

VOLUME LICENSE AND MAINTENANCE AGREEMENT

Carbon Copy Cloner ("Software") is licensed, not sold, to you ("Licensee") by Bombich Software, Inc. ("Bombich Software") for use only under the terms and conditions of this license ("License"). This License supersedes the terms of the Carbon Copy Cloner Software License Agreement form that accompanies each copy of the Software. By installing, copying, downloading, accessing or otherwise using the Software, Licensee agrees to be bound by the terms of this License. If Licensee does not agree to the terms of this Licensee, Licensee must not install, copy, download, access or use the Software, and Licensee must promptly notify Bombich Software in writing.

IMPORTANT NOTE: This software may be used to reproduce and distribute materials. It is licensed to you only for reproduction and distribution of non-copyrighted materials, materials in which you own the copyright, or materials you are authorized or legally permitted to reproduce or distribute. If you are uncertain about your right to copy or distribute any material, you should contact your legal counsel.

1. License.

- (a) **General License**. Upon payment of all applicable fees and subject to the terms of this License, Bombich Software grants to Licensee a non-exclusive, perpetual (unless terminated under Section 6), non-transferable license to make exact object code copies of the Software in the quantity purchased, and use and install each such copy of the Software on a single computer owned or leased by Licensee.
- (b) **End User License Agreement**. The terms and conditions stated in the end user license agreement ("EULA") provided with the Software will govern the use of each respective copy of the Software used under this License, except that the EULA does not constitute the granting of any additional license to the Software.
- (c) **Upgrades & Updates**. If the Software is licensed as an upgrade or update, then Licensee may only use the Software to replace a validly licensed version of the same software. Licensee agrees that the upgrade or update does not constitute the granting of a second license to the Software (i.e., Licensee may not use the upgrade or update in addition to the software it is replacing, nor may Licensee transfer the software which is being replaced to a third party).
- (d) **Education**. If the Software is licensed at an education discount, then the Software may only be used by enrolled students, faculty, teachers and administrators at an accredited K-12 educational institution (or equivalent) or higher education institution organized and operated exclusively for the purpose of teaching its students. For Software licensed by an authorized educational institution, there are no portable or home use rights.

(e) **Definitions**.

- (i) "Registration Code" is the individually customized registration code, and accompanying email and name to which it is tied, that is provided via email to the Customer that when applied within the Software removes the thirty day trial period.
- (ii) "License Count" is the quantity of computers upon which the Licensee has installed the Software.

2. Maintenance Software.

(a) Definitions.

- (i) "Maintenance Software" includes both Upgrades and Updates. Upgrades and updates are made available only through electronic download.
- (ii) "Upgrade" means an improvement to an existing product through added functionality and/or enhanced performance. Upgrades are identified by a change in the number to the left or right of the decimal point in the product version number (e.g., an upgrade from Carbon Copy Cloner 3.5 to 4.0, or an upgrade from version 4.0 to 5.0). (iii) "Update" means bug fix updates containing fixes, compatibility updates to maintain compliance with specifications, and standards compatibility updates to interoperate with specific standards. Updates are identified by a change in the number two digits to the right of the decimal point (e.g., Carbon Copy Cloner 3.5 to 3.5.1).
- (b) **Maintenance License**. As part of this Agreement, Licensee's rights to use the Software will extend to the Maintenance Software that is commercially released during the first year after purchase of Software Maintenance. Bombich Software will provide or make available to Licensee a downloadable master copy of such Maintenance Software commercially released during the term of this Agreement.

(c) **Restrictions and Disclaimers**. Licensee's rights to Maintenance Software does not grant Licensee the right to acquire products bearing different names or special versions of the Maintenance Software created for certain Licensees or market segments, even though they may contain similar features or perform similar functions. From time to time products will be offered in the retail or other channels in different configurations as special promotions, which will not be made available as Maintenance Software, except in Bombich Software's sole discretion.

MAINTENANCE SOFTWARE WILL BE DEVELOPED AND RELEASED BY BOMBICH SOFTWARE AND ITS LICENSORS IN THEIR SOLE DISCRETION. BOMBICH SOFTWARE AND ITS LICENSORS DO NOT WARRANT OR REPRESENT THAT THEY WILL DEVELOP OR RELEASE ANY MAINTENANCE SOFTWARE DURING THE TERM OF THIS AGREEMENT. BOMBICH SOFTWARE AND ITS LICENSORS DO NOT WARRANT THAT ANY MAINTENANCE SOFTWARE WILL BE PROVIDED TO LICENSEE OR MADE AVAILABLE WITHIN ANY SPECIFIED TIME PERIOD FOLLOWING THE COMMERCIAL RELEASE OF SUCH MAINTENANCE SOFTWARE.

