



Master Subscription Agreement

THIS AGREEMENT GOVERNS CUSTOMER'S ACQUISITION AND USE OF SERVICES (EVEN ON A HYPOTHETICALLY FREE TRIAL PERIOD). THIS AGREEMENT IS EFFECTIVE BETWEEN CUSTOMER AND MAXPHO AS OF THE EFFECTIVE DATE. THE TIME ZONE IS SPECIFIED ON THE ORDER FORM. BY ACCEPTING THE ORDER FORM, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES. IF YOU, OR THE COMPANY/OTHER LEGAL ENTITY, DO NOT AGREE WITH THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT OR IF YOU DO NOT HAVE SUCH AUTHORITY YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES. ANY PERSON OR ENTITY (INCLUDING YOU, CUSTOMER AND THE USER) WHO IS A DIRECT COMPETITOR OF MAXPHO IS STRICTLY BARRED FROM USING ANY OF THE SERVICES, WHETHER FOR FREE OR AT A PRICE. IN ADDITION YOU MUST NOT ACCESS THE SERVICES WITH THE INTENTION OF MONITORING THE FUNCTIONALITIES, PERFORMANCE OR FOR ANY OTHER BENCHMARKING FOR THE PURPOSES OF COMPETITION, WHETHER DIRECTLY OR INDIRECTLY.

Table of contents:

1. [DEFINITIONS](#)
2. [LICENSE TERMS AND SERVICES](#)
3. [FEES AND PAYMENTS](#)
4. [CUSTOMER OBLIGATIONS](#)
5. [SOFTWARE DEVELOPMENT ACTIVITIES](#)
6. [USE AND PROTECTION OF TRADEMARK](#)
7. [EXPRESS TERMINATION](#)
8. [WARRANTY](#)
9. [RESPONSIBILITY FOR THIRD PARTY CLAIMS](#)
10. [COMMUNICATIONS](#)
11. [CONFIDENTIALITY](#)
12. [MAINTENANCE AND SUPPORT](#)
13. [SERVER](#)
14. [PENALTIES](#)
15. [LAW AND JURISDICTION](#)

The parties agree:

1. DEFINITIONS

- 1.1. "**MSA**" or "Master Subscription Agreement" or "Agreement" means this document with all terms and conditions required to use the Services.
- 1.2. "**SOF**" or "**Subscription Order Form**" or "**Order Form(s)**" is an order form document - or a web order form - for purchase of subscriptions hereunder, that are agreed to by Maxpho or entered into between Maxpho and Customer or Customer and an authorized partner, as applicable, from time to time. Orders Forms are deemed incorporated herein by reference.
- 1.3. "**Customer**" means the legal entity, such as a company or corporation, identified in this Agreement as the procurement agent or licensee to receive the Services. Customer details are specified on the Order Form.

- 1.4. **"User(s)"** means any person(s) retained by Customer for the purpose of being provided with any type of Support by Maxpho. The User has no direct legal relationship with Maxpho. In fact, the User acts only as an agent of Customer. The User's details are specified on the Order Form.
- 1.5. **"Maxpho"** means the company: "Maxpho Inc. 2345 Route 52, Hopewell Junction New York 12533".
- 1.6. **"Maxpho Site"** means one of the websites owned by Maxpho (including, but not limited to, www.maxpho.com, maxpho.com, www.maxpho.co.uk, maxpho.co.uk, www.maxpho.it, wiki.maxpho.it, demo.maxpho.com, maxpho.es etc...).
- 1.7. **"Effective Date"** begins when you click on the box and electronically sign the Agreement. Customer may start using all Services (free or at a price) under the terms and conditions of this Agreement from the Effective Date. However, renewal subscriptions are based on the date specified in the Order Form.
- 1.8. **"Rent"** means Customer's temporary use of the Software license without acquiring sole or duplicable rights throughout the validity of the Agreement. Customer must use the Software license only on the Maxpho Server Cloud via Web Interface or via Data Import. Other type of use are not allowed. At the end of this Agreement, Customer will have no rights regarding the Software license or Services.
- 1.9. **"Sell"** means Customer use of the Software license without acquiring sole or duplicable rights throughout the validity of the Agreement. With the Software license, Maxpho can provide (if requested by Customer) the encrypted code of the Software, the Web Interface and the Data Import. The Customer cannot, for any reason, modify, falsify, resell or publish the encrypted code. Throughout the validity of the Agreement, Customer may use the Software license on the Maxpho Server Cloud via Web Interface or via Data Import. At the end of this Agreement, Customer can still use the Software license (without any form of obligations on Maxpho) on Customer's own server managing all expenses (additional costs from Maxpho will be applied) and at Customer's own full risk.
- 1.10. **"Fee(s)"** means the amounts owed (including any expenses, taxes or duties) by Customer to Maxpho for the use of the Services.
- 1.11. **"Buyer"** means a person who buys online (or is interested in buying) a good or service on Customer's sales channels.
- 1.12. **"SLA" or "Service Level Agreement"** means the metrics by which a service is formally defined. In this Agreement, the SLA is: (a) the assistance time response and (b) the value of the Monthly Uptime Percentage. All claims of any other nature (i.e. accounting info, legal info, etc ...) are excluded from this definition Response times should be considered in working hours as shown in this Agreement. The following are excluded from response time: (a) public holidays or (b) weekdays when Maxpho gives an advance communication.
- 1.13. **"Downtime"** means, for a domain, if there is more than a five percent user error rate. Downtime is measured based on server side error rates. Other types of problems are not contemplated (i.e. User connection problem, Buyer device problem etc...).
- 1.14. **"Monthly Uptime Percentage"** is a percentage calculated in this way:

