

Maximizer Software Limited

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MAXIMIZER CRM LIVE SUBSCRIPTION AGREEMENT

This Maximizer CRM Live Subscription Agreement consists of the terms and conditions set out below and the order form (the "**Order Form**") entered into between Maximizer Software Limited. ("**Maximizer**") and you (collectively, the "**Agreement**").

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING THE "I AGREE" BUTTON DISPLAYED AS PART OF THE ORDERING PROCESS OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS GOVERNING YOUR USE OF THE MAXIMIZER SERVICES, AS DESCRIBED BELOW. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU SHOULD NOT CLICK THE "I AGREE" BUTTON AND MAY NOT ACCESS OR USE THE MAXIMIZER SERVICES.

1. AGREEMENT DEFINITIONS

"**You**" and "**Your**" refers to the individual or entity, and any Affiliates (as defined below) of such an entity, that has ordered Maximizer CRM Live software as a service from Maximizer by executing an Order Form. Software as a service consists of system administration, system management, and system monitoring activities that Maximizer performs for the Maximizer CRM Live program, and includes the right to use the Maximizer CRM Live program and support services for such program, as defined in the Order Form (collectively, the "**Maximizer Services**"). The term "**User Guide**" refers to the user guide provided by Maximizer, as amended from time to time. The term "**Users**" means Your employees and any consultants, contractors and agents who require the use of the Maximizer Services to perform services for You, and who are authorized by You to use the Maximizer Services, for whom subscriptions to the Maximizer Services have been purchased under an Order Form accepted by Maximizer, and who have been supplied with user identifications and passwords by You (or by Maximizer at Your request). The term "**Your Data**" refers to all proprietary electronic data entered by You that resides in Your service environment. The term "**Malicious Code**" refers to any harmful or malicious code, content, files, scripts, agents or programs including, but not limited to, viruses, malware, worms, time bombs and Trojan horses. The term "**Third-Party Applications**" refers to online, Web-based applications and offline software products that are provided by third parties, interoperate with the Maximizer Services, and are identified as third-party applications in the User Guide. The term "**Affiliate**" refers to any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "**Control**," for the purposes of the definition of Affiliate, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity. The term "**Purchased Services**" refers to Maximizer Services that You purchase under an Order Form but does not include any of the Maximizer Services provided by Maximizer to You under a free trial.

2. RIGHTS GRANTED

Upon Maximizer's acceptance of Your Order Form, and for the duration of the subscription period set out in the Order Form or the term of this Agreement, whichever ends first, You have the nonexclusive, non-assignable, non sub-licensable worldwide limited right to use the Maximizer Services solely for Your internal business operations and subject to the terms of this Agreement. You may allow the Users to use the Maximizer Services for this purpose and You are responsible for the User's compliance with this Agreement.

You acknowledge that Maximizer has no delivery obligation and will not ship copies of any components of the Maximizer Services to You. You agree that You do not acquire under this Agreement any license to use the Maximizer Services in excess of the scope or duration set out in the Order Form and this Agreement. Upon the end of this Agreement, Your right to access or use the Maximizer Services will terminate.

3. PROPRIETARY RIGHTS

3.1 Reservation of Rights

Subject to the limited rights expressly granted under this Agreement, Maximizer reserves all rights, title and interest in and to the Maximizer Services and all software or other intellectual property rights of Maximizer and its licensors therein. No rights or licenses are granted to You under this Agreement except the right to use the Maximizer Services as expressly set forth in, and subject to, this Agreement.

3.2 Ownership of Your Data

As between Maximizer and You, You retain all rights, title and interest in and to all of Your Data.

3.3 Your Suggestions

Maximizer will have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Maximizer Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including any Users, related to the operation of, or modification or improvement to, the Maximizer Services.

4. FREE TRIAL

Terms and conditions for the use of the Maximizer Services on a trial basis may appear on the trial registration web page. Any such terms and conditions are incorporated into this Agreement by reference and are legally binding on You.

Any data You enter into the Maximizer Services, and any customizations made to the Maximizer Services by or for You, during Your free trial will be permanently lost unless You purchase a subscription to the Maximizer Services, or export such data, before the end of the trial period. You acknowledge that You are solely responsible for exporting Your Data from the Maximizer Services prior to the end of a free trial period. Maximizer will not be responsible for any of Your Data that is lost as a result of Your failure to export it prior to the end of the free trial period.

