

Windowmaker Terms and Conditions (“Terms”)



Our Terms and Conditions were published on 27th August 2024. These Terms replace and supersede all prior versions. These terms and conditions (the “**Terms**”) together with the Documentation (as defined below), constitute a binding legal Agreement between you, as the Customer, and Windowmaker as the Supplier as identified in the Documentation.

Please read these terms and conditions carefully before using our Service. As soon as you start using our service, these Terms will be applicable to you.

1. DEFINITIONS

- 1.1. The definitions are set out in Appendix 1 (Definitions), unless the context otherwise requires.
- 1.2. Reference to Clauses and Appendix are to Clauses of and Appendix to this Agreement and form an integral part of the Agreement. In the event of a conflict between text in the body of this Agreement and the Appendix, the text in the body of this Agreement shall prevail.
- 1.3. A reference to a statute or statutory provision is a reference to it as amended, extended, or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.4. Headings are for ease of reference only and have no legal effect. Words importing the singular include the plural and vice versa, words importing a gender include every gender and references to persons include bodies corporate or incorporate.
- 1.5. Any words following the terms including, include or any similar expression are illustrative and shall not limit the sense of the words, description, definition, phrase, or term preceding those terms.

2. PRODUCT AND SERVICES

- 2.1. These Terms and Conditions shall apply to each order accepted and/or fulfilled by Windowmaker. Any terms or conditions appearing on any Customer purchase order, acknowledgement, or confirmation that conflict with or are in addition to those contained hereunder are excluded and shall not be binding on the parties. Any variation to the terms is deemed invalid unless agreed between the parties, subject to Clause 3.
- 2.2. During the contract term, the Customer can use the service according to Access Rights specified in the relevant Invoice or documentation.
- 2.3. The Customer must cease using the Service if the Agreement ends or expires, or after termination or cancellation. Customer must address any unauthorised use as per clause 3.9.
- 2.4. In consideration of Customer's payment of the Fees, and subject at all times to Customer's compliance with the terms of this Agreement, Windowmaker will provide Customer with the related services described in the Documentation (including any SOW or other services described in Documentation), according to the terms of the Agreement.
- 2.5. For Professional Services, as part of the Agreement:
- 2.6. The Customer may request services beyond the standard Product offerings, such as setup, implementation, consultancy, and content creation or modification.
- 2.7. Each Professional Service will be detailed in an SOW, specifying the services, delivery timeline, responsibilities of both Parties, and other relevant information.
- 2.8. Professional Services are ordered through a Documentation that references the relevant SOW and includes Fees, Expenses, and other relevant terms.
- 2.9. Fees and Expenses for Professional Services are outlined in the SOW. Payment terms will follow the Agreement or as otherwise agreed in the SOW.
- 2.10. Any changes to the Professional Services in the SOW or Documentation require written agreement by both Parties.

3. CUSTOMER OBLIGATIONS

The Customer agrees to:

- 3.1. Pay the agreed Fees and Expenses.
- 3.2. Adhere to all obligations set out in the relevant Specific Terms.
- 3.3. Abide by the obligations specified in the relevant SOW.
- 3.4. Fulfil all Prerequisites identified in the Documentation necessary to use a Service and remain up to date with any new releases for Documentation and/or Website changes.
- 3.5. Manage and operate IT (“Information Technology”) elements (like networks, servers, end-user devices, storage, operating systems, databases, middleware, and IT service management tools) under the Customer's control when using a Product.
- 3.6. Appoint a maximum of two Designated Administrators who will have authority to obtain and receive the Support. You shall notify Us as soon as reasonably practicable of the details of the Designated Administrators. The Designated Administrators may be replaced at any time on the provision of reasonable notice to Us. For the avoidance of doubt except as provided in this clause, We will be under no obligation to provide Support to users of the Service.
- 3.7. Implement adequate (no less than industry standards) technical and organisational measures for information security concerning IT elements and Personal Data under the Customer's control, including being solely responsible for procuring, maintaining, and securing its network connections and telecommunication links from its systems to Windowmaker's data centres, and being responsible for any loss or damage arising from such IT elements.
- 3.8. Pay additional Fees and Expenses, without prejudice to any other rights or remedies available to Windowmaker, to cover any unauthorised use, an amount equal to the Fees which Windowmaker would have levied (in accordance with Windowmaker's normal commercial terms then current) had Windowmaker licensed any such unauthorised use on the date when such use commenced together with interest, from the date of commencement of the unauthorised use.
- 3.9. Comply with Sanctions, by:
 - 3.9.1. Following business and legal practices that comply with applicable Sanctions. Ensuring that neither the Products nor the Services are used directly or indirectly in or with any sanctioned country or entity.
 - 3.9.2. Declaring that it is not operating in, or with, any sanctioned country or entity in relation to the Products or Services.
 - 3.9.3. Promptly suspending access and reporting to Windowmaker if there's reasonable suspicion or knowledge of any involvement with sanctioned locations or entities.
 - 3.9.4. Acknowledging that Windowmaker may suspend access to the Products or terminate the Agreement without liability if there is a reasonable suspicion of breach of this clause 3.
- 3.10. The Customer must
 - 3.10.1. Adhere to the relevant Access Rights when using the Product and ensure that Authorised Users adhere to these Access Rights.
 - 3.10.2. Not exceed the Access Rights quantity outlined in the Documentation or Invoice (if Customer has modified quantity subsequently to signing the Documentation).
 - 3.10.3. Maintain records of Authorised Users, monitor their use, and remove accounts no longer needed.
 - 3.10.4. Customer is responsible for all acts and omissions of each Authorised User and any and all use of the Products by such Authorised Users.
 - 3.10.5. Comply with any EULA (End User License Agreement) when using Third Party Software provided under the Agreement.
 - 3.10.6. Not use the Product to provide services to a third party through time sharing, outsourcing, or Software as a Service nor resell, rent, sub-license, give, loan, or otherwise transfer the Product rights to a third party, as Access Rights granted are personal to the Customer and non-transferable

