

CLICK-TO-ACCEPT LICENSE

THIS LITMIS PORTAL TERMS OF USE (“AGREEMENT”) IS A LEGAL DOCUMENT BETWEEN YOU (“USER”) AND KRENGEL TECHNOLOGY, INC. (“LITMIS”). THIS AGREEMENT STATES THE TERMS AND CONDITIONS UNDER WHICH YOU MAY ACCESS THE LITMIS PORTAL. PLEASE READ THIS AGREEMENT CAREFULLY BEFORE ACCESSING THE LITMIS PORTAL. BY CLICKING THE ACCEPT BUTTON AND ACCESSING THE LITMIS PORTAL YOU INDICATE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT ACCEPT THIS AGREEMENT, USER SHALL NOT USE OR ACCESS THE LITMIS PORTAL.

LITMIS PORTAL TERMS OF USE

This LITMIS PORTAL Terms of Use ("Agreement") is made as of the Effective Date, by and between Kregel Technology, Inc. with offices located at 124 East Walnut Street, Suite 310, Mankato,, Minnesota, USA (“LITMIS”) and you, the party identified as User (“User”).

WITNESSETH

WHEREAS, LITMIS has established an IBM i Operating System development portal for use and access by users through the Internet (“LITMIS PORTAL”); and

WHEREAS, Clients (as defined hereinafter) and Associates (as defined hereinafter), collectively referred to as User, desire to access the LITMIS PORTAL and use the Software and Services (as defined hereinafter) in accordance with the terms and provisions of this Agreement; and

WHEREAS, LITMIS desires to provide Users (as defined hereinafter) access to the LITMIS PORTAL for purposes of developing IBM i Operating System software.

NOW, THEREFORE, in consideration of the mutual benefits of the covenants and restrictions herein contained, User and LITMIS hereby agree as follows:

ARTICLE I: RECITALS AND DEFINITIONS

Section 1.01 – Recitals: The above recitals and identification of parties are true and correct.

Section 1.02 – Definitions: The following definitions shall apply:

- (1) Access: The term “access” and variants thereof (including, without limitation, “accessing” and “accessible”) shall mean to store data in, retrieve data from or otherwise approach or make use of (directly or indirectly) through electronic means or otherwise.
- (2) Associates: The term “Associates” shall mean employees of LITMIS and independent contractors hired by LITMIS.
- (3) Authorized Person: The term “Authorized Person” shall mean a person or organization who is authorized in writing by LITMIS to receive Proprietary Information and who agrees to maintain the propriety and confidentiality of such Proprietary Information.
- (4) Client: The term “Client” shall mean an individual or organization that has established access to the LITMIS PORTAL.
- (5) Data: The term “Data” shall mean any and all data and information used, stored on or transmitted through the LITMIS PORTAL, including (without limitation) the User Content.
- (6) Documentation: The term “Documentation” shall mean any and all written manuals, user’s guides, and Policy Statements concerning the Data and LITMIS PORTAL as provided to User in printed or electronic form.
- (7) Effective Date: The term “Effective Date” shall mean the first date by which LITMIS assigns a Password to User or stores an authentication token for User (whichever is earlier).
- (8) Fee: The term “Fee” shall mean the amount of money to be paid by User for use of the LITMIS PORTAL or as specified in a Work Order (as the case may be).
- (9) Internet: The term “Internet” shall mean that certain global network of computers commonly referred to as the Internet.
- (10) Licensed Content: The term “Licensed Content” shall mean third party Technology incorporated in whole or part into the LITMIS Technology.
- (11) LITMIS Technology: The term “LITMIS Technology” shall mean the Password, Data, LITMIS PORTAL, Software, System, Documentation, and any and all Technology developed by or for LITMIS, including any and all technology and deliverables under any Work Order.

