

## **CIQ LONG-TERM SUPPORT FOR ROCKY LINUX**

### **END USER LICENSE AGREEMENT**

*This Agreement governs Customer's receipt of Subscribed Services and proprietary Software as furnished by Ctrl IQ to Customer. This Agreement does not apply to software licensed under an open source license, only the applicable open source license applies.*

This CIQ Long-Term Support For Rocky Linux End User License Agreement (this "Agreement") is entered into between Ctrl IQ, Inc. with offices at 560 Mill Street, Suite 302, Reno, Nevada 89502 ("Ctrl IQ") and the applicable customer ("Customer" or "you") that has licensed the Software (as defined below) through a third party marketplace (the "Marketplace"). Any references to a "Party" in this Agreement will mean Customer and Ctrl IQ. By entering into either this Agreement or using the Software, Customer hereby agrees to all terms and conditions of this Agreement. Further, as part of an Authorized User's onboarding process, the Company and Authorized User may enter into a separate agreement, such as a shirk wrap or click through terms of service and/or a privacy policy, that will govern the Authorized User's use of the Software, and the Company reserves the right to enforce such agreement directly with the Authorized User. If you use the Software on behalf of a company or other entity then "you" or "Customer" includes you and that entity, and you represent and warrant that (a) you are an authorized representative of the entity with the authority to bind the entity to this Agreement, and (b) you agree to this Agreement on the entity's behalf.

By accessing the Software, you are agreeing that you have read, understand, and are bound by, this Agreement.

If you do not agree to all the terms and conditions of this Agreement, you are not authorized to use the Software and must immediately cease any use of or access to the Software.

1. **Certain Definitions**. The following terms when capitalized have the meanings specified below:

"Authorized User" means an individual authorized by Customer to use the Software. Any individual using the Software through a Licensed Host will be presumed to be authorized by Customer.

"Invoice" means a written statement sent by Ctrl IQ or otherwise provided via the Marketplace to Customer that specifies Customer's license to the Software and all related fees.

"Licensed Host" means the Customer's host or server whereon the Software is installed.

"Software" means the applicable EOL Rocky Linux version that Customer has licensed from Ctrl IQ, together with any updates, modifications, and improvements of any of the foregoing that are furnished by Ctrl IQ under this Agreement.

"Subscription Commencement Date" means the earlier of (i) the date of Customer's first installation of the Software; and (ii) the date set forth on the Invoice.

2. **Subscription Term**. The term of each of the license to the Software will commence as of the Subscription Commencement Date and continue until terminated in accordance with this Agreement ("Subscription Term"). Notwithstanding the foregoing, the Subscription Term will

automatically terminate as of the date Ctrl IQ no longer provides the Software.

### 3. **License Grant.**

a. Ctrl IQ hereby grants to Customer a non-exclusive, non-transferable, limited license (without the right to sublicense) to: (a) install the Software on the number of Licensed Hosts permitted under the applicable Invoice and to use the Software solely for Customer's internal business purposes in object code form only and (b) to copy and use the documentation, manuals and user guides provided by Ctrl IQ in connection with the Software (the "Documentation") in connection with Customer's use of the Software.

b. Delivery. One copy of the Software in object code will be provided to Customer. The Software shall be deemed accepted upon delivery.

c. Restrictions. The license granted in this Section 3 is conditioned upon Customer's and its Authorized Users' compliance with this Agreement. Customer shall not and shall ensure its Authorized Users do not: (i) permit any third party to use or access the Software (except for the Authorized Users as permitted herein); (ii) install the Software on more than the number of Licensed Hosts permitted under the applicable Invoice; (iii) share access to the Software (including log in information or notifications) with anyone who is not intended to be an Authorized User; (iv) provide, license, sublicense, sell, resell, rent, lease, share, lend, or otherwise transfer or make available the Software to any third parties, except as expressly permitted by Ctrl IQ in writing; (v) except with respect to any access to Software that is licensed under an open source license, modify, copy or create derivative works based on any content accessed through the Software; (vi) except with respect to any Software that is licensed under an open source license, disassemble, reverse engineer, decompile or otherwise seek access to the source code of the Software; (vii) access the Software in order to build a competitive product or services; (viii) remove, delete, alter, or obscure any copyright, trademark, patent, or other notice of intellectual property or documentation, including any copy thereof; (ix) transmit unlawful, infringing or harmful data or code to or from; or (x) otherwise use the Software except as expressly permitted hereunder.

