

This Maximizer SaaS Agreement (“**Agreement**”) governs your access to, and use of, the Services. By using the Services, you accept and agree to be bound by (1) this Agreement, (2) the Professional Service Terms; (3) any Statement of Work, (4) any Order Forms, and (5) our Privacy Policy. No other terms or conditions shall apply to the Services, unless mutually signed by both parties. For clarity, no terms in any purchase order, invoice, or other document issued by Customer or an entity other than Maximizer shall apply to the Services.

## **1. Definitions**

- 1.1 **"Aggregated Statistics"** means aggregated or anonymized data and analysis derived from access or use of the Services by Customer or its Authorized Users, including statistical and performance information related to the Services.
- 1.2 **"Authorized User"** means Customer's employees, representatives, consultants, contractors, or agents that are authorized to access and use the Services under the rights and obligations of Customer in this Agreement.
- 1.3 **"Backup Request"** is defined in Section 11.3.
- 1.4 **"Business Partner"** means a business partner authorized by Maximizer to resell the Services. Please contact [accounting@maximizer.com](mailto:accounting@maximizer.com) if you want to confirm if a Business Partner is authorized by Maximizer.
- 1.5 **"Confidential Information"** has the meaning set forth in Section 6.
- 1.6 **"Customer," "you," and "your"** means the customer identified on the Order Form.
- 1.7 **"Customer Data"** means any information, data, and other content, in any form or medium, that is submitted, or otherwise transmitted by or on behalf of Customer as part of the Services, which may include Personal Information. Customer Data expressly excludes Aggregated Statistics.
- 1.8 **"Defect"** has the meaning set forth in Section 8.
- 1.9 **"Documentation"** means Maximizer's user manuals, online materials, guides, and other documentation describing the features, functionality, or operation of the to the Services, including the documentation available at [support.maximizer.com](https://support.maximizer.com).
- 1.10 **"DPA"** has the meaning set forth in Section 4.2.
- 1.11 **"Feedback"** has the meaning set forth in Section 7.3.
- 1.12 **"Fees"** has the meaning set forth in Section 5.1.
- 1.13 **"Force Majeure Event"** has the meaning set forth in Section 12.4.
- 1.14 **"Law"** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, provincial, territorial, municipal, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.
- 1.15 **"Intellectual Property"** means all copyrights, design rights, trademark rights, patent rights, trade secrets and any other proprietary rights, whether registered or unregistered, and any application for registration of any of the foregoing, and any right to file any such application, which may subsist anywhere in the world.
- 1.16 **"Losses"** has the meaning set forth in Section 9.1.
- 1.17 **"Notice"** has the meaning set forth in Section 12.3.
- 1.18 **"Order Form"** means the order documents delivered by Maximizer or its authorized Business Partner, and accepted by Customer for the Services, including any modifications or Renewal thereof.
- 1.19 **"Maximizer"** means Maximizer Services Inc. or its affiliate as identified on the Order Form.
- 1.20 **"Maximizer Technology"** means all technology, software, materials, formats, interfaces, information, data, content and Confidential Information of Maximizer, including the Maximizer CRM software, the Services, the Documentation, and Aggregated Statistics, together with any improvements or modifications thereof.
- 1.21 **"Personal Information"** means any information that relates to an individual person and identifies or can be used to identify, locate, or contact that individual alone or when combined with other personal or identifying information that is or can be associated with that specific individual, or as otherwise defined by applicable Law.
- 1.22 **"Privacy Policy"** means the Maximizer Privacy Policy available at [www.maximizer.com/about-us/privacy-policy/](https://www.maximizer.com/about-us/privacy-policy/), which may be updated by Maximizer at its sole discretion.
- 1.23 **"Professional Services"** means implementation or related support services provided by Maximizer to Customer as specified in a Statement of Work and subject to the Professional Service Terms.
- 1.24 **"Professional Service Terms"** means the terms and conditions in Exhibit A.
- 1.25 **"Renewal"** has the meaning set forth in Section 11.1.

