

Software as a Service Master Agreement

Version 1.2

This Software as a Service (SaaS) Master Agreement (“Agreement”) is between Maximum Solutions, Inc. (“Maximum Solutions”), a Minnesota corporation, with a principal place of business at 4570 W. 77th Street, Ste 365, Edina, MN 55435, and the entity whose name appears on the signature page of this Agreement as the Customer and is made as of the date signed by Maximum Solutions on the signature page of this Agreement (“Effective Date”).

Maximum Solutions and Customer agree that the provisions of this Agreement apply to Maximum Solutions’ provision of Services to Customer, except as otherwise provided on an Order placed in connection with this Agreement.

1. Definitions

In this Agreement, the words “you,” “your,” and “Customer” mean the person or entity named on the signature page of this Agreement as the Customer, and includes any authorized subcontractor, agent or consultant acting on its behalf. The words “we,” “us,” “our,” and “Maximum Solutions” each mean Maximum Solutions, Inc. The term “Customer Data” has the meaning given in Section 14 of this Agreement. The term “Documentation” means user guides, manuals and release notes for the Services. “Order” means Maximum Solutions’ standard form or Statement of Work for ordering the Services. “Services” means the services provided by Maximum Solutions hereunder. The term “Software” refers to the MaxGalaxy suite of application software products”.

2. Grant; Use

Subject to the terms of this Agreement, we grant you and you accept a non-exclusive, non-perpetual, terminable and non-transferable right, except as provided in Section 9, to access and to use the Services for you and your subsidiaries’ and affiliates’ internal business purposes. You are responsible for the acts and omission of your subsidiaries, affiliates, subcontractors, agents and consultants with respect to their use of the Services and this Agreement, and all such acts or omissions shall be deemed acts or omissions on your part. Your rights under this Agreement will automatically terminate upon expiration of or termination of this Agreement. Subject to the restrictions on use as set forth herein, Customer will have access to the Software and Maximum Solutions’ application server for the purpose of using the software for its intended purpose and in accordance with the specifications set forth in any documentation relating to the Software provided by Maximum Solutions. Such use and access will be continuous on a 24/7 basis except for interruptions by reason of maintenance or downtime beyond Maximum Solutions reasonable control. The Customer understands that the reliability of the Internet and of connections to and from the Internet may be affected by factors beyond the control of Maximum Solutions; because of this, it is impossible for Maximum Solutions to guarantee that the service will be uninterrupted, that the Customer will be able to properly access and use the Software, or that the software will be provided without error.

3. Ownership; Reverse Engineering; Restrictions

(a) Maximum Solutions and its suppliers retain all title and ownership to the Services. Maximum Solutions and its suppliers reserve all rights in the patents, copyrights, trade secrets and other intellectual property in the Services. You may not use the Services to provide time sharing services or operate a services bureau for third parties.

(b) You may copy the Documentation solely to facilitate your use of the Services in accordance with, and subject to, the terms and conditions contained herein.

(c) You understand that the Services and Documentation and the terms and pricing under this Agreement constitute valuable properties and trade secrets of Maximum Solutions, which are proprietary and confidential. You agree to maintain the confidentiality of such information and to protect the information to the extent permitted under Florida law as a trade secret by preventing unauthorized copying, use or disclosure of such information. In doing this you agree to maintain at least the same procedures that you maintain with respect to your own confidential information, which shall not be less than reasonable care. You may not disclose the Services or Documentation to a competitor of ours or disclose results of any benchmark test of the Services to any third party without Maximum Solutions prior written approval. Maximum Solutions will likewise keep all Customer Data confidential in like manner and not disclose to third parties.

(d) You may not remove, alter or destroy any proprietary, trademark or copyright notices placed upon or contained within the Documentation. You acquire no rights of any kind in or to any trademark, trade name, logo or product designation under which the Services are marketed and you may not make any use of the same for any reason.

(e) You agree not to reverse engineer, modify, decrypt, extract, disassemble, copy, or decompile the Services, or permit anyone else to.

(f) You will promptly notify us upon becoming aware of any unauthorized use of any Services or Documentation.