- (12) LITMIS PORTAL: The term “LITMIS PORTAL” shall mean that certain internet web site portal hosted on the System and located at URL: spaces.litmis.com , including (but not limited to) that certain personalized URL as assigned to User by LITMIS for purposes of accessing the System, Software and Services as well as information, data, communication, software and text transmitted through the LITMIS PORTAL and used or stored on the System.
- (13) Password: The term “Password” shall mean that certain unique access credential including a user name and password or personalized URL as assigned to User by LITMIS for purposes of accessing the LITMIS PORTAL.
- (14) Policy Statement: The term “Policy Statement” shall mean that certain written statement of policies (in printed or electronic form) concerning User access to the LITMIS Technology and use of the LITMIS PORTAL (including, without limitation, the Software and Services) including (without limitation) the Privacy Statement as may be adopted by LITMIS and as modified by LITMIS from time-to-time.
- (15) Privacy Statement: The term “Privacy Statement” shall mean that certain written statement of privacy policies (in printed or electronic form) concerning User software, systems, data and information as may be adopted by LITMIS and as modified by LITMIS from time-to-time.
- (16) Proprietary Information: The term “Proprietary Information” shall mean the Password, Data, Documentation, Software, Policy Statement, and any and all information in connection with the LITMIS Technology which is disclosed to User by LITMIS or learned or obtained by User and is not: (i) conveyed to User by a third party; (ii) released by LITMIS without restriction; (iii) independently developed by User; and (iv) required by Court Order to be released by User.
- (17) Master Services Agreement: The term “Master Services Agreement” shall mean that certain Master Services Agreement by and between Oxford County Telephone Service Company (“Oxford Networks”) and Krengel Technology, Inc. [as may be assigned to LITMIS (as under common control with Krengel Technology, Inc.)].
- (18) Restatements: The term “Restatements” shall mean Section 757 of the Restatement of Torts, Section 39 of the Restatement (Third) of Unfair Competition, Section 1 of the Uniform Trade Secrets Act and 18 U.S.C. § 1839.
- (19) Services: The term “Services” shall mean those certain services as provided by LITMIS to User through the LITMIS PORTAL and Work Orders (as the case maybe).
- (20) Software: The term “Software” shall mean the executable code for the administrative software interface providing User with facilities and utilities for developing software and systems for the IBM i Operating System on the System using the LITMIS PORTAL.
- (21) System: The term “System” shall mean computer systems and communications equipment owned or leased by LITMIS and used for hosting the LITMIS PORTAL as established by LITMIS under the terms of the Master Services Agreement.
- (22) Technology: The term “Technology” shall mean any and all information, data, applications, methodologies, techniques, ideas, solutions, processes, adaptations, products, concepts, procedures, works of authorship, LITMIS PORTAL, scripts, documentation, flow charts, diagrams, software, software libraries, databases, data structures, data models, data dictionaries, fields, records, screen displays and graphic interfaces.
- (23) Unauthorized Access: The term “Unauthorized Access” shall mean any access to the LITMIS PORTAL except for the exclusive purposes of using the Software and Services; accessing, retrieving, and viewing Data; and inputting and retrieving User Content.
- (24) Unauthorized User: The term “Unauthorized User” shall mean any individual who accesses the LITMIS PORTAL except for: (1) Associates and Clients authorized by LITMIS to access the LITMIS PORTAL for purposes of using the Software and Services; accessing, retrieving, and viewing Data, and inputting and retrieving User Content; and (2) Authorized Persons who are authorized in writing by LITMIS to access the LITMIS PORTAL.
- (25) User: The term “User” shall mean Client, Associates, employees of Client, and independent contractors hired by Client.
- (26) User Content: The term “User Content” shall mean any and all User software, data and information developed, used, stored or transmitted through the LITMIS PORTAL by User in developing software and systems for the IBM i Operating System.
- (27) Work Order: The term “Work Order” shall mean those certain Work Orders signed by LITMIS and User under which User engages LITMIS for services or software (as the case maybe) as defined therein.