- 3. Restrictions. In addition to the restrictions stated in the respective EULA, the following restrictions apply.
- (a) **Other Limitations**. LICENSEE MAY NOT REVERSE ENGINEER, DECOMPILE OR DISASSEMBLE THE SOFTWARE, EXCEPT AND ONLY TO THE EXTENT EXPRESSLY PERMITTED BY APPLICABLE LAW. LICENSEE MAY NOT MODIFY, ADAPT, TRANSLATE, RENT, LEASE, LOAN OR CREATE DERIVATIVE WORKS BASED UPON THE SOFTWARE OR ANY PART THEREOF.
- (b) **Restricted Uses**. THE SOFTWARE IS NOT INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL SYSTEMS, LIFE SUPPORT MACHINES OR OTHER EQUIPMENT IN WHICH THE FAILURE OF THE SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.
- (c) **Transfer Restriction**. LICENSEE MAY NOT TRANSFER OR ASSIGN ITS RIGHTS UNDER THIS LICENSE TO ANOTHER PARTY WITHOUT BOMBICH SOFTWARE'S PRIOR WRITTEN CONSENT.
- (d) **Notices**. Licensee shall: (i) not remove any copyright notices or proprietary legends from the Software; (ii) reproduce on all copies of the Software the copyright notice and any other proprietary legends that were on the original copy of the Software; (iii) not disclose the unique Registration Code to anyone except as required to use the Software as permitted under this Agreement; and (iv) take reasonable steps to ensure that each user of the Software is aware of and complies with the terms and conditions of this Agreement.
- **4. Ownership**. Licensee owns the media on which the Software is recorded or fixed, but Licensee acknowledges that Bombich Software and its licensors retain ownership of the Software itself. Bombich Software reserves any rights not expressly granted to Licensee. The rights granted are limited to Bombich Software's and its licensors' intellectual property rights in the Software and do not include any other patents or intellectual property rights.

5. Warranty.

- (a) **Inherent Risks**. The use of the Software, as with any backup software product, carries inherent risks that can be mitigated by careful preparation, proper use, and manual verification of data on the backup volume. These risks include, but are not limited to loss of preexisting data on a backup volume, media failure leading to data loss on the source or destination volume and backup failure due to error. These risks, and mitigation efforts to avoid them are described in the documentation included with the Software.
- (b) **Warranty**. Bombich Software warrants that, for 30 days after initial installation, the Software will perform substantially as stated in its published specifications therefor, provided that Bombich Software's sole liability and your exclusive remedy for any breach of this warranty is that, if reported to Bombich Software during the warranty period, Bombich Software will fix the non-compliance, replace the Software that does not conform with conforming Software or, if neither of the foregoing is reasonably available, refund the purchase price.

OTHER THAN STATED IN 5(b) ABOVE, BOMBICH SOFTWARE AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, REPRESENTATIONS AND CONDITIONS, EITHER EXPRESS OR IMPLIED (WHETHER COLLATERALLY, BY STATUTE OR OTHERWISE), INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES, REPRESENTATIONS AND CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY AND/OR FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE SOFTWARE AND ACCOMPANYING WRITTEN MATERIALS. FURTHERMORE, THERE IS NO WARRANTY AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE SOFTWARE OR AGAINST INFRINGEMENT OF THIRD PARTY PROPRIETARY RIGHTS BY THE SOFTWARE. BOMBICH SOFTWARE DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY BOMBICH SOFTWARE OR A BOMBICH SOFTWARE AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, CONDITIONS OR OTHER TERMS THE ABOVE LIMITATION MAY NOT APPLY TO YOU. THE TERMS OF THIS DISCLAIMER AND THE LIMITED WARRANTY UNDER THIS SECTION 5 DO NOT AFFECT OR PREJUDICE THE STATUTORY

RIGHTS OF A CONSUMER ACQUIRING THE SOFTWARE OTHERWISE THAN IN THE COURSE OF A BUSINESS, NEITHER DO THEY LIMIT OR EXCLUDE ANY LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY BOMBICH SOFTWARE'S NEGLIGENCE.