NOTWITHSTANDING SECTION 10, DURING THE FREE TRIAL THE MAXIMIZER SERVICES ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY.

Please review the User Guide during the free trial period so that You become familiar with the features and functions of the Maximizer Services before You make Your purchase.

5. USE OF THE MAXIMIZER SERVICES

5.1 User Subscriptions

Unless otherwise specified in the applicable Order Form:

- (a) the Maximizer Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users on the applicable Order Form and for which payment has been made to Maximizer;
- (b) the number of User subscriptions purchased cannot be decreased during the relevant subscription term stated on any Order Form;
- (c) additional User subscriptions may be added during the subscription term at Maximizer's then current list price at the time additional subscriptions are added, pro-rated for the remainder of the subscription term in effect at the time the additional User subscriptions are added; and
- (d) User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Maximizer Services.

5.2 Maximizer's Responsibilities

Maximizer will:

- (a) provide to You support for the Purchased Services as described in the User Manual;
- (b) provide the Purchased Services only in accordance with applicable laws and government regulations; and
- (c) use commercially reasonable efforts to make the Purchased Services available to You at least 99.5% of the time in any calendar month. The calculation of such percentage does not include:
 - (1) planned downtime (of which Maximizer will give at least 24 hours' notice and which Maximizer will schedule to the extent practicable during the hours from 7 p.m. Pacific time to 3 a.m. Pacific time); or
 - (2) any unavailability caused by circumstances beyond Maximizer's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Maximizer's employees), or Internet service provider failures or delays.

5.3 Your Responsibilities

You will:

- (a) use the Maximizer Services only for Your internal business purposes and in accordance with the User Guide;
- (b) be responsible for Users' compliance with this Agreement;
- (c) be solely responsible for the accuracy, quality, integrity and legality of Your Data and of the means by which You acquired Your Data; and
- (d) use Your best efforts to prevent unauthorized access to or use of the Maximizer Services by persons who are not Users, and notify Maximizer promptly of any such unauthorized access or use.

You will not:

- (e) make the Maximizer Services available to anyone other than Users;
- (f) sub-license, sell, resell, rent or lease the Maximizer Services;
- (g) use the Maximizer Services to upload, store, transmit, email, post or publish in any manner whatsoever any of Your Data or other material for any purpose that may:
 - (1) menace or harass any person or cause damage or injury to any person or property;
 - (2) involve the publication of any material that is false, defamatory, harassing, pornographic or otherwise obscene;
 - (3) violate privacy rights or promote bigotry, racism, hatred or harm;
 - (4) constitute unsolicited commercial email, junk mail, spam or chain letters or otherwise offend the provisions of the *Fighting Internet and Wireless Spam Act* (Canada), the *Controlling the Assault of Non-Solicited Pornography And Marketing Act of 2003* (United States), or any similar legislation in other provinces, states, countries or territories;
 - (5) infringe the intellectual property or other proprietary rights of any person including, but not limited to, any copyright, trademarks, patents or trade secrets of any other person;
 - (6) reasonably injure Maximizer's reputation or goodwill;
 - (7) otherwise violate any applicable laws or regulations;
- (h) use the Maximizer Services to store or transmit Malicious Code;

- (i) interfere with or disrupt the integrity or performance of the Maximizer Services or third-party data contained therein;
- (j) attempt to gain unauthorized access to the Maximizer Services or Maximizer's or its other customers' or licensors' related systems or networks;
- (k) make the programs or materials resulting from the Maximizer Services available in any manner to any third party for use in the third party's business operations;
- (l) create derivative works based on the Maximizer Services;
- (a) copy, frame or mirror any part or content of the Maximizer Services;
- (m) remove or modify any program markings or any notice of Maximizer's or its licensors' proprietary rights;
- (n) reverse engineer the Maximizer Services;
- (o) access the Maximizer Services in order to build a competitive product or service, or copy any features, functions or graphics of the Maximizer Services; or
- (p) send an email using the Maximizer Services to an email address:
 - (1) for which You have received an opt-out request; or
 - (2) for which You have received notification that emails sent to such address are "undeliverable" after ten days of receiving such notice.

5.4 Usage Limitations

The Maximizer Services may be subject to other limitations including, but not limited to:

- (a) the storage space provided for Your use of the Purchased Services; and
- (b) the aggregate number of emails that Users will be able to send using the Purchased Services.