$$\frac{((total\ number\ of\ minutes\ in\ a\ month) - ((number\ of\ Downtime\ minutes\ in\ a\ month) - (number\ of\ Maintenance\ minutes\ in\ a\ month)))}{(total\ number\ of\ minutes\ in\ a\ month)}$$
- 1.15. **"24/7"** means 24 hours per day, 7 days per week, 365 days per year.
- 1.16. **"Software"** means a Maxpho web-based application (not open source) that allows Customer interact with various networks in order to sell products/services online (demo available here: <http://demo.maxpho.com>). The license limit is specified on the Order Form. Anyhow, when Customer exceeds 200,000 table rows (i.e. on products, orders etc...) some Software extensions may not be available (i.e. advanced search, quick view etc...) in order to maintain a high performance on the Server Cloud.
- 1.17. **"S3" or "Simple Storage Service"** is a web data storage managed by Amazon Web Services. Maxpho can provide this service to Customer in order to share files (such as images, text, etc ...) on the network.
- 1.18. **"Cloud Servers"** mean the Amazon Web Services servers where the Software is installed. Maxpho makes use of an external company to provide web access and web space. The owner of the servers is the company: "Amazon Web Services LLC, 1200 12th Ave. South, Seattle, WA, 98144, USA". Customer and/or the User will have access (as a visitor/administrator) only to the Amazon Web Service S3 (accessible via S3:HTTP protocol) and to the Software (accessible via HTTP protocol).

- 1.19. **"MWS" or "Maxpho WS" or "Maxpho Web Services" or "Service(s)"** mean services offered by Maxpho to Customer including: (a) the Software, (b) Cloud Server, (c) Support, (d) the Maintenance, (e) Software Extensions, (f) any Software Customization, (g) any improvements, (h) the Modules, (i) the Data Import, (l) the Web Interface and (m) Documentation.
- 1.20. **"Extension(s)"** means an additional Software feature already developed, controlled, tested and put into production environment by Maxpho. Before using an Extension, Customer has to read all the Extension terms, limitations and effects. The Extension's details are available on Maxpho Site and/or in the Documentation.
- 1.21. **"Software Customization(s)"** means a customization requested by Customer or by the User.
- 1.22. **"Support"** means the assistance activity managed by Maxpho to one or more Users, in case of: (a) How-To-Use; (b) Bug Reporting; (c) Emergency. Maxpho will not give Support to anyone but Users.
- 1.23. **"How-To-Use"** means Users can ask how to use the Services (i.e. "how can I insert a product attribute into the Software?", "does the Software allow me record and save an action and then apply this to a batch?", "where is the API documentation?" etc...).
- 1.24. **"Bug Reporting"** means Users can report a potential problem with the Services. The User must specify: (a) error proof, (b) web URL where the error can be replicated, (c) step to be taken in order to replicate the problem, (d) browser and device to use in order to replicate the problem, (e) what the User observed and what the User otherwise expected to observe.
- 1.25. **"Emergency"** means Users shall have Support only when the Software or the Web Interface or the Data Import is completely blocked (down) because of Maxpho (server-side). To be clear, a Bug Reporting is not an Emergency. Moreover, to declare an Emergency, the Users cannot use the Software and they cannot resolve the problem by themselves. The following are never considered as Emergencies when the problem is related to: (a) Networks, (b) Buyer browser/device or internet connectivity (client-side), (c) Users or Customer activity.
- 1.26. **"Working Days"** means all working days from Monday to Friday from 8:00am to 5:00pm. National holidays or specific working days (when communicated in advance by Maxpho via email) are excluded from the Working Days.
- 1.27. **"WSS" or "Web Support Service"** is a type of Support where Users may contact Maxpho 24/7 via email at the address: support@maxpho.com. Maxpho will answer the User via email or via phone call with an SLA of 4 Working Days for every single email (even if they have the same subject).
- 1.28. **"FSS" or "Full Support Service"** is a type of Support where Users may contact Maxpho in any of 2 ways: (a) 24/7 via email to support@maxpho.com, or (b) Working Days via phone call. Maxpho shall answer the User via email or via phone call with an SLA of 4 (four) Working Days for every single request (even if they have the same subject).
- 1.29. **"PSS" or "Premium Support Service"** is a type of Support where Users may contact Maxpho in any of 2 ways: (a) 24/7 via email to support@maxpho.com or (b) Working Days via phone call. Maxpho shall answer the User via email or via phone call with an SLA of 2 (two) Working Days for every single request (even if they have the same subject).
- 1.30. **"ESS" or "Emergency Support Service"** is a type of Support where User may contact Maxpho only in Emergency cases. Users may contact Maxpho in any of 2 ways: (a) 24/7 via email to support@maxpho.com or (b) Monday to Saturday from 8am to 8pm (including holidays) via phone call to a premium-rate telephone number. The Emergency call allows Users to leave information about the problem and be called back if an agent is not immediately available. Maxpho shall communicate via email or via phone call the estimated time for the resolution of the problem (in case there is one) and to start working on it with an SLA of (two) working hours (basing on Working Days).
- 1.31. **"Network(s)"** means: (a) external websites where Modules have an API integration or (b) any external website used on the Software. Networks are companies/associations/individuals not related to Maxpho (i.e. eBay Inc., Google Inc. etc...).
- 1.32. **"SKU(s)" or "Stock Keeping Unit"** means a unique code used to identify a specific product within Customer inventory. In the case of variant management (i.e. size/color), the SKU is managed for each variant (i.e. a product t-shirt in 5 sizes and 5 colors has 25 SKUs).
- 1.33. **"Product(s)"** means any goods or services added to the Software. In the case of variant management (i.e. size/color), the Product is considered 1 time only. (i.e. a "t-shirt" in 5 sizes and 5 colors has 15 SKUs in 1 single

Product; or a "t-shirt" in 5 colors in 5 different listing and each color has 5 sizes, has 25 SKUs in 5 different Products).