6. Exclusion and Limitation of Remedies and Damages.

- (a) Exclusion. IN NO EVENT WILL BOMBICH SOFTWARE OR ANY OF ITS LICENSORS, DIRECTORS, OFFICERS, EMPLOYEES OR AFFILIATES OF ANY OF THE FOREGOING BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION AND THE LIKE) OR DIRECT LOSS OF BUSINESS, PROFITS OR REVENUE, WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR ACCOMPANYING WRITTEN MATERIALS, REGARDLESS OF THE BASIS OF THE CLAIM (WHETHER UNDER CONTRACT, NEGLIGENCE OR OTHER TORT OR UNDER STATUTE OR OTHERWISE HOWSOEVER ARISING) AND EVEN IF BOMBICH SOFTWARE OR ITS REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. WITHOUT LIMITING THE ABOVE, YOU SPECIFICALLY AGREE THAT BOMBICH SOFTWARE WILL BEAR NO LIABILITY FOR ANY DAMAGE, LOSS OR EXPENSES CAUSED BY USE OF THE SOFTWARE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL SYSTEMS, LIFE SUPPORT MACHINES OR OTHER EQUIPMENT IN WHICH THE SOFTWARE FAILURE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.
- (b) Limitation. IF BOMBICH SOFTWARE BREACHES ANY PROVISION OF THIS AGREEMENT, ITS SOLE AND EXCLUSIVE MAXIMUM LIABILITY, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT IN ANY EVENT EXCEED THE CONTRACT PRICE FOR THE PARTICULAR SOFTWARE THAT CAUSED THE LOSS. SPECIFICALLY, BOMBICH SOFTWARE IS NOT LIABLE FOR ANY DAMAGE TO OR LOSS OF DATA OR INFORMATION ON A COMPUTER SYSTEM THAT IS ALLEGED TO BE CAUSED BY CARBON COPY CLONER, INCLUDING THAT BOMBICH SOFTWARE IS NOT LIABILE FOR ANY ALLEGED ACTS OF NEGLIGENCE. IN NO EVENT SHALL BOMBICH SOFTWARE'S OR ITS LICENSORS' TOTAL LIABILITY FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EXCEED THE AMOUNT PAID UNDER THIS AGREEMENT.
- 7. Infringement Indemnity. If a claim is made or an action brought asserting that the Software infringes a copyright or trade secret, Bombich Software will indemnify you and hold you harmless against such claim and any damages finally awarded or agreed to in settlement and costs reasonably incurred, provided that Bombich Software (i) is given prompt written notice of the claim, and full cooperation and assistance in its defense or settlement, by you, and (ii) has sole control of the defense and all related settlement negotiations; however, Bombich Software may not settle the claim in a manner that imposes material duties or restrictions on you without your consent, not to be unreasonably withheld. If the Software becomes, or in Bombich Software's opinion is likely to become, the subject of such a claim, Bombich Software may, at its expense and option, either procure the right for you to continue using the Software, or replace or modify it so that it becomes non-infringing (yet contains comparable functionality); provided that if neither of the foregoing alternatives is available on terms that Bombich Software deems reasonable, you will return the affected Software promptly upon Bombich Software's request and receive a refund of the license fees you paid for the affected item. Bombich Software shall have no liability for any claim based upon (i) the combination, operation or use of any Software with equipment, software or data not supplied by Bombich Software, if the claim would have been avoided by use of other equipment, software or data, (ii) features of the Software designed or contributed by you, (iii) modification of any Software by persons other than Bombich Software, or (iv) use of the Software except strictly as permitted by this License. THE FOREGOING STATES YOUR EXCLUSIVE REMEDY AND BOMBICH SOFTWARE'S ENTIRE OBLIGATION WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY RIGHTS.

8. Maintenance Term & Termination.

- (a) **Initial Term**. This Agreement will commence on the date that Maintenance is purchased by the Customer and a Subscription Confirmation is emailed to the Customer by Bombich Software and will terminate one year from that date ("Initial Term"), unless the Agreement is renewed or terminated under the provisions of this Section 8. Following the Initial Term, Licensee can:
 - (1) Renew the Agreement under Section 8(b); (2) Terminate the Agreement under Section 8(d) and continue using only the currently licensed version of the software; or (3) Relicense the software under one of Bombich Software's other license programs under Bombich Software's then-current terms.
- (b) **Renewal Term(s).** For as long as Bombich Software is offering Maintenance services for the Software, Maintenance shall automatically be provided and renewed in increments of twelve (12) months each, commencing on expiration of the active maintenance period.

Licensee must confirm its License Count on or before each annual anniversary date to Bombich Software in writing and pay Bombich Software's then current license renewal fees in order to renew the Agreement. Maintenance is a subscription service

and Licensee's original form of payment will be automatically billed or charged on the renewal date. Licensee will receive reminder emails in advance of this billing and Licensee agrees to accept invoices delivered in either electronic or paper form. If payment was originally made by purchase order or check, payment shall be due in advance of the maintenance renewal term and within 30 days of the invoice date.

Bombich Software will confirm such renewal by displaying the maintenance subscription status as current and paid in full on the Licensee's subscription page in the Bombich Software Store and by updating Bombich Software's internal records.