- 3.10.7. Not develop software that competes with the Product nor modify the Product or create derivative works.
- 3.10.8. Not disassemble, reverse engineer, or decompile software within the Product, except as permitted by Law nor remove any copyright notices from the Product.
- 3.11. The Customer must Purchase the necessary Access Rights at Windowmaker's current price if unauthorised use of a Product or Third-Party Software is discovered - payable within seven (7) Days of receiving the payment invoice. This payment covers the duration and quantity of unauthorised use. If not paid within seven (7) Days, Windowmaker may block access via Account Suspension until payment is made in full.
- 3.12. You are responsible for securely managing Your password(s) for the Services and contacting Windowmaker if You become aware of any unauthorized access to Your account.
- 3.13. You shall obtain and shall maintain all necessary consents and permissions necessary for Us to perform Our obligations under the Agreement.
- 3.14. When You create an account with Us, you must provide Us with information that is accurate, complete, and current at all times. Failure to do so constitutes a breach of the Terms, which may result in immediate termination of Your account on Our Service.

4. WINDOWMAKER OBLIGATIONS

Windowmaker agrees to:

- 4.1. Provide the Customer with Access Rights to the service.
- 4.2. Offer Maintenance and other support services in the format of SaaS (Software as a Service), Subscription, or as a standalone service in accordance with the Service Levels detailed in the relevant Documentation.
- 4.3. Perform Professional Services with reasonable care and skill, completing them within a reasonable timeframe, and provide Deliverables as specified in a SOW.
- 4.4. Provide You with access to Our support and technical services, as agreed with you in our Service Level Agreement (SLA).
- 4.5. Technical support that Windowmaker provides under this agreement does not include
 - 4.5.1. Training in respect of Your use of the software. Windowmaker can provide additional training for an agreed charge upon request.
 - 4.5.2. Windowmaker Data set-up for Your specific requirements. Windowmaker is not responsible for Your Data created using the Service. Windowmaker can provide additional Data set-up services for an agreed charge upon request.
 - 4.5.3. On-site support and services.
- 4.6. The Service may periodically be updated with tools, utilities, improvements, third party applications, or general updates to improve the Service. You agree to receive these updates.

5. CSP COMPLIANCE

Unless otherwise specified in the Documentation, the following applies:

- 5.1. If the Product(s) require that the Customer complies with the CSPs' terms and conditions, such terms and conditions form part of this Agreement. These terms are available on the CSPs' websites and may change periodically. It is the Customer's responsibility to stay updated and comply with these terms.
- 5.2. Windowmaker manages CSPs to uphold standard security and privacy measures. However, We are not liable for any security or privacy breaches by the CSPs.
- 5.3. Cloud-based services can face limitations or issues. Windowmaker is not liable for service disruptions or related damages due to CSP problems.
- 5.4. Windowmaker may change or add CSPs for operational needs. Windowmaker will inform Customer about significant changes that could impact the Customer's usage.

5.5. Windowmaker will assist with issues concerning CSP services related to the Customer's subscription.

6. THIRD-PARTY PROVIDERS

Use of Third-Party Software:

- 6.1. The Customer understands that the Products may include or reference Third Party Software, which Windowmaker does not control for quality or accuracy.
- 6.2. Windowmaker is not liable for any issues, legal actions, claims, damages, or costs, whether direct or indirect, related to deficiencies or inaccuracies in Third Party Software.
- 6.3. The Customer's use of Third-Party Software might be subject to extra terms set by the third party, and agreeing to these terms may be necessary to use the Software as intended in this Agreement.
- 6.4. Indemnification for breach of third-party terms:
 - 6.4.1. The Customer will indemnify and protect Windowmaker against any loss or damage resulting from the Customer's violation of any third-party terms.
 - 6.4.2. Windowmaker may treat any breach of third-party terms by the Customer as a breach of this Agreement.
- 6.5. Interaction with third-party websites:
 - 6.5.1. The Customer acknowledges that the Products might enable access to third-party websites, and any interaction or transactions with these sites are solely at the Customer's risk.
 - 6.5.2. Windowmaker is not responsible for the content, correspondence, transactions, or contracts with any third-party website. These are solely between the Customer and the third party.
 - 6.5.3. Windowmaker advises the Customer to review third-party terms and conditions and privacy policies before using their websites. Windowmaker does not endorse or approve any third-party websites or their content accessible through the Products.

