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Maximizer Software Limited

Terms and Conditions

1. Definitions

1.1 The following terms shall where the context so permits have the meanings given:

"Agreement"	the agreement, governed by these terms and conditions, for us to provide New Versions and Error Fixes to you
"Authorised Provider"	one of our certified business partners authorised to sell and implement the Licensed Software
"Error Fixes"	the elimination of bugs and correction of material defects in the Licensed Software whether by repair or replacement of the Licensed Software
"Licence"	the non-exclusive limited right granted to you by us to use the Licensed Software and all operational and user manuals and other documentation, and including the right to receive New Versions and Error Fixes subject to clause 2.1
"Licensed Software"	the computer programs purchased by you from an Authorised Provider
"New Versions"	any new version of the Licensed Software that adds or enables a new function or capability or a major enhancement to the previous version of the Licensed Software
"you/your"	the customer who has purchased the Licensed Software from the Authorised Provider
"we/us/our"	Maximizer Software Limited whose registered details are given at the bottom of this page

1.2 Any reference to clauses is to clauses in this Agreement

1.3 Words importing the singular include the plural and vice versa and words importing any gender include every gender

1.4 Any reference to "written" or "in writing" shall include faxes and emails

1.5 The headings in this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement

1.6 Any reference to a "person" shall include any person, partnership, firm, company, body corporate or corporation or organisation

2. Licence

2.1 You will be entitled to receive New Versions and Error Fixes under the Licence provided that:

- 2.1.1 you have made payment for these to us or the Authorised Provider;
- 2.1.2 the Licensed Software has been installed and implemented by an Authorised Provider;
- 2.1.3 you have registered your Licence and this Agreement with us; and
- 2.1.4 the Licensed Software is operated in accordance with the Licence and any additional instructions supplied by us or the Authorised Provider

2.2 2.2.1 when a New Version or Error Fix becomes available we or your Authorised Provider will send you written notification; and

2.2.2 if you would like to upgrade your Licensed Software with the New Version you must first contact us or your Authorised Provider and after verifying your request, you will be sent the New Version

2.2.3 this agreement must be valid for additional licenses to be purchased

2.3 As we continue to make New Versions available, we will cease to support certain prior versions and we will notify you, where the Licensed Software version you originally acquired will no longer be supported by us (directly or through the Authorised Provider),

2.4 We shall not be obliged to offer Error Fixes where the error arises from:

2.4.1 misuse, incorrect use of or damage to the Licensed Software by you or any other person;

2.4.2 use of the Licensed Software in combination with any equipment or software not supported by us or an Authorised Provider, or any fault in such equipment or software;

2.4.3 relocation or installation of the Licensed Software by any person other than us or an Authorised Provider or a person acting under our or the Authorised Provider's instructions;

2.4.4 modification or alteration of the Licensed Software by you

2.5 Where the Authorised Provider from whom you purchased your Licensed Software is no longer associated with us we shall, at our option and with your consent, assign an alternative Authorised Provider or ourselves to provide all levels of support including without limitation response to telephone and email enquiries and guidance relating to the Licensed Software ordinarily provided by the Authorised Provider. Such support may be chargeable at the charge notified to you by us

3. Duration and Termination

3.1 This Agreement shall continue for a period of 12 months and shall be automatically renewed for successive periods of one year at a time unless terminated in accordance with this clause 3

3.2 You may terminate this Agreement by giving us written notice of your intent not to renew at least 30 days before the last day of the 12 month period or any anniversary thereof

3.3 The rights to terminate this Agreement given by this clause shall be without prejudice to any other right or remedy of either of us in respect of the breach concerned (if any) or any other breach

3.4 On termination of this Agreement for any reason:

3.4.1 you shall immediately pay any outstanding monies to us ;

3.4.2 you shall not be entitled to a refund of any payment made; and

3.4.3 subject as otherwise provided in this Agreement and to any rights or obligations which have accrued prior to termination neither of us shall have any further obligations to the other under this Agreement