ARTICLE II: LITMIS PORTAL ACCESS

Section 2.01 – Access: LITMIS hereby grants User a non-exclusive and non-transferable license to access the LITMIS PORTAL subject to the terms and conditions of this Agreement.

Section 2.02 – User Content: User may develop, input, retrieve, and modify User Content in connection with the Software and Services using the LITMIS PORTAL. User shall not access or modify any Data or information except User Content. User hereby authorizes LITMIS to retrieve and use User Content as well as User data sourced from third party data integrators, data bases, data systems and data sources for purposes of providing Services to User.

Section 2.03 – Password: LITMIS shall assign User a Password for purposes of accessing the LITMIS PORTAL and using the Software and Services. User hereby accepts responsibility for, and shall be liable for, all access to the LITMIS PORTAL, Data, Software and Services in connection with the Password. User shall access the LITMIS PORTAL and the Software and Services only using the Password. User shall be responsible for the confidentiality and maintenance of the Password. Modification of the Password shall be subject to written approval of LITMIS. All assignments of the Password by User shall be void.

Section 2.04 – Unauthorized Access: User shall prevent Unauthorized Users from accessing the LITMIS PORTAL using the Password. User shall prevent Unauthorized Access to the LITMIS PORTAL using the Password.

Section 2.05 – Lawful Purpose: User represents and warrants that User access to the LITMIS Technology and use of the LITMIS PORTAL shall not violate any contract, statute, rule, regulation or other obligation under which User is bound. User represents and warrants that User shall not access the LITMIS Technology or Services to conduct or solicit the performance of any business or activity that is tortuous or prohibited by law.

Section 2.06 – Policy Statement: User shall comply with the Policy Statement. LITMIS may modify the Policy Statement from time to time in the exclusive discretion of LITMIS. LITMIS shall comply with the Privacy Statement.

Section 2.07 – Back-Up: User shall perform routine backup of files stored on the System using commercially reasonable measures.

ARTICLE III: TERM OF AGREEMENT

Section 3.01 – Employment: User shall notify LITMIS immediately upon termination of employment or contracting services (as the case may be) with Client or LITMIS (as the case may be). Upon termination of employment or contracting services (as the case may be) with Client or LITMIS (as the case may be), this Agreement shall terminate and User shall cease all access to the LITMIS PORTAL.

Section 3.02 – Shut-off: LITMIS shall have the right to disable and deny the Password and terminate this Agreement without notice upon: (i) User's termination of employment or contracting services (as the case may be) with Client or LITMIS (as the case may be); (ii) User violation of Section 2.05; (iii) LITMIS receipt of notice from a third party (including, without limitation, Oxford Networks and Client) challenging use of the LITMIS PORTAL by User; (iv) Termination, cancellation or breach of the Master Services Agreement; (v) the failure of LITMIS to receive timely payment for access, products and services rendered to User hereunder; and (vi) Termination, cancellation or breach of contract services (as the case may be) between Client and LITMIS.

Section 3.03 – Deactivation and Removal: Upon termination of this Agreement, LITMIS shall have the right to disable and deny the Password and cease all User access to the LITMIS PORTAL. Upon termination of this Agreement, LITMIS shall remove, migrate, destroy, or convert (as the case may be) all User Content in its possession. User shall destroy or return (as requested by LITMIS) any copies of LITMIS property in possession of User.

ARTICLE IV: HOSTING AND SUPPORT

Section 4.01 – Hosting: User hereby acknowledges that the LITMIS PORTAL is hosted under the Master Services Agreement and subject to the terms thereof. User hereby releases, indemnifies and holds harmless LITMIS for the performance of Oxford Networks under the Master Services Agreement.

Section 4.02 – Disaster Recovery: User shall be responsible for disaster recovery and planning using the LITMIS PORTAL and the facilities provided by Oxford Networks. User shall administer security procedures using the LITMIS PORTAL as supported by Oxford Networks, including SSL Certificate management and establishing and maintaining firewalls.