- 1.26 **"Statement of Work"** means the documents delivered by Maximizer and accepted by Customer outlining the details and scope of the Professional Services.
- 1.27 **"Service Suspension"** has the meaning set forth in Section 2.5.
- 1.28 **"Services"** means the Maximizer CRM software-as-a-service offering described in the Order Form, and any ancillary maintenance and support services, including Professional Services. For clarity, this Agreement applies to on-premises and cloud-based versions of Maximizer CRM.
- 1.29 **"Support Services"** has the meaning set forth in Section 4.1.
- 1.30 **"Taxes"** means any sales tax, goods and services tax, value added tax, use and excise taxes, customs, duties, and any other similar taxes, duties, charges, and assessments of any kind imposed by any federal, provincial, state, territorial, or local governmental entity.
- 1.31 **"Term"** has the meaning set forth in Section 11.1.
- 1.32 **"Third-Party Claim"** has the meaning set forth in Section 9.1.
- 1.33 **"Third-Party Products"** has the meaning set forth in Section 3.2.
- 1.34 **"Trial"** has the meaning set forth in Section 2.8.
- 1.35 **"Updates"** has the meaning set forth in Section 2.7.
- 1.36 **"Upgrades"** has the meaning set forth in Section 2.7.

## **2. Access and Use**

- 2.1 **Provision of Access.** Subject to Customer's payment of Fees and compliance with this Agreement, Maximizer grants Customer a non-exclusive, non-transferable right to access and use the Services during the Term. Such use is limited to Customer's internal use by Authorized Users. Customer agrees that its purchase of the Services is not contingent upon the delivery of any future functionality, features or services.
- 2.2 **Authorized Users.** Maximizer shall provide Customer with access credentials to allow Customer and Authorized Users to access the Services. Customer will be responsible for ensuring the security and confidentiality of credentials. Credentials cannot be shared or used by more than one Authorized User. The total number of Authorized Users will not exceed the number set forth in the applicable Order Form. If Customer wishes to add Authorized Users, Customer must purchase additional licenses by completing a new Order Form. The number of Authorized User cannot be decreased during the current subscription term.
- 2.3 **Use Restrictions.** Customer shall not use the Services for any purposes beyond the scope of the access granted in this Agreement.
  - (i) Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to:
    - (A) copy, modify, or create derivative works of the Services, Documentation, or Maximizer Technology, in whole or in part;
    - (B) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, use the Services for the benefit of a third party or to operate a service bureau, or otherwise make available the Services, Documentation, or Maximizer Technology;
    - (C) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services or Maximizer Technology, in whole or in part;
    - (D) interfere in any manner with the operation of the Services or Maximizer Technology;
    - (E) remove any proprietary notices from the Services, Documentation, or Maximizer Technology;
    - (F) use the Services, Documentation, or Maximizer Technology in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property right or other right of any person, or that violates any applicable Law;
    - (G) access, harvest, collect, gather or assemble Personal Information or data regarding other Maximizer customers without their consent;
    - (H) use the Services or Maximizer Technology to store, transmit, email, post or publish in any manner whatsoever any Customer Data or other material for any purpose that menaces or harasses any third party, involves the publication of false, defamatory, or pornographic material, violates privacy rights, promotes racism, hatred or bigotry, constitutes spam mail or junk mail, could reasonably be expected to harm Maximizer's reputation, or otherwise violates any applicable Laws;
    - (I) otherwise use the Services or Maximizer Technology in any manner that exceeds the scope of this Agreement; or
    - (J) Upload any harmful or malicious code, content, files, scripts, agents or programs, including viruses, malware, worms, time bombs and Trojan horses;

- (ii) If any Customer Data or any other information or files uploaded by Customer or any Authorized Users contains or includes anything described in Section 2.3(i)(H) or Section 2.3(i)(J), then Maximizer may remove such data, information, or files from the Services and take such other action as Maximizer deems necessary (including suspension of Authorized User's or Customer's access and use of the Services). Any costs associated with such removal are the responsibility of Customer and may be charged by Maximizer to Customer and payable by Customer upon invoice. Maximizer will notify Customer of such actions as soon as reasonably practical under the circumstances. For clarity, Maximizer is under no obligation to review Customer Data for compliance with Section 2.3(i)(H) or Section 2.3(i)(J) or otherwise.
  - (iii) The Services may be subject to usage limitations as outlined in the Documentation. Maximizer reserves the right to amend usage limitations.
- 2.4 Reservation of Rights. Maximizer reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted herein, nothing in this Agreement grants any Intellectual Property rights or other right, title, or interest in or to the Maximizer Technology.
- 2.5 Suspension. Notwithstanding anything to the contrary in this Agreement, Maximizer may temporarily suspend Customer's and any Authorized User's access to any portion or all of the Services if:
  - (i) Maximizer reasonably determines that:
    - (A) Customer breaches any terms of this Agreement;
    - (B) there is a threat or attack on any of the Maximizer Technology;
    - (C) Customer's or any Authorized User's use of the Maximizer Technology disrupts or poses a security risk to the Maximizer Technology or to any other customer or vendor of Maximizer;
    - (D) Customer, or any Authorized User, is using the Maximizer Technology for fraudulent or illegal activities;
    - (E) subject to applicable Law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or
    - (F) Maximizer's provision of the Services to Customer or any Authorized User is prohibited by applicable Law;
  - (ii) any vendor of Maximizer has suspended or terminated Maximizer's access to or use of any third-party services or products required to enable Customer to access the Services; or
  - (iii) in accordance with Section 5.1;