- 1.34. **"Customer Data"** means any data, information or material submitted by Customer/Users/Buyer to the Software, or stored by Customer in the Cloud Server (i.e. Products info, orders info, images files, pdf files, Buyers info etc...).
- 1.35. **"Feed(s)"** means a URL with Products in a CSV format (or similar). Once enabled, the Feeds are public and Customer can share the Feeds at his own risk.
- 1.36. **"Module(s)"** means: Marketplace Module, Social Module, Ecommerce Module and Digital Marketing Module.
- 1.37. **"Data Import"** means import/export data via "CSV" or via "API". The CSV or API must be formatted in a specific way. The Documentation is available in the Software and/or may be provided directly by Maxpho. In order to use the Data Import, Customer must have (a) a stable internet connection with at least 2Mbps download and 512Kbps upload and (b) an adequate understanding of developing web-based applications.
- 1.38. **"Web Interface"** means the graphic user interface available online (via HTTP or HTTPS address) used to manage the Software. The Web Interface may be used if the User has (a) a stable internet connection with at least 2Mbps download and 512Kbps upload and (b) has installed on the User's computer the latest version of Mozilla® Firefox® browser.
- 1.39. **"Marketplace Module"** is a Software Module that allows Users manage Products on several marketplaces (i.e. ebay.com, ebay.fr, amazon.com etc...) through the Software. Using this Module, the User may manage a maximum of 200,000 Products.
- 1.40. **"Social Module"** means a Software Module that allows Users insert posts on social networks (i.e. facebook.com, twitter.com). Using this Module, the User may manage a maximum of 3 Products per day.
- 1.41. **"Ecommerce Module"** is a Software Module that allows Users sell Products through ecommerce websites. In order to use this Module, Customer must (a) buy and manage the domain on which the e-commerce will work and (b) point the DNS records directly to the Server Cloud. Maxpho is not responsible for any issue on the domain or DNS.
- 1.42. **"Digital Marketing Module"** is a Software Module that allows the Users promote the Ecommerce Module via web marketing campaigns (i.e. price comparison websites). Through this Module, the User may manage a maximum of 200,000 Products.
- 1.43. **"Documentation(s)"** means all Maxpho materials, including designs, drawings, specifications, documents, wiki, training manuals and user manuals (online or in hard copies) used in assisting and defining the correct use of the Services. Maxpho allows the use of the Documentation with non-exclusive rights and solely related to the use of the Services.
- 1.44. **"Payment(s) Notice(s)"** is a no-fiscal document sent by Maxpho to Customer. The Payment Notice contains all payment details for the Fee.
- 1.45. **"CSV"** means Comma-Separated Values. A CSV file stores tabular data (numbers and text) in plain text (more info available here https://en.wikipedia.org/wiki/Comma-separated_values). CSV file is usually used by Users to import or export Customer Data (i.e. import or export hundreds of Products). The Documentation specifies how to format a CSV file in order to use it with the Software. The User must follow the Documentation.
- 1.46. **"API"** means Application Programming Interface. API allows 2 software communicate directly without using the Web Interface (more info available here https://en.wikipedia.org/wiki/Application_programming_interface). API are usually used by Users for IT automation (i.e. automatically import or update Products). The Documentation specifies how to format an API call in order to use it within the Software. The User must follow the Documentation.
- 1.47. **"Maintenance"** means the Software updates handled by Maxpho for 2 reasons: (a) in order to fix some bug or (b) to add and/or modify the Services.
- 1.48. **"Confidential Information"** means all information disclosed by a party to the other party, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer Confidential Information includes Customer Data; Maxpho Confidential Information includes the Services and Fee; and Confidential Information of each party includes the terms and conditions of this Agreement and all order forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business

processes disclosed by such party. However, Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party.

- 1.49. **"Written Communication"** means the parties may communicate with each other by registered mail. For Written Communication email are excluded.
- 1.50. **"Authorized Partner"** means a Maxpho partner under a fully-executed Maxpho agreement who is associated with an Order Form under this Agreement.
- 1.51. **"GMV"** or **"Gross Merchandise Value"** means the sum equal to the value of Customer's Products processed for sale using any Service (for example, sold on a Network or Customer's e-commerce website). GMV includes shipping, sales tax and, where applicable, VAT and GST. GMV excludes cancel orders. For purposes of calculating GMV, GMV is converted to the appropriate currency applying the applicable rates specified in the Software.
- 1.52. **"Revenue sharing"** is the distribution of profits between Customer and Maxpho with a GMV percentage. If applicable, the percentage is defined in the Module Order.

