

## GitKraken End User License Agreement

The below agreement does *not* apply to our Git Integration for Jira product. You can click the following link to find the [Git Integration for Jira EULA](#).

**IMPORTANT – READ CAREFULLY:** This End User License Agreement (“*EULA*”) is a legal agreement between you (either an individual or a single entity) and Axosoft, LLC DBA GitKraken (“*GitKraken*”) for any software and documentation that accompany this EULA.

GITKRAKEN PROVIDES THE SOFTWARE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS EULA AND THE PROOF OF LICENSE AND ON THE CONDITION THAT YOU ACCEPT AND COMPLY WITH THEM. BY CLICKING “I AGREE,” INSTALLING OR OTHERWISE USING OR ACCESSING THE SOFTWARE, YOU: (A) AGREE TO BE BOUND BY THE TERMS OF THIS EULA; AND (B) REPRESENT AND WARRANT THAT (I) YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT, AND (II) IF YOU ARE ENTERING INTO THIS EULA ON BEHALF OF CORPORATION, GOVERNMENTAL ORGANIZATION, OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF SUCH ENTITY AND BIND THEM TO THE TERMS OF THIS EULA. IF YOU DO NOT AGREE, DO NOT INSTALL, USE, OR ACCESS THE SOFTWARE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS EULA OR YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS EULA, NO LICENSE IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION, OR OTHERWISE) UNDER THIS EULA, AND THIS EULA EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY SOFTWARE THAT YOU DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF GITKRAKEN’S SOFTWARE.

We may update this EULA from time to time and will provide you with the latest version by providing a notice to you in the Software. Your licensing of Software is in accordance with the terms of the EULA in effect at the time of such licensing. By licensing Software, you accept and agree to the EULA in effect at such time.

### 1. DEFINITIONS

“*Affiliate*” means an entity controlled by or under common control with the subject entity. “*Control*,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“*Open Source Software*” means any open source software, or any individual software components, that are licensed under the terms of various separate software license agreements.

“*Proof of License*” means the collective set of documentation from GitKraken evidencing your obligation to pay associated fees for the license, and/or the authorized scope of use of the Software under this EULA.

“*Server*” means a single physical computer that is accessed or accessible by multiple client programs and/or users and are owned, leased, or controlled by you. Multiple computers that share processing power or operate in a networked configuration as a single computer, such as a “server cluster,” or similar arrangement, shall constitute multiple Servers for the purpose of this EULA.

“*Software*” means collectively, any GitKraken software for which you are acquiring a license to which this EULA applies, including any Hosted Features (as defined below) and all versions related thereto, and associated media, printed materials, and online or electronic documentation. The term “Software” specifically excludes all Open Source Software provided with the Software.

“*Software License Key*” means a unique code to be issued to you by GitKraken that is required to activate the Software.

“*You*” or “*Your*” means the individual or legal entity specified in the Proof of License.

## **2. GRANT OF LICENSE**

**2.1 Trial or Beta Licenses.** The Software can be activated with no-cost evaluation or beta test Software License Key(s). Software License Keys for evaluation or beta test versions of the Software will expire on a certain date as noted when you activate the evaluation or beta test Software License Key (the “*Expiration Date*”). When you activate the Software using an evaluation or beta test Software License Key, the Software is licensed to you subject to the additional terms of this “Trial or Beta Licenses” section. If you activate an evaluation or beta version of the Software (hereinafter referred to as an “*Evaluation Product*” or “*Beta Product*,” as applicable) with an evaluation or beta Software License Key, then and notwithstanding anything in this EULA to the contrary: (a) you may use the Evaluation Product or Beta Product, as applicable, internally until the Expiration Date only to evaluate the suitability of the Evaluation Product for licensing on a for-fee basis or test and evaluate the Beta Product, as applicable; (b) GitKraken will have no duty or obligation to provide you with the support services described by Section 4 below; and (d) THE EVALUATION PRODUCT OR BETA PRODUCT, AS APPLICABLE, TOGETHER WITH ALL ASSOCIATED DOCUMENTATION, IS PROVIDED TO YOU “AS IS” WITH ALL FAULTS AND DEFECTS AND WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, GITKRAKEN, AND ITS AFFILIATES AND RESPECTIVE LICENSORS, HEREBY DISCLAIMS AND EXCLUDES ALL WARRANTIES, WHETHER STATUTORY, EXPRESS, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND SATISFACTORY QUALITY AND ANY WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, GITKRAKEN PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE LICENSED SOFTWARE WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED. NEITHER GITKRAKEN NOR ANY OF ITS AFFILIATES BEAR ANY LIABILITY FOR ANY DAMAGES RESULTING FROM USE (OR ATTEMPTED USE) OF THE EVALUATION PRODUCT OR BETA PRODUCT, AS APPLICABLE, THROUGH AND AFTER THE EXPIRATION DATE, AND HAS NO DUTY TO PROVIDE SUPPORT TO YOU.