7. FEES AND EXPENSES

- 7.1. The Customer agrees to pay the Fees and Expenses as outlined in the Documentation.
- 7.2. The minimum term of payments is for a period of 36 months unless specified otherwise in the Documentation.
- 7.3. Unless otherwise agreed in writing by us the Price shall be paid by direct debit; auto debit; Windowmaker payment portal.
- 7.4. Recurring Fees and Expenses are payable starting from the Effective Date. Your account will be debited when you subscribe and provide Your payment information.
- 7.5. We reserve the right, to revise the fees if there is a change in the cost to us of supplying the Service whether by reason of exchange rate fluctuations, third party charges or otherwise.
 - 7.5.1. If a price is increased between the order being placed and delivery of the Service, we will inform you as soon as possible and give you the option of reconfirming the order at the new price or cancelling the Order.
 - 7.5.2. During the term of contract, we will notify you of the changes. Continued use of Windowmaker's Products or services following such notification will constitute the Customer's acceptance of the revised Fees.
- 7.6. If Customer has provided a payment method authorising Windowmaker or its designated payment processor to charge the Customer's payment method for all Fees and Expenses due and payable, Customer agrees to promptly update account and payment information when necessary to keep it current, complete, and accurate.
- 7.7. Notwithstanding anything to the contrary in the Documentation, Windowmaker reserves the right to increase the Fees for any Auto Renewal by the percentage increase in an appropriate local consumer prices index in the preceding 12 Month period, plus a percentage mark-up determined at Windowmaker's sole discretion.
- 7.8. Unless stated otherwise in the Documentation, Customer will provide the payment monthly upfront.

- 7.9. All prices and amounts stated in the Documentation are exclusive of any applicable Taxes. These Taxes will be listed separately on the appropriate Invoice. Unless explicitly specified in the Invoice, Customer is responsible for paying all Taxes to their local authority.
- 7.10. For SaaS relying on a CSP, the Documentation may contain assumptions about CSP resources. Recurring Fees are based on these assumptions. Windowmaker can charge for any additional CSP resources required by the Customer.
- 7.11. If Customer fails to make any payment due by the due date for payment, then (without limiting Windowmaker's other remedies), Windowmaker may reclaim debt recovery costs in accordance with statute and/or charge statutory interest, such interest to accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. Customer shall pay the interest together with the overdue amount.
- 7.12. You may not withhold payment or take deductions from any invoice amount (by offset, counterclaim, or otherwise) before We issue a credit. This includes returns, rebates, price adjustments, billing errors, handling fees, allowances, remittance costs and other charges.
- 7.13. Without limiting Our other rights or remedies, We shall have the right to suspend the supply of Service under the Agreement if You fail to pay any amount due under the Agreement within seven (7) days of the due date for payment or if the Customer becomes the subject of an Insolvency Event.
- 7.14. Withholding Tax: Should the Law mandate any deductions or withholdings from payments under this Agreement, the Customer is obligated to compensate for such deductions. This means, in addition to making the required payment, the Customer must also pay an additional amount to Windowmaker. This additional payment should be sufficient to ensure that, after the deduction or withholding (including any tax credits related to such actions), the net amount received by Windowmaker is equal to the full payment amount that would have been due without such deductions or withholdings. This clause does not apply to interest on late or deferred payments.

8. REFUND POLICY

- 8.1. The Customer has the right to withdraw from this Agreement within fourteen (14) Days of the Effective Date, without giving any reason. This right of withdrawal does not apply from the moment when Customer begins the download or otherwise accesses the Product or service.
- 8.2. Unless otherwise provided by Law or by a particular offer detailed in the Documentation, all purchases are final and non-refundable.
- 8.3. The right to refund does not extend to Products or services that have been fully consumed or used by the Customer, except as required by Law.
- 8.4. For more information or to initiate a refund, please contact Windowmaker's Support Desk identified in the Documentation.
- 8.5. Nothing in this clause shall affect the Customer's statutory rights under applicable Law.

9. DATA PRIVACY AND INFORMATION SECURITY

- 9.1. When Windowmaker accesses Customer Data, including Personal Data, under the Agreement, the Customer acts as the data controller and Windowmaker as the data processor, as defined by Data Protection Laws.
- 9.2. In handling Personal Data, to the extent required by Data Protection Law, Windowmaker agrees to:
 - 9.2.1. Follow the Customer's written instructions for processing Personal Data, for the duration of the Agreement.
 - 9.2.2. Implement suitable technical and organisational safeguards to protect Personal Data from unauthorised processing and accidental loss, destruction, or damage. These measures will be proportional to the potential harm, considering the nature and purpose of processing, current technology, and implementation costs.
 - 9.2.3. Ensure all personnel with access to Personal Data maintain its confidentiality.

