service Levels.** Subject to Customer’s payment of the fees set forth in an Order Schedule (“**Fees**”), Kyriba will provide support services during the Term (as defined below). Support provided to Customer shall comprise of the following:

1.3.1. **Customer Support.** Kyriba shall provide telephone support to Users only for problem resolution assistance in accordance with the SLA for the support service purchased.

1.3.2. **Service Levels.** During the Term, Kyriba shall provide the service levels set forth in the SLA with respect to the SaaS Services. Customer’s sole and exclusive remedy for any failure to provide such service levels is set forth in the SLA.

1.4. **Professional Services.** During the Term, Kyriba shall perform implementation, training and consulting services set forth in the applicable statements of work for Customer as specified in an Order Schedule. Kyriba may utilize subcontractors to provide such services or parts thereof. Kyriba shall be responsible and liable for the performance of such subcontractors. Kyriba shall take appropriate measures to ensure that its employees and its subcontractors who perform services hereunder are competent to do so and that they observe the provisions of Section 6. Kyriba reserves the right to determine which of its personnel or those of its subcontractor shall be assigned to perform such services, and to replace or reassign such personnel during the Term hereof.

2. Ownership

The SaaS Services (including software, software application, computer code and programs, systems architecture, structure, organization and source code of the SaaS Services, the selection, compilation and analysis of all data in the SaaS Services and all derivatives and improvements thereof) constitute the sole and exclusive property of Kyriba or its licensors and suppliers. For the avoidance of doubt, the SaaS Services exclude any Customer Data (as defined below). Customer acknowledges that all right, title, and interest in and to the SaaS Services are and shall remain vested in Kyriba or its licensors or suppliers. Except for the limited license granted herein, Customer does not claim and shall not assert any right, title, or interest, or other ownership or proprietary rights, in or to the SaaS Services or other intellectual property provided by Kyriba. Customer shall not take any action that jeopardizes Kyriba’s or its licensors’ or suppliers’ intellectual property.

3. Customer Cooperation and Assistance

It shall be Customer’s responsibility to timely perform all obligations that may be required in order to establish Customer’s use of the SaaS Services. This includes but is not limited to: (a) providing information relating to Customer’s organization, technology platforms, systems configurations, business processes and any other information that is

reasonably requested by Kyriba from time to time; (b) providing employee lists to set up User accounts; (c) designating Users to participate in training; (d) assigning a project manager to coordinate implementation activities; (e) providing core referential data and initial bank statement data; (f) providing contact information for each bank to be connected for Customer; (g) make available such personnel assistance to Kyriba as may be reasonably necessary for Kyriba to perform hereunder; and (h) carry out in a timely manner all other Customer responsibilities set forth herein. Any delay by Customer hereunder shall result in an extension of Kyriba's dependent obligations due to such delay or failure.

4. **Payment**

Fees shall be paid by Customer in accordance with the applicable Order Schedules.

5. **Term and Termination**

5.1. **Term.** This Agreement shall commence on the date of Customer's signature on the initial Order Schedule, unless otherwise specified in the initial Order Schedule ("**Effective Date**") and shall remain in full force and effect for a period of three (3) years (the "**Initial Term**") unless terminated earlier in accordance with Section 5.2. Thereafter, this Agreement shall automatically renew for consecutive one (1) year terms (each a "**Renewal Term**") unless either party provides written notice to the other of its intention not to renew at least thirty (30) days prior to the end of the then-current term. The Initial Term and any Renewal Terms thereof shall be collectively referred to as the "**Term**". A merger, re-capitalization, sale of stock, asset sale, corporate bankruptcy, liquidation, or other similar action shall not relieve Customer of its financial obligations under this Agreement.

5.2. **Termination for Cause.** Either party may terminate this Agreement (i) for material breach by the other party, if such breach is not cured within thirty (30) days after written notice to the breaching party; (ii) where the other party is subject to a filed bankruptcy petition or formal insolvency proceeding that is not dismissed within thirty (30) days; or (iii) immediately for intellectual property infringement or breach of confidentiality by the other party. Kyriba may terminate this Agreement, modify, suspend or terminate any or all SaaS Services, or restrict Customer's use if, in Kyriba's sole reasonable judgment, use of the SaaS Services by Customer: (a) is subject to an order from a court, governmental entity or regulator stating that such use must cease; or (b) violates applicable law or export control sanctions. Any prolonged failure to pay due amounts will be considered as a material breach under this Agreement.

