



KMS Lighthouse

The Way to Know

KMS lighthouse End User License Agreement ("EULA")

This KMS lighthouse End User and License Agreement ("Agreement") is entered into between KMS Lighthouse ("KMS") and the party identified in the signature block below ("Customer") as of the last date signed below ("Effective Date"). All headings are for ease of reference and are for convenience only, and do not affect interpretation.

1. GRANT OF LICENSE.

1.1 License Grant. Subject to the terms of this Agreement, KMS grants to Customer a nonexclusive, nontransferable license to use the products described on a Schedule to this Agreement (the "Products") for Customer's internal use during the term of the License and at the Authorized Location described on the Schedule and any subsequent Schedules entered into by the parties. This license and the terms of license will also extend to Derivative Works, Upgrades, and Error corrections, which KMS may provide to Customer as part of the Annual Subscription Services described in Section 5.

1.2 License Conditions.

(a) **Ownership.** KMS retains all rights, title, interest and any other intellectual property rights in and to the Products, the Derivative Works, the Documentation and the KMS Information.

(c) **Application Service Provider.** Customer may not use the Products on an application service provider, in connection with a service bureau or for the benefit of any third party.

(d) **Reverse Engineering.** Customer may not attempt to decompile, disassemble or reverse engineer any Product.

(e) **Acceptance.** Each Product will be deemed accepted by Customer upon receiving the authorization to access the environment.

1.3 Confidentiality.

(a) For purposes of this Agreement, (1) the term "Receiving Party" shall mean KMS with respect to Confidential Information (as defined below) supplied hereunder by Customer, to KMS and Customer with respect to Confidential Information supplied hereunder by KMS to Customer and (2) the term "Disclosing Party" shall mean KMS with respect to Confidential Information supplied to Customer by KMS, and Customer with respect to Confidential Information supplied to KMS by Customer. "Confidential Information" means the Software (both object and source code), the Documentation and all related technical and financial information (including the terms of this Agreement) and any information, technical data or know-how, including, without limitation, that which relates to computer software programs or documentation, specifications, source code, object code, research, inventions, processes, designs, drawings, engineering, products, services, customers, markets or finances of the Disclosing Party which (i) has been marked as confidential or proprietary, (ii) is identified as confidential at the time of disclosure either orally or in writing, or (iii) which due to its character and nature, a reasonable person under like circumstances would understand to be

confidential.

(b) Confidential Information shall not include information which (i) Receiving Party can demonstrate was rightfully in its possession, without confidentiality restrictions, before receipt, (ii) is or subsequently becomes publicly available without Receiving Party's breach of any obligation owed the disclosing party, (iii) is disclosed to Receiving Party without confidentiality restrictions by a third party who had the right to disclose such information, or (iv) Receiving Party can demonstrate was independently developed without reliance on any Confidential Information of the Disclosing Party.

(c) The parties hereby agree that: (i) Receiving Party may use Confidential Information solely for the purposes of this Agreement; (ii) Receiving Party shall instruct and require all of its employees, agents, and contractors who have access to the Confidential Information of the disclosing party to maintain the confidentiality of the Confidential Information; (iii) Receiving Party shall exercise at least the same degree of care, but not less than reasonable care, to safeguard the confidentiality of the Confidential Information as Receiving Party would exercise to safeguard the confidentiality of Receiving Party's own confidential property; (iv) Receiving Party shall not disclose the Confidential Information, or any part or parts thereof except on a "need to know" basis to those of its employees, agents, and contractors who are bound to confidentiality obligations at least as protective of the Confidential Information as those set forth herein; and (v) Receiving Party; and (v) Receiving Party may disclose the disclosing party's Confidential Information to the extent required by a valid order by a court or other governmental body or by applicable law, provided, however, that Receiving Party will use all reasonable efforts to notify Disclosing Party of the obligation to make such disclosure in advance of the disclosure so that Disclosing Party will have a reasonable opportunity to object to such disclosure. Receiving Party agrees to undertake whatever action necessary to remedy any such breach of Receiving Party's confidentiality obligations set forth herein or any other unauthorized disclosure or use of the Confidential Information by Receiving Party, its employees, its agents, or contractors.

1.4 Reports. Upon KMS's reasonable request, Customer will provide KMS with documentation concerning Customer's use, reproduction, and sublicensing of the Products. Customer will provide KMS with reasonable access to its records during Customer's normal business hours to verify the information contained in these reports and Customer's compliance with this Agreement.

2. WARRANTY AND DISCLAIMER.

2.1 Warranty. KMS warrants that the Product will substantially conform to its Documentation. Customer, however, acknowledges that the Products are of such complexity that they may contain inherent defects and Errors and the mere existence thereof shall not constitute a breach of this Agreement.

