

---

# KIOSK Shrinkwrap Software License & Maintenance Agreement

v2020.11

---

# KIOSK Shrinkwrap Software License & Maintenance Agreement Table of Contents

- KIOSK SHRINKWRAP SOFTWARE LICENSE & MAINTENANCE AGREEMENT TABLE OF CONTENTS ..... 2**
- KIOSK SHRINKWRAP SOFTWARE LICENSE AND MAINTENANCE AGREEMENT ..... 3**
- TERMS AND CONDITIONS ..... 3**
- 1. DEFINITIONS.....3
- 2. LICENSE .....3
- 3. MAINTENANCE.....4
- F. EXCEPTIONS. ....6
- 4. LIMITED WARRANTY .....7
- 5. LIMITATION OF LIABILITY; EXCLUSION OF CONSEQUENTIAL DAMAGES .....7
- 6. DEFAULT.....7
- 7. NOTICES .....8
- 8. MAINTENANCE TERM AND TERMINATION; SURVIVAL.....8
- 9. GOVERNING LAW .....8
- 10. JURISDICTION AND VENUE.....8
- 11. ATTORNEYS’ FEES.....8
- 12. MODIFICATION AND WAIVER .....9
- 13. PURCHASE ORDER TERMS.....9
- 14. LANGUAGE .....9

# KIOSK Shrinkwrap Software License and Maintenance Agreement

This KIOSK Shrinkwrap Software License and Maintenance Agreement (“License Agreement”) is entered into as of the Effective Date by and between Kiosk Information Systems, Inc. (“KIOSK”) and the end-user customer (“Client”).

## TERMS AND CONDITIONS

### 1. Definitions

For purposes of this License Agreement

- a. **Effective Date** - means the initial delivery date of the Licensed Software.
- b. **Error** – means any unexpected result, issue, error message or incorrect behavior that deviates from the expected result or use as described in the associated product documentation. Architectural modifications in subsequent product releases or failures resulting from the use of undocumented product behavior, or use on unsupported platforms will not be classified as an Error.
- c. **Error Correction** - means either a modification or addition made by KIOSK that, when made or added to the Licensed Software, brings the Licensed Software into material conformity with product documentation and/or the Software Development Statement of Work (“**SW SOW**”), or a procedure or routine that, when observed in the regular operation of the Licensed Software, avoids the practical adverse effect of such nonconformity.
- d. **Licensed Software** – means the object code associated with the software used to operate a Product as originally delivered to Client as specified on a relevant Quote, as well as any related software programs, purchased or provided, which are designed to operate in conjunction with that Product.
- e. **Maintenance** - shall have the meaning ascribed in Section 3.
- f. **Maintenance Term** - means the time during which Maintenance will be provided by KIOSK commencing on the Effective Date and continuing for the duration of the time Maintenance is purchased (as provided in Section 8 below).
- g. **Product** – means a hardware kiosk product on which the Licensed Software is deployed.
- h. **Releases** - means versions of the Licensed Software, which may include Error Corrections and/or Updates.
- i. **Update** - means modifications of or improvements to the existing features of the Licensed Software (i) which KIOSK makes commercially available and (ii) which would normally be designated as a change to the right-most digit (“z”) in the product version number [x.y.z]. “Update” does **not** include a product revision that provides any material enhancement of Licensed Software features or functionality. KIOSK reserves the right and authority to define an Update.

### 2. License

- a. **License Grant.** Subject to the terms of this License Agreement, KIOSK grants to Client a worldwide perpetual, revocable (but only for breach), non-exclusive, non-transferable, non-sublicensable (except as otherwise permitted by the terms of this License Agreement), license

to Use the Licensed Software. Such “Use” of the Licensed Software shall be restricted, except as otherwise provided in this License Agreement, to Use of the Licensed Software on the Product on which such Licensed Software is first installed.

