

# Maximizer Services Inc.

260-60 Smithe St

Vancouver, BC, Canada V6B 0P5

MARCH 2020

## MAXIMIZER CRM LIVE SUBSCRIPTION AGREEMENT

This Maximizer CRM Live Subscription Agreement consists of the terms and conditions set out below and the order form specifying the Maximizer Services to be provided hereunder (the “**Order Form**”) entered into between Maximizer Services Inc. (“**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. **THIS AGREEMENT REPLACES ANY PREVIOUS LICENSE AND/OR MAINTENANCE AGREEMENT YOU MAY HAVE WITH MAXIMIZER OR ITS AFFILIATES FOR THE LICENSE BY YOU OF MAXIMIZER'S SOFTWARE PRODUCTS. ALL SUCH LICENSES AND/OR MAINTENANCE AGREEMENTS ARE HEREBY TERMINATED.** 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, subject to the terms and conditions contained in this Agreement and payment of all applicable fees by You to Maximizer, for the duration of the subscription term set out in the Order Form or the term of this Agreement, whichever ends first, Maximizer (a) will make the Maximizer Services available to You in accordance with the terms hereof and the policies and procedures in relation to the Maximizer Services, which are established by Maximizer from time to time, and (b) grants to You a non-exclusive, non-transferable, limited right to use any software component that Maximizer may, but will not be obligated to, from time-to-time elect to make available to You over the internet, through mobile application, data extract, or other form as deemed appropriate by Maximizer, and all automatically-provided updates to that software which Maximizer may make available to You (collectively the "**Software Applications**") provided it is used by You and Your Users solely to access and use the Maximizer Services in accordance with this Agreement. In the event of a conflict between the preceding documents, the following will be the order of precedence: (i) this Agreement; and (ii) the policies and procedures set out by Maximizer from time to time. You may use the Maximizer Services and the Software Applications solely for Your internal business operations and subject to the terms of this Agreement. You may allow the Users to use the Maximizer Services and the Software Applications 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 or the Software Applications to You. You agree that You do not acquire under this Agreement any license to use the Maximizer Services or the Software Applications 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 and the Software Applications 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, the Software Applications 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 and the Software Applications 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 provided, created, stored or processed through the Maximizer Services. You hereby grant Maximizer, its Affiliates and applicable contractors a non-exclusive license to use Your Data as reasonably required to provide the Maximizer Services, including a license to store, record, transmit, maintain, and display Your Data only to the extent necessary to provide the Maximizer Services. The forgoing license includes the right for Maximizer to use and copy Your Data, usage information and parameters of Your Users for the purpose of creating aggregated and anonymized statistical analytics in respect to Maximizer Services use and other Maximizer Services and User parameters and characteristics ("**Aggregated Statistics**"), provided that the license in respect to Aggregated Statistics will be perpetual, royalty-free, irrevocable and unlimited.

### 3.3 Your Suggestions

You may from time to time provide to Maximizer feedback or suggestions regarding the technology (including the Software Applications and any other software or systems) or Confidential Information of Maximizer, which may include suggestions for, or feedback concerning, improvements, modifications, corrections, enhancements, derivatives or extensions, as well as branding ideas (“**Feedback**”). You agree that Maximizer and its Affiliates will have a perpetual, royalty free, exclusive, and transferable license to use such Feedback, without any obligation to compensate You or Your personnel. Maximizer may develop technology, modifications, corrections, enhancements, derivatives or extensions (“**Improvements**”) and further may also develop branding elements, based on such Feedback, and such Improvements and branding elements, and any intellectual property rights therein, as well as any related intellectual property registrations, will be owned exclusively by Maximizer or its designees. You will sign such further documents as may be required reasonably to confirm such ownership.

