

Kasten K10 End User License Agreement (EULA)

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1. DEFINITIONS

1.1 "Authorized Persons" means trained technical employees and contractors of Licensee who are subject to a written agreement with Licensee that includes use and confidentiality restrictions that are at least as protective as those set forth in this Agreement.

1.2 "Authorized Reseller" means a distributor or reseller, including cloud computing platform providers, authorized by Kasten to resell licenses to the Software through the channel through or in the territory in which Licensee is purchasing.

1.3 "Confidential Information" means all non-public information disclosed in written, oral or visual form by either party to the other. Confidential Information may include, but is not limited to, services, pricing information, computer programs, source code, names and expertise of employees and consultants, know-how, and other technical, business, financial and product development information. "Confidential Information" does not include any information that the receiving party can demonstrate by its written records (1) was rightfully known to it without obligation of confidentiality prior to its disclosure hereunder by the disclosing party; (2) is or becomes publicly known through no wrongful act of the receiving party; (3) has been rightfully received without obligation of confidentiality from a third party authorized to make such

a disclosure; or (4) is independently developed by the receiving party without reference to confidential information disclosed hereunder.

1.4 "Documentation" means any administration guides, installation and user guides, and release notes that are provided by Kasten to Licensee with the Software.

1.5 "Intellectual Property Rights" means patents, design patents, copyrights, trademarks, Confidential Information, know-how, trade secrets, moral rights, and any other intellectual property rights recognized in any country or jurisdiction in the world.

1.6 "Node" means a single physical or virtual computing machine recognizable by the Software as a unique device. Nodes must be owned or leased by Licensee or an entity controlled by, controlling or under common control with Licensee.

1.7 "Edition" means a unique identifier for each distinct product that is made available by Kasten and that can be licensed, including summary information regarding any associated functionality, features, or restrictions specific to the Edition.

1.8 "Open Source Software" means software delivered to Licensee hereunder that is subject to the provisions of any open source license agreement.

1.9 "Purchase Agreement" means a separate commercial agreement, if applicable, between Kasten and the Licensee that contains the terms for the licensing of a specific Edition of the Software.

1.10 "Software" means any and all software product Editions licensed to Licensee under this Agreement, all as developed by Kasten and delivered to Licensee hereunder. Software also includes any Updates provided by Kasten to Licensee. For the avoidance of doubt, the definition of Software shall exclude any Third-Party Software and Open Source Software.

1.11 "Third-Party Software" means certain software Kasten licenses from third parties and provides to Licensee with the Software, which may include Open Source Software.

1.12 "Update" means a revision of the Software that Kasten makes available to customers at no additional cost. The Update includes, if and when applicable and available, bug fix patches, maintenance release, minor release, or new major releases. Updates are limited only to the Software licensed by Licensee, and specifically exclude new product offerings, features, options or functionality of the Software that Kasten may choose to license separately, or for an

additional fee.

1.13 "Use" means to install activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.

2. LICENSE GRANT AND RESTRICTIONS

2.1 Enterprise License. Subject to Licensee's compliance with the terms and conditions of this Agreement (including any additional restrictions on Licensee's use of the Software set forth in the Purchase Agreement, if one exists, between Licensee and Kasten), Kasten grants to Licensee a non-exclusive, non-transferable (except in connection with a permitted assignment of this Agreement under Section 14.10 (Assignment), non-sublicensable, limited term license to install and use the Software, in object code form only, solely for Licensee's use, unless terminated in accordance with Section 4 (Term and Termination).

2.2 Starter License. This section shall only apply when the Licensee licenses Starter Edition of the Software. The license granted herein is for a maximum of 3 Nodes and for a period of 12 months from the date of the Software release that embeds the specific license instance. Updating to a newer Software (minor or major) release will always extend the validity of the license by 12 months. If the Licensee wishes to upgrade to an Enterprise License instead, the Licensee will have to enter into a Purchase Agreement with Kasten which will supersede this Agreement. The Licensee is required to provide accurate email and company information, if representing a company, when accepting this Agreement. Under no circumstances will a Starter License be construed to mean that the Licensee is authorized to distribute the Software to any third party for any reason whatsoever.