2. LICENSE TERMS AND SERVICES

- 2.1. In this Agreement, the Software is related to "Maxpho Commerce", a web-based application (not open-source) that allows Users manage Customer Data and interact with Modules in order to sell Products online (further info are available at <http://www.maxpho.com>).
- 2.2. The Software license can be: Rent or Sell. The Software license type, the Fee and the usage limits are incorporated into the Order Form.
- 2.3. In case of Sales, Customer can install the Software on his own server managing all expenses (additional costs from Maxpho will apply) at his own full risk, losing the following rights: (a) any type of warranty on the Services, (b) any type of Maxpho Maintenance, and (c) the Assistance will be limited only to How-To-Use (Bug Reporting and Emergency are totally excluded).
- 2.4. The Software license shall apply to only 1 domain and 1 directory specified in the Order Form. Customer must (a) buy and manage the domain and (b) point the DNS records directly to the Server Cloud. Maxpho is not responsible for any issue on the domain or DNS. Maxpho shall also provide a secondary domain to allow Customer use the Services in case of problems with the domain.
- 2.5. The Customer is hereby informed that internet and the use of related services are at his own risk.
- 2.6. During the Agreement, Maxpho will provide Users the standard level of Support indicated in the Order Form; however, if Customer purchases subscriptions through an Authorized Partner, Customer shall obtain initial Support directly from the Authorized Partner and Maxpho shall have no obligation to provide initial Support to Customer unless otherwise agreed to in writing by the parties. Additional upgraded Support services may be purchased by Customer via submission of an Order Form. Customer agrees that Maxpho may subcontract and/or assign the provision of its Support to a third party.
- 2.7. Customer understands and acknowledges that Services are not configured to receive and store personal health information ("PHI"), as that term is defined under the Health Insurance Portability and Accountability Act ("HIPAA") and that Maxpho is neither a covered entity nor a business associate as those terms is defined in HIPAA. As such, Customer agrees, on behalf of itself and its Users, not to use the Services or provide access to or submit any PHI to Maxpho when requesting Support in either case, not to, directly or indirectly, submit, store or include any PHI into the Software.
- 2.8. Except as expressly stated in this Agreement, no other service will be provided to Customer and the Software shall operate on the basis of the Maxpho guidelines. No rights of any source code are provided to Customer. Customer, the User or third parties, must not disassemble, transfer, decompile or otherwise extract the source code or design information about any technology used by Maxpho and is not allowed to make changes in the Services. Customer, the User or third parties, may not remove or obscure any copyright, patents, trademarks, trade secrets (or similar) placed on the Services.

- 2.9. Customer agrees that the structure and commercial organization, behind the Services, are Maxpho Confidential Informations and will remain strictly confidential.
- 2.10. The Services shall be considered available to Customer when the Software access credentials are sent to Customer.
- 2.11. The Software allows Customer become technically connected with the Networks, which means Customer must open a personal account for each Network (signing a new contract for each Network). Maxpho is not responsible for: (a) Customer not being allowed to open an account for any reason, in one or more Networks; (b) the Customer Network account being suspended or terminated at any time; (c) the Network having any fiscal or legal issues (i.e. bankruptcies, class actions etc...); (d) the Network having temporary or permanent malfunctions/interruptions.
- 2.12. With prior email notice, Maxpho may access, monitor or remove Customer Data - or disable part or the whole of the Services accessed by Customer - if (a) a Network in use by Customer asks Maxpho to do so, (b) Maxpho, in its sole reasonable discretion, believes that could be directly responsible due to information made public by Customer, (c) Maxpho is required to do so by law, government order or other legal process, (d) in order to enforce the terms of this Agreement or (e) Maxpho notices a motivated security issue and/or privacy security issue.
- 2.13. In its sole discretion, Maxpho can change any design, layout, content, features or functions of Services without prior notice.
- 2.14. The Customer is aware that all changes in the Software made by Users, require an execution time (depending on the Network, operation type or cache) before the change takes effect online. Maxpho is not responsible for any wrong online information due to a delay.
- 2.15. In its sole discretion, Maxpho may change Networks from time to time. Maxpho may restrict, terminate or add Networks.
- 2.16. In its sole discretion and expenses, Maxpho may use external software/services (free or for sale), if considered useful to improve the Services performances.
- 2.17. If Customer purchases one of the Services from an Authorized Partner, then Customer warrants and agrees that it has appointed the Authorized Partner to act as Customer's agent in the procurement and management of the Services and that Maxpho may deal directly with the Authorized Partner on that basis. The provision of any Customer Data by that Authorized Partner will be deemed to have come from Customer directly and it is Customer's responsibility to ensure the accuracy and completeness of the Customer Data. If Customer does not wish the Authorized Partner to have access to Customer Data or to act on Customer's behalf, the Customer must inform Maxpho by Written Communication.
- 2.18. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, Maxpho may assign this Agreement in its entirety (including all Order Form), without Customer consent, to its Authorized Partner or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, this Agreement shall bind and inure to the Customer's benefit.
- 2.19. Any future Customer request (i.e. Software customization, new Software Extensions etc...) may be rejected by Maxpho without any kind of explanation.
- 2.20. If specified on the Order Form, at no additional charge, Maxpho will provide a duplicate of Customer's production environment (hereafter "Sandbox"). Any additional requests for a Sandbox shall be subject to additional Fee for such service. A Sandbox is intended to be used for development, testing, or staging of any modifications to Customer's production environment instance, and not for use as a production environment instance.
- 2.21. THE SOFTWARE IS PROVIDED TO CUSTOMER STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