- 9.2.4. Other than as part of normal business requirements, not transfer Personal Data outside the specified jurisdiction and at all times ensure compliance with Data Protection Laws.
- 9.2.5. Assist the Customer, at their cost, with data subject requests and compliance with Data Protection Laws regarding security, breach notifications, impact assessments, and regulatory consultations.
- 9.2.6. Inform the Customer promptly upon discovering a Personal Data breach.
- 9.2.7. Apply terms equivalent to this clause to any engaged sub-processors. Windowmaker remains responsible for the sub-processor's compliance.
- 9.2.8. Delete Personal Data upon Agreement termination at the Customer's written request, unless required by Law and/or Data Protection Laws to retain it.
- 9.2.9. Keep accurate records to prove compliance with Data Protection Laws and permit Customer audits, subject to reasonable notice and fee, ensuring minimal disruption to Windowmaker's operations or other customers' data.
- 9.3. The Customer solely determines the categories of data subjects and the nature and duration of processing necessary for Windowmaker to provide services under the Agreement.
- 9.4. As the data controller, the Customer will:
 - 9.4.1. Ensure all Personal Data processing instructions to Windowmaker are lawful.
 - 9.4.2. Obtain necessary consents to enable Windowmaker to process Personal Data per the Agreement.
 - 9.4.3. Grant general authorisation to Windowmaker to appoint sub-processors as needed for the Agreement.
 - 9.4.4. Be deemed to have no objections to appointed sub-processors unless the Customer advises otherwise within ten (10) Days of notification.
 - 9.4.5. Instruct Windowmaker in writing, within thirty (30) Days of Agreement termination, to delete Personal Data. If not instructed, Windowmaker may delete the data without liability.
- 9.5. You do not have the right to a physical copy of the software.
- 9.6. On Termination of contract, there is no access to the Data.

10. AMENDMENTS

- 10.1. Any modifications to the Agreement must be mutually agreed upon in writing by the Parties.
- 10.2. Recognising the evolving needs of the Customer's business, the Parties agree to modify the number of Access Rights, Licenses, Subscriptions, Maintenance, or Content under this Agreement upon written request, provided such request complies with the specific terms for the Product. All such modifications will be reflected in the Invoice to reflect these adjustments. Continual use of the Product or payment of the Invoice constitutes acceptance of the modification between the Parties.
- 10.3. Windowmaker reserves the right to charge an additional fee for any changes based on a Customer's request; the costs shall be communicated to the Customer at the point of request and be invoiced for payment as per clause 7.
- 10.4. Windowmaker may make changes to:
 - 10.4.1. Altering the delivery methods of Products and services, ensuring no substantial reduction in functionality, quality, or performance.
 - 10.4.2. Updating the format and content of the Documentation, Legal Terms, Specific Terms, EULA, Rate Card, Product Overview, Service Levels, Support Hours, and communication methods with the Service Desk.
- 10.5. Windowmaker will provide notice to the Customer about any substantive changes mentioned in clause 10.4.
- 10.6. Windowmaker may revise the terms of the Agreement with thirty (30) Days of written notice. The Customer's continued use of the Products after transmission of this notice means the Customer accepts the updated terms. If the Customer does not accept the revised terms, they must immediately inform Windowmaker and stop using the Products. Windowmaker will then consider

alternative arrangements or, if none can be made, notify the Customer of the Agreement's termination.

- 10.7. Windowmaker reserves the right to modify the Fees and general pricing for the Products. Any such changes shall be subject to clause 7.

11. DURATION

- 11.1. This Agreement shall commence on the Effective Date as specified in the Documentation and shall continue for the Minimum Period. Any termination rights or procedures applicable to the Agreement shall come into effect only upon the completion of the Minimum Period.
- 11.2. This Agreement shall automatically renew for a successive one (1) Year term, each, an Auto-Renewal unless otherwise stated in the Documentation. An email notice will be sent to Customers email address provided in the documentation, ninety (90) and then sixty (60) days prior to the end of the then-current term.
- 11.3. Either Party may prevent the Auto-Renewal of this Agreement by providing written notice of non-renewal to the other Party thirty (30) Days prior to the end of the then-current term.
- 11.4. The Customer's continued use of the Product after the commencement of an Auto-Renewal term shall constitute the Customer's express acceptance of the renewal and affirmation of the Agreement, including any amendments or modifications made to the Agreement prior to the commencement of such Auto-Renewal term.
- 11.5. Each Auto-Renewal Term shall be governed by the Conditions of this Agreement, including any amendments or modifications made in accordance with this clause.