2.3 Evaluation License. This section shall only apply when the Licensee has licensed the Software for an initial evaluation period. The license granted herein is valid only one time 30 days, starting from date of installation, unless otherwise explicitly designated by Kasten ("Evaluation Period"). Under this license the Software can only be used for evaluation purposes. Under no circumstances will an Evaluation License be construed to mean that the Licensee is authorized to distribute the Software to any third party for any reason whatsoever. If the Licensee wishes to upgrade to an Enterprise License instead, the Licensee will have to enter into a Purchase Agreement with Kasten which will supersede this Agreement.. If the Licensee does not wish to upgrade to an Enterprise License at the end of the Evaluation Period the Licensee's rights under the Agreement shall terminate, and the Licensee shall delete all Kasten Software.

2.4 License Restrictions. Except to the extent permitted under this Agreement, Licensee will not nor will Licensee allow any third party to: (i) copy, modify, adapt, translate or otherwise create derivative works of the Software or the Documentation; (ii) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software; (iii) rent, lease, sell, assign or otherwise transfer rights in or to the Software or Documentation; (iv) remove any proprietary notices or labels from the Software or Documentation; (v) publicly disseminate performance information or analysis (including, without limitation, benchmarks) relating to the Software. Licensee will comply with all applicable laws and regulations in Licensee's use of and access to the Software and Documentation.

2.5 Responsibility for Use. The Software and Documentation may be used only by Authorized Persons and in conformance with this Agreement. Licensee shall be responsible for the proper use and protection of the Software and Documentation and is responsible for: (i) installing, managing, operating, and physically controlling the Software and the results obtained from using the Software; (ii) using the Software within the operating environment specified in the Documentation; and; (iii) establishing and maintaining such recovery and data protection and security procedures as necessary for Licensee's service and operation and/or as may be specified by Kasten from time to time.

2.6 United States Government Users. The Software licensed under this Agreement is "commercial computer software" as that term is described in DFAR 252.227-7014(a) (1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms and this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulations ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

3. SUPPORT

During the Term (as defined below) and subject to Licensee's compliance with the

terms and conditions of this Agreement, Licensee may submit queries and requests for support using Kasten's support alias support@kasten.io and a private Slack channel (except Starter and Evaluation Edition Licensees). Licensee shall be entitled to the support service-level agreement specified in the Purchase Agreement (including relevant Order Forms) between the Licensee and Kasten. If there is no Purchase Agreement in place, support level shall default to Starter Edition Support as specified below. Licensee shall also be permitted to download and install all Updates released by Kasten during the Term and made generally available to users of the Software. Support is provided only for the current version of the Software (i.e. with all Updates and Upgrades installed) and for each of the previous three Updates.

3.1 Starter Edition Support. If the Licensee has licensed Starter Edition of the Software, they will have access to the Kasten support alias, but Kasten cannot guarantee a service level of any sort. Should a higher level of support be needed, Licensee has the option to consider entering into a Purchase Agreement with Kasten for licensing a different Edition of the Software.

4. TERM AND TERMINATION

4.1 Term. The term of this Agreement, except for Starter and Evaluation Licenses, shall commence on the Effective Date and shall, unless terminated earlier in accordance with the provisions of Section 4.2 below, remain in force for the Subscription Period as set forth in the applicable Order Form(s) (the "Term"). The parties may extend the Term of this Agreement beyond the Subscription Period by executing additional Order Form(s) and Licensee's payment of additional licensing fees. The term of this Agreement for the Starter and Evaluation Licenses will coincide with the term for Starter Edition (as stated in section 2.2) and the term for Evaluation Period (as stated in section 2.3), respectively

4.2 Termination. Either party may immediately terminate this Agreement and the licenses granted hereunder if the other party (1) becomes insolvent and becomes unwilling or unable to meet its obligations under this Agreement, (2) files a petition in bankruptcy, (3) is subject to the filing of an involuntary petition for bankruptcy which is not rescinded within a period of forty-five (45) days, (4) fails to cure a material breach of any material term or condition of this Agreement within thirty (30) days of receipt of written notice specifying such breach, or (5) materially breaches its obligations of confidentiality hereunder.