## 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” AND “AS-AVAILABLE” 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 any added subscriptions will terminate on the same date as the original subscriptions; 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 Guide;
- (b) provide the Purchased Services only in accordance with laws and government regulations applicable to Maximizer's provision of Maximizer Services to its customers generally, and subject to Your use of the Purchased Services in accordance with this Agreement; 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), Internet service provider failures or delays, denial of service attack, Third Party Applications, Your (or Your Users') acts, errors, omissions, or breaches of the terms of this Agreement, any issues originating with, or failures of, tablets or computer equipment that are not the responsibility of Maximizer or within its direct control.

Maximizer does not guarantee or warrant continuous or uninterrupted availability of the Maximizer Services. Your sole and exclusive remedy for any failure to meet the availability target set forth in Section 5.2(c) will be the provision of support services to remedy such failure and any such failure will not be a breach of the terms of this Agreement by Maximizer.

## **5.3 Your Responsibilities**

You will:

- (a) be responsible at Your sole cost for procuring and maintaining communication services, including high speed Internet, connections between Your systems and the Maximizer Services and Software Applications, and You will also be responsible for the technical

requirements described at

[http://download.maximizer.com/MaxCRM2017/Gold/Documents/MaxCRMLive\\_SystemRequirements.pdf](http://download.maximizer.com/MaxCRM2017/Gold/Documents/MaxCRMLive_SystemRequirements.pdf)

- (b) use the Maximizer Services and Software Applications only for Your internal business purposes and in accordance with the User Guide;
- (c) be responsible for Users' compliance with this Agreement, including assigning, recording and controlling the issuance and use of all user identification, passwords, digital certificates or any other similar process mechanism for authentication and recognition as determined by Maximizer from time to time;
- (d) obtain all necessary consents for Maximizer to exercise the licenses granted to Maximizer in Section 3.2, including all necessary consents for Maximizer to use and copy Your Data, usage information and parameters of Your Users for the purpose of creating the Aggregated Statistics and the exercise of the related perpetual, royalty-free, irrevocable and unlimited rights assigned in the license in Section 3.2 above;
- (e) assign, record and control the issuance and use of all Authentication IDs;
- (f) be solely responsible for the accuracy, quality, integrity and legality of Your Data and of the means by which You acquired Your Data; and
- (g) use Your best efforts to prevent unauthorized access to or use of the Maximizer Services and Software Applications by persons who are not Users, and notify Maximizer promptly of any such unauthorized access or use.

You will not:

- (h) make the Maximizer Services or Software Applications available to anyone other than Users;
- (i) sub-license, sell, resell, rent or lease the Maximizer Services or Software Applications;
- (j) use the Maximizer Services or Software Applications 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;
- (k) use the Maximizer Services or Software Applications to store or transmit Malicious Code;
- (l) interfere with or disrupt the integrity or performance of the Maximizer Services, Software Applications or third-party data contained therein;
- (m) attempt to gain unauthorized access to the Maximizer Services, Software Applications or Maximizer's or its other customers' or licensors' related systems or networks;
- (n) make the programs or materials resulting from the Maximizer Services or Software Applications available in any manner to any third party for use in the third party's business operations;
- (o) create derivative works based on the Maximizer Services or Software Applications;
- (p) copy, frame or mirror any part or content of the Maximizer Services;
- (q) remove or modify any program markings or any notice of Maximizer's or its licensors' proprietary rights;
- (r) reverse engineer, modify, decompile, disassemble, or commercially distribute, license, resell or transfer the Maximizer Services or Software Applications;
- (s) access the Maximizer Services or Software Applications in order to build a competitive product or service, or copy any features, functions or graphics of the Maximizer Services or Software Applications; or
- (t) send an email using the Maximizer Services or Software Applications to an email address:
  - (1) other than in compliance with all applicable laws, including any anti-spam laws and other applicable laws; or
  - (2) for which You have received notification that emails sent to such address are "undeliverable" after ten days of receiving such notice.