any such suspension described in subclause (i), (ii), or (iii), a **"Service Suspension"**). Maximizer shall use commercially reasonable efforts to provide written Notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. Maximizer shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Maximizer will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.
- 2.6 Aggregated Statistics. Customer agrees that Maximizer may collect, compile, and use Aggregated Statistics based on Customer Data, provided that the Aggregated Statistics do not identify any Personal Information or Customer Data. Maximizer owns all right, title, and interest in Aggregated Statistics, including all Intellectual Property rights related thereto. Maximizer may use Aggregated Statistics to improve the Maximizer Technology, including the development of AI Features.
- 2.7 Updates and Upgrades.
  - (i) Maximizer reserves the right, in its sole discretion, to make any updates to the Services (**"Updates"**), which may include: (a) changes to the features, functionality, quality, or operation of the to the Services; (b) patches or bug fixes; (c) updates to comply with applicable Law. Maximizer will use reasonable efforts to avoid Updates that remove material features, which were available on the effective date of the applicable Order Form. Maximizer shall provide such Updates to the Customer for the version of the Services purchased in the Order Form.
  - (ii) Maximizer may offer upgrades or new versions of the Services (**"Upgrades"**), including modifications additions or substitutions that result in a substantial change, improvement, or addition to the Maximizer Technology. Customer may choose to accept such Upgrades by completing a new Order Form.
- 2.8 Evaluations and Trials. If the Services are offered to Customer for evaluation purposes or on a trial use basis (**"Trial"**), then the Services are provided "AS IS" without any warranty. During the Trial: (a) Maximizer shall have no obligation with respect to Customer Data, Confidential Information, or Personal Information provided by Customer; and (b) Customer is permitted to use the Services for internal demonstration, test, or evaluation purposes

in a non-production environment; and (c) Maximizer may terminate this Agreement by discontinuing the Trial at its sole discretion.

### **3. Customer Responsibilities**

- 3.1 **General.** Customer represents and warrants that Customer will comply with all applicable Laws and the terms of this Agreement, and that Customer is responsible for:
- (i) the accuracy and completeness of any Customer Data provided to Maximizer;
  - (ii) procuring and maintaining any communication services between Customer's systems and the Services (including internet connectivity);
  - (iii) any technical requirements described in the Documentation;
  - (iv) all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer;
  - (v) using reasonable efforts to make all Authorized Users aware of and comply with this Agreement; and
  - (vi) obtaining consent to provide Customer Data to Maximizer as contemplated by this Agreement, including having consent or a lawful basis for Maximizer to collect or process any Personal Information.
- 3.2 **Third-Party Products.** Customer is solely responsible for any third party products, services, hardware, software, applications, websites, resources, or content not owned or provided by Maximizer ("**Third-Party Products**"), even if Maximizer makes available, recommends, or interoperates with such Third-Party Products. Third-Party Products are subject to, and governed solely by, their own terms and conditions, and not this Agreement. Customer acknowledges and agrees that Maximizer shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on Third-Party Products. If Customer integrates or links the Services or Maximizer Technology to Third-Party Products, then Customer consents to sharing of Customer Data between Maximizer and the Third-Party Products.
- 3.3 **Customer Data.** Customer represents and warrants that Customer has the right to share Customer Data with Maximizer. In the event of a request to remove, transfer, or migrate Customer Data, then Customer shall pay for any Professional Services needed to remove, transfer, or migrate such Customer Data.