4.3 Effects of Termination. Upon expiration or

termination of this Agreement for any reason, (i) any amounts owed to Kasten under this Agreement will be immediately due and payable; (ii) all licensed rights granted in this Agreement will immediately cease; and (iii) Licensee will

promptly discontinue all use of the Software and Documentation and return to Kasten any Kasten Confidential Information in Licensee's possession or control.

4.4 Survival. The following Sections of this Agreement will remain in effect following the expiration or termination of these General Terms for any reason:

4.3 (Effects of Termination), 4.4 (Survival), 5 (Third Party Software) 5 (Confidentiality), 9 (Ownership), 10.2 (Third-Party Software), 10.3 (Warranty Disclaimer), 11 (Limitations of Liability), 12.2 (Exceptions to Kasten Obligation), 13 (Export) and 14 (General).

5. THIRD PARTY AND OPEN SOURCE SOFTWARE Certain Third-Party Software or Open Source Software (Kasten can provide a list upon request) that may be provided with the Software may be subject to various other terms and conditions imposed

by the licensors of such Third-Party Software or Open Source Software. The terms of Licensee's use of the Third-Party Software or Open Source Software is

subject to and governed by the respective Third-Party Software and Open Source

licenses, except that this Section 5 (Third-Party Software), Section 10.2 (Third

Party Software), 10.3 (Warranty Disclaimer), Section 11 (Limitations of Liability), and Section 14 (General) of this Agreement also govern Licensee's use of the Third-Party Software. To the extent applicable to Licensee's use of

such Third-Party Software and Open Source, Licensee agrees to comply with the terms and conditions contained in all such Third-Party Software and Open Source

licenses.

6. CONFIDENTIALITY Neither party will use any Confidential Information of the other party except as expressly permitted by this Agreement or as expressly authorized in writing by the disclosing party. The receiving party shall use the same degree of care to protect the disclosing party's Confidential Information as it uses to protect its own Confidential Information of like nature, but in no circumstances less than a commercially reasonable standard of

care. The receiving party may not disclose the disclosing party's Confidential

Information to any person or entity other than to (i) (a) Authorized Persons in

the case the receiving party is Licensee, and (b) Kasten's employees and contractors in the case the receiving party is Kasten, and (ii) who need access

to such Confidential Information solely for the purpose of fulfilling that party's obligations or exercising that party's rights hereunder. The foregoing

obligations will not restrict the receiving party from disclosing Confidential

Information of the disclosing party: (1) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the receiving party required to make such a disclosure gives reasonable notice to the disclosing party prior to such disclosure; and (2) on a confidential basis to its legal and financial advisors. Kasten may identify Licensee in its customer lists in online and print marketing materials.

7. FEES Fees for Enterprise License shall be set forth in separate Order Form(s) attached to a Purchase Agreement, between the Licensee and Kasten.

If Licensee has obtained the Software through an Authorized Reseller, fees for licensing shall be invoiced directly by the Authorized Reseller.

If no Purchase Agreement exists, during the term of this Agreement, Kasten shall license the Starter Edition only and no other Edition of the Software "at no charge" to Licensee.

8. USAGE DATA Kasten may collect, accumulate, and aggregate certain usage statistics in order to analyze usage of the Software, make improvements, and potentially develop new products. Kasten may use aggregated anonymized data for any purpose that Kasten, at its own discretion, may consider appropriate.

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10. LIMITED WARRANTY AND DISCLAIMERS

10.1 Limited Warranty. Kasten warrants for a period of thirty (30) days from the Effective Date that the Software will materially conform to Kasten's then-current Documentation (the "Warranty Period") when properly installed on a computer for which a license is granted hereunder. Licensee's exclusive remedy for a breach of this Section 10.1 is that Kasten shall, at its option, use

commercially reasonable efforts to correct or replace the Software, or refund all or a portion of the fees paid by Licensee pursuant to the Purchase Agreement. Kasten, in its sole discretion, may revise this limited warranty from time to time.