Maximizer reserves the right to amend the usage limitations set out in this Section from time to time without providing notice to You. Details of current usage limitations are outlined at:

<http://www.maximizer.com/product/pricing-editions/>.

6. THIRD-PARTY APPLICATIONS

Maximizer may offer for sale Third-Party Applications under Order Forms. Any acquisition by You of third party products or services including, but not limited to, Third Party Applications and implementation, customization and other consulting services, and any exchange of data between You and any third party provider, is solely between You and the applicable third party provider. Your right to use Third Party Applications is governed by the terms of the Third Party Application license agreement and, unless otherwise stated in the Order Form, not under this Agreement. Maximizer does not warrant or support third-party products or services. You acknowledge that Maximizer may allow providers of those Third-Party Applications to access Your Data as required for the interoperation of such Third-Party Applications with the Maximizer Services. Maximizer will not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Third-Party Application providers.

7. FEES AND PAYMENT FOR PURCHASED SERVICES

7.1 User Fees

You will pay fees specified in the Order Form, as adjusted on each renewal term as contemplated in Section 13.2, in accordance with the terms and conditions set out therein and in this Agreement. Except as otherwise specified in this Agreement or in an Order Form:

- (a) fees are quoted and payable in the currency specified in the Order Form;
- (b) fees are based on the Maximizer Services purchased by You, including those added under Section 5.1, even if Your actual usage is less;
- (c) payment obligations are non-cancelable and fees paid to Maximizer are non-refundable except as expressly provided in Sections 13.5;
- (d) except as otherwise specified in the applicable Order Form, user subscription fees are based on annual periods that begin on the subscription start date and each annual anniversary thereafter; and
- (e) fees for User subscriptions added in the middle of a month will be charged for that full month and all remaining months in that annual subscription term on a pro-rata basis.

7.2 Invoicing and Payment

You will provide Maximizer with valid and current credit card information or with valid and current automatic bank debit information. You authorize Maximizer and its processing institution to charge such credit or automatically withdraw from such designated bank account, as applicable, for all Maximizer Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in Section 13.2. Such charges will be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If Maximizer agrees in an Order Form that payment will be by a method other than a credit card or automatic bank debit, Maximizer will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due 15 days

from the invoice date (the “**Due Date**”). You are responsible for maintaining complete and accurate billing and contact information in the Maximizer Services.

7.3 Overdue Charges

If any charges are not received by Maximizer from You by the Due Date, then at Maximizer's discretion:

- (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the Due Date until the date paid; and/or
- (b) Maximizer may condition future subscription renewals and Order Forms on payment terms other than those specified in Section 7.2.

7.4 Suspension of Service and Acceleration

If any amount owing by You under this Agreement is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Maximizer to charge to Your credit card), Maximizer may, without limiting Maximizer's other rights and remedies, accelerate Your unpaid fee obligations under this Agreement so that all such obligations become immediately due and payable, and suspend provision of any or all of the Maximizer Services to You until such amounts are paid in full.

7.5 Payment Disputes

Maximizer will not exercise its rights under Section 7.4 if the applicable charges are under reasonable and good-faith dispute by You and You are cooperating diligently to resolve the dispute.

7.6 Taxes

All payments, fees and other charges payable by You under this Agreement are exclusive of all taxes, levies and assessments of any jurisdiction. You agree to bear and be responsible for the payment of all such taxes (including without limitation sales, use, excise, import or export, value added taxes, governmental permit fees or license fees), levies and assessments imposed on either party arising out of this Agreement, excluding any tax based on Maximizer's net income and will provide to Maximizer evidence of such payment. If any taxes are required to be withheld by You, You will pay to Maximizer such grossed-up amount as would be necessary to provide Maximizer the full amount of the payments, fees and other charges that would have been otherwise payable under this Agreement.

8. CONFIDENTIALITY

By virtue of this Agreement, the parties may have access to information that is confidential to one another (the “**Confidential Information**”). Confidential Information is limited to the terms and pricing under this Agreement, Your Data, and all information clearly identified as confidential at the time of disclosure. A party’s Confidential Information will not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party’s lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

Each party agrees to hold the other party’s Confidential Information in confidence during the term of this Agreement and for a period of three years thereafter. Each party agrees to disclose only information that is required for the performance of obligations under this Agreement. Nothing in this Section will prevent either party from disclosing the Confidential Information to a governmental entity as required by law.