3. FEES AND PAYMENTS

- 3.1. Customer shall pay the Fee in the currency specified in the Order Form, according to the payment method specified in the Order Form. If not specified in the Order Form, the currency is USD.
- 3.2. Maxpho shall sign and accept the Order Form once the first payment is made by Customer.
- 3.3. For any payment delays, Maxpho will charge, without prior notice, additional costs basing on the official national rate.
- 3.4. The Fees do not include any taxes, levies, duties or similar governmental assessments of any nature (including for example value-added taxes, sales taxes, use or withholding taxes, assessable by any jurisdiction whatsoever). The Customer is responsible for paying all taxes associated with the purchases hereunder. Upon Maxpho having the legal obligation to pay or collect taxes for which the Customer is responsible under this section, Maxpho will invoice it to Customer. The Customer shall pay that amount unless he provides to Maxpho a valid tax exemption certificate authorized by the appropriate taxing authority.
- 3.5. The Customer shall be notified of the Fee amount with a Payment Notice. If Maxpho does not receive the full payment within 5 days, Maxpho in its sole discretion, may oblige the Customer for another 10 (ten) days.
- 3.6. If an automatic payment system fails (i.e. credit card), the Customer must pay the Fee via wire transfer within 15 days.
- 3.7. In any case, if payment of Fee becomes 15 or more days late, according to the date of Payment Notice, Maxpho has the right to suspend the Services until the payment is made. In this case, the Customer will have to pay all legal fees incurred by Maxpho.
- 3.8. The Customer may dispute any invoice/Payment Notice no later than 15 days from the date of receipt. The parties shall work in good faith to promptly resolve the dispute.
- 3.9. For some payments methods, the invoice shall be issued by Maxpho once the payment is made.
- 3.10. In the case of the Services being suspended because of section 3.7, an additional Fee of \$300.00 will be charged by Maxpho to the Customer in order to reactivate the Services.
- 3.11. In the case of missed payment via ACH or wrong amount made via wire transfer, an additional Fee of \$50.00 will be charged by Maxpho to Customer.
- 3.12. In its sole discretion, Maxpho has the right to increase or modify its Fee on renewal. To give effect to the amendment, Maxpho must notify Client within 90 days prior to renewal. The Customer can always terminate the Agreement if he does not agree with the new Fee.

4. CUSTOMER OBLIGATIONS

- 4.1. The Customer is solely responsible for all information added to the Software, either privately (i.e. by e-mail) or in an area (i.e. on the Cloud Server and/or on third parties servers).
- 4.2. The Customer is solely and personally responsible for any consequences that such information could cause a third party under both civil and criminal law.
- 4.3. The Customer is solely responsible for criminal offenses and the Customer must respect the laws and regulations on copyright.
- 4.4. The Customer is solely responsible, either under civil or criminal liability, for content published on the web or printed, regardless of the Customer Data ownership.
- 4.5. The Customer is solely responsible for the User actions. Maxpho, provides the credentials to the Users and Maxpho considers Users to act as Customer's agent in the procurement and management of the Services.
- 4.6. The Customer guarantees that neither Customer, nor the Users, nor third parties, will send emails without permission (spam).
- 4.7. The Customer guarantees that all information added on the Software: (a) are owned or licensed by the Customer or are on public domain, (b) do not constitute defamation, libel or obscenity, (c) do not involve any Buyer fraud or cause injury to third parties, (d) do not contain activities related, directly or indirectly, to pornography, to extreme ideologies or, in any case, are against public morality and (e) do not contain any viruses, trojans, worms, spyware, time bombs or other forms of malware that are designed to interfere with or disrupt the Services or any other online/offline services.

- 4.8. The Customer can use trademark signs only if he is the trademark owner or has the authorization to use such trademark.
- 4.9. The Customer or Users must not redistribute the Services offered by Maxpho to third parties.
- 4.10. The Customer is hereby barred from using other technologies not indicated on Documentation/Web Interface.
- 4.11. The Customer must choose a strong password and make sure that every Users use secure passwords. Maxpho is not responsible for any unauthorized access to the Services.
- 4.12. The Customer agrees to send Written Communication on any anomaly or problem discovered, within 15 (fifteen) days from when the problem or anomaly occurred, providing a honest documentation of the problem or anomaly found. Otherwise, any Customer's dispute/claim will be rejected.
- 4.13. The Customer must have the right privacy policy that complies with all laws, rules and regulations, including, without limitation, the treatment of all personal information in accordance with the United States of America authorities. The Customer can not keep Buyer's personal data for a period longer than necessary to complete the transaction and the Customer must establish security processes to protect the Buyer's personal data based on applicable law. The Customer acknowledges that the Buyer's data (or visitor information) may be transmitted in the United States, Canada, Singapore, Australia, China, Japan or in other European Union countries for business needs and/or for statistical purposes. The Customer will comply in full with the requirements of any applicable privacy and data protection laws (including, where applicable, European Union directive 95/46/EC and any national implementation(s) of them) to which it is subject as a data controller.
- 4.14. The Customer is responsible for providing all the Customer Data in the local language and providing support to Buyer in the same local language.
- 4.15. The Customer is responsible for publishing all right taxes on Products, providing the correct prices to Buyer.
- 4.16. The Customer is responsible for order processing to all its Buyers. The Customer shall deliver all goods purchased through the Software within a commercially reasonable time (once the Customer has received the payment for the goods purchased). The Customer is solely responsible for maintaining inventory levels sufficient to support its sales.
- 4.17. Customer, User or anyone else must not disassemble, transfer, decompile or otherwise extract the source code, or design similar technologies used by Maxpho in the Services and is not allowed to make any changes in the Services. Customer, User or anyone else, may not remove or obscure any copyright, patents, trademarks or similar properties alert visible on the Services.