5.3. **Effect of Termination.** Subject to Section 6.3, Customer's and User's right to access and use the SaaS Services shall immediately terminate on the date of termination. Upon termination, Customer shall, and shall use its best efforts to cause Users to, immediately cease all use of the SaaS Services. Customer shall pay Kyriba for the SaaS Services (a) received through the date of termination of this Agreement, and (b) for the entire contracted Term in the case of termination based upon a material breach by Customer. The provisions, which by their nature or context are intended to survive any termination or expiration, shall survive any such termination or expiration of this Agreement.

6. **Confidentiality and Customer Data**

6.1. **Confidential Information.** For the purposes of this Agreement, "**Confidential Information**" means all non-public or proprietary information and material of a technical, economic, financial or business nature, whether or not reduced to writing or other tangible form and whether or not marked as "confidential" or "proprietary", including without limitation trade secrets and other information concerning the business affairs of the disclosing party or its affiliates, subcontractors or vendors, compositions, data, designs, drawings, formulae, graphs, inventions, ideas, know-how, models, photographs, processes, product prototypes and specifications; customer requirements; customer lists, price lists, and supplier lists; research and development; manufacturing, development, marketing or distribution strategies, methods and processes; market studies; business plans; computer software and programs (including object code and source code); and database technologies, systems, structures and architectures that may be disclosed by the parties during the Term of this Agreement.

In connection with this Agreement, either party may have access to Confidential Information of the other party. Confidential Information shall (i) be used by the receiving party solely for the purposes for which it is provided and for no other purpose, (ii) be kept confidential by the receiving party and its Representative (as defined below) and protected from disclosure using the same standard of care as the receiving party uses to protect its own similar confidential and proprietary information, but not less than reasonable care, and (iii) be disclosed only to such of receiving party's and receiving party's affiliates or their respective officers, directors, employees, agents, advisors and consultants (collectively, "**Representatives**") on a need-to-know basis for the purposes for which such Confidential Information is provided and who have agreed (with confidentiality and non-use obligations no less strict than those contained herein) to maintain the confidential nature of such information. The receiving party shall be responsible and liable for any breach of the confidentiality obligations herein by its Representatives. The obligation of confidentiality will survive termination of this Agreement and continue until such information is deemed no longer confidential, as provided in Section 6.2 below.

62. Exclusions. The obligations under this Section shall not apply to information that: (a) is or becomes publicly available through no act, omission or breach by the receiving party, (b) was in the receiving party's lawful possession prior to the disclosure, (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure, or (d) is independently developed by the receiving party without access to or use of the disclosing party's Confidential Information. In addition, the receiving party may disclose Confidential Information if required to be disclosed by law, a court of competent jurisdiction, or regulatory body; provided that immediately upon receiving any such request, and to the extent permitted by law, the receiving party promptly notifies the disclosing party in writing of such requirement to enable the disclosing party to take any action as it deems appropriate to protect Confidential Information. To the extent that the receiving party must disclose Confidential Information pursuant to the immediately preceding sentence, any such disclosure shall be limited to only that Confidential Information required to be disclosed to comply with the order of the relevant court or regulatory body.

63. Customer Data. Customer is responsible for ensuring the accuracy, completeness, quality, integrity, legality, reliability and appropriateness of all Customer Data, including Customer Personal Data. During the Term, Customer can retrieve from the SaaS Services Customer's data that is inputted into and/or stored via the SaaS Services ("**Customer Data**") as part of the standard reporting data in XLS, CSV or TXT formats. Customer shall be solely responsible for the accuracy, completeness, and legality of all Customer Data and will provide any legally required notices and obtain any legally required consent related to Customer Data. Upon termination, Kyriba may immediately deactivate Customer's account and that following a reasonable period of not less than sixty (60) days shall be entitled to delete Customer's account from Kyriba's "live" site. During this 60-day period and upon Customer's written request, Kyriba will grant Customer limited access to the SaaS Services for the sole purpose of permitting Customer to retrieve Customer Data, provided that Customer has paid in full all good faith undisputed amounts owed to Kyriba. At the end of such 60-day period, and except as may be required by law, Kyriba may delete or otherwise render inaccessible any of Customer Data that remain in Kyriba's "live" site and Customer acknowledges and agrees that Kyriba has no obligation to retain Customer Data. This Section 6 supersedes the non-use and non-disclosure agreement which may have been entered into by the parties in connection with the negotiation of this Agreement and/or decision to purchase the SaaS Services.