### **4. Support and Data Privacy**

- 4.1 During the Term, Maximizer will provide customer support services at the support levels Customer purchased in the Order Form in accordance with its support policy available at [support.maximizer.com](https://support.maximizer.com) ("**Support Services**"). Provider may amend the Support Services in its sole discretion.
- 4.2 Maximizer will maintain appropriate administrative, physical, and technical safeguards designed to protect the security of the Services and Customer Data in accordance with applicable Law, and the Privacy Policy. If Customer's use of the Services involves processing Personal Information and/or transferring personal data between different countries requiring a separate agreement regarding such activities, then the terms of Maximizer's data processing addendum ("**DPA**") shall apply to such Personal Information and be incorporated into the Agreement upon both parties signing the DPA. The DPA may be requested by contacting [legal@maximizer.com](mailto:legal@maximizer.com).
- 4.3 Maximizer may use third party subcontractors to provide limited parts of the Services, including data collection, storage, processing, and content delivery. Customer agrees that Maximizer may use subcontractors and share Customer Data with subcontractors, provided that Maximizer shall remain liable to Customer for any breach of this Agreement by those subcontractors.

### **5. Fees and Payment**

- 5.1 **Fees.** Customer shall pay Maximizer, or its Business Partner, the fees ("**Fees**") as set forth in the Order Form or Statement of Work without off-set or deduction. Unless otherwise stated in an Order Form or Statement of Work, all Fees are billed annually in advance and due immediately upon receipt of invoice. Fees are non-refundable, except as expressly described in this Agreement. If Customer fails to make any payment when due, without limiting Maximizer's other rights and remedies:
- (i) Maximizer may charge interest on the past due amount at the rate of 24% per annum, or if lower, the maximum amount permitted under applicable Law, calculated daily and compounded monthly;
  - (ii) Customer shall reimburse Maximizer for all costs incurred by Maximizer (including reasonable attorneys' fees) in collecting any late payments or interest, including legal fees, court costs, and collection agency fees; and
  - (iii) if such failure continues for 10 days or more, Maximizer may suspend Customer's and its Authorized Users' access to any portion or all of the Services until such Fees are paid in full together with any other amounts described in this Section.

- 5.2 **Taxes.** All Fees and other amounts payable by Customer under this Agreement are exclusive of Taxes. Customer is responsible for all such Taxes on any Fees payable to Maximizer, other than any taxes imposed on Maximizer's income. If Maximizer is required to withhold Taxes, then the Fees payable by Customer shall be grossed up as necessary to ensure that the net amount Maximizer receives after such withholding is the same that Maximizer would have received if there had been no withholding.
- 5.3 **Auditing Rights and Required Records.** Maximizer may, but is not obligated to, monitor and record Customer's use of the Services, and may use information derived therefrom to ensure Customer is complying with this Agreement. Customer agrees to maintain complete and accurate records in accordance with generally accepted accounting principles with respect to matters necessary for accurately determining amounts payable to Maximizer. Maximizer may, at its own expense, on reasonable prior Notice, periodically inspect and audit Customer's records with respect to matters covered by this Agreement. Such audit may also be conducted by Maximizer through online tools and processes, which may automatically transmit usage reports to Maximizer. If such inspection or audit reveals that Customer has underpaid Maximizer with respect to any amounts due and payable during the Term, then Customer shall promptly pay the amounts necessary to rectify such underpayment, together with interest in accordance with Section 5.1, and the costs of the audit. The record keeping, inspection, and auditing rights will extend throughout the Term of this Agreement and for a period of 2 years after the termination or expiration of this Agreement.
- 5.4 **Automatic Payments.** If a credit card or other pre-authorized payment details are provided to Maximizer's payment processor, then Customer expressly authorizes Maximizer's payment processor to store those payment details and charge all amounts due under the Order Forms, Statements of Work, and this Agreement (including the Fees and late payment charges) using the pre-authorized payment details. This authorization will remain in effect until revoked by Customer in writing. Customer will also provide Maximizer with complete, accurate, and up-to-date billing and contact information at all times.