5. SOFTWARE DEVELOPMENT ACTIVITIES

- 5.1. Any approved Software Customization shall increase the annual or monthly renewal at a rate of 15% of (i.e. annual renewal \$ 2,000.00; customization \$ 1,000.00; next renewal \$ 2,150.00).
- 5.2. This activity relates to the Software Customization required by the Customer in order to design, develop, customize or add new features to the Software.
- 5.3. In order to request a Software Customization: the Customer shall make a request to Maxpho for the Software Customization with all specifics. Maxpho may: (a) reserve the right to communicate the timing and costs to Customer, (b) publish the idea on the Maxpho Site in order to have a feedback from other external Maxpho clients, or (c) may discard the Software Customization, without any obligation to inform Customer.
- 5.4. The Customer has been informed that final decision on each Software Customization is always up to Maxpho, who can refuse the Customer request for any reason and at any time.
- 5.5. The Customer may also comment and/or evaluate Software Customization suggested by other Maxpho clients through the Services and/or through the Maxpho Site.
- 5.6. The Customer does not have any ownership of Software Customization (even if the Customer pays for it), but has the right to use it within the term of this Agreement. The Software, the Software Extensions and Software Customization (even if commissioned and paid for by Customer) are the exclusive property of Maxpho and are internationally protected by Copyright and other intellectual property rights.

- 5.7. In the case of the Customer asking for a Software Customization or license extension (maximum of 2 per license) after signature of this Agreement, the quotation or the Order Form shall be considered as part of this Agreement.

6. USE AND PROTECTION OF TRADEMARK

- 6.1. The parties may use their respective brands, paying attention to the layout, fonts, graphics, colors and proportions of the original. The parties shall not make improper use that can devalue the brand itself (i.e. brand associations to pornography, politics, war, insults, etc ...).
- 6.2. More information on the use of the Maxpho brand are available here <http://wcdn.maxpho.com/terms/en/Trademark-Protection.pdf>
- 6.3. Each party shall promptly notify the other party if they notice any trademark infringement of any kind.
- 6.4. Upon termination or cancellation of this Agreement, the parties shall immediately discontinue the use of the other party's trademarks, regardless of any disagreement on the cause of termination.

7. EXPRESS TERMINATION

- 7.1. Maxpho has the right, at any time, to immediately terminate this Agreement (hereby "Express Termination") if: (a) The Customer does not pay any type of Fee, (b) The Customer assigns this Agreement to a third party without prior consent of Maxpho, (c) The Customer violates the law, upon Maxpho becoming aware of the fact, (d) The Customer does not follow the rules of normal behavior adopted online or the Customer does not follow the normal behavior communicated by Maxpho itself, (e) the Customer publishes ads information that do not conform to the law, (f) the Customer publishes press releases that do not conform to the law, (g) the Customer goes under federal investigation and/or proceedings (i.e. injunctions, enforcement procedures etc...) that demonstrate the Customer insolvency, (h) The Customer becomes bankrupt, (i) The Customer violates one or more obligations of the Agreement in section: 2 (LICENSE TERMS AND SERVICES) 3 (FEES AND PAYMENTS), 4 (CUSTOMER'S OBLIGATIONS), 6 (USE AND PROTECTION OF TRADEMARK), 10 (COMMUNICATIONS) and 11 (CONFIDENTIALITY).
- 7.2. In the cases mentioned in points (c), (d), (e), (f) of section 7.1 Maxpho does not have any responsibility even if Maxpho is aware of the occurrence of any or all of the events specified in section 7.1.
- 7.3. The Express Termination shall occur upon Maxpho sending Written Communication or email to the Customer with the subject "Express Termination" (or similar) and explain the reasons for such express termination.
- 7.4. In case of Express Termination for any reason, the Fee already paid by the Customer shall not be refunded. In case of Express Termination under point (a) of section 7.1, Maxpho may oblige the Customer paying the Fee even after the Express Termination charging, all costs for an attorney and/or court procedures.
- 7.5. In the case of Express Termination all Services shall terminate immediately.
- 7.6. The Customer has the right, at any time, to immediately terminate this Agreement, with the right of asking for a refund as specified under art. 14.5, when the Monthly Uptime Percentage is under 95% for more than 2 times per year.

8. WARRANTY

- 8.1. For the period of the Agreement, Maxpho will make the Services available pursuant to this Agreement and the Order Form, with an exception for Modules that interact with external Networks.
- 8.2. For the period of the Agreement, Maxpho will resolve any Service problem (bug) with no additional Fee required from Customer. Maxpho will never consider as a Software problem when the problem or anomaly is caused by: (a) incorrect use of Services by anyone but Maxpho, (b) other applications or hardware installed by anyone but Maxpho, (c) any change made on the Services by anyone but Maxpho.

- 8.3. Maxpho uses commercially reasonable efforts to make the Services available 24/7, except for: (a) planned downtime (of which Maxpho shall give advance notice), and (b) any unavailability caused by circumstances beyond Maxpho reasonable control including, for example, act of government, flood, fire, earthquake, an act of God, civil unrest, act of terror, strike or other labor problem (other than one involving Maxpho employees), Cloud Server failure or internet service provider failure.
- 8.4. Maxpho will not Support Users for applications or services not provided by Maxpho itself (i.e. browsers, devices, OS etc...).
- 8.5. For any possible the Customer refund request, the total amount requested must not exceed the total contracted year Fee. Any Fee paid on previous contracted years is excluded from any possible refund.
- 8.6. From time to time Maxpho shall update the Software with new features.

