

Kaminario SW End-user-Agreement-Ltd.



KAMINARIO END USER LICENSE AGREEMENT

THIS END USER LICENSE AGREEMENT (THIS “**AGREEMENT**”) IS A BINDING AGREEMENT. ALL USE OF KAMINARIO SOFTWARE IS SUBJECT TO THIS AGREEMENT. BY USING THE SOFTWARE THAT IS THE SUBJECT OF THIS AGREEMENT YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, THAT YOU UNDERSTAND IT, AND THAT YOU AGREE TO BE BOUND BY ITS TERMS. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT ACCEPT THIS AGREEMENT AND DO NOT USE THE SOFTWARE.

1. **Grant of License.** Subject to the terms and conditions of this Agreement, including all provisions regarding payment, Kaminario Technologies Ltd. (“**Licensor**”) grants you a non-exclusive, non-transferable license during the term of this Agreement to use the copy of the Kaminario Software pre-installed on the hardware you purchased for your own internal commercial requirements.

2. **Restrictions.** Except as expressly permitted hereunder you may not, nor may you assist other parties to (a) copy, modify, or create derivative works of the Software or part thereof, (b) distribute, sell or transfer the Software or part thereof or sublicense your right to use the Software hereunder, (c) reverse-engineer, disassemble, or attempt to derive the source code of the Software, (d) attempt to disable or circumvent any security or access control mechanism of the Software, or (e) remove any trademarks or notices (including copyright notices) from the Software. You may not install the Software on any hardware other than the hardware on which it was provided to you. You may not use the Software in violation of any applicable law or regulation. You may not offer to third parties a service of your own that uses the functionality provided by the Software. To the extent any of the restrictions set forth in this Section are not enforceable under applicable law, you shall inform Licensor in writing in each instance prior to engaging in the activities set forth above. You have no rights in respect of any source code of the Software.

3. **Ownership.** You have no ownership rights in the Software. Rather, you have a license to use the Software only so long as this Agreement remains in effect. Ownership of the Software and all intellectual property rights therein shall remain at all times with Licensor or its licensors. No rights are granted hereunder by estoppel or by implication. All rights not granted to you herein are reserved to Licensor or its licensors. Any references to the sale or transfer of the Software herein or in any other communication between Licensor and you shall mean only the license of the Software pursuant to the terms and conditions of this Agreement. If you provide Licensor with any feedback concerning the Software or Device, you also provide Licensor with a non-exclusive, perpetual license to make all uses of such feedback without any obligation to you.

4. **Payment.** In consideration of the license granted hereunder, you shall make payment as required under the applicable invoice in respect of the Kaminario software. Such invoice may be provided directly by Kaminario or may be provided by an authorized third party, such as by the supplier of the hardware on which the Kaminario Software is installed or an authorized Kaminario reseller.

5. **Open Source.** The Kaminario Software may include certain software made available under open source licenses (the “**Open Source Software**”). To the extent required by the applicable open source licenses, the terms and conditions of such licenses shall apply to the Open Source Software in lieu of the terms and conditions of this Agreement. Notwithstanding anything to the contrary in this Agreement, Licensor makes no warranties in respect of Open

Source Software in excess of the warranties set forth in the applicable open source license itself, and accepts no liability in respect of Open Source Software in excess of the limitation of liability set forth in the applicable open source license. If any license requires Licensor to provide source code, Licensor shall make such source code available to Purchaser upon Purchaser's written request according to the terms of the applicable open source license.

6. **Support.** Licensor will, subject to payment of applicable support fees, provide support and maintenance in accordance with **Exhibit A**.

7. **Licensor Warranties; Disclaimer.** Licensor represents and warrants that the software shall operate in material compliance with applicable specifications and does not, to the best of its knowledge, infringe the intellectual property rights of any third party. EXCEPT AS SET FORTH HEREIN, THE SOFTWARE IS PROVIDED "AS-IS". THE LICENSOR (AND ITS LICENSORS AND COMMERCIAL PARTNERS) EXPRESSLY DISCLAIMS ANY WARRANTIES WITH RESPECT TO THE SOFTWARE. LICENSOR DISCLAIMS ANY STATUTORY OR IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. NO WARRANTY IS MADE THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE SOFTWARE WILL BE CONTINUOUS OR ERROR-FREE, THAT THE SOFTWARE WILL OPERATE AS INTENDED OR AT ALL UNDER ALL CONDITIONS, OR THAT ANY DEFECTS IN THE SOFTWARE WILL BE CORRECTED.