9. PROTECTION OF YOUR DATA

- 9.1** You shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of Your Data.
- 9.2** Maximizer shall follow its archiving procedures for Your Data as set out in our back-up policy, which is available on request from info@maximizer.co.uk. In the event of any loss or damage to Your Data, Your sole and exclusive remedy against Maximizer shall be for Maximizer to use reasonable commercial endeavours to restore Your Data which has been lost or damaged from the latest back-up of Your Data maintained by Maximizer in accordance with the archiving procedure described in its back-up policy. Maximizer shall not be responsible for any loss, destruction, alteration or disclosure of Your Data caused by any third party (except those third parties sub-contracted by Maximizer to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable under paragraph 2.4, Schedule 1).
- 9.3** Maximizer shall, in providing the Maximizer Services, comply with its Privacy and Security Policy relating to the privacy and security of Your Data available at <https://www.maximizer.com/legal/privacy-policy/> or such other website address as may be notified to You from time to time, as such document may be amended from time to time by Maximizer in its sole discretion.
- 9.4** Both parties will comply with all applicable requirements of the Privacy Laws (as defined in Schedule 1) and the data processing terms set out in Schedule 1. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations under the Privacy Laws.
- 9.5** Schedule 1 sets out the scope, nature and purpose of processing by Maximizer, the duration of the processing and the types of personal data and categories of data subject.

10. WARRANTIES AND DISCLAIMERS

10.1 Limited Warranty

Maximizer warrants that the Purchased Services will perform materially in accordance with the User Guide. If the Maximizer Services provided to You for any given month during the term of this Agreement are not performed as warranted, You must provide written notice to Maximizer no later than five business days after the last day of that particular month. This limited warranty is subject to the following limitations:

- (a) this limited warranty applies only during the term of this Agreement, including any renewals (the **“Warranty Period”**);
- (b) any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last only during the Warranty Period;
- (c) this limited warranty does not cover problems caused by accident, abuse or use of the Maximizer Services in a manner inconsistent with this Agreement or the User Guide, or resulting from events beyond Maximizer’s reasonable control;
- (d) this limited warranty does not apply to problems caused by the failure to meet minimum system requirements; and
- (e) this limited warranty does not apply to downtime or other interruptions in access to the Maximizer Services.

10.2 Disclaimer of Other Warranties

OTHER THAN THIS LIMITED WARRANTY, MAXIMIZER PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES. TO THE EXTENT NOT PROHIBITED BY LAW, MAXIMIZER DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT.

11. INDEMNIFICATION

11.1 Your Indemnity

You will defend Maximizer, its officers, directors, employees, suppliers, agents, and assigns against any claims, liabilities, losses, costs or damages, including lawyer's fees (a "**Claim**"), related to or arising out of:

- (a) Your breach of any term, condition or warranty in this Agreement;
- (b) Your use or installation of any third party's software;
- (c) Your unauthorized use of any third party's proprietary or confidential intellectual property or information including, but not limited to, patents, copyrights, licensed material or trade secrets; or
- (d) Your use of the Maximizer Services in a manner that contravenes any applicable law or regulation including, but not limited to, Your unauthorized or improper use of any individual's personal information in contravention of any applicable privacy laws,

provided that Maximizer gives You written notice of the Claim, gives You sole control of the defense and settlement of the Claim (provided that You may not settle any Claim unless the settlement unconditionally releases Maximizer of all liability) and provides to You all reasonable assistance, at Your expense.

11.2 Maximizer Indemnity

Provided that you are in compliance with the terms of this Agreement, Maximizer indemnifies You against any Claim incurred by You based on infringement of a third party's patent or copyright in Canada or the United States of America that is due to Your use of the Purchased Services during the term of this Agreement, provided: (i) that such use is in accordance with the terms and conditions of this Agreement; (ii) You give prompt notice of any Claim which may be incurred by You; (iii) Maximizer has exclusive conduct of the litigation; (iv) You immediately cease use of the Purchased Services alleged to be the subject of the Claim; and (v) Maximizer's obligations hereunder extend only to the extent that the claim is as a result of Your use of the Purchased Services.

