

# Maximizer Software Solutions Pty Ltd.

PO Box 629

North Sydney, New South Wales, Australia 2059

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 (the “**Order Form**”) entered into between Maximizer Software Solutions Pty Ltd. (“**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. The term “**GST**” means any tax, levy, charge or impost implemented under the A New Tax System (Goods and Services Tax) Act (“**GST Act**”) or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act.

## **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**

If Maximizer agrees in the Order Form to provide to You a limited free trial period, Maximizer will make the Maximizer Services available to You on a limited 30 day trial basis free of charge until the earlier of:

- (a) the end of the 30 day free trial period or such date that Maximizer notifies You that the free trial period is terminated, whichever first occurs; and
- (b) the start date of any Purchased Services ordered by You.

Additional terms and conditions for the use of the Maximizer Services on a trial basis may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. You will not be entitled to more than one 30 day free trial period for the Maximizer Services.

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:
  - (i) 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

- (ii) 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:

- (a) make the Maximizer Services available to anyone other than Users;
- (b) sub-license, sell, resell, rent or lease the Maximizer Services;
- (c) 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:
  - (i) menace or harass any person or cause damage or injury to any person or property;
  - (ii) involve the publication of any material that is false, defamatory, harassing, pornographic or otherwise obscene;
  - (iii) violate privacy rights or promote bigotry, racism, hatred or harm;
  - (iv) 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;
  - (v) 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;
  - (vi) reasonably injure Maximizer's reputation or goodwill; or
  - (vii) otherwise violate any applicable laws or regulations;

- (d) use the Maximizer Services to store or transmit Malicious Code;
- (e) interfere with or disrupt the integrity or performance of the Maximizer Services or third-party data contained therein;
- (f) attempt to gain unauthorized access to the Maximizer Services or Maximizer's or its other customers' or licensors' related systems or networks;
- (g) 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;
- (h) create derivative works based on the Maximizer Services;
- (i) copy, frame or mirror any part or content of the Maximizer Services;
- (j) remove or modify any program markings or any notice of Maximizer's or its licensors' proprietary rights;
- (k) reverse engineer the Maximizer Services;
- (l) 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
- (m) send an email using the Maximizer Services to an email address:
  - (i) for which You have received an opt-out request; or
  - (ii) for which You have received notification that emails sent to such address are "undeliverable" after ten days of receiving such notice.
- (n) directly or indirectly cause, permit or assist any other person or entity to engage in any of the conduct referred to in (a) to (m) of this clause.

#### **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 is limited to one gigabyte;
- (b) the aggregate number of emails that Users will be able to send using the Purchased Services is limited to 1000 outgoing emails in any given day; and
- (c) each email sent using the Maximizer Services may be sent to no more than 50 recipients.

The limitations set out above may be increased by purchasing storage space and/or email upgrades from Maximizer at Maximizer's then current list price for the desired upgrade. Maximizer reserves the right to amend the usage limitations set out in this clause 5 from time to time without providing notice to You.

## 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 13.4, 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

On or before accepting this agreement, 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**

Unless otherwise stated, Maximizer's fees do not include any taxes, levies, duties or similar governmental assessments of any nature including but not limited to, value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). You are responsible for paying all Taxes associated with Your purchases and use of the Maximizer Services contemplated in this Agreement. If Maximizer has the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount will be invoiced to and paid by You, unless You provide Maximizer with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Maximizer is solely responsible for taxes assessable against it based on Maximizer's income. The amount of any payments referred to in this agreement do not include GST. If Maximizer is or become liable to pay GST in respect of a supply to which payment is to be made by You under this agreement, the amount payable by You will be increased so that the net amount retained by Maximizer after payment of that GST is the same as if Maximizer were not liable to pay in GST in respect of that supply.

## 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. Confidential Information excludes such information which is or became generally available in the public domain otherwise than through a breach of this agreement and excludes any information that was developed by the recipient independently of the disclosure or was communicated to or accessed by the recipient from a third party under no obligation of confidence in respect of that information. 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. Maximizer will not:

- (a) modify Your Data;
- (b) disclose Your Data except as required by law; or
- (c) access Your Data except:
  - (i) to provide the Maximizer Services;
  - (ii) to collect performance metrics and other statistical information about the Maximizer Services;
  - (iii) to prevent or address service or technical problems; or
  - (iv) 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 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.

Where You obtain goods or services from Maximizer as a consumer, within the meaning of the Australian Consumer Law, the following shall apply.

- (i) Such goods and services are supplied subject to the guarantees set out in Division 1 of the Australian Consumer Law (“the Guarantees”);, subject to clauses (ii) and (iii);
- (ii) In the case of goods, the liability of Maximizer for failure to comply with a guarantee (other than a guarantee under section 51, 52 or 53 of the Australian Consumer Law) is limited to the replacement of the [goods](#) or the [supply](#) of equivalent goods;
- (iii) In the case of services, the liability of Maximizer for failure to comply with a guarantee is limited to the [supply](#) of the services again; and
- (iv) This clause 10.2 prevails over all other provisions of this agreement.

## 11. INDEMNIFICATION

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 ("**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.

## 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. 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 IS 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 30 day free trial period and do not purchase a subscription before the end of that period, this Agreement will terminate at the end of the 30 day 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 or one year, whichever is shorter, 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**

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. 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, 10, 10.2, 11, 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 time 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 Software Solutions Pty Ltd., PO Box 629, North Sydney, New South Wales, Australia 2059, Facsimile: 604-681-6001, Attention: CRM Administrator.

#### **14.9 Governing Jurisdiction.**

- i) This agreement shall be governed by the laws of New South Wales, Australia.
- ii) The parties submit to the jurisdiction of the Courts of New South Wales in relation to any dispute arising under this agreement.

#### **14.10 Personal Properties Security Act**

- i) The terms used in this clause 14.10 shall have the same meaning as contained in the PPSA.
- ii) If the Company determines that a Transaction Document is or contains a Security Interest, You agree to do anything that Maximizer reasonably requires (such as obtaining consents, signing and producing documents, having documents completed and signed and supplying information) for the purposes of;
  - a) Ensuring that the Security Interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective.

- b) Enabling Maximizer to apply for any registration, or give any notification, in connection with the Security Interest to the effect that the Security Interest has the priority required by Maximizer. This includes registration under the PPSA for such collateral class as Maximizer shall deem appropriate. You consent to any such registration or notification and agree not to make an Amendment Demand.
    - c) Enabling Maximizer to exercise rights in connection with the Security Interest.
- iii) Maximizer shall not be liable to You for any failure by Maximizer to register a financing statement or for any error or omission in the financing statement.
- iv) You agree that, despite any other provision in any Transaction Document and to the extent permitted by law, in relation to any Security Interest in the Maximizer's favour;
  - a) Maximizer need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and such other sections of the PPSA as are notified to You by the Company and You further acknowledges that sections 142 and 143 of the PPSA are excluded.
  - b) Neither Maximizer nor any receiver in relation to Maximizer shall be required to give any notice under any provision of the PPSA.
- v) You warrant to Maximizer that You will not perform any act or execute any document or otherwise cause or establish any encumbrance over or in relation to the Equipment.