**2.2 License Rights.** The Software is provided under a license to you and is not sold. Subject to the terms and limitations of this EULA and the terms of your Proof of License, GitKraken hereby grants you a non-exclusive, non-transferable limited license, without rights to sublicense, during the license term to: (i) use the Software License Key(s) to activate the Software to the extent permitted by your Proof of License and subject to payment of the applicable license fees, if any; (ii) install as many instances of the Software on as many Servers as you like, provided that the total number of authorized users across all of your instances does not exceed the amount of users permitted by your Proof of License; (iii) use the Software, in object code form only, solely for internal use and solely in accordance with the terms and conditions of this EULA and the Proof of License, and (iv) use the documentation for the Software in connection with permitted licensed uses of the Software. An applicable Software License Key or other program within the Software may monitor your usage of

the Software to ensure your compliance with the limitations set forth in the Proof of License and this EULA. We also reserve the right to audit your usage of the Software at any time.

**2.3 SaaS License and Use.** Certain features of the Software, such as interactive features, may be provided on a hosted basis to you if you purchase access to them (the “*Hosted Features*”). Subject to the terms and limitations of this EULA and the terms of your Proof of License, GitKraken hereby grants you during the license term a non-exclusive, non-transferable license, without the right to sublicense, to access and use the Hosted Features to the extent permitted by your Proof of License, subject to the payment of applicable license fees if any, and subject to the Hosted Features terms and conditions set forth in Section 2.9 below.

**2.4 Proof of License.** Your Proof of License will specify: (a) the Software licensed, (b) the license term, (c) the total number of authorized users (including individual users and maximum concurrent users), and (d) any other applicable terms (e.g., Expiration Date, use restrictions (such as open source projects or commercial use) authorized location(s) for a site license, etc.). Additionally, if your Proof of License includes additional services, then it will also specify the (e) service and (f) service term. If your rights to Software or services are limited in duration and the date such rights begin is other than the purchase date, your Proof of License will provide that beginning date(s). The Proof of License may be delivered to you in various ways depending on the manner in which you obtain Software and services; for example, the Proof of License may be provided in your receipt, invoice or your contract with GitKraken or its Affiliate or authorized GitKraken reseller. It may also be in electronic form if you download Software. If your Proof of License does not set forth the license term or number of authorized users, then the license term shall be for one (1) year, and the number of authorized users shall each be one (1), as applicable. If you do not have a Proof of License, then such software shall be an Evaluation Product and your rights shall be as set forth in Section 2.1 above.

**2.5 Software Transfer.** You may transfer the Software to a different internal workstation that you control or user so long as you have purchased a license for such Software for each such workstation or user, as applicable. You may not, however, transfer the Software to any third party or otherwise install the Software on a Server or other hardware systems not owned, leased or controlled by you.

**2.6 Limitations.** You may only use the Software in accordance with this EULA. You may not use the Software for any other purpose, including as a service bureau. You may not use, copy, sell, sublicense, modify, display, rent, lease, loan, transfer, distribute, assign, transfer, download, merge, make any translation or derivative work of the Software, except as expressly provided herein. You may not reverse engineer, decompile, or disassemble the Software, or access or use any Third Party Materials, directly or indirectly, independent of the Software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. You may not remove any titles, trademarks or trade names, copyright notices, legends, or other proprietary markings on the Software. You are not granted any rights to any trademarks, service marks, logos or trade names of GitKraken or any of its Affiliates. The Software may contain protective mechanisms that are designed to protect the intellectual property rights of the Company, its Affiliates, and their third party licensors and suppliers. You may not modify, alter, attempt to defeat or defeat such protective mechanisms. GitKraken retains all rights not expressly granted to you under this EULA and expressly disclaims any implied rights.