9. RESPONSIBILITY FOR THIRD PARTY CLAIMS

- 9.1. Maxpho shall bear the cost of: (a) settling or defending any action, claim or demand brought by a third party against Customer, Customer's officers, Customer's directors, Customer's employees or Customer's agents, where the third party claims that the "Maxpho" trademark infringes such third party's trademarks/copyrights or Maxpho illegally dealt with such third party's trade secrets in providing the Services, and (b) settling all such damages awarded against the Customer or Customer's indemnified parties or as agreed in settlement between Maxpho and the third party. Maxpho shall not be liable to the Customer under this section for any claim, action or demand upon such claim, demand or action being derived from: (i) a third party application, the Customer web-application or the Customer Data, (ii) modifications made by anyone but Maxpho, where the Services would not have otherwise infringed except for such modification, (iii) combination of the Services with other products, processes or materials where the Services would not have otherwise infringed except for such combination, (iv) where the Customer continues to use the Services after the Customer has been informed of suspected infringement, or (v) where Customer's use of the Services contravenes any provision of this Agreement.
- 9.2. In the event that Maxpho believes the Services, or any part thereof, may be the subject of an infringement or a misappropriation claim as to which this section 9.1 applies, then Maxpho, in its discretion and at its sole expense replace such Services, or infringing part thereof, with a non-infringing version (or part thereof).
- 9.3. In the event that Maxpho believes the Services, or any part thereof, may be the subject of an infringement or a misappropriation claim as to which this section 9.1 applies and in case the event in 9.2 is not commercially feasible, the Customer shall have the right to terminate this Agreement and have a pro-rata refund of unused portion of any pre-paid subscription Fee.
- 9.4. The Customer shall bear the cost of: (a) settling or defending any action, claim or demand brought by a third party against Maxpho, Maxpho's Authorized Partners, Maxpho's officers, Maxpho's directors, Maxpho's employees and Maxpho's agents, and (b) settling all such damages awarded against the Customer indemnified parties or as agreed in settlement between the Customer and such third party arising from: (i) Customer's breach of the provisions of sections 4 (CUSTOMER OBLIGATIONS) of this Agreement, (ii) any claim against the Customer to the extent that Customer's data breaches any rights of a third party, (iii) any claim that User's use of the Services in breach of the provisions of this Agreement infringes the rights of a third party, or (iv) any claim that the Customer violated applicable laws, rules or regulations in performing this Agreement.
- 9.5. EXCEPT FOR A VIOLATION OF SECTIONS 2.7, 2.9, 4.2, 4.3, 4.4, 4.7, 4.9 AND 4.17, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR (A) ANY PROFITS OR REVENUE OR FOR ANY INDIRECT, SPECIAL, COVER, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING UNDER THIS AGREEMENT AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (B) AN AMOUNT THAT EXCEED THE TOTAL PAID FEE TO MAXPHO UNDER THIS AGREEMENT DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE ACT/FACT.

10. COMMUNICATIONS

- 10.1. Each party shall promptly send Written Communication to the other party, in case the party's address change. If not, any Written Communication to the old address is considered valid.
- 10.2. If the Customer specifies a wrong address in the Order Form or the Customer does not keep it updated, Maxpho is exempted from any liability.

11. CONFIDENTIALITY

- 11.1. Maxpho will maintain administrative, physical, and technical safeguards for the protection of the security, confidentiality and integrity of the Customer Data. These safeguards shall include, but shall not be limited to, measures for preventing access, use, modification or disclosure of the Customer Data by Maxpho personnel except (a) to provide the purchased Services and prevent technical problems, (b) as compelled by law, or (c) as the Customer expressly permit in writing.
- 11.2. Maxpho will process and/or share the Customer Data in accordance with Customer's instructions under applicable privacy law(s) and Maxpho shall not process the Customer's Data for its own purposes.
- 11.3. The Customer is informed that only technical specialized Maxpho personnel have access to the Cloud Server.

12. MAINTENANCE AND SUPPORT

- 12.1. The Support may be: WSS, FSS, PSS or ESS (or a combination of any or all of them). The Support type is defined on the Order Form. The User can use only the Support type specified in the Order Form. The SLA for each Support type is specified in section 1.27, 1.28, 1.29 e 1.30.
- 12.2. The Support is also extended to Software Customizations.
- 12.3. If the Bug Reporting is not specified with all information requested on points a,b,c,d,e of section 1.24, Maxpho can reject the Bug Reporting.
- 12.4. In case the Bug Reporting is not replicable, it shall not be considered as a technical Software problem.
- 12.5. In case the Bug Reporting is replicable and considered as a Software problem (hereafter "Bug") by Maxpho, the Bug must be fixed within a time decided by the specialized Maxpho personnel, and Maxpho must communicate that deadline to User. Except for any delay on Bug fixing deadline, the Customer will not have any refund for damages or any other inconvenience. In case of delay on Bug fixing deadline, the Customer has the right to ask for a refund on a daily basis pro-rata each day of delay as specified in section 14.3.
- 12.6. For any Customer and/or User request not specified in this Agreement, the Customer shall be charged \$120 per hour (i.e. the Customer Data changes, design etc...).
- 12.7. In cases of wrong Emergency communications or an abuse of the regular Support, the Customer shall be charged \$120 per hour.
- 12.8. In order to provide Maintenance, Maxpho may suspend the Services for up to 4 hours each time, for up to 8 times per year.
- 12.9. In the case of Maintenance, Maxpho shall: (a) carry it out in the evenings (unless Maxpho is unable to do so), (b) give prior notice to the Customer and/or to the User (unless Maxpho is unable to do so).
- 12.10. The SLA on Monthly Uptime Percentage must be above 99,9% (which is the equivalent to a maximum Downtime of 43 minutes and 49 seconds per month. The Monthly Uptime Percentage returns back to 100% the first day of every month.
- 12.11. Downtime due to Maintenance shall not be considered on the Monthly Uptime Percentage.