10.2 Third-Party Software. Except as expressly set forth in this Agreement, Third-Party Software (including any Open Source Software) are provided on an "as-is" basis at the sole risk of Licensee. Notwithstanding any language to the contrary in this Agreement, Kasten makes no express or implied warranties of any kind with respect to Third-Party Software provided to Licensee and shall not be liable for any damages regarding the use or operation of the Third-Party Software furnished under this Agreement. Any and all express or implied warranties, if any, arising from the license of Third-Party Software shall be those warranties running from the third party manufacturer or licensor to Licensee.

10.3 Warranty Disclaimer. EXCEPT FOR THE LIMITED WARRANTY PROVIDED ABOVE, KASTEN AND ITS SUPPLIERS MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, RELATING TO THE SOFTWARE OR TO KASTEN'S MAINTENANCE, PROFESSIONAL OR OTHER SERVICES. KASTEN SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. KASTEN AND ITS SUPPLIERS AND LICENSORS DO NOT WARRANT OR REPRESENT THAT THE SOFTWARE WILL BE FREE FROM BUGS OR THAT ITS USE WILL BE UNINTERRUPTED OR ERROR-FREE. THIS DISCLAIMER SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. EXCEPT AS STATED ABOVE, KASTEN AND ITS SUPPLIERS PROVIDE THE SOFTWARE ON AN "AS IS" BASIS. KASTEN PROVIDES NO WARRANTIES WITH RESPECT TO THIRD PARTY SOFTWARE AND OPEN SOURCE SOFTWARE.

11. LIMITATIONS OF LIABILITY

11.1 EXCLUSION OF CERTAIN DAMAGES. EXCEPT FOR BREACHES OF SECTION 6 (CONFIDENTIALITY) OR SECTION 9 (OWNERSHIP), IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR RELIANCE DAMAGES, INCLUDING ANY LOST DATA, LOSS OF USE AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT, THE SOFTWARE OR DOCUMENTATION, EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF, OR COULD REASONABLY HAVE PREVENTED, SUCH DAMAGES.

11.2 LIMITATION OF DAMAGES. EXCEPT FOR THE BREACHES OF SECTION 6 (CONFIDENTIALITY) OR SECTION 9 (OWNERSHIP), EACH PARTY'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT OR THE SOFTWARE, DOCUMENTATION, OR SERVICES PROVIDED BY KASTEN, WILL NOT EXCEED THE AMOUNT OF

FEES PAID OR PAYABLE BY LICENSEE FOR THE SOFTWARE, DOCUMENTATION OR SERVICES GIVING RISE TO THE CLAIM IN THE TWELVE (12) MONTHS FOLLOWING THE EFFECTIVE DATE.

LICENSEE AGREES THAT KASTEN'S SUPPLIERS AND LICENSORS WILL HAVE NO LIABILITY OF

ANY KIND UNDER OR AS A RESULT OF THIS AGREEMENT. IN THE CASE OF KASTEN'S INDEMNIFICATION OBLIGATIONS, KASTEN'S CUMULATIVE LIABILITY UNDER THIS AGREEMENT

SHALL BE LIMITED TO THE SUM OF THE LICENSE FEES PAID OR PAYABLE BY LICENSEE FOR

THE SOFTWARE, DOCUMENTATION OR SERVICES GIVING RISE TO THE CLAIM IN THE TWELVE

(12) MONTHS FOLLOWING THE EFFECTIVE DATE.

11.3 THIRD PARTY SOFTWARE. NOTWITHSTANDING ANY LANGUAGE TO THE CONTRARY IN THIS

AGREEMENT, KASTEN SHALL NOT BE LIABLE FOR ANY DAMAGES REGARDING THE USE OR OPERATION OF ANY THIRD-PARTY SOFTWARE FURNISHED UNDER THIS AGREEMENT.

