

KELTON MeterManager LICENCE AGREEMENT

1. Definitions

Expression	Definition
KELTON	Kelton Engineering Ltd, incorporated under Companies Act 1985, Registered in Scotland Number 129648 and having its Registered Office at The Mackenzie Building, 168 Skene Street, Aberdeen AB10 1PE
Software	a computer software programme purchased from KELTON as listed in the Proposal and any Maintenance Release which is acquired by the Customer during the subsistence of this licence.
Licencee	The purchaser
User	The Licensee or as appointed by the Licensee
KELTON MeterManager	KELTON Meter Management System Software Application
Commencement Dates	the date of the agreed Purchase Order between Kelton and the Customer.
Fee	the licence fee payable in accordance with the terms of the Proposal.
Intellectual Property Rights	patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.
Maintenance Release	release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.
Open-Source Software	open-source software as defined by the Open Source Initiative (http://opensource.org) or the Free Software Foundation (http://www.fsf.org).
Proposal	the proposal document of which this Licence Agreement forms a part.
Site	the premises from which the Customer carries out its business.
Source Code Materials	the source code of the Software, and all technical information and documentation required to enable the Customer to modify and operate it.
Specification	as set out in the Proposal.

2. Grant of Licence

In consideration of the payment of the fee (the “License Fee”), the License entitles and permits the Licensee to use one copy of the Software on any single computer or network for each licenced user. Where a multiple user license has been purchased it is the Licensee’s responsibility to assign individual users as licensees.

The Software is ‘in use’ when it is either loaded into RAM or installed into the hard disk or other permanent memory. This License does not allow the Software to be installed on a network server for access by multiple simultaneous users and/or distribution to other computers, except where a multiple user license has been purchased. If a multiple user license has been purchased, then the number of licenced users must not exceed the total number of licenses purchased.

3. Restrictions

As a Licensee you may not:

- Copy, with the exception of one copy for 'back-up' purposes only, the Software. Any such copy will be in all respects subject to the terms and conditions of this Licence agreement.
- Assign, novate, sub-license, loan, rent, charge, lease, transfer or otherwise deal in or encumber the Software.
- Reverse engineer, de-compile or disassemble the whole or any part of the Software from object code into source code except and only to the extent that such an activity is expressly permitted by applicable law.
- Use the Software on other than equipment suitable for its operation.
- Seek to repair, adjust alter, merge, combine or modify Software in any way.
- Use Software for a purpose other than for the purpose for which it is designed.
- Remove or alter any copyright or other proprietary notice on the Software.

Breach of the foregoing will entitle KELTON to immediately terminate this Licence, the Licensee will indemnify KELTON in respect of all claims, losses, expenses and damages thereby incurred and the Licensee shall return the Software and all copies made (authorised or unauthorised) without refund.

4. Warranty

KELTON warrants that:

- The Software will perform substantially in accordance with the system specification.
- That the materials within the package are not defective.

Provided always that the Software has been used and maintained strictly in accordance with KELTON's instructions, and the Licensee has fully complied with the terms of this Licence.

The warranty period is twelve (12) months from the date of the download of the Software by the Licensee (the "**Warranty Period**").

All and any complaints and/or claims under the Warranty must be received by KELTON in writing within the Warranty Period. Any claim brought outside of Warranty Period will not be addressed by KELTON under the terms of this Licence.

In the event that the software does not conform to the Warranty then KELTON shall have the option, but shall not be obliged, to provide replacement software. Any such replacement software shall be subject to the Warranty and the provisions of this Licence.

5. Support

Where a Licence has been purchased or support has been purchased for a pre-existing perpetual licence, KELTON will attempt to answer specific customer support requests during the period in which the Licence is in force. This service is offered on a 'reasonable endeavours' basis and you, the Licensee acknowledge and agree that KELTON may not be able to resolve every problem or fully resolve every support request. KELTON shall not be responsible and or liability for their failure to respond or for any error or negligence in responding.

6. Maintenance Releases

KELTON may from time to time issue maintenance releases in respect of the Software which, if applicable, shall be available to you the Licensee under the terms of this License. KELTON warrants that no Maintenance Release will adversely affect the then existing facilities or function of the Software. The Licensee shall install all Maintenance Releases as soon as reasonably practicable after receipt.

7. Intellectual Property Rights

The Licensee acknowledges that all intellectual property rights in the Software and any Maintenance Releases belong and shall belong to KELTON or the relevant third-party owners (as the case may be), and the Licensee shall have no rights in or to the Software other than the right to use it in accordance with the terms of this Licence.

8. Limitation of Liability

KELTON shall not in any circumstances have any liability for any losses or damages which may be suffered by the Licensee (or any person claiming under or through the Licensee), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

Special damage even if KELTON was aware of the circumstances in which such special damage could arise;

- a) Loss of profits;
- b) Loss of anticipated savings;
- c) Loss of business opportunity;
- d) Loss of goodwill;
- e) Loss of corruption of data.

The total liability of KELTON, whether in contract, tort (including negligence) or otherwise and whether in connection with this licence or any collateral contract, shall in no circumstances exceed a sum equal to the Fee.

7. Force Majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

8. Governing Law and Jurisdiction

This agreement, and any dispute or claim arising under it, shall be construed in accordance with, and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

9. The Contracts (Rights of Third Parties) Act 1999



No provision of this agreement is intended by the Parties to be construed as creating any right(s) enforceable by a third party and all third-party rights implied by law are, to the extent permissible by law, excluded from this agreement.