d. Reporting. Ctrl IQ reserves the right to communicate with Customer to understand usage patterns of the Software. At Ctrl IQ's written request, Customer will deliver to Ctrl IQ a written report detailing the number of Licensed Hosts on which the Software is installed, the number of Authorized Users, GPU usage information and the number of sites whereby the Software is installed, and such other information as may be reasonably requested by Ctrl IQ. An officer of the Company shall certify the accuracy of each such report.

e. Updates. Ctrl IQ may make available to Customer updates and upgrades to the Software as such updates and upgrades are generally made available to Ctrl IQ's other customers. However, Customer acknowledges and agrees that purchases of Software are not contingent on the delivery of any future functionality or features. Customer is solely responsible for any costs required in connection with the implementation of any updates or upgrades.

f. No Support. No support or other services are provided to Customer by Ctrl IQ under this Agreement, and nothing herein gives Customer the right to open a support ticket with Ctrl IQ.

### 4. **Ownership.**

a. Ctrl IQ or its licensors retain all rights, title, and interest (including all intellectual property rights and other rights) in and to the Software and the Documentation, including any modifications or updates thereto, and any Feedback submitted by Customer in accordance with Section 4(b). Customer does not acquire any other rights, express or implied, in the Software and the Documentation other than those rights expressly granted under this Agreement. Customer acknowledges that the Software and the Documentation embody Ctrl IQ's Confidential Information and that they are protected by copyright and other intellectual property laws.

b. Feedback. If Customer or its Authorized Users elect to provide Ctrl IQ with any feedback, comments, or suggestions for improvements of any kind related to the Software or the Documentation ("Feedback"), the Feedback will be the sole and exclusive property of Ctrl IQ. Customer hereby assigns all rights in and to the Feedback to Ctrl IQ and agrees that Ctrl IQ will have the right to use and disclose such Feedback in any manner and for any purpose, without remuneration, compensation, or attribution to Customer.

## **5. Confidentiality.**

a. "Confidential Information" shall mean any information in whatever form, and however delivered or communicated by a Party (the "Disclosing Party") to the other Party (the "Receiving Party"), including, without limitation, all software code, documentation, product plans, trade secrets, business plans, customer lists, know-how, and all other information of whatever nature related to or incorporated into the business of the Disclosing Party or its affiliates and which is reasonably understood to be of a confidential nature. Confidential Information includes information of third parties that the Disclosing Party has agreed to keep confidential. For clarity, all information, documentation and specifications regarding the Software shall be Ctrl IQ's Confidential Information; provided, that the foregoing will not apply to any portion of the Software that is licensed under an open source license. Confidential Information of a Party shall not include information or material that (i) is rightfully known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (ii) is released by the Disclosing Party to the Receiving Party without restriction; (iii) is in the public domain through no fault of the Receiving Party; (iv) lawfully obtained by the Receiving Party from a third party who has no confidentiality obligations to the Disclosing Party; or (v) is independently developed by the Receiving Party without any reference or use of the Disclosing Party's Confidential Information. Additionally, a Receiving Party may disclose Confidential Information of the Disclosing Party if required to do so by legal process, provided, the Disclosing Party is given reasonable notice of such law or order and an opportunity to attempt to preclude or limit such production. Nothing contained in this Section 5 shall be construed to allow a Party to reverse engineer or decompile the other Party's Confidential Information.