- b. **Restrictions.** Except as expressly stated in this License Agreement, Client shall not: (i) copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make Error corrections to the Licensed Software or other deliverables specified in any SW SOW related to this License Agreement (“**Deliverables**”) in whole or in part; (ii) make any derivative works based on the Deliverables, including but not limited to, by incorporating some or all of the Deliverables in another piece of software or by adapting or modifying the Deliverables to give it additional features or to allow the Deliverables to run on additional hardware and/or delete or remove the copyright notices, trademarks and numbers of KIOSK or any other attributes that identify the Deliverables; (iii) work around any technical limitations in the Deliverables or exceed the number or type of scope of Use(s) agreed to and paid for by Client; (iv) lease, sublicense, rent, lend, timeshare, distribute, transfer or assign the Deliverables or any portion thereof to any third party (including by operation of law, stock transfer or merger) without the prior written authorization of KIOSK; or (v) purposely use the Deliverables in violation of applicable laws. Client shall not have the right to use the Deliverables on a stand-alone basis. Use by Client of the Deliverables outside the scope of this license, or for any purpose prohibited under this License Agreement, shall result in immediate revocation of such license and shall constitute infringement of KIOSK’s intellectual property for which KIOSK may pursue any and all legal and equitable remedies that may be available to it.
- c. **Ownership and Reservation of Rights.** KIOSK is the sole and exclusive owner of all right, title, and interest in and to the Licensed Software (including ownership of all copyrights and other intellectual property rights pertaining thereto), subject only to the license expressly granted to the Client herein. Any rights not expressly granted to Client herein are reserved to KIOSK.
- d. **Fees and Expenses.** The fees for the license granted to Client to Use the Licensed Software shall consist of a monthly license fee for each Product on which the Licensed Software is deployed. This monthly license fee per Product on which the Licensed Software is deployed also includes the cost of Maintenance on the Licensed Software. The monthly license fee for each Product on which the Licensed Software is deployed is due and payable upon deployment to each Product (“**Deployment Date**”) and each month thereafter during any and all Monthly Renewal Terms (as defined in Section 8 below). Such fees do not include any applicable travel and living expenses for installation and training, file conversion costs, optional products and services, directories, consulting services, shipping charges, or the costs of any recommended hardware. The Client agrees to pay such fees and costs as invoiced by KIOSK. KIOSK reserves the right to require prepayment or advance deposit for such additional charges or expenses in some instances. The Client is also responsible for sales or use taxes and state or local property or excise taxes associated with Client’s licensing, possession, or use of the Licensed Software or any associated services.

### 3. Maintenance

- a. **Scope of Maintenance.** During the Maintenance Term (defined in Section 8 below), KIOSK agrees to provide maintenance services in support of the Licensed Software. Maintenance services shall consist of:
  - i. **Error Correction.** KIOSK shall be responsible for using all commercially reasonable diligence to correct verifiable and reproducible Errors when reported to KIOSK if (a)

reported within the Maintenance Term or any Renewal Terms (defined in Section 8 below) and (b) applicable to no more than one major Release prior to the then current Release version. For Errors reported outside the foregoing limitations, KIOSK will provide a quote for correction of such Error for Client’s consideration. The Error Correction, when completed, may be provided in the form of a “temporary fix,” consisting of sufficient programming and operating instructions to implement the Error Correction.

- ii **“Software Severity Levels.”** Errors are prioritized as to severity level as determined by KIOSK based on the following definitions:
  - a) **Severity 1** means the issue causes the Licensed Software to stop, crash, or cease to function. Work cannot reasonably continue; the Licensed Software is mission critical to the business and the situation is an emergency requiring immediate attention towards resolution.
  - b) **Severity 2** means the issue severely restricts the functionality of Licensed Software within a production environment, but the Licensed Software can continue to run/operate. Severity Level 2 issue renders the Licensed Software completely unusable in pre-production efforts.
  - c) **Severity 3** means an issue restricts the functionality of the Licensed Software within a production environment and/or impedes pre-production development efforts. Severity 3 issues include a degradation of reliability or performance or limited access to a non-critical function of the Licensed Software. Severity Level 3 issues include those for which a workaround had been provided, but for which a permanent improvement is still necessary.
  - d) **Severity 4** means an issue does not significantly restrict the functionality of the Licensed Software within a production environment and/or has only a minor impact on pre-production development efforts. Requested performance or usability enhancements will also be considered Severity Level 4 issues, but will be prioritized and provided at KIOSK’s discretion.
- iii **Response Times.** Client will receive an acknowledgement when submitting a suspected error. KIOSK shall use commercially reasonable efforts to make a substantive second response to Client for each Software Severity Level within the corresponding time period set forth below:

<b>Severity</b>	<b>Description</b>	<b>Targeted First Response</b>
<b>Severity 1</b>	Software is causing an interruption of production business services	Within 8 business hours
<b>Severity 2</b>	Major functions disabled in production	Within 16 business hours
<b>Severity 3</b>	Non-essential functions disabled	Within 3 business days
<b>Severity 4</b>	Minor problems	Within 5 business days

- iv **Client Obligations.** The Client is responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware necessary to operate the Licensed Software and to obtain maintenance services from KIOSK. KIOSK will not be responsible for delays caused by events or circumstances beyond its reasonable control, including but not limited to force majeure events as set forth in the MSA.