Section 4.03 – Work Orders: LITMIS shall provide the services set forth in a Work Order.

Section 4.04 – Service Levels: The LITMIS PORTAL shall be accessible by User in accordance with the scheduled availability of the System under the Master Services Agreement, less downtime attributable to: (i) scheduled network, hardware or service maintenance; (ii) the acts or omissions of User; or (iii) Internet failure.

Section 4.05 – Support: LITMIS shall resolve reported defects in the LITMIS PORTAL as may be reported by User via telephone or email. LITMIS shall provide User with telephone and email consultations in answering questions concerning use of the LITMIS PORTAL, subject to the discretion of LITMIS.

Section 4.06 – Fee: User shall pay the Fee. Failure to pay the Fee shall be cause for cancellation of access to the LITMIS PORTAL and Work Order (as the case may apply). LITMIS shall not refund any portion of the Fee in the event of cancellation, termination or otherwise.

ARTICLE V: INTELLECTUAL PROPERTY

Section 5.01 – Ownership and Title: Title to the LITMIS Technology (excluding Licensed Content and User Content), including ownership rights to patents, copyrights, trademarks and trade secrets in connection therewith shall be the exclusive property of LITMIS.

Section 5.02 – Reverse Engineering: Customer shall not reverse engineer the LITMIS PORTAL and shall use reasonable efforts to prevent reverse engineering of the LITMIS PORTAL.

Section 5.03 – Modifications: User shall not copy the LITMIS PORTAL and Documentation and shall not allow the LITMIS PORTAL and Documentation to be copied without the prior written consent of LITMIS. User shall not modify the LITMIS PORTAL and Documentation and shall not allow the LITMIS PORTAL and Documentation to be modified without the prior written consent of LITMIS. If the LITMIS PORTAL or Documentation is modified, such modifications shall be the sole and exclusive property of LITMIS and LITMIS shall own any and all of the rights, title, and interests to such modifications, including (but not limited to) any and all copyrights, patents, and trade secrets related thereto.

Section 5.04 – Proprietary Information: User shall not disclose Proprietary Information except to Authorized Persons. User shall hold Proprietary Information in strict confidence and shall not duplicate, use or disclose Proprietary Information except as otherwise permitted under this Agreement. User hereby acknowledges and agrees that the Proprietary Information derives independent economic value (actual or potential) from not being generally known to other persons who can obtain economic value from its disclosure or use and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; is the subject of reasonable efforts under the circumstances to maintain its secrecy; and is a trade secret as defined under the Restatements.

Section 5.05 – No Contest: User shall not contest or aid in contesting the ownership or validity of the copyrights, trademarks, service marks and trade secrets of LITMIS in connection with the LITMIS Technology.

Section 5.06 – Employee Pirating: User shall not induce or solicit (directly or indirectly) any Associate of LITMIS to leave the employ or hire of LITMIS or engage (directly or indirectly) the services of such Associates (as an employee, consultant, independent contractor or otherwise) without the prior written consent of LITMIS.

Section 5.07 – Noncompete: User shall not (directly or indirectly) promote, advertise, market or provide any product or service similar to or competitive with the LITMIS PORTAL.

ARTICLE VI: WARRANTY

Section 6.01 – Warranty: LITMIS hereby represents and warrants that the LITMIS PORTAL shall be provided on a reasonable efforts basis and shall conform to the standards generally observed in the industry for similar services.