Maximizer will have the right, without obligation:

- (a) if available on terms reasonable to Maximizer at its sole discretion, to settle the Claim;
- (b) to procure for You the right to the continued use of the Purchased Services in accordance with the terms of this Agreement;
- (c) to provide You with rights to non-infringing intellectual property to replace the Purchased Services, having equivalent functionality; or
- (d) to refund the fees paid by You to Maximizer for the Purchased Services following which Your right to use the Purchased Services will cease, following which Maximizer will have no further obligations to You in respect of the Claim.

Notwithstanding anything herein to the contrary, the foregoing section 11.2 sets out Your exclusive remedy for Claims incurred by You based on infringement of a third party's patent or copyright in Canada or the United States of America that is due to Your use of the Purchased Services.

Maximizer will have no liability and indemnity obligations for any Claim which is based on:

- (e) the use or combination of the Purchased Services with software, hardware or any other materials not provided or approved by Maximizer, provided the Claim would not have arisen but for such use or combination;
- (f) use of the Purchased Services other than in a manner contemplated by this Agreement or the User Guide provided the Claim would not have arisen but for such use;
- (g) any modification by You of the Purchased Services, provided the Claim would not have arisen but for such modification; or
- (h) Maximizer's compliance with Your requests to modify the Purchased Services provided such claim would not have arisen but for such compliance.

12. LIMITATION OF LIABILITY AND CHANGES

12.1 Limitation of Liability

NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THIS AGREEMENT), DATA, OR DATA USE. EXCEPT FOR MAXIMIZER'S OBLIGATION OF INDEMNIFICATION UNDER SUBSECTION 11.2 OF THIS AGREEMENT, MAXIMIZER'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR IN TORT, OR OTHERWISE, WILL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO MAXIMIZER UNDER THE ORDER FORM FOR THE MAXIMIZER SERVICES THAT ARE SUBJECT TO THE CLAIM IN THE THREE MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. ANY DAMAGE IN YOUR FAVOUR AGAINST MAXIMIZER WILL BE REDUCED BY ANY REFUND OF CREDIT RECEIVED BY YOU UNDER THIS AGREEMENT AND ANY SUCH REFUND AND CREDIT WILL APPLY TOWARDS THE LIMITATION OF LIABILITY. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

12.2 Changes

Notwithstanding anything else to the contrary in this Agreement, Maximizer reserves the right at any time not to release or to discontinue release of any Purchased Services (and other Maximizer Services), to change its then current list price for the Purchased Services and other Maximizer Services and to alter features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the Purchased Services and other Maximizer Services.

13. TERM AND TERMINATION

13.1 Term of Agreement

Unless terminated earlier in accordance with Section 13.3, this Agreement commences on the date You accept it or the date You accept an Order Form to which this Agreement applies, whichever is earlier, and continues until all User subscriptions granted to You by Maximizer have expired or been terminated. If You elect to use the Maximizer Services for a free trial period and do not purchase a subscription before the end of that period, this Agreement will terminate at the end of that free trial period.

13.2 Term of Purchased User Subscriptions

User subscriptions purchased by You commence on the start date specified in the applicable Order Form accepted by Maximizer and continue for the subscription term specified in the Order Form. Except as otherwise specified in the applicable Order Form, all User subscriptions will automatically renew for additional periods equal to the expiring subscription term unless either party gives the other written notice of non-renewal at least 60 days before the end of the relevant subscription term. The per-unit pricing during any such renewal term will be at Maximizer's then current list price for the Purchased Services which will be made available to You by Maximizer on request.

13.3 Termination by Maximizer

Maximizer may terminate this Agreement, effective immediately and without liability of Maximizer:

- (a) without notice if You breach any of the terms or conditions set out in Section 5.3;
- (b) in addition to Maximizer's rights of termination under Subsection (a) above, upon 30 days written notice to You of a breach by You or any Users of the terms of this Agreement if such breach remains uncured at the expiration of such notice period;
- (c) without notice if You become the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; or
- (d) upon 90 days' written notice to You for any other reason whatsoever.

13.4 Termination by You

- (a) You may terminate this Agreement:
 - (1) upon 30 days' written notice to Maximizer of a breach by Maximizer of the terms of this Agreement if such breach remains uncured at the expiration of such notice period; or
 - (2) upon 30 days' written notice to Maximizer if Maximizer becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; or

- (b) In addition, no earlier than 90 days after the commencement of the initial term of this Agreement (excluding any free trial period) or any renewal term, You may give written notice to Maximizer to terminate this Agreement, which notice will be effective upon a further 90 days from the date of the notice (i.e. the effective date of termination will be no earlier than 180 days after commencement of the term) for any other reason whatsoever. If termination is requested during the agreed term, any refund will be calculated based on Maximizer's current list price for the Purchased Services at the point of termination.