## **6. Confidential Information**

- 6.1 Either party may disclose or make available to the other party information about its business affairs, products, Intellectual Property, trade secrets, third-party confidential information, and other sensitive or proprietary information that is identified or marked as confidential at the time of disclosure or that ought to have been reasonably considered confidential (collectively, "**Confidential Information**"). Confidential Information of Maximizer includes technical, marketing, financial, employee, planning, Maximizer Technology. Confidential Information of Customer includes Customer Data. Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving party at the time of disclosure; (c) rightfully obtained by the receiving party from a third party without restriction; or (d) independently developed by the receiving party without reference to the Confidential Information.
- 6.2 The receiving party shall hold the Confidential Information in strict confidence and shall not use the Confidential Information for any purpose except in compliance with this Agreement. The receiving party shall use the same efforts to protect the confidentiality of the Confidential Information as it uses to protect its own Confidential Information, and in any event, no less than a reasonable standard of care
- 6.3 The receiving party shall not disclose the disclosing party's Confidential Information to any person or entity, except to the receiving party's employees, affiliates, independent contractors, or suppliers who have a need to know the Confidential Information and are bound to substantially similar confidentiality obligations as herein.
- 6.4 Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required: (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable Law, provided that the party making the disclosure pursuant to the order shall first give written Notice to the other party (to the extent permitted by Law) and made a reasonable effort to allow the disclosing party to obtain a protective order; or (ii) to establish a party's rights under this Agreement, including to make required court filings.
- 6.5 On the expiration or termination of this Agreement, the receiving party shall promptly return to the disclosing party all copies, whether in written, electronic, or other form or media, of the disclosing party's Confidential Information, or destroy all such copies and certify in writing to the disclosing party that such Confidential Information has been destroyed; provided that Section 11.3 shall apply to Customer Data on expiration or termination of this Agreement.

## **7. Intellectual Property Ownership**

- 7.1 **Maximizer Technology.** Maximizer owns all right, title, and interest in and to the Maximizer Technology, including all Intellectual Property rights related thereto. Other than as expressly set forth in this Agreement, no license or other rights in the Maximizer Technology are granted to the Customer, and all such rights are hereby expressly reserved by Maximizer.
- 7.2 **Customer Data.** Customer owns all right, title, and interest in and to the Customer Data. Customer grants Maximizer a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Maximizer to

provide the Services to Customer. Customer will be solely responsible for providing all Customer Data required for the proper operation of the Services.

- 7.3 **Feedback.** If Customer or any of its Authorized Users, employees, contractors, or agents provides any suggestions, feature requests, recommendations, or other feedback related to the Maximizer Technology ("**Feedback**"), then Maximizer is free to use such Feedback without any attribution or compensation, provided that Maximizer is not required to use any Feedback. On Customer's behalf, and on behalf of its Authorized Users, employees, contractors, and/or agents: (i) Customer hereby assigns to Maximizer all right, title, and interest in the Feedback; and (ii) to the extent the Feedback is not assignable, then Customer hereby grants a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use the Feedback for any purpose whatsoever.
- 7.4 **Artificial Intelligence.** Some features within the Services may utilize artificial intelligence ("**AI Features**"). The AI Features may generate content and outputs using large language models ("**Outputs**"). Maximizer does not guarantee that any AI Features or Outputs will be accurate, complete, unbiased, non-infringing, or free from hallucinations or inappropriate content. It is Customer's sole responsibility to monitor the AI Features and the Outputs. The AI Features and the Outputs are provided "AS IS" without any warranty, and Maximizer disclaims all liability related to the AI Features and the Outputs. Maximizer may discontinue access to the AI Features at any time.

7.5

## **8. Limited Warranty and Warranty Disclaimer**

- 8.1 During the Term, Maximizer warrants that the Services will operate in accordance with the Documentation without a material failure ("**Defect**"). In the event of a Defect, Customer shall provide Maximizer with written Notice of the Defect, and Maximizer will use reasonable efforts to correct or work around the Defect in accordance with the Support Services. If the Defect persists in causing a material failure in the Service without correction or work-around 45 days after written Notice to Maximizer, then Customer may terminate the affected Service and Maximizer shall provide Customer a pro rata refund of any prepaid unused Fees. This shall be Customer's sole remedy for any Defects or other alleged warranty claims.
- 8.2 Without limiting the foregoing, Maximizer is not responsible or liable to provide Support Services for: (a) issues arising by accident, abuse or use of the Services in a manner inconsistent with this Agreement or the Documentation, or resulting from a Force Majeure Event; (b) issues arising from any Third-Party Products; (c) issues arising from the failure of Customer to meet the responsibilities in Section 3.1; and (d) issues arising from downtime or other interruptions in Customer's access to the Services.
- 8.3 Except as provided in Section 8.1, the Services and Maximizer Technology are provided "AS IS" and "AS AVAILABLE", and Maximizer expressly disclaims all warranties and conditions, whether express, implied, statutory, or otherwise. Maximizer specifically disclaims all implied warranties and conditions of merchantability, fitness for a particular purpose, title, and non-infringement, and all warranties arising from course of dealing, usage, or trade practice. Maximizer makes no warranty of any kind that the Services or Maximizer Technology will meet Customer's or any other person's requirements, operate without interruption, achieve any intended result, be compatible or work with any software, system, or other services, or be uninterrupted, secure, accurate, complete, free of harmful code, or error free. Maximizer makes no representations that the Service or Maximizer Technology are appropriate or available for use in the location of Customer. The Customer and those who access or use the Service or Maximizer Technology are responsible to ensure that their use is in compliance with applicable local Law.