SECTION 6.02 – WARRANTY LIMITATION: THE WARRANTY SET FORTH IN SECTION 6.01 IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES OF MERCHANTABILITY. EXCEPTING THE WARRANTY SET FORTH IN SECTION 6.01, LITMIS HEREBY DISCLAIMS AND USER HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY. THE LITMIS PORTAL IS PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND. LITMIS DOES NOT GUARANTEE OR WARRANT THE ACCURACY, COMPLETENESS OR USEFULNESS OF THE LITMIS PORTAL. LITMIS DOES NOT MAKE ANY WARRANTY AND USER HEREBY WAIVES ANY AND ALL WARRANTIES AS TO THE RESULTS OBTAINED FROM THE SERVICES OR AS TO THE ACCURACY OR RELIABILITY OF THE LITMIS PORTAL. USER HEREBY ACKNOWLEDGES AND AGREES THAT USE OF THE SERVICES SHALL BE AT THE SOLE AND EXCLUSIVE RISK OF USER AND SUBJECT TO THE RESTRICTIONS, TERMS AND CONDITIONS, RULES, REGULATIONS, POLICIES, APPLICABLE LAWS AND THE POLICY STATEMENT. LITMIS SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR HARM OR DAMAGES RESULTING FROM OR ARISING OUT OF USER INABILITY TO USE THE SERVICES.

Section 6.03 – Inaccuracies: User hereby acknowledges that the Data may contain errors, inaccuracies and omissions. User shall assume any and all risk of loss, harm or damage associated with User access to and use of the LITMIS Technology.

Section 6.04 – Express Warranties: User hereby acknowledges and agrees that LITMIS (including officers, employees, agents, directors and independent contractors of LITMIS) has not made or granted to User any express warranties concerning the LITMIS Technology, excepting the warranty in Section 6.01.

Section 6.05 – Limitation of Damages: LITMIS shall not be liable to User for any lost profits or consequential, exemplary, incidental or punitive damages, in connection with (i) use, performance or operation of the LITMIS PORTAL or Services; (ii) use, performance or operation of the Internet or use of the Internet by User; and (iii) loss of Data, regardless of the form of action, whether in contract or in tort, including negligence, regardless of whether LITMIS has been advised of the possibility of such damages in advance or whether such damages are reasonably foreseeable.

Section 6.06 – Remedies: The sole remedy for User for any reason and for any cause of action whatsoever in connection with this Agreement and the LITMIS PORTAL or Services, regardless of the form of action, whether in contract or in tort, including negligence, shall be modification of the LITMIS PORTAL, as determined by LITMIS, for compliant access and use by User.

Section 6.07 – Force Majeure: LITMIS shall not be liable to User for failing to perform its obligations hereunder because of circumstances reasonably beyond the control of LITMIS. Such circumstances shall include (without limitation) any acts or omissions of any government or governmental authority, natural disaster, act of a public enemy, acts of terrorism, riot, sabotage, labor disputes, power failure, delays in transportation or deliveries of supplies or materials, acts of God, computer failure, hardware failure, telecommunications failure, software failure, failure of User to cooperate with the reasonable requests of LITMIS, breach of this Agreement by User, failure of Oxford Networks under the Master Services Agreement and any other events reasonably beyond the control of LITMIS.

Section 6.08 – Content Warranty: User represents and warrants that any and all information provided by User in connection with this Agreement, the Password, Services, and the User Content are true, accurate, complete and current.

Section 6.09 – Indemnification: User shall release, defend, indemnify and hold harmless LITMIS from and against any and all claims, liability, losses and damages arising in connection with: (1) User access to the LITMIS Technology; (2) use of the Services by User; (3) the User Content; and (4) breach of this Agreement by User.

Section 6.10 – Export Assurance: User shall not perform any act in conflict with or in violation of any applicable export laws and regulation.

Section 6.11 – Loss of User Content: Programming, design errors, maintenance of the LITMIS PORTAL or Services, or unauthorized access to the LITMIS PORTAL or Services may result in the loss of User Content. LITMIS shall not be responsible for any loss of User Content.

ARTICLE VII: MISCELLANEOUS

Section 7.01 – Assurances: User represents and warrants that all representations, warranties, recitals, statements and information provided to LITMIS under this Agreement are true, correct and accurate as of the Effective Date.