b. For a period of five (5) years from the receipt of any information deemed Confidential Information hereunder, each Party as the Receiving Party shall take all steps that are necessary or reasonable to safeguard the secrecy and confidentiality of, and proprietary rights to, the Confidential Information disclosed or provided by the Disclosing Party, and shall not disclose the foregoing to any third party (other than any employee, agent, director, officer, consultant, affiliate or contractor informed on a "need to know" basis and who has entered into a written agreement with confidentiality obligations at least as restrictive as the terms herein). Each Party shall be responsible for the compliance of such third parties with the restrictions set forth in this Section 5.

c. Each Party as the Receiving Party shall make no use whatsoever of any

Confidential Information of the Disclosing Party except as required to fulfill its obligations under this Agreement.

d. Upon the Disclosing Party's request at any time and for any reason, the Receiving Party shall promptly destroy, render unreadable, or deliver to the Disclosing Party all materials (including all copies) in its possession which contain Confidential Information of the Disclosing Party; provided, however, that this provision does not apply to data that may be kept during the normal course of business in email or back-up systems.

## **6. Fees**

a. Commencement of Billing. Billing will commence on the Subscription Commencement Date, and Customer shall be obligated to pay any and all Subscription Fees (defined below).

b. Payment. Each Invoice will set forth all charges, including, but not limited to, the recurring subscription fee, the usage related fees, and any other recurring or non-recurring charges (collectively, the "Subscription Fees") that Customer is required to pay under the Invoice. All amounts due under an Invoice are payable in full within thirty (30) days of Customer's receipt of an Invoice, or as otherwise set forth in an Invoice (e.g., via automatic pre-paid billing). All amounts will be paid in U.S. dollars. If any payment is made by Customer via credit card, Customer hereby agrees that its credit card information will be shared with and processed by Ctrl IQ's third-party payment processor subject to such payment processor's terms of service and privacy policy. Overdue amounts shall accrue interest at the rate of one-and one-half percent (1.5%) per month. Customer agrees to pay to Ctrl IQ all reasonable costs and expenses of collection, including reasonable attorneys' fees and court costs, incurred by Ctrl IQ to collect payments past due under this Agreement. Customer's payment obligations shall survive the termination of any Subscription Term.

c. Taxes. The Subscription Fees are exclusive of all taxes and Customer agrees to pay all federal, state, local, sales, use, value added, excise, withholding or other taxes, fees, or duties in connection with its and its use of the Software (other than taxes based on Ctrl IQ's net income). If Ctrl IQ has the legal obligation to pay directly or collect any such tax for which Customer is responsible under this Section 6(c), the appropriate amount will be invoiced to and paid by Customer unless Customer provides Ctrl IQ with a valid tax exemption certificate authorized by the appropriate taxing authority. If Customer is required to deduct or withhold any taxes from any payment due to Ctrl IQ, then (i) the amount payable to Ctrl IQ shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 6(c)), Ctrl IQ receives an amount equal to the amount it would have received had no deductions been made, (ii) Customer shall make such deductions, (iii) Customer shall pay the full amount deducted to the relevant government authority in accordance with applicable law and (iv) Customer shall promptly provide Ctrl IQ satisfactory evidence of such payment upon request.

## **7. Termination.**

a. Termination. Either Party may terminate this Agreement immediately upon notice to the other party.

b. Suspension Right. Without limiting the foregoing termination rights and subject to applicable open source licenses, Ctrl IQ reserves the right to suspend access to the Software if

any payment owing by Customer is more than ten (10) days overdue.

c. Effect of Termination. Upon the effective date of expiration or termination of this Agreement for any reason: (i) subject to applicable open source licenses, Customer must immediately cease use the Software; and (ii) all outstanding payment obligations of Customer become due and payable immediately. The following provisions will survive the expiration or termination of this Agreement for any reason: Sections 1, 3(c), 4, 5, 6, 7(c), 8, 9, 10 and 11.