8. **Limitation of Liability.** IN NO EVENT SHALL LICENSOR (OR ITS LICENSORS OR COMMERCIAL PARTNERS) BE LIABLE TO YOU OR ANY OTHER ENTITY FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF DATA OR LOSS OF USE DAMAGES) AS A RESULT OF THE SOFTWARE OR THE USE THEREOF, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. THE LIABILITY OF LICENSOR (AND ITS LICENSORS OR COMMERCIAL PARTNERS) FOR THE SOFTWARE AND THE DEVICE SHALL NOT EXCEED AMOUNTS ACTUALLY PAID BY YOU TO LICENSOR SPECIFICALLY FOR THE USE OF THE SOFTWARE.

9. **Publicity.** Licensor has the right to reveal the fact that you are using the Software, and may refer to Licensee (and use Licensee's name and logo) on Licensor's website and promotional and marketing materials.

10. **Term and Termination.** The license set forth in this EULA will come into effect upon delivery to you (either by Kaminario or by an authorized third party) of the hardware on which Kaminario software is installed. This Agreement shall come into effect as of the day that you accept its terms and shall continue in effect until terminated according to the provisions hereof. This Agreement shall terminate if you cease making payment as agreed between the parties, and do not cure such breach within 30 days of Licensor's notice thereof. In addition, this Agreement shall automatically terminate if the term for which payment amounts between the parties was agreed comes to a conclusion. Either party may terminate this agreement upon the occurrence of a material breach or default as to any obligation hereunder by the other party and the failure of such breaching party to remedy such breach within thirty (30) days after receiving written notice thereof from the non-breaching party, any such termination becoming immediately effective upon the giving of written notice of termination. The rights and obligations of the parties as set forth in Sections 2 – 11 shall survive the termination or expiration of this Agreement for any reason.

11. **Effective Capacity Guarantee.** Licensor may provide you with a "capacity guarantee" as part of its Capacity Guarantee program. Licensor's "capacity guarantee" guarantees only "effective capacity". Licensor does not guarantee the specific data reduction ratio to be achieved under the guarantee. You shall make commercially reasonable efforts to deploy your

applications in a manner that will enable the mutually optimal data placement for data reduction capabilities and your needs. The guaranteed effective capacity warranty will not be applicable to the extent any data sets are non-dedupable and either pre-compressed or encrypted. Licensor shall in its sole discretion determine the most cost-effective and efficient means of providing any guaranteed capacity. Your sole remedy under this "capacity guarantee" shall be the receipt of the guaranteed capacity. The "capacity guarantee" shall only be effective during periods that you are a party to a support and maintenance agreement with Licensor then in effect and, if you are not a party to any such agreement then in effect, you shall have no remedy under the "capacity guarantee". If Licensor provides (including for commercial reasons) any extra capacity in addition to any guaranteed capacity, use of such extra capacity shall be subject to payment according to Licensor's then-standard commercial terms

12. **Performance Analysis.** Licensor may have provided a performance analysis of the Kaminario Software at your location (the "Kaminario Services Professional Analysis and Report"). Licensor has made reasonable commercial efforts to ensure the accuracy of the Kaminario Services Professional Analysis and Report, but you understand that the performance of the Kaminario Software may vary across a spectrum of factors, and that Licensor does not make any warranties regarding the content of Kaminario Services Professional Analysis and Report or the performance of the Kaminario Software. All of Licensor's legal obligations, representations and warranties regarding the Kaminario Software and any implementation thereof are set forth solely in this Agreement and nothing in the Kaminario Services Professional Analysis and Report should be interpreted as providing any representations or warranties

13. **Force Majeure.** Neither party will be liable to the other for any delay in performing or inability to perform its obligations under this agreement caused by acts of God such as fire, storm, flood, or earthquake government acts, labor strikes, terrorism, and riots and misconduct outside its control provided the affected party notifies the other party of such delay as soon as commercially practicable and uses commercially reasonable efforts to minimize potential effects of the delay. In the event the force majeure event as described above causes delays longer than ten (10) Business Days, the parties will negotiate in good faith a partial termination hereof for support services not yet completed or a change in the price for redeployment of personnel and support services.