13. SERVER

- 13.1. Maxpho may change the Server Cloud at its sole discretion, simply by giving Written Communication or via e-mail to Customer.
- 13.2. The Server Cloud must process and save the log files as specified in local law and regulations.

- 13.3. Any service not specified in this Agreement (i.e. backup recovery, email address, SSL certificate etc ...) has an additional cost.
- 13.4. Fee for extra usage of Cloud Server must be paid in advance every year (hereby "Estimate Usage") and shall be settled and paid at the end of the year (hereby "Real Usage"). The Customer can always monitor the monthly usage of the Cloud Server from the Web Interface (icon above on the right). The Customer must pay extra usage of the Cloud Server without exceptions.

14. PENALTIES

- 14.1. The Agreement continues until all subscriptions hereunder have expired or have been terminated. The term of subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 60 days before the end of the relevant subscription term.
- 14.2. If this Agreement is terminated by the Customer without following section 14.1, the Customer shall pay any unpaid Fee covering the remainder of the term of all Order Forms.
- 14.3. In case Maxpho does not fix a Bug within the proposed time, the Customer has the right to: (a) send a Written Communication to Maxpho within 30 days (starting on Bug fixing date), asking for a pro rata daily refund (based on dividing the last 12 months Fee by 365) for every day the Bug was not fixed starting from the deadline, (b) not send any Written Communication to Maxpho within 30 days, waiving any Maxpho violation and any immediate or future refund request.
- 14.4. In case Maxpho does not act in accordance with the response time on Support SLA, the Customer has the right to: (a) send a Written Communication to Maxpho within 30 days (starting from the Support response date), asking for a pro rata daily refund (based on dividing the last 12 months Fee by 365) for every day starting from the Support request date to the Support response date, (b) not send any Written Communication to Maxpho within 30 days, waiving any Maxpho violation and any immediate or future refund request.
- 14.5. In the case of Maxpho violation on Monthly Uptime Percentage SLA, the Customer has the right to: (a) send a Written Communication to Maxpho within 30 days (starting from the beginning of Downtime date), asking for a pro rata daily refund (based on dividing the last 12 months Fee by 365) as specified in the following table, (b) not send any Written Communication to Maxpho within 30 days, waiving any Maxpho violation and any immediate or future refund request.

Monthly Uptime Percentage	Days of refund on monthly basis
between 99.9% and 99.0%	7 days
between 99.0% and 95.0%	15 days
Below 95.0%	30 days

- 14.6. In the case of the Agreement expiring, not being renewed or terminated, all Confidential Information shall survive for five (5) years starting from the date of termination. Each party must keep confidential all Confidential Information without sharing them internally or in public.
- 14.7. In the case of the Agreement expiring, not being renewed or terminated, the following sections shall survive: 4 (CUSTOMER OBLIGATION), 6 (USE AND PROTECTION OF TRADEMARK), 9 (RESPONSIBILITY FOR THIRD PARTY CLAIM), 11 (CONFIDENTIALITY), 15 (LAW AND JURISDICTION).

15. LAW AND JURISDICTION

- 15.1. This Agreement supersedes any previous oral or written agreement (on the same subjects) and, in particular, takes precedence over any annexes.
- 15.2. Any tolerance of one of the parties for any specific violation, does not constitute a waiver of the violation itself.
- 15.3. The invalidity or unenforceability of one or more sections of this Agreement does not lead to the invalidity or ineffectiveness of other provisions of the Agreement. In such circumstances, the parties shall negotiate in good faith to replace the invalid article.
- 15.4. If any of the parties wish to retain the services of an attorney or attorneys to enforce the terms of this Agreement or to file an action to enforce any of the terms, conditions or rights contained herein, or to defend any action, then the prevailing party in any such action shall be entitled to recover from the other party its reasonable fees for attorneys and expert witnesses, in addition to such court costs and expenses as may be fixed by any arbitration panel or court of competent jurisdiction.
- 15.5. This Agreement and any dispute arising out of or in connection with this Agreement shall be governed as to all matters, including, but not limited to the validity, construction and performance of this Agreement, by and under the laws of the State of New York, United States of America, without giving effect to conflicts of law principles thereof and excluding the U.N. Convention on the International Sale of Goods.
- 15.6. ANY PROCEEDING TO RESOLVE OR LITIGATE ANY DISPUTE IN ANY FORUM SHALL BE CONDUCTED SOLELY ON AN INDIVIDUAL BASIS. NEITHER THE CUSTOMER NOR MAXPHO WILL SEEK TO HAVE ANY DISPUTE HEARD AS A CLASS ACTION OR IN ANY PROCEEDING IN WHICH EITHER PARTY ACTS OR PROPOSES TO ACT IN A REPRESENTATIVE CAPACITY. NO PROCEEDING SHALL BE COMBINED WITH ANOTHER WITHOUT THE PRIOR WRITTEN CONSENT OF ALL PARTIES TO THE AFFECTED PROCEEDINGS. THE CUSTOMER HEREBY GIVES UP THE RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM THE CUSTOMER MAY HAVE AGAINST MAXPHO INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.
- 15.7. The Services and derivatives thereof may be subject to export laws and regulations of the United States and the European Union. Each party represents that it is not named on any USA and EU government denied-party list. You shall not permit anyone to access or use any Service in the USA, the EU or ONU embargoed country or in violation of any USA and EU export law or regulation.