- v **New Releases.** KIOSK may, from time to time, issue new Releases of the Licensed Software, containing Error Corrections and/or Updates, to Clients who have maintenance agreements in effect. KIOSK shall provide the Client with one (1) copy of each new Release for each copy of the Licensed Software being maintained under this License Agreement, without additional charge. KIOSK shall provide reasonable assistance to help the Client install and operate each new Release on a time and materials basis. Note: Some compatible and related software may be released by KIOSK and made available to the Client through additional purchases. After purchasing such software, updates to the compatible and related software may be provided for the Products covered under this License Agreement if so provided in the relevant SOW, Order, or signed quote for such software.
- b. **Provision of Maintenance.** For avoidance of doubt, if Client has no maintenance agreement in effect, none of the services described in section 3.a. will be performed for or received by such Client. If Maintenance is terminated or expires, Client can only receive Updates via an incremental purchase of a software upgrade, subject to future terms and pricing. Once an incremental software upgrade is purchased, the Client will be afforded the opportunity to purchase a software license and maintenance agreement for the upgrade purchased.
- c. **Fees and Expenses.** The fee for Maintenance is included in the monthly license fee.. Such fees do not include any applicable travel and living expenses for installation and training, file conversion costs, optional products and services, directories, consulting services, shipping charges, or the costs of any recommended hardware. The Client agrees to pay such fees and costs, when and as the services are rendered and the expenses incurred, as invoiced by KIOSK. KIOSK reserves the right to require prepayment or advance deposit for such additional charges or expenses in some instances. The Client is also responsible for sales or use taxes and state or local property or excise taxes associated with Client's licensing, possession, or use of the Licensed Software or any associated services. No refunds of Maintenance fees will be issued for any reason, including upon termination of Maintenance.
- d. **Back-Level Support.** KIOSK will use reasonable commercial efforts to maintain one prior back-level major version of the Licensed Software.
- e. **Cooperation of the Client.** The Client agrees to notify KIOSK promptly in writing following the discovery of any Error. Separate notifications for each suspected Error shall be submitted to [customercare@kiosk.com](mailto:customercare@kiosk.com) for logging and tracking purposes. Further, upon discovery of an Error, the Client agrees, if requested by KIOSK, to submit to KIOSK a listing of output and any other data that KIOSK may require in order to reproduce the Error and the operating conditions under which the Error occurred or was discovered.
- f. **Exceptions.** The following matters are not covered by Maintenance:
  - i Any problem resulting from the misuse, improper use, alteration, or damage of the Licensed Software;
  - ii Any problem caused by modifications in any version of the Licensed Software not made or authorized by KIOSK;
  - iii Any problem resulting from programming other than the Licensed Software or equipment;
  - iv Any problem resulting from the combination of the Licensed Software with such other programming or equipment to the extent such combination has not been approved by KIOSK; or
  - v Errors in any version of the Licensed Software other than the current Release and one major Release back.

- g. **Platform.** Client hereby acknowledges and agrees that Client is solely responsible for: (i) the selection of the platform; (ii) the maintenance of a license to the platform and further acknowledges the Licensed Software is designed solely for use in connection with the platform or such other versions of the platform as KIOSK may notify Client of in writing from time to time; (iii) the compatibility of Client's computer hardware, peripherals, third party operating systems, and other third party software, and software developed by Client to integrate with the Licensed Software; and (iv) all of Client's data entry and loading of Client's data and maintaining back-up or archival copies thereof. In addition, KIOSK assumes no responsibility due to conflicts resulting from future releases of third-party applications used by Client. KIOSK assumes no responsibility for third party application errors, bugs or defects and assumes no responsibility for the performance and or reliability of third-party service providers. KIOSK is not responsible for the setup, maintenance, support or costs associated with Client merchant accounts, hardware or third-party service providers.
- h. **Compatibility.** In the event Client requests a modification to a licensed software product that results in such product no longer being fully compatible and able to operate with Client's network and systems, KIOSK shall not be liable for correcting the modified product so that it is compatible with Client's network and systems.