13.5 Refund or Payment upon Termination

Upon termination in accordance with Section 13.3(d) or 13.4, Maximizer will refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon termination under Section 13.3(a), 13.3(b) or 13.3(c), You acknowledge and agree that Maximizer will not provide any refund to You and You will pay any unpaid fees covering the remainder of the term of the Order Form after the effective date of termination. In no event will any termination relieve You of the obligation to pay any fees payable to Maximizer for the period prior to the effective date of termination.

13.6 Return of Your Data

Upon request by You made within 30 days after the effective date of termination of a Purchased Services subscription, Maximizer will make Your Data available to You for download. After such 30-day period, Maximizer will have no obligation to maintain or provide any of Your Data and will thereafter, unless legally prohibited, delete all of Your Data in Maximizer's systems or otherwise in Maximizer's possession or control.

13.7 Surviving Provisions

Sections 3, 5.3, 7, 8, 10.2, 11.1, 12, 13.5, 13.6, 14 will survive any termination or expiration of this Agreement.

14. GENERAL

14.1 Amendment

This Agreement may be amended at any time by mutual agreement of the parties in writing. Except as otherwise provided in Section 5.4, Maximizer further reserves the right to make changes to other parts of this Agreement to reflect changes in or required by law or to reflect changes in business practices, and by posting notice of the amendments on the Maximizer CRM Live website at <http://www.maximizer.com/crm-live/subscription-agreement.html>. If You do not accept such amendments, You may terminate this Agreement at any time within the 60-day period following notice by Maximizer, by delivering written notice to Maximizer of Your intention to terminate. If You do not deliver notice to Maximizer terminating this Agreement within the 60- day period, You will be deemed to have accepted the amendment.

14.2 Audit

Maximizer may audit Your use of the Maximizer Services and You will cooperate and provide Maximizer with reasonable assistance and access to information, so long as Maximizer gives You three days advance written notice. You agree to pay within 30 days of written notice any fees applicable to Your use of the Maximizer Services in excess of Your rights under this Agreement. You agree that Maximizer will not be responsible for any of Your costs incurred in cooperating with the audit.

14.3 Waiver of Jury Trial

Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

14.4 Press Releases

You acknowledge that Maximizer may make reference to You and Your relationship to Maximizer in press releases, advertising and promotional materials and You consent to any such reference.

14.5 Relationship

The parties are independent contractors and are not agents, joint venturers, partners or employees of one another, and Maximizer will not be obligated by any agreements or representations made by You to any person, nor will Maximizer be obligated for any damages to any person caused by Your actions, failure to act, negligence or willful conduct.

14.6 Assignment

This Agreement may not be assigned or sublicensed by You without the prior written approval of Maximizer. Maximizer may subcontract or delegate the provision of any or all of the Maximizer Services or otherwise assign its rights in this agreement at any time without Your consent.

14.7 Entire Agreement; Enforceability; Waiver

This Agreement and the applicable Order Form constitute the entire agreement between the parties relating to the subject matter of this Agreement and supersede or replace all prior or contemporaneous agreements or representations. The terms and conditions of this Agreement may only be amended under an amendment to this agreement signed by all parties. If any terms of this Agreement are found to be invalid or unenforceable, the remaining provisions will remain effective. No failure or delay by a party in exercising any right or power under this agreement will operate as a waiver of that right or power, and the single or partial exercise of a right or power under this Agreement will not preclude any other or future exercise of that or any other right or power.

14.8 Notice

Except as otherwise specified in this Agreement, all notices, permissions and approvals will be in writing and will be deemed to have been given upon: (i) personal delivery, (ii) the fifth business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (i) the first business day after sending by email to the email address set out in the Order Form (provided email will not be sufficient for notices of termination or an indemnifiable claim). Notice to You will be addressed to the system administrator designated by You under the Order Form, and in the case of billing notices, to the relevant billing contact designated by You. The address and contact person for any notices by You to Maximizer will be to Maximizer Services Inc., 208 West 1st Ave , Vancouver, BC, Canada V5Y 3T2, Facsimile: 604-681-6001, Attention: CRM Administrator.