7. Security

Kyriba will maintain adequate administrative, technical, organizational, and physical safeguards designed to ensure the security and confidentiality of Customer Data. Customer shall provide and institute all appropriate tools and procedures required to ensure the security of its information system and, more specifically, to prevent, detect and destroy the occurrence of any viruses. During the Term of this Agreement, Kyriba will maintain Statement on Standards for Attestation Engagement No. 16 ("**SSAE 16**") certification or its equivalent. Upon the written request of Customer, and within a reasonable period of time, Kyriba will provide to Customer a copy of its most recent Service Organization Control (SOC) 1, Type II and SOC 2, Type II annual report or recognized industry successor security practices report (or any successor report obtained by Kyriba based on similar recognized set of standards).

8. Warranties; Exclusion of Warranties

8.1. Limited Warranty. Kyriba warrants to Customer that, during the Term, the SaaS Services will operate substantially in accordance with the Documentation. Any updates or upgrades provided to Customer hereunder shall be warranted to the same extent as the SaaS Services. This limited warranty shall not apply (i) during the occurrence of a Force Majeure Event (as defined below); (ii) when Customer breaches its payment obligations under this Agreement; (iii) to any failure by Customer to use the SaaS Services in accordance with this Agreement, the Documentation, or other instructions provided to Customer by Kyriba; (iv) to Customer's or any of Customer's third party's hardware, software, and equipment; (v) to Customer errors in entering, analyzing, or reporting data; or (vi) to downtime as a result of scheduled maintenance performed by or for Kyriba. Warranty claims must be timely received to be valid. Any claim for breach of an express warranty set forth in this Section must be in writing, contain sufficient detail and delivered to Kyriba not more than thirty (30) days following the date on which Customer first determines that such a breach has occurred (a "**Warranty Notice**"). Customer's exclusive remedy and Kyriba's entire liability for a breach of the warranty above is for Kyriba to use commercially reasonable efforts to correct the defective SaaS Services as soon as is reasonably practicable. If Kyriba is unable or unwilling to correct the defective SaaS Services within thirty (30) days from written notice of the defective SaaS Services, Customer may (i) terminate the defective SaaS Services and Kyriba will refund any prepaid Fees for the terminated SaaS Services for the period following the date of termination or (ii) accept the SaaS Services as provided by Kyriba without additional claim related to the matter set forth in the Warranty Notice.

8.2. Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, KYRIBA MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED (IN CONTRACT OR TORT OR OTHERWISE) OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DURABILITY, CORRESPONDENCE TO SAMPLE, DESIGN, CONDITION OR QUALITY WITH RESPECT TO THE USE, MISUSE, OR

INABILITY TO USE THE SAAS SERVICES (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES LICENSED OR PROVIDED TO CUSTOMER BY KYRIBA, OR OTHERWISE UNDER THIS AGREEMENT. THE SAAS SERVICES ARE PROVIDED "AS IS" AND ON AN AVAILABLE BASIS. WITHOUT LIMITING THE FOREGOING, KYRIBA DOES NOT WARRANT THAT OPERATION OF THE SAAS SERVICES OR ANY PRODUCTS OR SERVICES PROVIDED HEREUNDER SHALL BE AVAILABLE AT ANY TIME OR LOCATION, UNINTERRUPTED, SECURE OR ERROR-FREE AND THAT ALL ERRORS CAN BE CORRECTED. OPERATION OF THE SAAS SERVICES MAY BE INTERFERED WITH BY NUMEROUS FACTORS OUTSIDE OF KYRIBA'S CONTROL AND KYRIBA DOES NOT WARRANT THAT THE CONTENT OF THE SAAS SERVICES WILL BE FREE OF HARMFUL COMPONENTS. KYRIBA HAS NO OBLIGATION TO REPAIR OR REPLACE THE SAAS SERVICES, SERVICES OR PRODUCTS DAMAGED BY EXTERNAL CAUSE OR THROUGH THE FAULT OR NEGLIGENCE OF ANY PARTY OTHER THAN KYRIBA. KYRIBA DOES NOT WARRANT OR GUARANTEE THE TIMELINESS, SEQUENCE, ACCURACY OR COMPLETENESS OF THIRD PARTY DATA ACCESSED BY CUSTOMER THROUGH THE SAAS SERVICES, AND CUSTOMER ACKNOWLEDGES THAT SUCH THIRD-PARTY DATA IS PROVIDED TO CUSTOMER "AS IS" WITHOUT WARRANTY OF ANY KIND BY KYRIBA OR ITS THIRD-PARTY VENDOR.