**2.7 Open Source Software.** Any Open Source Software is licensed to you under the terms of the applicable third party license conditions that can be found in the menu, popup window, or other documentation accompanying the Software (the “*Open Source Terms*”). Copyrights to the Open

Source Software are held by copyright holders indicated in the Open Source Terms. Any terms of this EULA that conflict with the terms of any license agreements for Open Source Software shall not apply to such Open Source Software.

**2.8 Types of Licenses.** GitKraken provides several different types of licenses, which are further detailed on your Proof of License. However, we have summarized them here for your convenience:

**a. Standard:** This version of the license grants you a license to install the Software and to access the Hosted Features.

**b. On-Premise (Serverless):** This version of the license grants you a bulk single license and permits you to install copies of the Software on one or multiple Servers that you own or control. It does not grant you access to the Hosted Features.

**c. On-Premise (Self-Hosted Server):** This version of the license grants you a single license to the installed version of the Software only and does not grant you access to the Hosted Features.

**d. Other Products:** From time to time, we may offer other versions of the license and the details pertinent to that license will be specified on your Proof of License.

## **2.9 Acceptable Use Policy.**

a. The Software may only be used for lawful purposes. You agree to comply with all applicable laws, rules, and regulations in connection with your use of the Software (including, without limitation, any laws regarding the export of data or software to and from the U.S. or other countries). Any material or conduct that in our judgment violates this Section 2.9 in any manner may result in suspension or termination of the Software or removal of your user account with or without notice.

b. You may not use the Software:

- For the purpose of exploiting, harming, or attempting to exploit or harm any person in any way by exposing them to inappropriate content, asking for personally identifiable information, or otherwise.
- To send, knowingly receive, upload, download, use, or re-use any material that does not comply with this EULA.
- To transmit, or procure the sending of, any advertising or promotional material without our prior written consent, including any “junk mail,” “chain letter,” “spam,” or other similar solicitation.
- To impersonate or attempt to impersonate the Company, a Company employee, another user, or any other person or entity (including, without limitation, by using email addresses or usernames associated with any of the foregoing).
- To engage in any other conduct that restricts or inhibits anyone’s use or enjoyment of the Software, or which, as determined by us, may harm the Company or users of the Software, or expose them to liability.
- For purposes of creating or marketing a similar or competitive solution with the Software.

c. Additionally, you agree not to:

- Use the Software in any manner that could disable, overburden, damage, or impair or interfere with any other party's use of the Software, including their ability to engage in real time activities, if applicable..
- Use any robot, spider, offline readers or other automatic device, process, or means to access the Software for any purpose, including monitoring or copying any of the material on or through the Software.
- Use any device, software, or routine that interferes with the proper working of the Software.
- Introduce any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful.
- Attempt to gain unauthorized access to, interfere with, damage, or disrupt any parts of the Software, any Server on which the Software may be stored, or any Server, computer, or database connected to the Software.
- Attack the Software via a denial-of-service attack or a distributed denial-of-service attack.

d. We have the right to:

- Take any action that we deem necessary or appropriate at our sole discretion, including if we believe that your use of the Software is not in accordance with this EULA and Proof of License, infringes any intellectual property right or other right of any person or entity, threatens the personal safety of users of the Software or the public, or could create liability for the Company.
- Take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the Software.
- Terminate or suspend your access to all or part of the Software for any or no reason, including without limitation, any violation of this EULA, or any other agreement between you and the Company.

Without limiting the foregoing, we have the right to cooperate fully with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information provided on or through the Software. YOU WAIVE AND HOLD HARMLESS THE COMPANY AND ITS AFFILIATES, LICENSEES, AND SERVICE PROVIDERS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY ANY OF THE FOREGOING PARTIES DURING, OR TAKEN AS A CONSEQUENCE OF, INVESTIGATIONS BY EITHER SUCH PARTIES OR LAW ENFORCEMENT AUTHORITIES. Accordingly, we assume no liability for any action or inaction regarding transmissions or communications by any user or third party. We have no liability or responsibility to anyone for performance or nonperformance of the activities described in this section.