12. TERMINATION

- 12.1. To terminate the Agreement, the Customer must complete the termination process by providing notification to the Support Desk, or as otherwise outlined in the Documentation.
- 12.2. Either Party may terminate the Agreement by written notice if the other Party:
 - 12.2.1. Commits a significant breach of obligations and fails to resolve the breach within thirty (30) Days of being notified (immediate termination is allowed if the breach cannot be fixed).
 - 12.2.2. Becomes insolvent or is unable to pay debts as defined by Law.
- 12.3. The Customer is responsible for all Fees and/or Expenses due during the Term and up until the end of the Month in which the Agreement is terminated.
- 12.4. Any amendment to the Agreement requiring a replacement of the existing Agreement must be mutually agreed upon and documented in a duly executed Documentation.
- 12.5. Upon termination or expiry of the Agreement:
 - 12.5.1. The Customer's Access Rights will cease.
 - 12.5.2. Any Fees due up to the date of termination or expiry must still be paid.
 - 12.5.3. All Parties' obligations end, except those intended to continue after termination or expiry.
- 12.6. Any rights of either Party which arose on or before termination or expiry shall be unaffected.

13. INTELLECTUAL PROPERTY

- 13.1. The Service and its original Data features and functionality are and will remain the exclusive property of the Company and its licensors, notwithstanding any modifications made by or for you.
- 13.2. Windowmaker retains ownership of the Intellectual Property Rights in:
 - 13.2.1. The Product (except for any Third-Party Software).
 - 13.2.2. Background IPRs created by Windowmaker independently either before, during, or after the Agreement
 - 13.2.3. Any Customisations made by Windowmaker.
 - 13.2.4. Software tools used for organising, manipulating, viewing, and/or editing Content.
 - 13.2.5. Information created by Windowmaker within the Content.
 - 13.2.6. Usage Data, provided it does not include identifiable Customer Data or Personal Data.

- 13.3. The Customer holds the Intellectual Property Rights in:
 - 13.3.1. Customer Data.
 - 13.3.2. Information created by the Customer within the Content.
- 13.4. The Service is protected by copyright, trademark, and other laws of both the UK and foreign countries.
- 13.5. Our trademarks and trade dress may not be used in connection with any product or service without the prior written consent of the Company.

14. CONFIDENTIALITY

- 14.6. Each party undertakes that it shall keep any confidential information of the other party confidential and shall not at any time during the Agreement, and for a period of five years after termination of the Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs.
- 14.7. Each party may disclose the other party's confidential information:
 - 14.7.1. To its employees, officers, representatives, or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Agreement. Each party shall ensure that its employees, officers, representatives, or advisers to whom it discloses the other party's confidential information comply with this clause 14; and
 - 14.7.2. As may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.8. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Agreement.

15. LIMITATION OF LIABILITY

- 15.1. Neither Party excludes nor limits its liability for:
 - 15.1.1. Death or personal injury due to negligence.
 - 15.1.2. Fraud or intentional deception.
 - 15.1.3. Breaking confidentiality as detailed in clause 14.
 - 15.1.4. Violating Intellectual Property Rights indemnities in clause 13.
 - 15.1.5. Gross negligence or deliberate wrongdoing (where applicable by Law).
 - 15.1.6. Any liabilities that Law does not allow to be limited or excluded.
- 15.2. Neither Party is liable for:
 - 15.2.1. Loss of profits, revenue, anticipated savings, goodwill, business, contracts, or business interruption or loss of use (regardless of whether such losses are considered to be a direct or indirect loss).
 - 15.2.2. Indirect, incidental, or consequential damages or similar losses of any nature whatsoever.
- 15.3. Windowmaker is not liable for losses caused by:
 - 15.3.1. The Customer's failure to meet Prerequisites.
 - 15.3.2. Customer's breach of Agreement.
 - 15.3.3. Force Majeure events.
 - 15.3.4. Internet failures or delays.
 - 15.3.5. Use of a Product version, which is not a Supported Version.
 - 15.3.6. Any other losses or damages not covered by our insurance policies, except as stated in the Agreement or required by Law.
- 15.4. The maximum liability for contract-related issues is limited to the greater of the Fees paid by the Customer in the twelve (12) months preceding a claim (excluding the Customer's obligation to pay Fees) or the extent covered by our insurance policies.

- 15.5. Windowmaker is not liable for issues arising from Third-Party Software, except as stated in the Agreement or required by Law.