- (c) **Breach**. If any breach of this Agreement by Licensee continues for more than ten (10) days after receipt of written notice of such breach by Bombich Software, Bombich Software may terminate this Agreement by written notice to Licensee, whereupon this Agreement and all rights granted to Licensee herein shall immediately cease. Breach of this Agreement includes, but is not limited to, Licensee's failure to pay any license fees when due.
- (d) **Discontinuance of Maintenance Program Services**. Discontinuation of Maintenance requires using the link provided in the initial purchase confirmation email to view subscription status. Maintenance can be cancelled on this web page. If the initial purchase confirmation email cannot be found, written notice must be provided to Bombich Software no less than fourteen (14) days prior to the commencement of any Maintenance Renewal period.
- (e) **Effect of Termination**. Discontinuance of Maintenance shall not affect Licensee's right to use the Software, "as is", in the version currently in use at the time of discontinuance or void the license rights granted under the license for the Software at the time that maintenance is discontinued. Should Licensee later decide to reinstate Maintenance for the Software, Licensee must reinstate Maintenance for all licensed copies of the Software at the same location. The charge for such reinstatement shall be Bombich Software's then current reinstatement fee in effect at the time of the reinstatement, multiplied by the number of licensed copies of the Software for which Maintenance is being reinstated. Should Licensee choose to discontinue Maintenance on a partial amount of licenses for a given Software product or for a particular location or configuration, this Agreement shall be amended to permanently terminate the use of those licenses no longer covered under Maintenance. Bombich Software will then adjust the applicable Maintenance Program fee on the remaining licenses. Should the Licensee wish to reinstate discontinued licenses, the Licensee would have to re-purchase them at the then current Software License fee.
 - (f) **Survival**. Sections 3, 5, 6, 7, 8, 9, 10, 11 and 12 shall survive expiry or termination of this Agreement.
- **9. Audit**. No more than once per year and during ordinary business hours (after giving reasonable advance notice) Bombich Software, or at either party's option, an independent third party reasonably acceptable to both parties, may audit Licensee and its records relating to its payment obligations under this Agreement for the purpose of confirming Licensee's compliance with this Agreement. At Bombich Software's request, Licensee will provide a knowledgeable employee to assist in such audit. If such audit reveals that Licensee has underpaid amounts owing to Bombich Software under this Agreement, Licensee will promptly pay Bombich Software such past due amounts. If the amount which Licensee has underpaid in any period exceeds five percent (5%) or more of the amounts actually owed to Bombich Software for such period, Licensee will promptly reimburse Bombich Software for the direct out-of-pocket expenses incurred in conducting such audit.
- **10. Support**. Bombich Software is not obligated to provide Licensee any technical support services for Licensee's use of the Software under this Agreement. Licensee may order additional support services currently offered by Bombich Software during the term of this Agreement.

11. Consent to Use of Data.

You agree that Bombich Software may collect and use technical and related information, including but not limited to technical information about your computer, system and application software, and peripherals, that is gathered periodically to facilitate the provision of product support and other services to you (if any) related to the Software. Bombich Software may use this information, as long as it is in a form that does not personally identify you, to improve its products or to provide services or technologies to you.

12. General.

- (a) **Choice of Laws**. This Agreement shall be governed by, and its terms shall be construed in accordance with, the laws of the Commonwealth of Massachusetts. Any disputes shall be resolved by courts in Massachusetts. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980), as amended, is specifically excluded from application to this License. All Software provided to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 is provided with the commercial license rights and restrictions described in this License. All Software provided to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 is provided with RESTRICTED RIGHTS as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR, 48 CFR 252-227-7013 (OCT 1988), as applicable.
- (b) **Waiver**. No waiver or breach of any term or condition of this Agreement shall operate as a waiver of any other breach of such term or condition, or of any other term or condition, nor shall any failure to enforce any provisions hereunder operate as a waiver of such provision or any other provision hereunder.

- (c) **Severability**. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, except in those instances where removal or elimination of such invalid, illegal, or unenforceable provision or provisions would result in a failure of consideration under this Agreement, such invalidity, illegality or unenforceability shall not effect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.
- (d) **Headings**. Headings used in this Agreement are for the purpose of reference only and are not to be considered in construction or interpretation of this Agreement.
- (e) **Entire Agreement; Amendment**. This Agreement contains the entire Agreement between the parties relating to the subject matter hereof. All prior agreements and all prior negotiations, representations and communications relating to the same subject are superseded by this Agreement. This Agreement may not be modified other than by a written document signed by an authorized representative of each party. Any translation of this License is done for local requirements and in the event of a dispute between the English and any non-English versions, the English version of this License shall govern.

13. Export Law Assurances.

You may not use or otherwise export or re-export the Software except as authorized by United States law and the laws of the jurisdiction in which the Software was obtained. In particular, but without limitation, the Software may not be exported or re-exported (a) into any U.S. embargoed countries, or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List. By using the Software you represent and warrant that you are not located in, under control of, or a national or resident of any such country or on any such list. You also agree that you will not use the Software for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, chemical or biological weapons.