**2.10 Third Party Materials.** The Software may include software, content, data, or other materials, including related documentation, that are owned by third parties other than GitKraken ("*Third Party Materials*") and that are provided to you on licensee terms that are in addition to and/or different from those contained in this EULA. A list of all Third Party Materials, if any, included in the Software and provided under such third party licenses will be set forth in the Proof of License. You are bound by and shall comply with all such third-party licenses and acquire any licenses and/or consents

necessary for use of such Third Party Materials. Any breach by you or any of your users of any such license is also a breach of this EULA.

**2.11 Responsibility for Use of Software.** You are responsible and liable for all uses of the Software and documentation through access you provide, directly or indirectly. Specifically, and without limiting the generality of the foregoing, you are responsible and liable for all actions and failures to take required actions with respect to the Software by your users or by any other third party to whom you or your users may provide access to or use of the Software, whether such access or use is permitted by or in violation of this EULA.

### **3. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY**

**3.1 Ownership Rights.** The Software is provided under a license to you and is not sold and you do not acquire any ownership interest. The Software and its documentation, including methods, processes and/or techniques utilized therein, are owned by, proprietary to, and valuable trade secrets of GitKraken and are protected by U.S. copyright law and international treaties. You agree to take no actions that impair or infringe GitKraken's intellectual property rights in the Software. GitKraken retains all right, title, and interest in and to the Software and the Software License Key(s) and in all related, and whether or not registered, copyrights, trade secrets, patents, trademarks, and any other intellectual and industrial property and proprietary rights, including, without limitation, registrations, applications, renewals, and extensions of such rights.

**3.2 Your License of Company Name and Logo.** To the extent you are a paying user of the Software, GitKraken and its Affiliates may use your company name and logo ("*Marks*"), and you hereby grant a license to GitKraken and its Affiliates, to identify you as a customer of GitKraken on its website(s) and marketing and promotional materials. You retain all right, title and interest in and to your Marks and all rights not granted to GitKraken and its Affiliates are reserved by you. Paying users may opt-out of the forging license by emailing [legal@gitkraken.com](mailto:legal@gitkraken.com).

### **4. SUPPORT SERVICES**

**4.1 Support Terms and Conditions.** During the term of your license, GitKraken will provide support services and maintenance to you in accordance with GitKraken's then-current support terms and conditions, as furthered detailed on <https://help.gitkraken.com/> (the "*Support Terms and Conditions*"), subject to your payment of the applicable fees. By accepting the terms of this EULA, you are accepting the Support Terms and Conditions, which terms are hereby incorporated by reference. Any update, upgrade or supplemental software code or related materials that GitKraken provides to you as part of any support services are to be considered part of the Software and are subject to the terms and conditions of this EULA. GitKraken may use free of charge any information you provide to GitKraken or its Affiliates for any GitKraken business purposes without restriction, including for product support and development. GitKraken will not use information in a form that personally identifies you.

**4.2 Usage and Other Data.** The Software, by default, automatically collects and sends to GitKraken and/or its third party agents (a) general usage information, such as actions and durations of those actions and (b) bug reports when the Software experiences a crash. This information is used by GitKraken to improve the Software and related products and services. You acknowledge and agree that GitKraken solely and exclusively owns all right, title, and interest in and to such information and bug reports.

## **5. AUDIT AND RECORDS**

You agree to maintain complete and accurate records during the term of your license and for a period of two (2) years after the termination or expiration of this EULA with respect to matters necessary for accurately determining the number of users using the Software and the amounts due to GitKraken hereunder. GitKraken may, at its own expense, upon reasonable prior notice, periodically inspect and audit your records with respect to matters covered by this EULA and applicable Proof of License, provided that if such inspection and audit reveals that you have underpaid GitKraken with respect to any amounts due and payable during the period to which such inspection and audit relate, or that you have exceeded the parameters of your license rights, you shall promptly pay such amounts as are necessary to rectify such underpayment, or purchase additional licenses to account for all of your license usage. You agree to reasonably cooperate with the personnel conducting such audits and provide all access reasonably requested by GitKraken. Such inspection and auditing rights shall extend throughout the term and for a period of two (2) years after the termination of this EULA. GitKraken's remedies set forth in this Section 5 are cumulative and are in addition to other remedies GitKraken may have at law or in equity, whether under this EULA or otherwise.