## **8. Warranties**

a. Mutual Warranties. Each Party hereby represents and warrants that: (i) it has all requisite power and authority to execute this Agreement and to perform its obligations hereunder; (ii) the execution, delivery, and performance of this Agreement shall not conflict with its charter or bylaws, or any agreement, order, or judgment by which it is bound and (iii) it has obtained all necessary permits and consents for the performance of its obligations hereunder.

b. THE SOFTWARE IS PROVIDED BY CTRL IQ AND ITS LICENSORS "AS IS" WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CTRL IQ HEREBY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, CONCERNING THE SOFTWARE WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR SKILL AND CARE AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE. CTRL IQ FURTHER DISCLAIMS ANY WARRANTY THAT THE SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS, WILL OPERATE IN ALL THE COMBINATIONS WHICH MAY BE SELECTED FOR USE BY CUSTOMER OR THAT ALL ERRORS WILL BE CORRECTED OR REPAIRED.

9. Limitation of Liability. IN NO EVENT SHALL CTRL IQ'S AGGREGATE LIABILITY TO CUSTOMER UNDER THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO CTRL IQ FOR THE SOFTWARE IN THE TWELVE MONTHS PRECEDING THE DATE OF THE ACT OR OMISSION GIVING RISE TO THE CLAIM. NOTWITHSTANDING THE FOREGOING, CTRL IQ SHALL HAVE NO LIABILITY WHATSOEVER WITH RESPECT TO ANY SOFTWARE LICENSED UNDER AN OPEN SOURCE LICENSE. IN NO EVENT SHALL CTRL IQ OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, GOODWILL OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THE SOFTWARE EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

## **10. Indemnification**

a. By Customer. Customer shall, at its sole expense, indemnify, defend and hold Ctrl IQ and its officers, directors, employees and agents harmless from and against any and all liabilities, losses, damages, claims and expenses (including reasonable attorney's fees) (collectively, "Losses"), resulting from any third-party claim arising out of or relating to

Customer's use of the Software, including without limitation, any and all Losses resulting from (a) Customer's failure to comply with applicable law in using the Software, or (b) Customer's breach of the terms and conditions of this Agreement; provided, however that Customer shall not be liable for any claim subject to indemnification by Ctrl IQ under Section 11(b) below.

b. By Ctrl IQ. Ctrl IQ shall, at its sole expense, indemnify, defend and hold Customer and its officers, directors, employees and agents harmless from and against any and all Losses resulting from any third-party claim arising out of an allegation that the proprietary Software owned by Ctrl IQ infringes any intellectual property right of such third party; provided, however that Ctrl IQ shall not have any obligation regarding claims that arise from or relate to (i) any Software licensed under an open source license, (ii) Customer's use of the Software other than as contemplated by this Agreement, (iii) any modifications made to the Software by any entity other than Ctrl IQ or its authorized representative; (iv) any combination of the Software with services or technologies not provided by Ctrl IQ, (v) use of any version other than the latest commercially available version of the Software made available to Customer or (vi) Customer's use of the Software after Ctrl IQ has terminated this Agreement or such portion of the Software in accordance with this Section 11(b). If in Ctrl IQ's opinion, the Software is likely to be infringing, Ctrl IQ may in its discretion (x) obtain a license to enable Customer to continue to access the potentially infringing portion of the Software, (y) modify the Software to avoid the potential infringement, or (z) if the foregoing cannot be achieved after using commercially reasonable efforts, terminate the Agreement or access to the infringing portion of the Software. CTRL IQ'S OBLIGATIONS IN THIS SECTION 11(B) SHALL BE ITS SOLE AND EXCLUSIVE LIABILITY TO CUSTOMER, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS INVOLVING THE SOFTWARE.

c. A Party seeking indemnification under this Section 11 will provide the indemnifying Party with prompt written notice of the relevant claim (provided that the failure to provide prompt notice will only relieve the indemnifying Party of its obligations to the extent it is materially prejudiced by such failure) and permit the indemnifying Party to control the defense, settlement, or compromise of such claim. The indemnified Party may employ counsel at its own expense to assist it with respect to such claim; provided, however, that if such counsel is necessary because the indemnifying Party does not assume control, the indemnifying Party will be responsible for the expense of such counsel. The Party not controlling such defense may participate therein at its own expense. The Party controlling such defense shall keep the other Party advised of the status of such claim and the defense thereof. Neither Party shall have authority to settle any claim on behalf of the other.