9. Limitation of Liability

9.1. Exclusion of Indirect Damages. IN NO EVENT SHALL KYRIBA OR CUSTOMER, OR THEIR RESPECTIVE PARENT, SUBSIDIARY, AFFILIATE, LICENSOR OR SUPPLIER, BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSSES REGARDING THIS AGREEMENT OR RESULTING FROM OR IN CONNECTION WITH A PARTY'S PERFORMANCE HEREUNDER OR THE USE, MISUSE, OR INABILITY TO USE THE SAAS SERVICES OR OTHER PRODUCTS OR SERVICES HEREUNDER, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF THE LIABLE PARTY HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. IN NO EVENT SHALL KYRIBA BE LIABLE FOR PROCUREMENT COSTS OF SUBSTITUTE PRODUCTS OR SERVICES.

9.2. Limits on Liability. Except for Fees owed hereunder, the total aggregate liability of either party arising out of or in connection with this Agreement shall not exceed the amount of Fees paid or payable by Customer to Kyriba as consideration for the SaaS Services, products and/or services giving rise to such claim during the twelve (12) months preceding the date on which the cause of action arose. The existence of one or more claims under this Agreement will not increase Kyriba's liability in excess of the foregoing. For purposes of Sections 9 and 10, reference to Kyriba shall also include its suppliers and licensors.

10. Indemnification

10.1. Indemnification by Kyriba. Kyriba will defend and indemnify Customer against any and all costs, damages, and expenses (including reasonable attorneys' fees) finally awarded against Customer by a court of competent jurisdiction once all appeal rights are exhausted or agreed to in a written settlement agreement signed by Kyriba arising out of any claim or allegation by a third party that the SaaS Services infringes, misappropriates or violates any intellectual property rights of any third party. In the event that the SaaS Services are held or are believed by Kyriba to infringe a third party's intellectual property rights, Kyriba may, at its option and expense (a) replace or modify the SaaS Services to be non-infringing, without materially adversely affecting the SaaS Services' specified functionalities; (b) obtain for Customer a license to continue using the SaaS Services; or (c) terminate this Agreement and return to Customer any prepaid fees unearned by Kyriba. The foregoing states Kyriba's sole and exclusive liability, and Customer's sole and exclusive remedy, for any claim of infringement. Kyriba shall not be obligated to defend, and indemnify Customer for any claims to the extent based on: (i) any Customer or third party intellectual property or software incorporated in or combined with the SaaS Services where in the absence of such incorporated or combined item, there would not have been infringement, but excluding any third party software or intellectual property incorporated into the SaaS Services at Kyriba's discretion; or (ii) the SaaS Services that has been altered or modified by Customer, by any third party or by Kyriba at the request of Customer (where Kyriba had no discretion as to the implementation of modifications to the SaaS Services or Documentation directed by Customer), where in the absence of such alteration or modification the SaaS Services would not be infringing.

10.2. Indemnification by Customer. Customer will defend and indemnify Kyriba against any and all costs, damages, and expenses (including reasonable attorneys' fees) finally awarded against Kyriba by a court of competent jurisdiction once all appeal rights are exhausted or agreed to in a written settlement agreement signed by Customer arising out any claim or allegation by any third party resulting from or related to Customer's or any of its User's breach of Sections 1.1 and/or 1.2.

10.3. Indemnification Procedures. Each party's obligations under this Section are conditioned upon (i) prompt written notification by the indemnifying party of any threatened or actual claim or suit; provided that a failure of prompt notification shall not relieve the indemnifying party of liability hereunder except to the extent that defenses to such claim are materially impaired by such failure of prompt notification; (ii) allowing the indemnifying party to have sole control of the defense or settlement of any claim or suit, except that the indemnifying party may not, without the indemnified party's prior written consent, enter into any settlement that does not unconditionally release the indemnified party from liability; and (iii) the indemnified party providing the indemnifying party, at the indemnifying party's request and expense, with the assistance, information and authority necessary to perform the indemnifying party's obligations under this Section.