## **6. TERMINATION**

GitKraken may terminate this EULA upon notice if you fail to comply with any term of this EULA or Proof of License. Additionally, for Evaluation Product and Beta Product, either party may terminate this EULA for any reason or no reason whatsoever by providing notice to the other party effective upon notice. GitKraken may terminate this EULA, effective immediately, if you file, or you have filed against you, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property. GitKraken may terminate any Internet-based services provided to you or made available to you through the use of the Software upon no less than thirty (30) days prior written notice. In the event of termination or expiration of this EULA, all of the licenses granted to you hereunder shall immediately terminate and you must promptly destroy all copies of the Software and all Software License Keys. In addition, you must promptly remove all copies of the Software from the Server(s) and all computers and terminals on which it is installed. The definitions and rights, duties and obligations of the parties that by their nature continue and survive shall survive any termination or expiration of this EULA. No expiration or termination shall affect your obligation to pay all fees that may have become due before such expiration or termination, or entitle you to any refund.

## **7. U.S. GOVERNMENT USERS; COMPLIANCE AND RESTRICTIONS**

**7.1** The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying, or disclosing of the Software by the U.S. Government shall be governed solely by the terms of this EULA.

**7.2** Each party shall comply with all laws applicable to the actions contemplated by this EULA. You acknowledge that the Software is of United States origin, is provided subject to the U.S. Export

Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (a) you are not, and are not acting on behalf of (i) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (ii) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (b) you will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Software available outside the United States.

## **8. LIMITED WARRANTIES, EXCLUSIVE REMEDY, AND DISCLAIMER**

**8.1 Limited Warranties.** GitKraken warrants that the media, if any, on which the Software is delivered will be free of defects and that the Software will substantially conform to the description contained in the applicable end user documentation in each case for a period of 30 days after the date of activation of the Software License Key, or with regard to the Hosted Features, 30 days after the date such Hosted Features are first accessed by you (the “*Warranty Period*”). The warranties set forth in this Section will not apply and will become null and void if: (a) you breach any provision of this EULA or the Proof of License; or (b) if you, or any of your users (i) installs or uses the Software on or in connection with any hardware or software not specified in the documentation or expressly authorized by GitKraken in writing; (ii) modifies or damages the Software, or the media on which it is provided, including abnormal physical or electrical stress; or (iii) misuses the Software, including any use of the Software other than as specified in the associated documentation. THE FOREGOING WARRANTIES DO NOT APPLY, AND GITKRAKEN STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD PARTY MATERIALS.

**8.2 Exclusive Remedy.** Within the Warranty Period, should you encounter and report to GitKraken a reproducible error that causes the Software to not meet the foregoing warranty, then GitKraken will, at its sole discretion, either: (a) resolve the error or malfunction, and modify or replace the Software (if deemed necessary by GitKraken); or (b) allow you to terminate this EULA with respect to the non-conforming Software and, upon your return of the Software to GitKraken, GitKraken shall refund to you the amount you paid for the non-conforming Software. THE REMEDIES DESCRIBED IN THIS SECTION SHALL BE YOUR SOLE AND EXCLUSIVE REMEDIES, AND GITKRAKEN’S SOLE LIABILITY UNDER THIS EULA.

**8.3 Disclaimer of Warranties.** EXCEPT FOR THE EXPRESS LIMITED WARRANTY IN SECTION 8.1, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GITKRAKEN PROVIDES THE SOFTWARE TO YOU “AS IS” AND WITH ALL FAULTS AND DEFECTS WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, OR IN ANY OTHER PROVISION OF THIS EULA OR COMMUNICATION WITH YOU. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, GITKRAKEN, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SOFTWARE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING,



GITKRAKEN PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE LICENSED SOFTWARE WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

## **9. LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL GITKRAKEN OR ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE LICENSORS, SUPPLIERS, OR SERVICE PROVIDERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, WHETHER OR NOT ARISING OUT OF THIS EULA (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR LOSS OF DATA, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, AND RELATED CONTENT THROUGH THE SOFTWARE OR OTHERWISE ARISING OUT OF THE USE OF THE SOFTWARE, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS EULA, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, BREACH OF CONTRACT, AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES REGARDLESS OR WHETHER SUCH DAMAGES WERE FORESEEABLE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU.