## **11. General.**

a. Relationship of the Parties. Each Party agrees that its relationship with the other Party is that of an independent contractor and that nothing in this Agreement should be construed to create a partnership, joint venture, or employer-employee relationship. Neither Party shall be responsible to the other Party and neither Party has the authority to act for, bind or incur any debts or liabilities on behalf of the other Party.

b. Assignment. Customer may not assign this Agreement, directly or indirectly, by operation of law, change of control or otherwise, without the prior written consent of Ctrl IQ. Ctrl IQ may freely assign this Agreement. Any purported assignment in violation of this Section 11(b) shall be null and void from the beginning. Subject to the foregoing, this Agreement will bind and inure to the benefit of any successors and permitted assigns.

c. Notices. All notices required or permitted under this Agreement shall be deemed duly given (i) when delivered by hand or confirmed facsimile transmission; (ii) one (1) day after delivery by overnight delivery, or (iii) three (3) days after being mailed by certified or registered mail, return receipt requested, with postage prepaid. In each case, notice must be sent, in the case of Ctrl IQ to the address set forth in the preamble of this Agreement. Customer is responsible for updating its contact information with Ctrl IQ, including providing Ctrl IQ with an up-to-date e-mail address for the provision of notice under the Agreement. In the event that the latest e-mail address provided to Ctrl IQ by Customer is not valid, or for any reason is not capable of delivering any notice required by the Agreement, Customer acknowledges and agrees that Ctrl IQ's dispatch of an e-mail to such address will nonetheless constitute effective notice. Either Party may update their email or address for notice by furnish such information to the other Party in writing in accordance with this Section 11(c).

d. Governing Law. This Agreement shall be governed by the laws of the State of Delaware, without regard to any conflicts of laws principles. The parties agree that the United Nations Convention for the International Sale of Goods does not apply to this Agreement.

e. Jurisdiction. All disputes arising out of or relating to this Agreement will be submitted to the exclusive jurisdiction of the state or federal courts of competent jurisdiction located in Los Angeles, California, and each Party irrevocably consents to such personal jurisdiction and waives all objections to this venue. THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

f. Entire Agreement, Amendment and Modification. This Agreement supersedes all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions. This Agreement may not be altered except by a written instrument signed by authorized legal representatives of both Parties. Any waiver of the provisions of this Agreement or of a Party's rights or remedies under this Agreement must be in writing to be effective. In the event of a conflict between any Invoice and the Agreement, the Invoice will control, but only to the extent there is a conflict.

g. Force Majeure. Neither Party will be liable or deemed to be in default for any delay or failure in performance under this Agreement (except for payment obligations) resulting, directly or indirectly, from acts of God, civil or military authority, acts of the public enemy, war, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, the elements, pandemics, epidemics, strikes, labor disputes or any causes beyond its reasonable control; provided, that the Party failing to perform in any such event will promptly resume or remedy, as the case may be, the performance of its obligations hereunder as soon as practicable.

h. Injunctive Relief. Customer acknowledges that any breach or threatened breach of this Agreement would cause irreparable injury to Ctrl IQ and that monetary damages in such event would be inadequate compensation. Customer agrees that Ctrl IQ will be entitled in addition to monetary relief as may be recoverable by law, to seek temporary, preliminary, and/or permanent injunctive relief as may be necessary to restrain Customer from further breach, without posting bond.