4. Charges and Payment

Except as otherwise set forth in an Order (i) the recurring Services fees ("Recurring Fees) delineated on an Order are due and payable monthly in advance, and (ii) any applicable setup fee ("Initial Setup Fee") as delineated in an Order is due and payable within 30 days following the date of the Order. Any additional charges for services not covered by the Recurring Fees or Initial Setup Fee shall be due and payable within 30 days from the date of your receipt of an invoice. All undisputed sums due under this Agreement will be paid by you (without any set off or deduction) within 30 days from the date of your receipt of an invoice. You shall pay all applicable taxes, duties or levies at the then prevailing rate. Any late payment charges arising out of your late payment of taxes (other than income taxes payable by Maximum Solutions), duties or levies shall be payable by you.

5. Equipment and Third Party Software

Certain software provided by Licensor may require that the Licensee purchase certain computer hardware or software from third parties. The list of recommended hardware or software may be updated by Licensor from time to time. The Licensee will be responsible for the selection, purchase and maintenance of such hardware and software.

6. Limited Warranty

(a) (i) We warrant that the Services will substantially conform to and operate according to our then current Documentation under normal use. We further warrant to you that the Services will not contain any contaminants, including any codes or instructions that may be used to access, modify, delete, damage or disable your computer systems.

(ii) Maximum Solutions warrants that the Services performed under this Agreement will be performed in a professional and workmanlike manner, using generally accepted industry standards, by trained and skilled personnel in accordance with the Service Level Agreement applicable to the Services (if any); provided, however, that Maximum Solutions will not be liable for violation of any applicable law, rule or regulation or any third party claim associated with the Customer Data unless unlawfully used or disclosed by Maximum Solutions.

(iii) Maximum Solutions warrants that Maximum Solutions will protect the confidentiality of the Customer Data transmitted or stored by Customer, and/or persons under Customer's control through any Service provided hereunder and warrants that Maximum Solutions will take all reasonable precautions and actions to avoid a breach of the security of the Customer Data transmitted or provided by Customer under this Agreement.

(b) The foregoing warranty shall commence the Effective Date and continue through the remainder of the term of this Agreement. As our sole liability to you in the case of a breach of the warranty set forth in (i) Section 6(a)(i), we will use commercially reasonable efforts to repair the Services with respect to any error, non-conformity or defect so that the Services can be used substantially in accordance with the specifications set forth in the Documentation; and (ii) Section 6(a)(ii), to provide the services level credits pursuant to the policy outlined in the applicable Service Level Agreement. We do not warrant that the Services will meet your requirements or will operate uninterrupted or error free.

(c) EXCEPT FOR THE EXPRESS WARRANTY IN SECTION 6(a), THE SERVICES ARE PROVIDED "AS IS", AND TO THE FULLEST EXTENT PERMITTED BY LAW, Maximum Solutions AND ITS SUPPLIERS EXCLUDE ALL OTHER EXPRESS AND IMPLIED TERMS, WARRANTIES OR REPRESENTATIONS REGARDING THE SERVICES ARISING BY LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED TERMS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Some jurisdictions do not allow for the exclusion or limitation of implied warranties, so the above limitations or exclusions may not apply to you.

7. Indemnification

At our expense we will defend, indemnify and hold you harmless against any third party claim that the Services infringe a patent, trademark, copyright or other intellectual property right enforceable in any country in which Maximum Solutions or its affiliated companies have operations in accordance with this Agreement. We will pay all costs, damages and attorney's fees that a court finally awards as a result of such claim. But you must give us prompt written notice of the claim, cooperate fully with us in its defense, and give us sole authority to control the case and any related settlement negotiations. We will not be responsible for any settlement made without our written consent. Our obligations under this Section do not apply if a claim is based on the use of Customer's content. If a third party infringement claim is sustained in a final judgment from which no further appeal is taken or possible, or if your use of the Services is enjoined by a court, then we shall, in our sole reasonable election and expense, either: (i) procure your right to continue to use the Services in accordance with this Agreement; (ii) replace or modify the Services to make them non-infringing; or (iii) if (i) and (ii) are not reasonably feasible, terminate this Agreement and refund to you the Initial Setup Fee and, in addition, any other fees paid by you

during the 3-month period then preceding the termination. Other than as provided in this Section, you and your affiliates, subsidiaries and representatives shall have no other remedy against us arising from a claim of actual or alleged infringement of intellectual property rights respecting the Services.

8. Limitation of Liability

(a) The parties agree that, to the fullest extent permissible under law, in no event shall a party, and in the case of Maximum Solutions, its suppliers, be liable to the other for any direct or indirect loss of profits or any incidental, consequential, indirect, special or punitive damages (including without limitation lost savings, loss of use or loss of data) arising out of or related to this Agreement or with respect to the installation, use or operation of the Services, whether in contract, tort, negligence or other form of action even if the party has been apprised of the possibility of such damages. This Section shall apply notwithstanding any failure of essential purpose of any limited remedy.