GITKRAKEN'S – AS WELL AS ITS AFFILIATES, AND ANY OF THEIR RESPECTIVE LICENSORS, SUPPLIERS, AND SERVICE PROVIDERS – AGGREGATE LIABILITY SHALL NOT, IN ANY EVENT, EXCEED THE LICENSE FEES, IF ANY, ACTUALLY PAID BY YOU FOR THE SOFTWARE LICENSED UNDER THIS EULA IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. THE FOREGOING LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER GITKRAKEN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

## **10. ASSIGNMENT**

You may not assign this EULA, in whole or in part, without the prior written consent of GitKraken, except as part of the sale or other transfer of any Server on which the Software came pre-loaded, provided that you retain no copies of the Software and the transferee agrees in writing to honor the terms and conditions of this EULA in all respects. In the case of any such transfer, GitKraken shall continue to own all right, title and interest in and to any intellectual property embodied in the Software. Any attempt by you to assign or otherwise transfer your right and obligations under this EULA in violation of the provisions of this Section 10 shall be null and void. Subject to the foregoing, this EULA will bind and inure to the benefit of the parties and their respective successors and permitted assigns.

## **11. PRIVACY POLICY**

GitKraken collects information about its users to measure and analyze how its users interact with its products, such as usage patterns and characteristics of its user base. GitKraken collects such information in accordance with its [Privacy Policy](#), which is incorporated herein by reference.

## **12. GENERAL PROVISIONS**

This EULA is governed and construed by the laws of the State of Arizona, United States without regard to any choice or conflict of law principles or rules. The United Nations Convention for the International Sale of Goods shall not apply. The federal and state courts located in Maricopa County, Arizona USA shall have exclusive jurisdiction in respect of any and all disputes arising in connection with this EULA or Proof of License. This EULA and the Proof of License is the entire agreement between us with respect to the subject matter hereof and supersedes the terms of any purchase orders and any other communications or advertising with respect to the Software. If any provision of this EULA is held invalid, that provision shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of this EULA shall continue in full force and effect. This EULA may be modified only by written agreement signed by authorized representatives of you and GitKraken. No term or provision hereof will be considered waived by GitKraken, and no breach excused, unless such waiver or consent is in writing signed by GitKraken. No consent by GitKraken to, or waiver of, a breach, whether express or implied, will constitute a consent to, waiver of, or excuse of any other, different or subsequent breach. The section headings appearing in this EULA are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such paragraph or in any way affect such section. Any notice required or permitted to be given must be in writing and is considered received: (a) when personally delivered; (b) one business day after having been sent by overnight mail via a professional carrier; or (c) when sent via facsimile or electronic mail, receipt confirmed, with an original document placed in the mail within 5 business days of the date of that facsimile or electronic mail. All business and legal communications from GitKraken to you may be sent through the Software or by email or regular mail to the address on file in your account. You may designate another address in writing by changing your address in your account. Legal notices to GitKraken must be sent with a copy addressed to: Axosoft LLC DBA GitKraken, 16435 N Scottsdale Road, Suite 130, Scottsdale, AZ 85254, to the attention of "Legal" or such other address as may be communicated to you by GitKraken.

## **13. CONTACT INFORMATION**

If you have any questions about this EULA or wish to request any special terms for a customer subscription, please direct all correspondence to: Axosoft LLC DBA GitKraken, 16435 N Scottsdale Road, Suite 130, Scottsdale, AZ 85254, or email [legal@gitkraken.com](mailto:legal@gitkraken.com). If you want to report a suspected bug or security vulnerability with our site or products, please contact [security@gitkraken.com](mailto:security@gitkraken.com). Axosoft, GitLens and GitKraken are trademarks and/or a registered trademark of Axosoft or its Affiliates in the United States and/or various jurisdictions.