Section 7.02 – Entire Agreement: This Agreement contains the entire understanding of the parties relating to the LITMIS Technology and supersedes all previous verbal and written agreements between LITMIS and User relating to the LITMIS Technology. The Policy Statement (as modified by LITMIS from time to time) is incorporated herein by this reference and made a part of this Agreement.

Section 7.03 – Continuation: The terms and provisions of Articles V of this Agreement shall survive termination and cancellation of this Agreement.

Section 7.04 – Amendments and Modifications: Excepting modifications to the Policy Statement, any alteration, modification or amendment of this Agreement shall be void unless such alteration, modification or amendment is in writing and signed by the parties hereto.

Section 7.05 – Severability: If a provision of this Agreement is rendered invalid the remaining provisions shall remain in full force and effect.

Section 7.06 – Captions: The headings and captions of this Agreement are inserted for convenience of reference and do not define, limit or describe the scope or intent of this Agreement or any particular section, paragraph, or provision.

Section 7.07 – Counterparts: This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 7.08 – Governing Law: This Agreement is governed by the laws of the State of Minnesota, without regard to any rules of conflict or choice of laws that require the application of laws of another jurisdiction, and venue shall be St. Paul, Minnesota.

Section 7.09 – User Notice: All notices shall be in writing. Notices to User shall be deemed delivered when delivered electronically, by commercial overnight delivery service, by Certified or Registered Mail - Return Receipt Requested - or by hand to an address set forth for

User as maintained in LITMIS's records. Notices to User shall be deemed given on the date notice is delivered electronically or by hand to User or on the date of receipt by User (as evidenced in the case of Certified or Registered Mail by Return Receipt), whichever occurs first. Notices delivered to User electronically (including, without limitation, electronic mail) shall be deemed written notices.

Section 7.10 – LITMIS Notice: Notices to LITMIS shall be deemed delivered when delivered by commercial overnight delivery service, Certified or Registered Mail - Return Receipt Requested - or by hand to the person and address set forth in the statement of parties above for LITMIS. Notices to LITMIS shall be deemed given on the date notice is received by LITMIS (as evidenced in the case of Certified or Registered Mail by Return Receipt).

Section 7.11 – Pronouns/Gender: Pronouns and nouns shall refer to the masculine, feminine, singular or plural, as the context shall require.

Section 7.12 – Equitable Remedies: The parties hereby acknowledge that damages at law may be an inadequate remedy to LITMIS. In addition to all other remedies that may be available at law or equity, LITMIS shall have the rights of specific performance and injunction in the event of a breach or threatened breach of this Agreement by User.

Section 7.13 – Waiver: Waiver of a breach of this Agreement shall not constitute a waiver of any other breach. All remedies under this Agreement are in addition to equitable remedies and remedies provided by law. Failure to enforce any provision of this Agreement shall not constitute a waiver or create an estoppel from enforcing such provision. Any waiver of a provision of this Agreement shall not be binding unless such waiver is in writing and signed by the waiving party.

Section 7.14 – Assignments: Any and all assignments of rights hereunder by User shall be void.

Section 7.15 – Public Announcements: All public announcements concerning the LITMIS Technology or the relationship of User and LITMIS under this Agreement shall be subject to the prior written approval of LITMIS.

Section 7.16 – Arbitration: Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration in accordance with the Arbitration Rules of the American Arbitration Association in St. Paul, Minnesota. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Three Qualified Arbitrators shall be selected by the parties in accordance with the Arbitration Rules of the American Arbitration Association. Each party shall have the right of discovery as set forth in the Federal Rules of Civil Procedure.

Section 7.17 – Litigation Expense: In the event of litigation or arbitration arising out of this Agreement, each party shall pay its own costs and expenses of litigation or arbitration (excluding fees and expenses of arbitrators and administrative fees and expenses of arbitration).