

Kemp Technologies

End User Licensing Agreement for US Federal Entities

1. READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY BEFORE INSTALLING THIS PRODUCT ON YOUR NETWORK OR PERSONAL COMPUTER. THIS PRODUCT LICENSE AGREEMENT IS A LEGAL AGREEMENT BETWEEN THE ORDERING ACTIVITY ON THE ONE HAND, AND KEMP TECHNOLOGIES, INC. AND ITS SUBSIDIARIES AND AFFILIATES (COLLECTIVELY REFERRED TO AS 'KEMP') ON THE OTHER HAND FOR THE HARDWARE AND/OR SOFTWARE PRODUCT ENTITLED 'LoadMaster,' WHICH INCLUDES PHYSICAL HARDWARE AND/OR COMPUTER SOFTWARE AND ANY ASSOCIATED MEDIA, PRINTED MATERIALS, AND/OR 'ONLINE' OR ELECTRONIC DOCUMENTATION (TOGETHER CALLED THE 'PRODUCT'). PLEASE READ THIS AGREEMENT CAREFULLY AND PRINT OUT A COPY FOR YOUR RECORDS. THIS AGREEMENT SUPERSEDES ALL PREVIOUS VERSIONS. BY EXECUTING THIS AGREEMENT IN WRITING, THE ORDERING ACTIVITY AGREES TO BE BOUND BY ITS TERMS. THE PRODUCT IS LICENSED, NOT SOLD, TO THE ORDERING ACTIVITY FOR USE EXCLUSIVELY UNDER THE TERMS OF THIS AGREEMENT, UNDERLYING GSA SCHEDULE CONTRACT, SCHEDULE PRICELIST AND PURCHASE ORDERS. IF THE ORDERING ACTIVITY DOES NOT AGREE TO THE TERMS OF THIS PRODUCT LICENSE AGREEMENT, DO NOT EXECUTE THIS AGREEMENT, INSTALL, OR USE THE PRODUCT AND DELETE ALL COPIES IN THE ORDERING ACTIVITY'S POSSESSION.

2. Kemp grants the Ordering Activity a non-exclusive, non-transferable license to use one copy of the Product for use of the Ordering Activity, but retains all property rights of the Product and all copies thereof. All other rights are expressly reserved by Kemp. The Ordering Activity may: (i) use the Product on any supported computer configuration provided the Product is used on only one (1) such computer; and (ii) permanently transfer the Product and its documentation to another user provided the Ordering Activity retains no copies and the recipient agrees to the terms of this Agreement. The Ordering Activity may not transfer, distribute, rent, sub-license, or lease the Product or documentation, except as stipulated herein; or alter, modify, or adapt the Product or documentation or any parts thereof.

3. The Ordering Activity acknowledges that the Product in source code form remains a confidential trade secret of Kemp. The Ordering Activity agrees not to modify or attempt to reverse engineer, decompile, or disassemble the Product, except when and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. Kemp recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

4. OWNERSHIP: All right, titles, interests and intellectual property rights in and to the Product (including, but not limited to, any titles, computer code, concepts, screen images, text and 'applets' incorporated into the Product), accompanying printed materials and any copies of the Software are owned by Kemp or its licensors. This Agreement grants the Ordering Activity no rights to use such content other than as part of the Product.

5. This Agreement is effective upon the Ordering Activity's installation of the Product and shall continue unless terminated in accordance with the FAR, the underlying GSA Schedule 70 Contract, and any applicable Ordering Activity Purchase Order. Upon termination, the Ordering Activity agrees to destroy and/or delete all copies of the Product in the Ordering Activity's possession.

