

NXPOWERLITE VIDEO

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"Use", "Used" and "Using" means the use of the Software run as a batch process to search through a configurable set of directories, optimizing the Files found and replacing the original Files with smaller optimized versions in order to reclaim storage. For the avoidance of doubt the Software must not be adapted to run constantly or to optimize files 'on demand' (for example as they are uploaded to or downloaded from a file server).

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"Support and Maintenance" shall mean the optional maintenance and support services set out in Schedule A.

"Order Confirmation" means an order document, online sales receipt, licence confirmation email or invoice specifying the Software Licence Type, Support and Maintenance, Subscription Term and/or Permitted Number purchased by Licensee hereunder.

"Licence Type" means either a Subscription Licence or a Perpetual Licence

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- 3.3 Licensee acknowledges receipt of the third party proprietary notices attached to this License Agreement as Schedule B.

4. LICENCE FEE

In consideration for the licence granted to Licensee hereunder, Licensee shall pay to Neuxpower the Licence Fee. Such Licence Fee shall be due and payable on the date that the Licensee executes this Licence Agreement. Such Licence Fee is exclusive of VAT or other sales tax. If any applicable law requires Licensee to withhold amounts from any payments to Neuxpower hereunder, (i) Licensee shall effect such withholding, remit such amounts to the appropriate taxing authorities and promptly furnish Neuxpower with tax receipts evidencing the payments of such amounts, and (ii) the sum payable by Licensee upon which the deduction or withholding is based shall be increased to the extent necessary to ensure that, after such deduction or withholding, Neuxpower receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount Neuxpower would have received and retained in the absence of such required deduction or withholding.

5. TERM AND TERMINATION

- 5.1 This Licence Agreement shall commence on the Effective Date and continue in effect indefinitely, unless terminated in accordance with this Clause 5.1. If either party breaches this Licence Agreement in any material respect, the other party may give written notice to the breaching party of its intent to terminate, and if such

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- 5.2 Upon any termination of this Licence Agreement, (a) the rights and licences granted to Licensee herein shall terminate; (b) Licensee shall cease all use of the Software; (c) Licensee shall return to Neuxpower all copies of the Software and Documentation in Licensee's possession or under its control; and (d) Licensee shall certify in writing to Neuxpower its compliance with the foregoing. Clauses 1, 3, 4 (to the extent of unpaid obligations), 5.2, 6, 7 and 8 shall survive any termination of this Licence Agreement.

6. REPRESENTATIONS AND WARRANTIES

- 6.1 Neuxpower warrants that the Software will function materially in accordance with the Documentation for a period of ninety (90) days from the Effective Date. Neuxpower shall have no obligation to provide ongoing support or maintenance services to Licensee unless the parties enter into a separate Support and Maintenance agreement or the Licensee has a Subscription Licence and the services are requested during the Subscription Term.
- 6.2 The above warranty is conditional upon the Licensee complying with the Minimum Requirements.
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- 6.4 The Licensee hereby represents that it shall (i) comply with all applicable local and foreign laws and regulations which may govern the use of the Software, and (ii) use the Software only for lawful purposes and in accordance with the terms of this Licence Agreement.

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9. GENERAL

- 9.1 Licensee shall not assign this Licence Agreement, in whole or in part, without the written consent of Neuxpower.

- 9.2 This Licence Agreement and its performance shall be governed by and construed in accordance with and the parties hereby submit to the exclusive jurisdiction of the laws of England and Wales.
- 9.3 Licensee agrees that because of the unique nature of the Software and Neuxpower's proprietary rights therein, a demonstrated breach of this Licence Agreement by Licensee would irreparably harm Neuxpower and monetary damages would be inadequate compensation. Therefore, Licensee agrees that Neuxpower shall be entitled to preliminary and permanent injunctive relief, as determined by any court of competent jurisdiction to enforce the provisions of this Licence Agreement.
- 9.4 If any provision of this Licence Agreement or the Software thereof is declared void, illegal, or unenforceable, the remainder of this Licence Agreement will be valid and enforceable to the extent permitted by applicable law. In such event, the parties agree to use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by the applicable law, achieves the purposes intended under the invalid or unenforceable provision.
- 9.5 Any failure by any party to this Licence Agreement to enforce at any time any term or condition under this Licence Agreement will not be considered a waiver of that party's right thereafter to enforce each and every term and condition of this Licence Agreement.
- 9.6 Neither party will be responsible for delays resulting from circumstances beyond the reasonable control of such party, provided that the nonperforming party uses reasonable efforts to avoid or remove such causes of nonperformance and continues performance hereunder with reasonable dispatch whenever such causes are removed.
- 9.7 This Licence Agreement, together with Neuxpower's then current price list, where applicable, and all agreements in writing between the parties in respect of the Permitted Number, Subscription Term and Licence Fees (i) constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, oral and written, made with respect to the subject matter hereof, and (ii) cannot be altered except by agreement in writing executed by an authorised representative of each party. No purchase order and/or standard terms of purchase provided by Licensee shall supersede this Licence Agreement.
- 9.8 If Licensee does not agree to the terms of this Licence Agreement, Licensee may obtain a refund of the amount paid for the Software or Subscription if Customer: (a) does not Use the Software and the accompanying items (including all electronic materials, documents etc) and (b) notifies Neuxpower in writing of the non-acceptance of this Licence Agreement, with proof of payment, at the address set out below within 30 days of the purchase date.