2.2 Disclaimer. EXCEPT AS PROVIDED ABOVE, KMS EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, GUARANTEES, CONDITIONS AND UNDERTAKINGS WITH RESPECT TO THE PRODUCTS AND DOCUMENTATION, KMS INFORMATION AND THEIR PERFORMANCE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3. LIMITATION OF LIABILITY.

3.1 NOTWITHSTANDING ANY OTHER CLAUSE IN THIS AGREEMENT, IN NO EVENT WILL KMS BELIEVABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS; ANY LOSS OF USE; OR ANY CLAIMS MADE BY OR ANY PAYMENTS MADE TO ANY THIRD PERSON), ANY LOSS OF REVENUE OR PROFITS, ANY LOSS AND/OR DAMAGE ARISING FROM OR IN CONNECTION WITH A VIRUS, OR ANY LOSS OF DATA AND/OR DAMAGE ARISING THERE FROM OR RELATING THERETO, IN EACH CASE ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF ANY PRODUCT WHETHER IN AN ACTION BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, WHETHER OR NOT KMS HAS BEEN NOTIFIED OF THE POSSIBILITY THEREOF.

3.2 NOTWITHSTANDING ANY OTHER CLAUSE IN THIS AGREEMENT, IN NO EVENT WILL KMS' TOTAL AGGREGATE LIABILITY FOR ANY DAMAGES ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF ANY PRODUCT, WHETHER IN ACTIONS BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT KMS HAS BEEN NOTIFIED OF THE POSSIBILITY THEREOF, EXCEED THE PRICE PAID BY THE CUSTOMER FOR THE PRODUCT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT THAT GAVE RISE TO THE CLAIM.

4. **ANNUAL SUBSCRIPTION.** Subscriptions services will automatically renew for one-year periods, and Customer will be invoiced for the corresponding annual subscription fees, unless KMS is notified in writing by Customer no later than sixty days prior to the renewal date that Customer no longer wishes to receive the services for the Product and signs the KMS Standard Withdrawal from the Using the System Document.

5. INDEMNITIES.

5.1 **Indemnification by KMS.** KMS agrees to defend, indemnify and hold Customer harmless from and against damages assessed against Customer, by a court of competent jurisdiction, in favor of any third party as a result of such party's claim that any part of the Product or Documentation constitutes an infringement of a United States patent, trademark or copyright owned by such party and enforceable in the Customer's country, provided: (i) Customer notifies KMS promptly in writing of any such claim and gives full and complete authority, information, and assistance to KMS in the defense of such claim; (ii) Customer does not make any admissions or otherwise respond to any such claim without KMS's written consent; and (iii) KMS will have sole control of the defense of any such claim and of all negotiations for its settlement or compromise.

5.2 If an allegation of infringement of any intellectual property rights with respect to the Products or Documentation, or any part thereof is made, or in KMS's opinion is likely to be made, KMS may at its own option and expense: (1) procure for Customer the right to continue to use such part, or (2) modify the part so it becomes non-infringing, or (3) remove the part and refund the price paid by Customer for such part amortized on a straight line basis over five (5) years from the date of the applicable purchase order.

5.3 KMS will not have any liability if any allegation of infringement is based upon the interconnection, modification or use of the Product in combination with other hardware, software or other devices not furnished or specified in writing by KMS, or upon any use of the Product for which the Product was not designed, or if the infringement arises out of compliance with Customer's specifications or designs, or out of modifications made to the Product or Documentation.

5.4 THE FOREGOING STATES KMS' ENTIRE LIABILITY WITH RESPECT TO INFRINGEMENT OF AN INTELLECTUAL PROPERTY BY THE PRODUCT AND DOCUMENTATION.

6. TERM AND TERMINATION.

6.1 **Term.** This Agreement commences on the Effective Date and continues for the time period specified in the applicable Order. The License for a Product commences on the Effective Date shown on the applicable Schedule or purchase order accepted by KMS and terminates on the Termination Date shown on the applicable Schedule.

6.2 **Termination for Breach.** Either party may terminate this Agreement or any License to a Product by giving written notice to the other, if the other party fails to remedy any breach of this Agreement within fourteen days after its receipt of notice of breach and intent to terminate.

6.3 **Effect of Termination.** On termination of this Agreement or any License to any Product, the following will occur:

(a) All rights granted to the affected Product(s), and all related Documentation and KMS Information will immediately terminate and Customer will lose the right to access the Product.

(b) Customer must either return to KMS the affected Product(s), and all related Documentation, Materials, Derivative Works, and KMS Information, or destroy them and certify such destruction to KMS.