4 Warranties

- 4.1 You acknowledge that software in general is not error-free and agree that the existence of such errors shall not constitute a breach of this Agreement by us
- 4.2 We warrant that:
- 4.2.1 the Licensed Software, New Versions and Error Fixes that we support at any time, excluding any third party software, will substantially conform with all material operational features and material performance characteristics described in the Licensed Software documentation;]
- 4.2.2 the Licensed Software, New Versions and Error Fixes will not contain any software routine (for example but not limited to any back door, time bomb, Trojan horse or worm) that will deliberately disable, lock, erase or otherwise harm your software, hardware or data; and
- 4.2.3 the Licensed Software, New Versions and Error Fixes will not contain any other "lockout", self-help code or other disabling code or device that will otherwise prevent or restrict your use of the Licensed Software (including but not limited to passwords, time restrictions or "dongle")
- 4.3 No warranty is given that:
- 4.3.1 the Licensed Software and New Versions will meet your requirements;
- 4.3.2 the Licensed Software New Versions and Error Fixes will perform error-free or uninterrupted and will be free from viruses and infections (even though all reasonable measures have been taken to ensure the Licensed Software New Versions and Error Fixes are virus-free); or
- 4.3.3 we will correct all Licensed Software errors (whether diagnosed or not) including without limitation non-conformity with any of the warranties given in clause 4.2
- 4.4 To the extent permitted by law, we exclude all warranties with respect to the Licensed Software, New Versions and Error Fixes, either express or implied, including but not limited to any implied warranties of suitability or fitness for particular purpose and non-infringement of third party rights
- 4.5 We shall not be liable to you for any consequential special or indirect loss or damage which may arise in respect of the supply of the Licensed Software, New Versions, or Error Fixes (whether for loss of profit revenue goodwill or contracts) even if we had been advised of the possibility of such damages
- 4.6 In the event that any exclusion contained in this Agreement shall be held to be invalid for any reason and we become liable for loss or damage that may lawfully be limited, our maximum liability shall not exceed the price you paid under this Agreement in the year in which the liability arises
- 4.7 We do not exclude liability for death or personal injury caused by our employees' or agents' negligence

5 Intellectual Property Rights

- 5.1 You acknowledge that any and all copyright, trade marks, trade names, patents and other intellectual property rights ("Intellectual Property Rights") subsisting in or used in connection with the Licensed Software, New Versions and Error Fixes shall be and remain the sole property of us or any other party identified
- 5.2 You shall not during or at any time after the expiry or termination of this Agreement in any way question or dispute the ownership of the Intellectual Property Rights

6 Indemnity

- 6.1 You shall indemnify us against any claims, proceedings, losses, liabilities, damages charges and expenses (including reasonable costs) of whatever nature arising out of or in connection with any claim or action made against us relating to a breach by you of your obligations under this Agreement
- 6.2 Where a person makes a claim against you stating that our Licensed Software New Versions or Error Fixes infringe their Intellectual Property Rights, we will indemnify you in respect of all direct damages arising from the claim made against you provided that you:

- 6.2.1 have not done, permitted or suffered to be done anything which may have been or become an infringement of any Intellectual Property Rights;
- 6.2.2 notify us in writing of such a claim within 30 days from receiving notice of the claim;
- 6.2.3 give us sole control over the defence proceedings; and
- 6.2.4 give us the information, authority and assistance that we may reasonably require in relation to the claim

7 Force Majeure

We shall not be responsible for any delays in providing, or any failure to perform, any of our obligations under this Agreement due to any occurrence, event or cause beyond our reasonable control

8 General

- 8.1 You may not assign or otherwise transfer all or any of your rights or obligations under this Agreement without our prior written consent
- 8.2 This Agreement constitutes the entire agreement between you and us in relation to its subject matter and supersedes all prior agreements and understanding whether oral or written with respect to that subject matter
- 8.3 No party has relied on any representation or promise except as expressly set out in this Agreement
- 8.4 We reserve the right to amend these terms and conditions as required from time to time provided that we will give you no less than 14 days' written notice of such amendments. You will have 14 days from receiving the notice to review the amendments and submit any questions or concerns to us, and if you does not exercise this right, you will be deemed to have accepted the amended terms and conditions
- 8.5 No exercise or failure to exercise or delay in exercising any right power or remedy vested in either of us under or pursuant to this Agreement shall constitute a waiver by either of us or any other right power or remedy
- 8.6 Any waiver by either of us of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof
- 8.7 If any provision of this Agreement is declared by any judicial or other competent authority to be illegal, void, voidable or otherwise unenforceable or indications to that effect are received by either of us from any competent authority then that provision shall be limited or eliminated to the minimum extent necessary so that the Agreement shall otherwise remain in full force and effect and enforceable
- 8.8 Except as provided in this Agreement no term is enforceable under the Contract (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement

9 Notices

Any notice or other information required or permitted to be given by either of us under this Agreement shall be deemed to have been validly given if served personally on the other or if sent by first-class pre-paid post to the other's last known address. If sent by first class pre-paid post the notice shall be deemed to have been received 2 working days after the date of posting. If any such notice or other information is given by means of e-mail, facsimile or other immediate form of communication, then notice shall be deemed to have been received on the same day, provided it is sent within normal working hours or if sent outside normal working hours on the next working day

10 Jurisdiction and Governing Law

This Agreement shall be governed by and construed in all respects in accordance with English Law and both of us hereto submit to the exclusive jurisdiction of the English courts