(b) The parties hereto specifically agree that except for amounts properly payable to Maximum Solutions hereunder, the total liability of either party to the other for damages under this Agreement shall not exceed an amount equal to the Initial Setup Fee and, in addition, any other fees paid by you within the 12-month period immediately preceding the occurrence of the event that is the subject of the claim.

(c) The limits described in this Section 8 shall not apply with respect to a breach of the obligations under Sections 3 (Ownership; Reverse Engineering; Restrictions), Section 6 (a) (ii) and Section 11 (Export), and shall not limit Maximum Solutions' obligations under Section 7 (Indemnification) or Customer's obligations under Section 14 (Customer Obligations).

9. Assignment

You may not license, sublicense, assign, sell, rent, lease, or otherwise transfer the Services or this Agreement without our prior written consent. Notwithstanding the foregoing, you may, without our consent, (a) assign this Agreement to a subsidiary or affiliate, provided you remain liable for such entity's performance; and (b) assign this Agreement to another entity pursuant to a merger, consolidation or acquisition of all or substantially all of your assets; provided that in each case you notify us of the assignment in writing and the assignee agrees to be bound by this Agreement.

10. Terms and Termination

(a) Subject to the terms and conditions contained herein, this Agreement shall commence on the Effective Date and shall continue for a term of (2) years. Upon expiration of the initial term, we may offer you the option of renewing the Agreement for one or more additional terms having a fixed number of months. If you do not renew the Agreement for a fixed term, it will automatically renew for successive extended terms of one month unless and until one of us provides the other with at least thirty days advance notice of non-renewal, or unless terminated earlier under the terms contained within this agreement. After the first year, prices are subject to a maximum of 5% change by Maximum Solutions upon sixty (60) days written notice to customer. Maximum Solutions may terminate this Agreement: (i) on written notice upon Customer's failure to pay amounts when due, after 30 days' written notice and failure to cure; (ii) for breach of a material provision of this Agreement, after 30 days' written notice and failure to cure; (iii) if Maximum Solutions is unable to perform the Services hereunder due to Customer's acts or omissions; (iv) upon any regulatory decision or governmental order requiring Maximum Solutions to suspend Service(s), upon reasonable notice; or (v) if Customer files for bankruptcy or reorganization or

fails to discharge an involuntary petition therefore within 60 days after filing. Any termination hereunder, except under 10(a)(iv), shall subject Customer to applicable termination and other accrued charges. Customer may terminate this Agreement for convenience at any time with thirty (30) days advance written notice.

(b) If the Services are terminated before the end of the Term, which can only be done on 30 days' prior written notice, Customer will pay an early termination charge equal to 100% of the Recurring Fees applicable for the remainder of the Term, except if: (i) Customer terminates as a result of Maximum Solutions' material uncured breach, or (ii) Maximum Solutions terminates other than by reason of Customer's breach or pursuant to Section 10(a) (iv). The parties specifically agree that the damages that Maximum Solutions would incur arising from any breach or early termination of this Agreement by Customer are based upon future facts and conditions which are difficult for the parties to presently predict, anticipate, ascertain or calculate. The parties further agree that such liquidated damages, as determined herein, are based upon the best efforts of the parties to estimate the nature and amount of Maximum Solutions' actual damages, are not penal in nature, and are intended to place Maximum Solutions in the same position it would have achieved, had this Agreement been fully performed by the parties according to the original terms. Upon the effective date of expiration or termination of this Agreement, (a) Maximum Solutions will immediately cease providing the Services, and (b) any and all payment obligations of Customer under this Agreement will become due immediately.

(c) Upon termination for any reason, Customer shall immediately cease use of the Services and shall, within 30 days following the date of termination, destroy all copies of the Documentation or else return such Documentation to us and Maximum Solutions shall, within 30 days following the date of termination, destroy all data files of the Customer and return an electronic copy of such files to Customer.