16. INDEMNIFICATION

- 16.1. Windowmaker will indemnify and protect the Customer against all costs, claims, demands, expenses, and liabilities if any third party alleges that the Customer's use or possession of the Products infringes their Intellectual Property Rights, under these conditions:
- 16.1.1. The Customer must immediately inform Windowmaker in writing about any such claims or legal actions.
 - 16.1.2. The Customer should not admit fault and must allow Windowmaker to handle the defence or settlement of these claims, at Windowmaker's expense.
 - 16.1.3. The Customer must provide reasonable assistance to Windowmaker in addressing these claims, with Windowmaker bearing the related costs.
 - 16.1.4. The infringement claim must not result from the Customer using or combining the Products with any items not supplied or approved by Windowmaker.
 - 16.1.5. The claim must not arise from modifications to the Products made by the Customer or any third party without Windowmaker's written approval.
- 16.2. The Customer will indemnify and protect Windowmaker, its subsidiaries, affiliates, officers, agents, employees, partners, and licensors against all costs, claims, demands, expenses, and liabilities arising from:
- 16.2.1. Any claim that Windowmaker's use, or possession of Customer Data or Content created by the Customer infringes third-party Intellectual Property Rights. The Customer is solely responsible for defending such claims and will bear all related costs, including, but not limited to, legal fees, court costs, and damages.
 - 16.2.2. Any breach of the Access Rights by the Customer or Authorised Users.
 - 16.2.3. Any misuse of Windowmaker's Products and Services, or otherwise breach any applicable Laws.

17. WARRANTIES

- 17.3. Windowmaker guarantees that the Product will substantially perform as described in the Documentation. If Windowmaker is notified, it will make reasonable efforts to respond to errors as per the Service Levels. This warranty does not cover failures caused by incompatible hardware, other software, firmware, or data from the Customer or third parties.
- 17.4. Windowmaker will make reasonable efforts to provide Subscriptions and Maintenance services throughout the Term, excluding maintenance periods.
- 17.5. This Agreement replaces all other warranties, conditions, or terms not explicitly stated here, whether implied by Law, or otherwise, including implied conditions of quality, fitness for purpose, or professional skill and care.
- 17.6. The Customer understands that no guarantees have been made about the Products' suitability or benefits. The Products are provided 'as is,' with no warranty for accuracy, completeness, merchantability, or fitness for a particular purpose.
- 17.7. Regarding prices displayed in the Product environment, Windowmaker does not guarantee the accuracy or completeness of the information provided in the Content. The prices displayed in Product are for reference purposes only and may not reflect the actual price at the time of use. Windowmaker shall not be liable for any discrepancies, errors, or omissions in the pricing information provided in the Product environment or otherwise in the Content.
- 17.8. The Customer acknowledges it has chosen the Products based on its own judgment and the Products may not meet its individual needs.
- 17.9. Windowmaker does not guarantee:
- 17.9.1. That information obtained through the Products will meet the Customer's needs.
 - 17.9.2. That the Products will be free from vulnerabilities or viruses.

17.10. Windowmaker is not liable for issues caused by data transfer over networks, including the internet, and acknowledges that such transfers may face inherent limitations and risks.

18. FORCE MAJEURE

In the event that the fulfilment of any obligations under an Agreement is hindered by Force Majeure, the affected Party must:

- 18.1. Immediately provide written notification detailing the Force Majeure event and its effect on their performance.
- 18.2. Be excused from performing those obligations affected by the Force Majeure event.
- 18.3. Take all reasonable measures to lessen the effects of the Force Majeure.
- 18.4. Restart their obligations as soon as possible after the Force Majeure event has ended.

19. GOVERNING LAW AND DISPUTE RESOLUTION

- 19.1. The Agreement shall be governed by and construed in accordance with the Law of the jurisdiction in which the Supplier is registered as a company.
- 19.2. The Parties irrevocably agree that the courts of jurisdiction in which the Supplier is registered as a company shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).
- 19.3. If You have any concern or dispute about the Service, you agree to first try to resolve the dispute informally by contacting the Company.
- 19.4. Failing amicable resolution, the dispute shall be conclusively submitted to binding arbitration in accordance with the rules of the London Court of International Arbitration with the arbitration proceedings to be conducted in England & Wales or shall be subject to the exclusive jurisdiction of the courts of England and Wales.

20. GENERAL

- 20.1. The Quotation/Proposal and the Documentation form the complete agreement between the Parties regarding the Agreement's subject matter.
- 20.2. Unless stated otherwise in the Documentation, this Agreement overrides all previous agreements, discussions, negotiations, and representations, both verbal and written, including earlier agreements, Order Confirmation Forms, quotes, or offers.
- 20.3. If there is a discrepancy among the Documentation, the following order of precedence will resolve it, with a descending hierarchy (e.g. 'Invoice' is highest):
 - 20.3.1. The Order Confirmation
 - 20.3.2. The Invoice.
 - 20.3.3. The Proposal/Quotation.
 - 20.3.4. The 'Terms.'
- 20.4. The English version of the Terms will be the version used when interpreting or construing the Terms.
- 20.5. You may not assign or otherwise transfer the Terms or Your rights and obligations under the Terms, in whole or in part, without Our written consent which will not be unreasonably withheld, and any such attempt will be void. Windowmaker may sub-contract its obligations but remains responsible for their fulfilment.
- 20.6. If any provision of these Terms is held to be unenforceable or invalid, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.
- 20.7. If a Party does not immediately use a right or remedy under this Agreement or as provided by Law, this does not mean they have waived (given up) that right or any other right or remedy. Neither delaying nor partially using a right or remedy will stop or limit that Party from using that right or remedy, or any other right or remedy, in the future.