Without limiting the foregoing, if Maximizer, in its absolute discretion, forms the view that any of Your Data or any other information or files uploaded by You or any of Your Users contains or includes any Malicious Code or violates any of this Section 5.3, Maximizer may remove such Data, information or files from the Maximizer Services and take such other action as Maximizer deems necessary (including suspension of

Your access to the Maximizer Services) to protect the integrity and operation of the Maximizer Services, the Software Applications and Maximizer's computer systems and software. Any costs associated with such removal may be charged by Maximizer to You and will be paid by You upon invoice. Maximizer will notify You of such actions as soon as reasonably practical under the circumstances.

You acknowledge and agree that: You are not established as a controller or processor in a European Union member state; and You or any of Your Users are not subject to the General Data Protection Regulation ("GDPR"), or related laws including related laws of European Union member states. You represent that You have undertaken all requirements to comply with all privacy and data protection laws which may apply to Your Data. Such requirements may include but are not limited to ensuring You have all rights and obtained all necessary consents to collect, use, provide, manage, all personal information in relation to the Maximizer Services and Your rights under this Agreement.

#### **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. Maximizer reserves the right to apply an NSF fee for any rejected payments; 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 and Software Applications to You until such amounts are paid in full. Maximizer reserves the right to impose a reconnection fee in the event You are suspended and thereafter Maximizer agrees to Your request to access the Maximizer Services.



## 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 Safeguards

Maximizer will maintain reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. Except as explicitly permitted hereunder, Maximizer will not:

- (a) modify Your Data;
- (b) disclose Your Data except as required by law; or
- (c) access Your Data except:
  - (1) to provide the Maximizer Services;

- (2) to collect performance metrics and other statistical information about the Maximizer Services and/or Software Applications and to otherwise exercise its rights under Section 3.2;
- (3) to prevent or address service or technical problems; or
- (4) at Your request in connection with customer support matters.

## **9.2 Security Breaches**

Despite best efforts, no method of transmission over the Internet, or method of electronic storage, is perfectly secure. Therefore, we cannot guarantee absolute security. If Maximizer learns of a security breach or potential security breach, we will make our best effort to notify the affected users electronically (via all email addresses available on our customer database) so that they can take appropriate protective steps. Maximizer may also post a notice on the Maximizer CRM Live website if warranted.

## **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 or Software Applications 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 or Software Applications.

### **10.2 Disclaimer of Other Warranties**

OTHER THAN THIS LIMITED WARRANTY, MAXIMIZER PROVIDES NO OTHER STATUTORY, EXPRESS OR IMPLIED WARRANTIES. THE SOFTWARE APPLICATIONS ARE PROVIDED ON AN “AS IS WHERE IS” AND “AS AVAILABLE” BASIS. TO THE EXTENT NOT PROHIBITED BY LAW, MAXIMIZER DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF AVAILABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT.

## 11. INDEMNIFICATION

### 11.1 Your Indemnity

You will defend and indemnify 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 or Software Application with Third-Party Applications, or 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 or Software Application 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 or Software Application, provided the Claim would not have arisen but for such modification; or
- (h) Maximizer's compliance with Your requests to modify the Purchased Services or Software Application 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 GOODWILL, REVENUE OR PROFITS (EXCLUDING FEES UNDER THIS AGREEMENT), DATA, OR DATA USE. 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) or Software Applications, 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, the Software Applications and other Maximizer Services.

## **13. TERM AND TERMINATION**

### **13.1 Term of Agreement**

Unless terminated earlier in accordance with Section 13.3 or 13.4, 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. Upon termination of this Agreement, You will discontinue use of the Maximizer Services and the Software Applications. 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 90 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 for such time period 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 or any Users 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**

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

### **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 subject to any applicable administration fees. 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. You acknowledge and agree if You fail to make such request and fail to download Your Data within such 30 day period then You may not have access to such information, Maximizer will have no obligation to maintain or provide any such information, such information may be deleted or destroyed by Maximizer and Maximizer will have no responsibility for the failure to provide, loss or destruction of Your Data.

### **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, provided that any amendments will only have prospective effect, by providing You with notice. Notice of such amendments will be provided to You in accordance with Section 14.8 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 1<sup>st</sup> 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.