14.9 Governing Jurisdiction.

This Agreement in all respects will be governed and interpreted in accordance with the laws of the Province of British Columbia, and the parties hereby irrevocably attorn exclusively to the Courts of the Province of British Columbia. This Agreement will not be governed by the conflict of law rules of any other jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

SCHEDULE 1

DATA PROCESSING TERMS

1 DEFINITIONS

1.1 In this Schedule 1 the following words and expressions shall have the following meanings unless the context otherwise requires:

“Appropriate Technical and Organisational Measures”	shall be interpreted in accordance with the Privacy Laws.
“Your Personal Data”	means any Personal Data the Processing of which is subject to Privacy Laws, that is controlled by You which Maximizer Processes in the course of providing the Services under this Agreement, wherever the Processing takes place.
“Data Controller”	shall be interpreted in accordance with the Privacy Laws.
“Data Processor”	shall be interpreted in accordance with the Privacy Laws.
“Data Subject”	shall be interpreted in accordance with the Privacy Laws.
“EU Data Protection Law”	means all applicable EU data protection and privacy laws, including: (i) prior to 25 May 2018, the EU Data Protection Directive 95/46/EC and, on and after 25 May 2018, the General Data Protection Regulation 2016/679; (ii) the Privacy and Electronic Communications Directive 2002/58/EC; and (iii) any other European Union or EU Member State laws made under or pursuant to (i) or (ii), in each case as such laws may be amended or superseded from time to time.
“GDPR”	means the General Data Protection Regulation (EU) 2016/679.
“Personal Data”	shall be interpreted in accordance with the Privacy Laws.
“Privacy Laws”	means applicable laws serving to ensure the protection of Personal Data (including in connection with the Processing of Personal Data), and the protection of the rights and freedoms (in particular, their right to privacy) of Data Subjects relating to their Personal Data, including EU Data Protection Law and UK Data Protection Law, in each case as such laws may be amended or superseded from time to time.
“Processing”	shall be interpreted in accordance with the Privacy Laws (and “Process” shall be construed accordingly).
“UK Data Protection Law”	means all applicable UK data protection and privacy laws including any UK law which replaces EU Data Protection Law, or which implements or transposes EU Data Protection Law into UK law.

2 DATA PROTECTION

2.1 Maximizer agrees, in relation to Your Personal Data, that You are the Data Controller (and therefore control what happens to Your Personal Data) and Maximizer is the Data Processor.

2.2 The subject-matter and the duration of the Processing, the nature and purpose of the Processing, the type of Personal Data and the categories of Data Subjects are set out in the table below.

- 2.3 When Maximizer Processes Your Personal Data in the course of providing the Services, Maximizer will:
- 2.3.1 Process Your Personal Data only in accordance with written instructions from the Customer, including with regard to transfers of Your Personal Data to a third country or international organisation except where required to do so by law. If Maximizer is required by law to Process Your Personal Data for any other purpose, Maximizer will inform You of this requirement before the Processing, unless that law prohibits this on important grounds of public interest;
 - 2.3.2 take reasonable steps to ensure the reliability and competence of Maximizer personnel who have access to Your Personal Data;
 - 2.3.3 ensure that the personnel required to Process Your Personal Data:
 - (a) are informed of the confidential nature of Your Personal Data;
 - (b) are subject to appropriate obligations of confidentiality; and
 - (c) do not publish, disclose or divulge any of Your Personal Data to any third party unless directed in writing to do so by You;
 - 2.3.4 implement and maintain Appropriate Technical and Organisational Measures to protect Your Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure;
 - 2.3.5 taking into account the nature of the Processing, assist You:
 - (a) by taking Appropriate Technical and Organisational Measures and in so far as it is possible, in fulfilling Your obligations to respond to requests from Data Subjects exercising their rights; and
 - (b) in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR or equivalent provisions in the Privacy Laws;
 - 2.3.6 on expiry or termination of this Agreement, at Your option, either delete or return to You all Your Personal Data (unless Maximizer is required to retain it by law). If You require Maximizer to delete Your Personal Data in any other circumstances, Maximizer may make a reasonable charge for doing so; and
 - 2.3.7 make available to You all information necessary to demonstrate its compliance with its obligations in this agreement and allow You and its auditors or authorised agents to conduct audits and inspections during the term of this Agreement (and provide reasonable assistance in connection therewith) for the purpose of verifying that Maximizer is Processing Your Personal Data in accordance with Maximizer's obligations under this Agreement and applicable Privacy Laws.
- 2.4 You hereby authorise Maximizer to give access and transfer Your Personal Data to Maximizer's Affiliates. Save as provided in this paragraph 2.4, Maximizer shall not appoint third-party processors of Your Personal Data except with your prior written consent in which case Maximizer shall enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this paragraph 2. As between You and Maximizer, Maximizer shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this paragraph 2.4.