(c) All rights and obligations under Sections 1.3, 2, 3, 4, 6, and 8.1 and other provisions hereunder which by their nature should survive termination of this Agreement, will survive termination of this Agreement.

(d) Except as provided in Section 6.3, termination will not affect any claim, liability or right of Customer or KMS arising prior to the termination.

7. GENERAL.

7.1 **Restricted Rights Legend - U.S. Government.** The Products acquired by the United States of America, its agencies and/or instrumentalities are and will be provided with RESTRICTED RIGHTS FOR SOFTWARE DEVELOPED AT PRIVATE EXPENSE. Use, duplication or disclosure by the U.S. government is subject to the restrictions set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at 48 C.F.R. 252.227 or DFAR 52.227, as applicable.

7.2 **Export.** Customer agrees not to transfer, directly or indirectly, any product, technical data or software furnished hereunder or the direct product of such technical data or software in violation of the export laws of the United States or of any other country.

7.3 **Assignment.** Customer may not assign this Agreement or otherwise transfer the use of any Products without the prior written consent of KMS.

7.4 **Independent Parties.** Neither Customer nor KMS is a legal representative or agent of the other, or is legally a partner of the other.

7.5 No Hiring: Customer and Customer's Affiliates may not hire, or directly or indirectly solicit or employ, any employee or contractor of KMS who is or was involved in the development, use or provision of Services to Customer, without the prior written consent of KMS, for a period of: (i) two (2) years after the termination of this Agreement, or (ii) during the time the employee is employed by KMS and for a period of one (1) year thereafter, whichever is later.

7.6 Entirety. This Agreement, Schedule(s) and Appendices represent the entire agreement of the parties regarding the subject matter hereof, superseding all other agreements. In the event that a Schedule is in conflict with the terms of this Agreement, the Schedule will overrule. Delivery of an executed counterpart of this Agreement by facsimile of any other reliable means, shall be deemed to be as effective for all purposes as delivery of the manually executed counterpart. This Agreement may not be amended except in writing signed by both parties. No waiver of rights by either party may be implied from any actions or failures to enforce rights under this Agreement.

7.7 Severability. Each of the provisions of this Agreement is severable from all of the other provisions. The invalidity or unenforceability of any provision will not affect or impair the remaining provisions, which will continue in full force and effect.

7.8 Governing Law and Jurisdiction. This Agreement will be governed by the laws of New York, USA without regard to its choice of law provisions. Any dispute arising under this Agreement must be brought exclusively in a court of competent jurisdiction located in New York, New York, USA and each party irrevocably consents to such personal jurisdiction in such forum and waives all objections to this venue.

7.9 Notice. All notices must be in writing to the address in this Agreement and will be effective on the date received.

8. DEFINITIONS.

8.1 "Affiliate" means an entity that a party, directly or indirectly, controls, an entity that controls a party or an entity that is under common control with a party. For purposes of this provision, control means ownership of at least fifty percent (50%) of the outstanding voting shares of the entity.

8.2 "Derivative Work" means any work based on or incorporating all or any portion of a Product, including mechanical or electronic reproduction, translation, adaptation, change of media or other form.

8.3 "Documentation" means the user manuals, implementation manuals, and system administration manuals that accompany a Product, as well as Upgrades of such manuals, in electronic, paper formats or any other form.

8.4 "Error" means a failure of the Product to conform in all material respects with the application Documentation.

8.5 "KMS Information" means all information furnished by KMS in oral, written or machine-readable form, disclosed as a result of this Agreement, and that should reasonably have been understood by the receiving party, because of legends or other markings, the circumstances of disclosure or the nature of the information itself, to be proprietary and confidential to the disclosing party, an affiliate of it or to a third party.

8.6 "Maintenance Fix" means a later version of the Product, designated by KMS by means of a change in the digit to the right of the Version number (e.g. x.x.1, x.x.2).

8.7 "Products" means the KMS products identified on the attached Schedule, any additional Schedules entered into by the parties or in purchase orders accepted by KMS in writing during the term of this Agreement, including all associated Documentation.

8.8 "Upgrade" means a Release, Version, or Maintenance Fix of the Product.

8.9 "Version" means generally commercially released code corrections, patches, and minor version releases of the same Product as designated by a change in the number to the right of the decimal in the version number (e.g. x.4, x.5, x.6).

KMS LIGHTHOUSE

9 Shimshon Street
Petach Tikva,
4952707
ISRAEL
Attn: Legal Department

Signature: _____

Name: _____

Title: _____

Date: _____

CUSTOMER

Name: _____

Address: _____

Attn: _____

Signature: _____

Name: _____

Title: _____

Date: _____