

## TERMS OF USE

READ THIS LICENSE AGREEMENT CAREFULLY. THIS INCLUDES THE TERMS OF USE WHICH GOVERN THE USE OF OPTIMYTH SOLUTIONS, S.L.U. (“OPTIMYTH”) **KIUWAN LOCAL ANALYZER** SOFTWARE (THE “PRODUCT”), BY YOU (THE “LICENSEE”).

THE USE OF THE PRODUCT IMPLIES, BY YOU, THE EXPRESS AND BINDING ACCEPTANCE OF ALL TERMS IN THIS AGREEMENT. IF YOU DON’T AGREE WITH THE TERMS STATED, YOU MAY NOT USE THE PRODUCT.

IN ORDER TO GUARANTEE YOUR FULL SATISFACTION, OPTIMYTH IS AVAILABLE AND WILLING TO ANSWER ANY QUESTION YOU MAY HAVE, REGARDING TO THE PRODUCT USE RIGHTS. YOU WILL FIND OUR CONTACT DATA AT [WWW.KIUWAN.COM](http://WWW.KIUWAN.COM) (THE “WEBSITE”).

1. **Definitions.** The following terms will have, for the purposes of this Agreement, the content, respectively shown below:
  - a. “Agreement” means license agreement.
  - b. “User documentation” means the user manuals and other documents provided by Optimyth to their licensees, either printed or electronic.
  - c. “Maintenance” means the services described in the clause 7 of this Agreement.
  - d. “Software” means: (i) the version of the Software in machine-readable object code, which Optimyth makes downloadable at the Website, (ii) the documentation (iii) and every copy of the above.
  - e. “Confidential information” means this Agreement, the source code, the object code, the documentation and any proprietary tools, proprietary knowledge or proprietary methodologies, provided by one party (“Disclosing Party”) to the other (“Receiving Party”), generally unknown to the public, and to which the Disclosing Party gives access or knowledge as a result or in connection with this Agreement.
2. **License.**
  - a. Subject to the terms and conditions of this Agreement, Optimyth grants to the Licensee, who accepts from Optimyth, a license to use the product, in a nonexclusive, nontransferable and non-sub licensable way.
  - b. This License gives you the right to install, use, access, run or interact in any other way with the Product to the extent specified in the Website, in accordance to the applicable Documentation.
  - c. Nothing in this Agreement shall be construed to empower the Licensee to obtain the source code of any part of the Software.
3. **Download and installation.** The Product can be obtained only by the process of downloading it from the Website. The installation of the Product is at the sole responsibility of the Licensee.
4. **Restrictions.**
  - a. Optimyth reserves to itself all rights, express or implied, not expressly granted to the Licensee, and reserves to itself, as well, every right, title or interest regarding to the Product, including patents, copyrights, trademark and commercial secrets rights.
  - b. You acknowledge and agree not to have any rights authorizing you to modify the Software in any manner or a part of it.
  - c. You may not resell the Software nor use it as a managed services provider, outsourcing services provider or any other form of timeshare trade agreement that makes the Software usable for the benefit of other entity than you.
  - d. You may not transfer the Software for their use by third parties without the prior written consent of Optimyth.
  - e. To allow Optimyth maintain the confidential nature of the Software to the maximum extent permitted by law, you may not sublicense, distribute, modify or create derivate works from assembly or reverse compilation, or any other actions of reverse engineering on the Software.
5. **Assignment.** You may not assign, novate or transfer rights and obligations under this Agreement, without the prior written consent of Optimyth. Any assignment without that consent shall be null and void.

The license assignment shall be effective at the beginning of the calendar month following the assignment approval date.
6. **Termination.**
  - a. The effectiveness of this Agreement will be limited by the trade agreement reached between the Licensee and Optimyth. In case you use the Product Free Edition, its duration shall be established by Optimyth, in its sole and absolute discretion.
  - b. This Agreement or any individual license issued hereunder may be settled (a) by agreement between Optimyth and the Licensee, (b) by a decision of the Licensee, without refund, by notifying Optimyth thirty (30) days prior or (c) by a decision of Optimyth, in case of default by the Licensee, and such breach is not remedied to the satisfaction of Optimyth within thirty (30) days of notification of Optimyth purpose.
  - c. Upon termination of the license or the Agreement, Licensee shall immediately cease using the Software and certify Optimyth in writing, within thirty (30) days of the resolution, which has destroyed or returned to Optimyth such Software and all copies.
  - d. The termination of this Agreement shall not prevent the parties from exercising the available actions, including seeking injunctive relief, or relieve Licensee of its obligation to pay the fees earned.

e. The provisions of Sections 4, 6, 8, 9, 10, 12, 13 and 14 shall remain in effect after the resolution.

**7. Maintenance and Support.**

- a. Optimyth shall make new versions and releases of the Software available to the Licensee, including Software corrections, enhancements and upgrades, as long as Optimyth makes them generally available to licensees of the Software, through the Website.
- b. Optimyth shall keep the Software in operating conditions, according to the applicable User Documentation at all times.
- c. Optimyth shall make its best reasonable efforts to repair or replace any Software failures. Licensee agrees to identify any suspicion of the existence of a fault and notify Optimyth according to established procedures in the User Documentation.
- d. Optimyth offers Technical Support by the feedback window available on the Website, or alternatively, by sending an e-mail to the address [jelly.service@kiuwan.com](mailto:jelly.service@kiuwan.com).