6. LICENSE RESTRICTIONS: The Ordering Activity acknowledges that the foregoing license extends only to the Ordering Activity's use of the features and functionality of the Product as described in the documentation accompanying the version of the Software downloaded or Product obtained by the Ordering Activity (the "Documentation"), and the Ordering Activity agrees not to reconfigure or modify the Product in order to enable features or functionalities different to those described in such

Documentation or available in other Kemp products without notifying Kemp and paying the applicable Product upgrade fee. The Ordering Activity may not: (i) reverse engineer, decompile, or disassemble the Product; (ii) modify or create derivative works based upon the Product in whole or in part; (iii) distribute copies of the Product; (iv) remove any proprietary notices or labels on the Product; or (v) resell, lease, rent, transfer, sublicense, or otherwise transfer rights to the Product. Recourse against the United States for any breach of the terms in this Section must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

7. TITLE: The Ordering Activity agrees that no title to the intellectual property in the Product, Subscription Services (as defined) or license keys are transferred to the Ordering Activity. Title, ownership, rights, and intellectual property rights in and to the Product, Subscription Services, and license keys shall remain in Kemp and/or Kemp's licensors. The Product, Subscription Services and license keys are protected by the intellectual property laws of the United States and other countries and by international treaties.

8. GENERAL: The Product is provided to the Ordering Activity at minimal charge. Kemp does not guarantee that use of the Product will be uninterrupted or error-free. The Ordering Activity acknowledges that the performance of the Product may be affected by any number of factors, including, without limitation, technical failure of the Product, the acts or omissions of third parties and other causes reasonably beyond the control of Kemp. Certain features of the Product may not be forward-compatible with future versions of the Product and the use of such features with future versions of the Product may require the purchase of the applicable future version of the Product.

9. AS IS SALE: THE ORDERING ACTIVITY AGREES THAT KEMP AND ITS LICENSORS HAVE MADE NO EXPRESS WARRANTIES ASIDE FROM THOSE MADE IN SECTION TEN (10) BELOW, ORAL OR WRITTEN, TO THE ORDERING ACTIVITY REGARDING THE PRODUCT AND THAT THE PRODUCT IS BEING PROVIDED TO THE ORDERING ACTIVITY "AS IS" WITHOUT WARRANTY OF ANY KIND. THE ORDERING ACTIVITY ACKNOWLEDGES THAT THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE PRODUCT LIES WITH THE ORDERING ACTIVITY. SHOULD THE PRODUCT PROVE DEFECTIVE, THE ORDERING ACTIVITY ALONE (AND NOT KEMP, THE RETAILER, OR ANY DISTRIBUTOR) ASSUME THE FULL COST OF ALL NECESSARY REPAIRS.

10. DISCLAIMER: Kemp warrants that the PRODUCT will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with PRODUCT written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, KEMP DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY DISCLAIMER AFFECTS YOUR LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. SOME JURISDICTIONS DO NOT ALLOW EXCLUSIONS OF IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. ADDITIONALLY, THIS AGREEMENT DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

11. Limitation on Liability. EXCEPT FOR BODILY INJURY OF A PERSON, IN NO EVENT WHATSOEVER WILL KEMP BE LIABLE TO THE ORDERING ACTIVITY OR ANY THIRD PARTY FOR ANY DAMAGES ARISING FROM THE SUBJECT MATTER OF THIS AGREEMENT, THE PRODUCT OR ANY SERVICES UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS), OR FOR ANY LOSS OF OR CORRUPTION OF DATA, OR FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR TECHNOLOGY, IRRESPECTIVE OF WHETHER KEMP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. KEMP'S MAXIMUM LIABILITY FOR DAMAGES SHALL BE LIMITED TO THE LICENSE FEES RECEIVED BY KEMP UNDER THIS LICENSE FOR THE PARTICULAR PRODUCT(S) THAT CAUSED THE DAMAGES. Some jurisdictions do not permit the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).