#### **4. Limited Warranty**

KIOSK shall perform its services hereunder in a workmanlike manner. Notwithstanding the addition of any Error Correction, Update, or Release to the Licensed Software for purposes of the License Agreement, KIOSK's obligation to correct Errors in such additions shall be limited to the maintenance terms of this License Agreement. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, KIOSK SHALL HAVE NO LIABILITY FOR THE LICENSED SOFTWARE OR ANY SERVICES PROVIDED, INCLUDING ANY LIABILITY FOR NEGLIGENCE; KIOSK MAKES AND THE CLIENT RECEIVES NO OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS LICENSE AGREEMENT OR ANY OTHER COMMUNICATION; AND KIOSK SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### **5. Limitation of Liability; Exclusion of Consequential Damages**

IN NO EVENT SHALL KIOSK BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR EXEMPLARY DAMAGES OF ANY NATURE IN CONNECTION WITH THIS LICENSE AGREEMENT AND THE SERVICES OR SOFTWARE PROVIDED HEREUNDER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF: BUSINESS PROFITS, BUSINESS INTERRUPTION, BUSINESS INFORMATION OR DATA STORAGE, GOODWILL, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF THE USE OR INABILITY TO USE THE LICENSED SOFTWARE, EVEN IF KIOSK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### **6. Default**

Should the Client fail to pay any fees or charges due hereunder or fail to carry out any other obligation under this License Agreement or any other agreement with KIOSK, KIOSK may, at its option, in addition to other available remedies, terminate this License Agreement or suspend Maintenance, provided that it first gives the Client thirty (30) calendar days prior notice in order to permit the Client to cure the Client's default. In addition, Maintenance will automatically terminate with respect to any copies of Licensed Software that are no longer regularly used by KIOSK Client whether as a result of expiration or replacement of such versions with new Releases.

## **7. Notices**

All notices or other communications required to be given hereunder shall be in writing and shall be delivered by personal delivery, mail, or courier to the address of the other party set forth in this License Agreement. Notice shall be deemed given based on any one of the following notification methods: upon personal delivery; upon the courier's confirmed delivery if sent by courier; and if sent by mail with proper postage prepaid, five (5) calendar days after the date of mailing. A party may change its address for notice by delivering to the other party written notice.

## **8. Maintenance Term and Termination; Survival**

- a. **Maintenance Term.** The term of this License Agreement (the "**Maintenance Term**") shall commence on the Effective Date and shall continue for one month. The License Agreement shall automatically renew at the end of the Maintenance Term for successive one-month Renewal Terms ("Monthly Renewal Terms"), up to a maximum of 59 Monthly Renewal Terms unless earlier terminated by the Client or KIOSK in writing at least 30 days prior to the end of the Maintenance Term or then-current Renewal Term.
- b. **Termination.** Either party may terminate the maintenance obligations in this License Agreement by delivering written notice thereof to the other party in the event that such other party breaches any material term or condition of this License Agreement and does not take action to cure such breach within thirty (30) calendar days after receipt of written notice from the non-breaching party, which notice shall specify the breach in reasonable detail.
- c. **Termination by Client.** Client may terminate the license grant in the Licensed Software at any time on thirty (30) calendar days written notice to KIOSK. At termination of the license grant, Client shall no longer use the Licensed Software in any way and will destroy all copies of the Licensed Software in its possession and have an officer of the Client certify in writing to such destruction.
- d. **Survival.** The following shall survive the termination of this License Agreement: (a) provisions of Sections 4, 5, 9, 10 and 11, (b) any payment obligations of either party accruing prior to the effective date of such termination, and (c) any other provisions of this License Agreement necessary to interpret the respective rights and obligations of the parties hereunder

## **9. Governing Law**

This License Agreement shall be governed by the laws of the State of Colorado and the United States as applied to agreements entered into and fully performed therein by residents thereof.

## **10. Jurisdiction and Venue**

Any action or proceeding arising directly or indirectly from this License Agreement shall be litigated in the state or federal courts located in Boulder County, Colorado. Both parties consent to the jurisdiction of such courts.

## **11. Attorneys' Fees**

The prevailing party in any action to enforce this License Agreement shall be entitled to recover costs and expenses, including reasonable attorneys' fees actually incurred by such party.

## **12. Modification and Waiver**

This License Agreement is the entire agreement between KIOSK and the Client relating to the subject matter hereof and it may be amended only by a writing executed by the Client and KIOSK. The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of any subsequent breach of the same provision or any other provision.

## **13. Purchase Order Terms**

The terms stated in this License Agreement are the exclusive terms regarding the Client's rights and obligations with respect to the services provided hereunder and the license to the Licensed Software. Any terms or conditions stated in any purchase order, signed quote, other SOW between the parties or invoice shall be of no force and effect, and no course of dealing, usage of trade, or course of performance shall be relevant to explain or modify any term expressed in the License Agreement. The issuance of any purchase order or signed quote and/or payment of the license fee invoice by the Client shall constitute full and unconditional acceptance and acknowledgement of this License Agreement and its terms by the Client.

## **14. Language**

The official version of this License Agreement is in the English language and this License Agreement will be construed in accordance with this version. Translations of this License Agreement into any other language are for the purpose of accommodation only and shall be of no legal effect.