11.4 LIMITATION OF ACTIONS. IN NO EVENT MAY LICENSEE BRING ANY CAUSE OF ACTION

RELATED TO THIS AGREEMENT MORE THAN ONE (1) YEAR AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO THE LIABILITY.

12. EXPORT

The Software, Documentation and related technical data may be subject to U.S. export control laws, including without limitation the U.S. Export Administration Act and its associated regulations, and may be subject to export

or import regulations in other countries. Licensee shall comply with all such regulations and agrees to obtain all necessary licenses to export, re-export, or

import the Software, Documentation and related technical data.

13. GENERAL

13.1 No Agency. Kasten and Licensee each acknowledge and agree that the relationship established by this Agreement is that of independent contractors,

and nothing contained in this Agreement shall be construed to: (1) give either

party the power to direct or control the day-to-day activities of the other; (2)

deem the parties to be acting as partners, joint venturers, co-owners or otherwise as participants in a joint undertaking; or (3) permit either party or

any of either party's officers, directors, employees, agents or representatives

to create or assume any obligation on behalf of or for the account of the other

party for any purpose whatsoever.

13.2 Compliance with Laws. Each party agrees to comply with all applicable laws, regulations, and ordinances relating to their performance hereunder. Without limiting the foregoing, Licensee warrants and covenants that it will

comply with all then current laws and regulations of the United States and other jurisdictions relating or applicable to Licensee's use of the Software and Documentation including, without limitation, those concerning Intellectual Property Rights, invasion of privacy, defamation, and the import and export of Software and Documentation.

13.3 Force Majeure. Except for the duty to pay money, neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, riots, fires, flood, storm, explosions, acts of God, war, governmental action, earthquakes, or any other cause which is beyond the reasonable control of such party.

13.4 Governing Law; Venue and Jurisdiction. This Agreement shall be interpreted according to the laws of the State of California without regard to or application of choice-of-law rules or principles. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in Santa Clara County, California and the parties hereby consent to the personal jurisdiction and venue therein.

13.5 Injunctive Relief. The parties agree that monetary damages would not be an adequate remedy for the breach of certain provisions of this Agreement, including, without limitation, all provisions concerning infringement, confidentiality and nondisclosure, or limitation on permitted use of the Software or Documentation. The parties further agree that, in the event of such breach, injunctive relief would be necessary to prevent irreparable injury. Accordingly, either party shall have the right to seek injunctive relief or similar equitable remedies to enforce such party's rights under the pertinent provisions of this Agreement, without limiting its right to pursue any other legal remedies available to it.

13.6 Entire Agreement and Waiver. This Agreement and any exhibits hereto shall constitute the entire agreement and contains all terms and conditions between Kasten and Licensee with respect to the subject matter hereof and all prior agreements, representations, and statement with respect to such subject matter are superseded hereby. This Agreement may be changed only by written agreement signed by both Kasten and Licensee. No failure of either party to exercise or enforce any of its rights under this Agreement shall act as a waiver of subsequent breaches; and the waiver of any breach shall not act as a waiver of subsequent breaches.

13.7 Severability. In the event any provision of this Agreement is held by a

court or other tribunal of competent jurisdiction to be unenforceable, that provision will be enforced to the maximum extent permissible under applicable law and the other provisions of this Agreement will remain in full force and effect. The parties further agree that in the event such provision is an essential part of this Agreement, they will begin negotiations for a suitable replacement provision.

13.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered (including by facsimile), shall be deemed an original, and all of which shall constitute one and the same agreement.

13.9 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the respective parties hereto, their respective successors and permitted assigns.

13.10 Assignment. Neither party may, without the prior written consent of the other party (which shall not be unreasonably withheld), assign this Agreement, in whole or in part, either voluntarily or by operation of law, and any attempt to do so shall be a material default of this Agreement and shall be void. Notwithstanding the foregoing, Kasten may assign its rights and benefits and delegate its duties and obligations under this Agreement without the consent of Licensee in connection with a merger, reorganization or sale of all or substantially all relevant assets of the assigning party; in each case provided that such successor assumes the assigning party's obligations under this Agreement.