12. TERMINATION: Reserved.

13. MISCELLANEOUS:

13.1 COMPLIANCE WITH EXPORT CONTROL LAWS: the Ordering Activity agrees to fully comply with all relevant export laws and regulations, including but not limited to the U.S. Export Administration Regulations and regulations promulgated by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), as amended from time to time (collectively the "Export Control Laws"). The Ordering Activity agrees not to export or re-export the Product to any parties located in any E:1 countries which are specifically prohibited under U.S. embargoes or sanctions programs maintained by the OFAC or otherwise prohibited under the Export Control Laws. The current list of E:1 Countries is available at the following link http://www.bis.doc.gov/index.php/forms-documents/doc_view/452-supplement-no-1-to-part-740-countrygroups

13.2 U.S. GOVERNMENT RIGHTS: The Product under this Agreement is a commercial computer product as this term is described in 48 C.F.R. 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer product and/or commercial computer product documentation subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Product) and 12.211 (Technical Data) of the Federal Acquisition Regulations ("FAR") and its successors.

13.3 GOVERNING LAW: This Agreement will be governed by the Federal laws of the United States of America. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed.

13.4 ENTIRE AGREEMENT: The Ordering Activity agrees that this agreement, along with the underlying GSA Schedule Contract, Schedule Pricelist, and Purchase Order(s) represent the entire agreement between the Ordering Activity and Kemp, and that it supersedes any prior agreement, whether in written or oral form, and all other communications between Kemp and the Ordering Activity relating to the subject matter of this Agreement. This Agreement may be amended, modified or supplemented only as a writing document that is signed by the authorized representatives of both parties.

13.5 RESERVATION OF RIGHTS: All rights not expressly granted in this Agreement are reserved by Kemp.

14. INJUNCTION. Reserved.

15. INDEMNITY. Kemp reserves the right, at its own expense, to assume the exclusive defense and control of any matter, otherwise subject to indemnification by the Ordering Activity hereunder, and in such event the Ordering Activity shall have no further obligation to provide indemnification for such matter. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

16. TERMINATION. Reserved.

17. GENERAL PROVISIONS. The Ordering Activity may not use, copy, modify, sublicense, rent, sell, assign or transfer the rights or obligations granted to the Ordering Activity in this Agreement, except as expressly provided in this Agreement. Any assignment in violation of this Agreement is void, except that the Ordering Activity may transfer its Product to another organization provided that the organization accepts the terms of this License Agreement. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable, and such decision shall not affect the enforceability of: (i) such provision under other circumstances, or (ii) the remaining provisions hereof under all circumstances. Kemp's failure at any time to enforce any of the provisions of this Agreement shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the right of any party to enforce each and every such provision thereafter. The express waiver by Kemp of any provision, condition or requirement of this Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement. Notwithstanding anything else in this Agreement, no default, delay or failure to perform on the part of Kemp shall be considered a breach of this Agreement if such default, delay or failure to perform is shown to be due to causes beyond the reasonable control of Kemp. This Agreement, along with the underlying GSA Schedule Contract, Schedule Pricelist, and Purchase Order(s) represent the complete agreement concerning this License Agreement between the Ordering Activity and Kemp.

18. ONLY APPLICABLE TO FREE LOADMASTER – The Free LoadMaster is a derivative of the LoadMaster product line with unique end user requirements.

i) The Free LoadMaster may be deployed in a production environment exclusively under the condition that no direct revenue is derived from its use.

ii) The Free LoadMaster will only continue to operate when able to Call Home to an internet-located Kemp server to provide non-personally identifiable data about the appliance configuration including usage statistics, enabled features and general configuration. Kemp expressly disclaims any liability for non-performance in the event that Call Home communication is disrupted. If the Ordering Activity does not agree with terms put forth above, do not execute this agreement.

19. Subscription Grant. Subject to the terms and conditions of this Agreement Kemp hereby grants Customer a non-exclusive, non-transferable, non-assignable, limited right to use the Kemp's Subscription services during the applicable Subscription Term for personal or commercial use but retains all property rights of the services delivered. All other rights are expressly reserved by Kemp. Your subscription definition associated with your product are dictated by your agreement made with Kemp. Detailed definitions of all Kemp subscription options are available at <https://kemptechnologies.com/subscription/loadmaster-licensing/>.