14. **General.** This Agreement shall be construed, interpreted and governed by the laws of the State of Israel without regard to conflicts of law provisions thereof. Any action, suit or other proceeding arising under or relating to this Agreement shall be brought exclusively in the competent courts located in Tel Aviv, Israel, and the parties hereby consent to the sole jurisdiction of such courts. The rights and obligations of the parties to this Agreement shall not be governed by the United Nations Convention on the International Sale of Goods. Any waivers of any condition of this Agreement must be in writing, and the waiver of any requirement in certain situations or circumstances shall not be interpreted as the waiver of such requirement in other situations or circumstances. This Agreement constitutes the entire agreement between the parties hereto. Any amendment or modification of this Agreement shall only be effective if it is in writing and signed by both parties hereto. If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, such provision shall be interpreted as necessary to give maximum effect to its provisions as possible under applicable law and the remainder of this Agreement shall remain in effect. Licensor may assign or transfer any of its rights or obligations hereunder without your consent. You may not assign any of your obligations or rights hereunder. Licensor communicates with its users

electronically and on-line and, as such, you consent to receive all communications and notices electronically from Licensor (including through the Software) or to an email address that you have provided to Licensor. All such communications or notifications shall be considered as having been provided in writing.

Exhibit A: Support and Maintenance

Subject to the terms and conditions of this **Exhibit A**, including without limitation payment of required Support Fees (as defined below) Licensor shall provide to the end user support services according to the service package purchased by end user. In order to receive support services, end user must contact Licensor through the contact details made available by Licensor.

1. **Definitions.** In addition to terms elsewhere defined in the Agreement of which this document forms an Exhibit, the following terms shall have the meanings set forth below:

1.1 **“Business Day”** shall mean Monday through Friday, not including any day during which banks are closed in Massachusetts.

1.2 **“Problems”** shall mean bona-fide functional and technical problems in the Kaminario Software that can be reproduced by Licensor.

1.3 **“Representative”** shall mean a Licensor representative possessing technical, operational or other expertise and designated by Licensor at Licensor’s sole discretion.

1.4 **“Site”** shall mean the site at which Licensor or its authorized representatives have installed the Kaminario products.

1.5 **“Upgrade”** shall mean new versions of the Kaminario Software made available by Licensor to its existing customers, in Licensor’s sole discretion, that may contain bug fixes and/or enhancements or improvements. For avoidance of doubt, Upgrades shall not include any release, option, plug-in, component, module or product that Licensor generally licenses separately from the then-current version of the Kaminario Software.

2. **Support and Maintenance Services.** Subject to the terms and conditions of this Agreement, during each term for which services fees are timely paid, Licensor or its agents shall make commercially reasonable efforts to provide the end user with the following support services:

2.1 **Problem Correction.** Licensor shall use reasonable efforts to diagnose and correct verifiable and reproducible Problems when reported to Licensor in accordance with the procedures set by Licensor from time to time. End user shall make best efforts in assisting Licensor to reproduce the Problem, as determined by Kaminario’s support center. On site support will be provided only at the Site. End user agrees to accept, install and use Upgrades provided by Licensor and Licensor shall not have responsibility for Problems caused by end user’s failure to install and use Upgrades. The parties acknowledge the potentially

idiosyncratic nature of any Problem in the software and Upgrades. Licensor shall use reasonable commercial efforts to attempt to resolve any Problem within the response time set forth below.

2.2 **Response Time.** Customers may contact Licensor for assistance and Licensor will make commercially reasonable efforts to respond pursuant to the table set forth below.

Level of Purchased Support	Availability and Response Times
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Premium Support

Premium Support is available 24x7x365. A Kaminario support specialist shall contact Customer within the target response objective (TRO) from the time that Customer first reported the Problem to Kaminario by telephone or Kaminario’s customer portal, according to Kaminario’s TRO guidelines listed below.