- 20.8. The rights and remedies outlined in this Agreement are additional to any other rights or remedies the Parties may have under the Law. These contractual rights and remedies do not exclude any other legal rights or remedies available to either Party.
- 20.9. Nothing in the Agreement is intended to or shall be deemed to establish any partnership or joint venture between any of the parties. The parties are independent contractors.
- 20.10. No one other than a party to the Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

21. NOTICES

- 21.1. Notices to the Customer related to the Terms to be sent by email to the Customer email address provided in the Documentation and can also be sent in writing by post to the address details confirmed in Order Confirmation document.
- 21.2. Notices from the Customer:
 - 21.2.1. For any procedural requirement, such as, but not limited to, cancellation, termination, or any technical matter, should be submitted directly to Help@windowmaker.com.
 - 21.2.2. All other non-procedural notices not within clause 21.2.1, should be submitted to Help@windowmaker.com, unless otherwise specified in the Documentation.
- 21.3. An email notice is considered delivered at the time it is transmitted. If this transmission occurs outside of Business Hours, it is deemed delivered when Business Hours resume.

Appendix 1 -Definitions

In this Agreement, unless the context otherwise requires:

Access Rights	The contractual rights to use a Service and/or Third-Party Software granted to the Customer by Windowmaker comprising: the relevant provisions in the Documentation; the specific rules set out in a Documentation (different Products may have different rules regulating their use); and the quantity of Access Rights agreed in the Documentation as may be amended by the appropriate Invoice to any additional rights.
Account	A unique account created for You to access Our products and services.
Affiliate	Any legal entity that owns, is owned by, or that is under common ownership with Windowmaker or the Customer (as relevant). Ownership means control of 50% or more of the shares, equity interests, or other securities entitled to vote for the election of directors or other managing authority.
API (Application Programming Interface)	An API is considered part of the Software and Services provided by Windowmaker. APIs facilitate interaction with the Software and are
Authorised User(s)	Any person who is given permission by the Customer to use a Product subject to the relevant Access Rights, or otherwise gains access through the Customer's user accounts or systems including, but not limited to, laptops, desktops, workstations, mobile devices, consoles, network devices, and/or servers.
Business Day	Any day that is not a Saturday, Sunday, or public holiday in England and Wales.
Commercial Purpose	The use of the software for business or profit-making activities, which is prohibited under the EULA.
Company	Referred to as either “the Company,” “We,” “Us,” “Our” or “Windowmaker” in this Agreement) means Windowmaker Software Limited.
Confidential Information	Any data, facts, knowledge, or insights, regardless of whether they are conveyed or received in written, oral, electronic, graphic, or other electronic formats, that belong to either the Customer or Windowmaker and are intended to be kept confidential or private. This includes, but is not limited to, Customer Data, contractual agreements between the Parties, Product roadmaps, and any information explicitly stated or marked as 'confidential.' Additionally, it encompasses information which, by its nature or the context in which it is presented, should reasonably be understood as confidential.
Contract	The agreement between Us and You, including these Terms and Conditions and the Proposal.
CSP (Cloud Service Provider)	Has the full meaning as a public cloud service provider, Microsoft Azure, providing services delivered over the internet, including access to virtual IT products, services and resources, management tools, and other

services including information security, data back-up and disaster recovery.

Customer	The individual or legal entity, which is a Party to an Agreement with Windowmaker, as identified in the Documentation. Additionally referred to as “You” or “Your;”.
Data	All data, including all text, sound, video, image files, or other information that is posted, uploaded, linked to or otherwise made available by You regardless of the form of that Data; And also means all data (including Personal Data), information, or material that the Customer or an Authorised User processes and/or stores using the Product.
Data Protection Law(s)	All applicable data protection and privacy legislation in force as Law in the Location including, where applicable, the General Data Protection Regulation ((EU) 2016/679); the UK’s Data Protection Act 2018; UK GDPR (General Data Protection Regulation); the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
Designated Administrators	Your administrators who are appointed to obtain and receive Support.
Device	Any PC, laptop, mobile, or tablet under the user’s control that meets the minimum requirements of the Windowmaker software.
Documentation	Specifications, manuals, handbooks, maintenance libraries, and other publications or media supplied or made available to Customer or to which Customer has been given access to in connection with the Products or connected services. Documentation will include any Proposal, Quotation, Invoice, Order Confirmation Form, Conditions, SOW, Terms, Special Terms, in connection with the Agreement between Windowmaker and the Customer.
Effective Date	The ‘Contract Start Date’ specified in the Windowmaker Order Confirmation Documentation.
EULA	End User License Agreement, governing the use of the Service.
Fees	The charges for the Services which are payable by the Customer under the Agreement (Fees are either One Off Fees or Recurring Fees, and do not include Expenses). Any failure by Customer to pay any Fees by the applicable due date shall be deemed a material breach of this Agreement.
Force Majeure	Any event outside the reasonable control of either Party affecting its performance of its obligations under the Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including denial of service attacks, hacking, internet outages, pandemics, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster.