11. General Provisions

11.1. Assignment. Customer may not assign or transfer any of its rights under this Agreement to any third party without the prior written consent of Kyriba, which consent shall not be unreasonably withheld. Any attempted assignment or transfer in violation of the foregoing will be void.

11.2. Force Majeure. Except with respect to payment obligations under this Agreement, neither party will be responsible or liable for delays or failure of performance resulting from acts beyond the party's reasonable control, including denial-of-service attacks, acts of God, strikes, walkouts, labor or material shortages, riots, acts of war, acts of terrorism, epidemics, power or communications failures, delays or failures due to Internet access connections or congestions, hostile network attacks, earthquakes, or other disasters (each a "**Force Majeure Event**"). Upon the occurrence of a Force Majeure Event, the non-performing party will be excused from any further performance of its obligations effected by the Force Majeure Event for so long as the event continues and such party continues to use commercially reasonable efforts to resume performance.

11.3. Non-solicitation. During the Term and for a period of twenty-four (24) months thereafter, neither party will hire or solicit for employment any of the other party's employees, except by written consent of the other party. Should either party hire or solicit for employment any of the other party's employees, without written consent, the breaching party shall pay an amount equal to the payment received by the employee from its employer during the twelve (12) month period immediately preceding the breach of this provision.

11.4. Notices. All notices required under this Agreement shall be in writing and shall be sent to the party's address set forth in the Order Schedule. Notices will be deemed to have been duly given (1) when delivered personally or by acknowledged email, (2) the next day if sent by internationally recognized overnight courier service (costs prepaid and receipt requested); or (3) on the third day after the date mailed, if sent by certified mail (postage prepaid and return receipt requested). A party may change its address for purposes of this Agreement by giving written notice thereof in accordance with this Section.

11.5. Governing Law; Venue. This Agreement will be governed by the laws of England and Wales without regard to conflict of laws principles. The parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act from this Agreement. The parties irrevocably consent and agree to the exclusive jurisdiction and venue of the courts located in England in any and all suit or proceeding based on or arising under this Agreement.

11.6. Independent Contractors. Kyriba and Customer are independent contractors under this Agreement, which shall not be construed to create any employment relationship, partnership, joint venture, franchisor-franchisee or agency relationship, or to authorize any party to enter into any commitment or agreement binding on the other party.

11.7. Enforceability; Waiver. If any provision of this Agreement is unenforceable or illegal, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. None of the conditions or provisions of this Agreement shall be deemed to have been waived by any act, omission or knowledge on the part of any party or its agents or employees except by an instrument in writing expressly waiving such provision and signed by a duly authorized representative of such party.

11.8. Marketing. Customer agrees that Kyriba may identify Customer as a name in a list of new customer subscribers in press release on Kyriba's growth and momentum. Customer agrees to allow Kyriba to identify Customer, including use of Customer logo, as a Kyriba client on marketing literature and on Kyriba's web properties. Kyriba agrees to abide by all Customer branding guidelines, and to not single out or highlight Customer in any way.

11.9. Entire Agreement; Precedence Order. This Agreement constitutes the complete and exclusive agreement between Kyriba and Customer with respect to the subject matter hereof. It supersedes and replaces all oral or written RFPs, proposals, prior agreements, "click-wrap" agreements, electronic acceptance or other terms and conditions (including those contained in purchase orders or confirmations issued by Customer) and other prior or contemporaneous communications between the parties concerning the subject matter hereof. This Agreement may be amended only by a written agreement signed by both parties. If there is a conflict or inconsistency between the various documents forming this Agreement, such conflict shall be resolved by giving precedence in the following order: these Terms, the Order Schedules, the SLA, the statement of work and then the AUP. In case of discrepancies between two (2) Order Schedules, the most recent one shall prevail.

IN WITNESS WHEREOF, the parties hereto have each caused these Terms to be signed and delivered by their duly authorized representatives as of the date of the last signature set forth below.

For Customer

For Kyriba UK Ltd.

Date

Date

Name

Name

Title

Title

Signature

Signature