Next Business day Support (“NBD Support”)

NBD Support is available 24x7x365. A Kaminario support specialist shall contact Customer within the target response objective (TRO) from the time that Customer first reported the Problem to Kaminario by telephone or Kaminario’s customer portal, according to Kaminario’s TRO guidelines listed below.

Initial Target Response Objectives(TRO):

Case Severity	Definition	Target Response Objective Premium Support	Target Response Objective NBD Support
Severity 1 – Critical	System is not serving data. In a severity 1 case, both Kaminario’s	Within 30 min	Within 60 min

	Support and the customer must be committed to work on the issue in full cooperation and around the clock until a solution or an acceptable workaround is in place.		
Severity 2 – High	System is serving data with meaningful impact on business operations.	Within 2 hours	Within 4 hours
Severity 3 – Medium	A Kaminario system is experiencing an anomaly, or unexpected behavior which leads to an incontinence but has little or no impact on the customer business operations.	Within 12 hours	Within 24 hours
Severity 4 – Low	Information/technical question	With one business day	With two business day

3. Payment Terms and Pricing.

3.1 **Support Fee.** End user shall make payment of support fees according to a written quotation provided by Licensor (or provided by an authorized third party, such as the supplier of the hardware on which the Kaminario Software is installed or an authorized Kaminario reseller) (the “**Support Fees**”). The Support Fees are non-refundable, and no portion thereof shall be returned if this Agreement is terminated prior to end of the applicable support period.

3.2 **Payment Terms.** If the applicable quotation is provided by Licensor then, unless set forth expressly otherwise on the applicable quotation, Licensor will invoice for Support Services at the time of purchase. End user will make full payment of such invoice within thirty (30) days from the date of invoice. Any portion of such invoice that is not paid when due will accrue interest at 18% per annum or the maximum rate permitted by applicable law, whichever is less, from the due date until paid. Payment of invoices issues by an authorized third party shall be according to the payment terms agreed with such third party. The failure to make timely payment of the Support Fees could result in termination of support, at the discretion of Licensor and its agents.

4. Limitations. Licensor shall not have any obligation to provide support in event the Kaminario Software or any part or component thereof (i) has been used other than in accordance with the Agreement or the applicable documentation provided by Licensor or other Licensor instructions, (ii) has been damaged due to external causes, including but not limited to, negligence, accident, abuse, misuse, neglect, mishandling, improper testing, use of contrary industry practices, or any damage caused by equipment not supplied by Licensor, (iii) has been modified, repaired, serviced, maintained or altered by any party except Licensor, or (iv) has been installed or de-installed by any party other than Licensor.

5. Subcontracting. Licensor may use third party subcontractors in providing any support services. Licensor will remain responsible for the performance of required support services by such third party service provider

6. Updates. Licensor may release updates and enhancements of any Software. Licensor may require end users to update to more recent versions of any software as a condition of continued support.

7. Support Reinstatement. In the event that end user desires to reinstate support services after allowing support services to lapse, or to initiate support services after a period of non-coverage, Licensor reserves the right to charge for Support Fees in respect of the period of non-coverage. In the event end user requests the reinstatement of support services, end user will allow Licensor to perform an inspection to ensure the Kaminario Software is within Kaminario's documented specifications.

8. Customers Responsibilities. Licensor's provision of support is subject to end user's compliance with the terms and conditions of this Agreement.

9. Customer Contacts. End user will designate up to four (4) authorized employees to serve as primary points of contact for Licensor and any related support issues, which list of authorized employees may be updated upon written notice to Licensor. Licensor shall be entitled to presume that all such employees are authorized to submit service requests.

10. Cooperation. End user will cooperate with Licensor, including without limitation by providing as much information as available about any Problems, and taking all reasonable measures requested by Licensor in order to detect and provide further information with respect to each Problem. End user must provide remote access to software as requested by Licensor.

11. Data and Recovery. End user will be solely responsible for management of its data back-up, data recovery, and disaster recovery measures. Licensor and its authorized service representatives will not be responsible or held liable for end user's internal processes, procedures or requirements to ensure the protection, loss, confidentiality, or security of end user data or information.

12. Term. The support term will commence upon delivery to you (either by Kaminario or an authorized third party) of the hardware on which Kaminario software is installed