SCHEDULE A

SUPPORT AND MAINTENANCE TERMS

DEFINITIONS

"**Additional Charges**" means additional sums which may be charged under these Support Terms in accordance with Neuxpower's rates from time to time for work undertaken on a time and materials basis;

"**Effective Date**" means the date set out in the Schedule on which maintenance commences;

"**Fault**" means either (a) a failure of the Software to perform in accordance with the Documentation; or (b) a cessation, interruption or degradation of the usual functionality of the Software;

"**Licence**" means the licence agreement pursuant to which the Licensee is authorised by Neuxpower to use the Software;

"**Maintenance Release**" means (i) any corrected version of the Software from time to time issued by Neuxpower; (ii) any maintenance and/or new release of the Software from time to time issued by Neuxpower;

"**New Release**" means any improved or modified version of any of the Software from time to time issued by Neuxpower;

"**Permitted Number**", "**Subscription Term**", "**Subscription Licence**", "**Perpetual Licence**", "**Neuxpower**" and "**Licensee**" shall be interpreted in accordance with the License;

"**Services**" means the provision of support in respect of the Software by Neuxpower pursuant to these Support Terms;

"**Software**" means the Software specified in the Schedule to be supported pursuant to these Support Terms;

"**Support Fee**" shall mean the periodic charge for the relevant service specified in the Schedule as increased from time to time pursuant to clause 3.3;

"**Support Terms**" means these terms and conditions of maintenance and support;

"**Authorised Representative**" means a member of the Licensee's staff notified to Neuxpower as being an authorised Licensee contact for reporting Faults to Neuxpower and receiving Fault rectifications;

"**Weekends**" shall mean Saturday and Sunday.

"**Working Day**" means all days excluding Weekends and United Kingdom bank and public holidays.

2. PROVISION OF SERVICES

- 2.1 Perpetual Licence. On payment of the Support Fee in accordance with clause 3 below Neuxpower shall provide the Services to the Licensee upon these Support Terms for the period to which that payment relates.
- 2.2 Subscription Licence. Neuxpower shall provide the Services to the Licensee upon these Support Terms during the Subscription Term. Subscription Licence fees include Support and Maintenance.

3. FEES

- 3.1 The Support Fee shall be payable by the Licensee annually in advance and within 14 days of receipt of Neuxpower's invoice therefor. The Support Fee is exclusive and net of value added tax and any other sales tax that the Licensee will be additionally liable to pay.
- 3.2 Neuxpower reserves the right to charge the Licensee interest in respect of the late payment of any sum due under these Support Terms at the rate of 4 per cent per annum above the base rate from time to time of Barclays Bank PLC from the due date therefor until payment.
- 3.3 Neuxpower shall be entitled to increase the Support Fee by giving to the Licensee not less than 90 days prior written notice such notice to expire on an anniversary of Effective Date. Notwithstanding the foregoing, no increase in Support Fees shall take effect in respect of any period for which the Licensee has paid in advance.

4. TECHNICAL SUPPORT

- 4.1 The Services provided by Neuxpower comprise the following:-
 - 4.1.1 the provision of advice by email on a priority basis on the use of the Software;
 - 4.1.2 the diagnosis of Faults in the Software and instructions as to the rectification of such Faults by email on a priority basis;
 - 4.1.3 the creation and dispatch to the Licensee of Maintenance Releases.
- 4.2 The Licensee shall supply by email to Neuxpower a detailed description of any Fault requiring the Support Services and the circumstances in which it arose forthwith upon becoming aware of the same.
- 4.3 Neuxpower shall use its reasonable endeavours to respond to the Licensee within 2 Working Days of a request for Services. This response shall include an initial analysis of the reported Fault. Thereafter, Neuxpower shall use its reasonable endeavours to provide a rectification to the Fault as soon as reasonably possible thereafter.
- 4.4 The Services shall not include the diagnosis and rectification of any Fault resulting from:
 - 4.4.1 the improper use operation or neglect of the Software or the equipment upon which it is run;
 - 4.4.2 the modification of the Software or its merger (in whole or in part) with any other software except as permitted by the License;
 - 4.4.3 the failure by the Licensee to implement Maintenance Releases or recommendations in respect of or solutions to Faults previously advised by Neuxpower;
 - 4.4.4 any repair adjustment alteration or modification of the Software by any person other than Neuxpower or an agent of Neuxpower without Neuxpower's prior consent;
 - 4.4.5 the use of the Software for a purpose for which it was not designed;
 - 4.4.6 rectification of lost or corrupted data arising for any reason other than Neuxpower's own negligence;
 - 4.4.7 loss or damage caused directly or indirectly by operator error or omission;
 - 4.4.8 a fault in Licensee or third party software or applications or any upgrade or new release in respect thereof;
 - 4.4.9 a fault in the equipment or in any other software operating in conjunction with or closely with the Software.
- 4.5 Neuxpower shall upon request by the Licensee provide Support notwithstanding that the Fault results from any of the circumstances described in clause 4.4 above or shall provide Support to the Licensee in circumstances which are not covered by these Support Terms. Neuxpower shall in such circumstances be entitled to levy Additional Charges monthly in arrears and shall be paid by the Licensee (together with value added tax thereon) within 14 days of receipt of an invoice in respect of such Additional Charges.
- 4.6 All email contact with Neuxpower should be to the following email address unless the Licensee is notified to the contrary by Neuxpower: support@neuxpower.com.

SCHEDULE B

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