Free Trial	A trial period during which the user can use the Windowmaker software without charge, governed by the same EULA agreement.
Governing Law	The laws of England that govern the EULA agreement and any disputes arising from it.
Insolvency Event	Means the other party suspends or threatens to suspend payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party, a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party, an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party, the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver, a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party, a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days, any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned, the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
Intellectual Property and Ownership	"Intellectual Property and Ownership" refers to the ownership rights retained by Windowmaker Software Ltd. over the Software, including all copyrights, trademarks, trade secrets, patents, and other intellectual property rights, whether registered or unregistered.
License Grant	Refers to the permission granted by Windowmaker Software Ltd. to the Customer, allowing the use of the Software on the Customer's devices, subject to the specific terms and conditions outlined in the End-User License Agreement (EULA).
Limitation of Liability	The extent to which Windowmaker Software Ltd. and its suppliers shall be held liable for any damages, whether direct, indirect, incidental, or consequential, arising from the use or inability to use the Software, as specified in the EULA or other governing agreements.
Limited Warranty	The warranty provided by Windowmaker Software Ltd., which covers defects in the physical media or dongle supplied with the Software, under normal use, for a specified period, as detailed in the relevant agreement.

Windowmaker Terms and Conditions (“Terms”)



Maintenance Services	The activities undertaken by Windowmaker Software Ltd. to maintain the functionality, performance, and security of the Software. This includes the provision of updates, patches, bug fixes, and version upgrades, as described in the Proposal.
Misuse	The EULA specifies what You are permitted and not permitted to do under the 'Licence Grant' section.
Modifications	Any changes, adaptations, translations, or alterations to the Software, which are strictly prohibited under the terms of the End-User License Agreement (EULA).
Personal, Non-Transferable, Non-Exclusive Licence	The license granted to the Customer by Windowmaker Software Ltd., allowing personal use of the Software. This license does not confer the right to transfer the Software to others and does not grant exclusive rights.
Professional Services	The specialized services provided by Windowmaker Software Ltd. to the Customer, including but not limited to consulting, training, implementation, configuration, customization, and project management, as outlined in the Proposal or Statement of Work.
Proposal	The document provided by Us, outlining the specific Services to be offered to the Customer, including detailed descriptions and terms of the engagement.
Provider	Windowmaker Software Ltd, a company registered in England and Wales under number 01701233.
Reseller	An entity authorized by Windowmaker Software Ltd. to distribute or resell the Software to end users, pursuant to a valid Reseller Agreement.
Sales Terms	The Terms and Conditions of Sale governing the sale of products and services by the Provider.
Sanctions	Any legal or regulatory restrictions, penalties, or directives imposed by governments, regulatory bodies, or international organizations that may affect the ability of the Parties to perform their obligations under this Agreement.
Service	The Software-as-a-Service (SaaS) product provided by the Provider, including any updates, modifications, or enhancements made available to the Customer during the term of the Subscription.
Service Desk	A single point of contact between Windowmaker and the Customer in relation to any query, requests, notices, Incidents and Service Requests affecting a Product (The SLA contains further information about Support Hours, channels of communication, Service Levels for Incident management, etc). The service desk is reached via Help@windowmaker.com .
Services	Also referred as “Product(s),” “Products and Services” refer to all activities, deliverables, and obligations provided by Windowmaker to the Customer, as delineated in the Proposal. This includes, but is not limited to, Professional Services, Software, Support, Maintenance Services, and any other services that the Parties have explicitly agreed upon.

Windowmaker Terms and Conditions (“Terms”)



SLA	"Service Level Agreement" or "SLA" refers to the document outlining the specific performance and quality metrics that are applicable to the Services provided by Windowmaker.
Software	Also known as "Windowmaker Software" is the SaaS service, any computer programs, applications, or code provided by Windowmaker to the Customer. This includes, but is not limited to, executable files, source code, Application Programming Interfaces (APIs), and any related documentation, as described in the Proposal or any associated documentation.
Subscription Plan	The plan selected by the Customer, which details the features, functionalities, and subscription fees associated with the Services provided by Windowmaker.
Subscriptions	The recurring financial commitments made by the Customer for the purpose of accessing or utilizing Windowmaker's Software, Services, or both, as specified in the Proposal.
Support	The technical assistance provided by Windowmaker to the Customer. This includes, but is not limited to, troubleshooting, issue resolution, and guidance related to the Software or Services. Support may involve help desk services, error corrections, and updates as described in the Service Level Agreement (SLA) or the Proposal.
Termination	Refers to the conditions under which the End-User License Agreement (EULA) may be terminated, whether by the Customer or by Windowmaker Software, and the respective consequences that arise from such termination.
Terms and Conditions	Also referred to as "Terms", mean these Terms and Conditions that form the entire agreement between You and Us regarding the use of the Service.
Third Party	Any individual or entity not party to the agreement.