**8. Limited warranty.**

- a. Optimyth warrants for a period of thirty (30) days from the date of discharge: (i) the physical file on which the Product is recorded is free from defects in materials and functions under normal conditions of use, and (ii) that operation of the Product, as is provided by Optimyth, will substantially conform to the relevant documentation, as long as the Product is installed and used in accordance with its documentation and instructions and hardware and software requirements that are specified in it.
- b. Licensee shall give written notice to Optimyth of any breach of the above warranties during the warranty period, and the only remedy for the Licensee, and Optimyth sole obligation, for breach of this warranty shall be the replacement of the physical file and correct or provide a workaround for reproducible errors that cause the breach of warranty within a reasonable time, considering the severity of the error and its effects to the Licensee or to Optimyth decision, refund the license fees paid for the defective Product against Optimyth refund of such Product and resolution of license.
- c. The above warranties are exclusive and any other alternatives, which are expressly excluded by Optimyth, whether express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
- d. If it became necessary to replace the physical file, Licensee must submit them to Optimyth. Under no circumstances shall the replacement without previous return by Licensee original physical file.
- e. Nevertheless, Optimyth is not responsible for any deficiencies that may cause to the performance of the external technical Licensed Software not covered by minimum performance requirements or, in any case, for the use, modification or alteration of the Product performed by the Licensee or third parties not authorized by Optimyth, for not following the instructions that have to contemplate these operational and instructions issued by Optimyth or in the documentation accompanying the Product.

**9. Violation.**

- a. Optimyth, at its own expense, shall defend or relent in any claim, action or proceeding (the "Claim") that is brought by a third party against you, to the extent that the Claim is based on the allegation that the latest unmodified version of the Software, in accordance with this Agreement, infringes or constitutes an unlawful use of intellectual property rights or industrial or misappropriates a trade secret company (the "Infringement"), provided that the Licensee: i) has given to Optimyth written notice of any such claim, ii) allows Optimyth hold in exclusive control of the defense, research and / or transaction, and iii) facilitates cooperation and assistance to Optimyth as reasonably requested, always in connection with the investigation, defense and / or settlement. Optimyth shall have no obligation to indemnify the Licensee for any claim: a) for the use by you of the Software other than as authorized by this Agreement, and in the manner described in the documentation, b) derived from a modification of Software not effected by Optimyth; c) based on any patent issued after the date of signature of this Agreement by Licensee., d) based on the use of the Software by Licensee that Optimyth after its cessation has been recommended because of potential or actual violations or use of an altered version or exceeded by a subsequent release, if the offense could have been avoided by using a current, unaltered release of the Software, made available to the Licensee by Optimyth.
- b. If a competent court or tribunal finds that the Software is a violation, and restricts its use by you, Optimyth may elect, at its own expense: (i) obtain the necessary rights for Licensee to continue using the Software, ( ii) replace the Software for a functionally equivalent product, (iii) modify the Software in order to cease the infringement: or (iv) accept the return of the infringing Software and refund the license fee paid in proportion to the time enjoyed, based on calculating the product life of five (5) years.
- c. This clause establishes the total and exclusive responsibility of Optimyth, and the only remedy available to Licensee in connection with the infringement of intellectual, industrial and commercial secrets.

**10. Limitation of remedies and damages.**

- a. With the express exception that any provision of this agreement should be construed as limiting or precluding of Optimyth' responsibility for death or injury caused by the negligence of Optimyth or arising from fraud or statements made fraudulently by Optimyth or its directors or administrators, employees, subcontractors, agents or representatives, Optimyth full responsibility, if any, for damages from any cause and concept, including not limited to contractual liabilities (including liability for any indemnity or warranty clause), tort, statute or otherwise howsoever negligence, shall not exceed the amount of payments received by the licensee Optimyth licensing fees, for specific sale or transaction giving rise to such action.

- b. Optimyth not be responsible for any loss of profits, loss of revenue or anticipated savings, contracts, or opportunity, loss of information or data, or other indirect losses, even when based on breach of agreement (including under any indemnity or warranty clause) or statute or legal, regardless of whether such damages and / or damages were foreseeable or unforeseeable, even if Optimyth warned of the possibility of such damage and / or injury.

**11. Confidentiality.**

- a. The Receiving Party shall observe complete confidentiality with respect to the Confidential Information and will use its commercially reasonable efforts and take all reasonable steps to protect the Confidential Information from disclosure, discovery or transfer (including usage, reproduction, publication, distribution, etc. .), except as expressly authorized by this Agreement.
- b. The Receiving Party shall notify the Disclosing Party, as soon as practicable, of any use or disclosure of Confidential Information and will cooperate with the Disclosing Party in any action brought by it against others in protecting their rights or compensation for damages.

**12. Applicable law.** This Agreement shall be construed in accordance with Spanish law in force. For the resolution of any dispute related to this Agreement the parties submit to the jurisdiction of the Courts of Madrid (Spain) and expressly waive any other jurisdiction.

**13. Severability.** If any provision of this Agreement is held illegal or unenforceable by a court of competent jurisdiction, such provision shall be effective to the maximum extent possible and the remaining provisions of the Agreement remain in full force and effect.

**14. General.**

- a. All notices, demands, requests or general communications required or contemplated by this Agreement shall be in writing and delivered in any way that provides a record of receipt to the following address: C/.Norias, 80. 28221 – Majadahonda (Madrid) – Spain.
- b. You manifest your agreement to be included in Optimyth’ list of clients and to be named by Optimyth, in their marketing communications, as one of those who choose Optimyth products.
- c. The enforceability of an obligation for a party to this Agreement may be waived only by writing signed by legal representative of the other party duly authorized, and such waiver shall be effective only with respect to the specific obligation described therein.
- d. Except for payment obligations, the parties shall be excused from performance of its obligations during the period and to the extent that such performance is prevented by causes beyond its reasonable control area without infringement or negligence on their part, including, in a non-limiting way, acts of God, force majeure, strikes, demonstrations, blockades, riots, acts of war, epidemics, communication failure in the power supply.