- 2.5 Maximizer shall notify You immediately if, in Maximizer's opinion, an instruction for the Processing of Your Personal Data given by You infringes applicable Privacy Laws.
- 2.6 Maximizer shall communicate any claims or requests in respect of Your Personal Data (including requests from Data Subjects exercising their rights) without delay to You to enable You to respond in accordance with applicable Privacy Laws.
- 2.7 If Maximizer becomes aware of any accidental, unauthorised or unlawful destruction, loss, alteration, or disclosure of, or access to Your Personal Data that Maximizer Processes when providing the Services (a "Personal Data Breach"), Maximizer will:
 - 2.7.1 notify You within 48 hours;
 - 2.7.2 provide You (as soon as possible) with a detailed description of the Data Breach, the type of Your Personal Data that was the subject of the Data Breach and the identity of each affected person, as soon as such information can be collected or otherwise becomes available (as well as periodic updates to this information and any other information the Customer may reasonably request relating to the Data Breach); and
 - 2.7.3 not release or publish any filing, communication, notice, press release, or report concerning the Data Breach without Your prior written approval (except where required to do so by law).
- 2.8 If, pursuant to Article 28(7) or Article 28(8) of the GDPR, the Information Commissioner adopts standard contractual clauses for the matters referred to in Article 28(3) and Article 28(4) of the GDPR and You notify Maximizer that you wish to incorporate any element of any such standard contractual clauses into this Agreement, Maximizer will agree to the changes as reasonably required by You to achieve this.
- 2.9 Maximizer will not Process Your Personal Data outside the European Economic Area except as set out in this paragraph 2.9 or otherwise with Your prior written consent. Maximizer may transfer Your Personal Data to third-party processors appointed pursuant to paragraph 2.5 for Processing outside the European Economic Area provided that:
 - 2.9.1 the transfer is:
 - (a) to a country in respect of which a valid adequacy decision has been issued by the European Commission;
 - (b) to a country which is the subject of a data protection framework mechanism (such as the EU-US Privacy Shield Frameworks); or
 - (c) subject to the terms of the model clauses for the transfer of Personal Data to data processors established in third countries adopted by the European Commission or any replacement or additional form approved by the European Commission or as applicable in the UK; and

2.9.2 Maximizer will remain fully liable to You for the fulfilment of Maximizer's obligations under this Agreement.

Subject-matter of the Processing:	Services made available to You during the term of this Agreement.
Nature and purpose of the Processing:	<p>Maximizer Processes Your Personal Data in order to:</p> <ul style="list-style-type: none"> • provide You with the system administration, system management and system monitoring activities that Maximizer performs for the Maximizer CRM Live program; • provide You with support services for the Maximizer CRM Live program; and • communicate and improve Maximizer's products and services.
Type of Personal Data:	<p>Personal Data may include, among other information, the personal contact information such as name, gender, work address and postcode, telephone or mobile number, email address, employment details, including employer name, profession, job title and function and business contact details, login details, user names, display names and passwords, call log records, customer service reports, customer service case details, details of relationships between companies, business type, appointment details, task details, notes associated with address book entries, campaign details, details of solutions to customer service cases, metrics measuring activities and performance, audit log details, system audit report, goods and/or services provided, network carriers or data providers, web browser type and version, operating system, IP addresses, a list of URLs starting with a referring site, activity on the Maximizer CRM Live website at uk1.maximizercrmlive.com and any website the user exits to and any other data You may elect to include as part of the Processing.</p>
Categories of Data Subject:	<p>Data Subjects may include Your representatives, such as employees, contractors, collaborators, partners, customers and users, and any other Data Subjects You may elect to include as part of the Processing. Data Subjects may also include individuals who may communicate or transfer Personal Data to You.</p>