11. Export

You acknowledge that all or part of the Services is of U.S. origin and subject to U.S. export jurisdiction. Accordingly, you agree to comply with all export and reexport restrictions and regulations ("Export Restrictions") imposed by the U.S. Government. You represent and warrant that you understand that U.S. law currently prohibits the export or reexport, directly or indirectly, of U.S.-origin products and technology to certain proscribed countries, entities, organizations and individuals, without prior authorization from the U.S. Government. You agree that you will not commit any act or omission that will result in a breach of any such Export Restrictions, including those relating to the export or reexport of cryptographic items. If you breach this clause, Maximum Solutions may terminate this Agreement immediately. Further, you unconditionally accept full responsibility for your compliance with this Section and agree to defend, indemnify and hold us harmless from and against any claim, loss, liability, expense or damage (including fines or legal fees) incurred by us or our affiliates or suppliers as a result of your violation of this Section.

12. Governing Law and Disputes

This Agreement shall be governed and construed in accordance with the laws of the State of Florida. Any controversy or claims arising out of or related to this Agreement shall be venued only in the state or federal court in and for a) Pasco County, Florida, or b) the primary jurisdiction in which Customer is using the Services; without regard to their conflict of laws and principles. Such venue shall be determined by the choice of the plaintiff bringing the action.

13. General

(a) Any failure by either party to enforce at any time or for any period of time the provisions of this Agreement shall not be construed as a waiver of such provision, or of the right to enforce that provision.

(b) Each of us agrees that any material breach of this Agreement may cause the other party irreparable harm, and that such non-breaching party may seek injunctive relief.

(c) In the event any part of this Agreement is held to be unenforceable, that shall not affect the enforceability of the remaining provisions.

(d) The headings of each provision of this Agreement are for reference purposes only. This Agreement may not be modified unless the modification is in a writing signed by both parties. This Agreement, and the Order that accompanies it, is complete and constitutes the entire agreement between us with respect to the Software and Services. This Agreement will be binding on and will inure to the benefit of the heirs, executors, administrators, successors and assignees of the parties hereto but nothing in this Section will be construed as consent to any assignment of this Agreement except as provided above.

(e) Any notice or other communication required or permitted in this Agreement shall be in writing and shall be deemed to have been duly given on the day of service if served personally or by facsimile transmission with confirmation, or 5 days after mailing if mailed by First Class mail, registered or certified, postage prepaid, and addressed to Maximum Solutions at the addresses set forth above, or addressed to Customer at the address set forth in the initial Order, or at such other addresses as may be specified by either party pursuant to the terms and provisions of this paragraph.

14. Customer Obligations

(a) Customer will: (i) be solely responsible for all Customer Data and any party's reliance hereunder and (ii) allow Maximum Solutions, for the sole purpose of its performance hereunder, to copy, display, distribute, download, transmit and otherwise use the Customer Data solely on behalf of Customer.

(b) Customer warrants and represents that it has all necessary right, title and interest in the Customer Data, and that it has obtained all consents, licenses, permissions and releases necessary to grant Maximum Solutions the right to distribute the Customer Data in accordance with this Agreement.

(c) Customer shall comply with all applicable laws and regulations and with Maximum Solutions' reasonable Policies and Procedures, which Policies and Procedures are communicated in writing, including by website link, as may be in effect from time to time.

(d) "Customer Data" means the text, data, images, sounds, photographs, illustrations, graphics, programs, code and other materials transmitted or stored by Customer, and/or persons under Customer's control through any Service provided hereunder.

(e) The Customer Data will not violate or infringe the rights of others, including, without limitation, any patent, copyright, trademark, trade dress, trade secret, privacy, publicity, or other personal or proprietary right.

(f) The Customer Data will not violate any laws to which Customer or Maximum Solutions may be subject, or constitute a defamation or libel of Maximum Solutions or any third party and will not result in the obligation of Maximum Solutions to make payment of any third party licensing fees.

(g) Customer acknowledges and agrees that Maximum Solutions exercises no control over, and accepts no responsibility for, the content of the information passing through Maximum Solutions' network or the Internet. Customer assumes responsibility for its use of the Services, and the Internet. Customer understands and agrees further that the Internet contains materials some of which are socially inappropriate or may be offensive; and is accessible by persons who may attempt to breach the security of Maximum Solutions and/or its network(s). Maximum Solutions has no control over and expressly disclaims any liability or responsibility whatsoever for such materials or actions. Customer and its users and end users access the Service at their own risk. Maximum Solutions is not liable for the content of any data transferred either to or from Customer or stored by Customer or via the Services provided by Maximum Solutions.

The following contact has been accepted by the following parties:

MAXIMUM SOLUTIONS, INC.

By: _____ (Date)
(Signature)

(Typed or Printed) (Title)

City of New Port Richey, FL

By: _____ (Date)
(Signature)

(Typed or Printed) (Title)