## **9. Indemnification**

- 9.1 **Maximizer Indemnification.** Maximizer shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable legal fees) ("**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Services, or any use of the Services in accordance with this Agreement, infringes or misappropriates such third party's Canadian or United States patents, provided that Customer promptly notifies Maximizer in writing of the claim, cooperates with Maximizer, and allows Maximizer sole authority to control the defense and settlement of such claim. If such a claim is made or appears possible, Customer agrees to permit Maximizer, at Maximizer's sole discretion, to (i) modify or replace the Services or Maximizer Technology, or component or part thereof, to make it non-infringing, or (ii) obtain the right for Customer to continue use of the Services. If Maximizer determines that neither alternative is reasonably available, Maximizer may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written Notice to Customer, and provide a pro rata refund of any prepaid unused Fees. This Section 9.1 will not apply to the extent that the alleged infringement arises from: (A) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Maximizer or authorized by Maximizer in writing; (B) modifications to the Services not made or by Maximizer; (C) Customer Data; or (D) Third-Party Products. This Section shall be subject to the limitations in Section 10.1(ii), and sets forth

Customer's sole remedies and Maximizer's sole liability and obligation for any actual, threatened, or alleged claims that the services infringe, misappropriate, or otherwise violate any Intellectual Property rights of any third party.

- 9.2 Customer Indemnification. Customer shall indemnify, hold harmless, and, at Maximizer's option, defend Maximizer from and against any Losses resulting from any Third-Party Claim based on: (a) Customer's or any Authorized User's breach of any term, condition, obligation, or warranty in this Agreement; (b) Customer's or any Authorized User's negligence or willful misconduct; (c) Customer's or any Authorized User's violation of applicable Law; (d) violation of applicable Law related to Personal Information, except to the extent caused by Maximizer; (e) any Third Party Products installed or used with the Services; (f) any collection, use, or processing of Customer Data in accordance with this Agreement or instructions from Customer; (g) infringement of Intellectual Property in relation to Customer Data or Third Party Products; provided that Maximizer promptly notifies Customer in writing of the claim, cooperates with Customer, and allows Customer sole authority to control the defense and settlement of such claim (except that Customer may not settle any Third-Party Claim against Maximizer unless Maximizer consents to such settlement, and further provided that Maximizer will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice).

## **10. Limitations of Liability**

- 10.1 In no event will Maximizer be liable to Customer, under any legal or equitable theory, including breach of contract, tort (including negligence), strict liability, and otherwise, whether under or related to this Agreement, for:
- (i) Any consequential, incidental, indirect, exemplary, special, aggravated, or punitive damages, including: (a) increased costs, diminution in value, or lost business, production, revenues, or profits; (b) loss of goodwill or reputation; (c) use, inability to use, loss, interruption, delay, or recovery of any data, or breach of data or system security; or (d) cost of replacement goods or services; in each case regardless of whether Maximizer was advised of the possibility of such losses or damages or such losses or damages were otherwise foreseeable, and notwithstanding the failure of essential purpose of any limited remedy provided herein.
  - (ii) Any liability exceeding the total amounts paid and received by Maximizer for Services under this Agreement in the 12-month period preceding the event giving rise to the claim. Any liability against Maximizer by Customer will be aggregated to satisfy this limit and multiple claims will not enlarge this limit.

## **11. Term and Termination**

- 11.1 Term. The term of this Agreement will commence upon accessing the Services and shall continue until the expiration of the last Order Form or Statement of Work between Maximizer and Customer or Maximizer ("**Term**"), unless terminated sooner in accordance with this Agreement. Services purchased by Customer commence on the start date specified in the Order Form. The Services will automatically renew: (a) monthly, if the current subscription term is monthly; or (b) for an additional 12-months in all other cases ("**Renewal**"); unless either party gives the other party written Notice of non-renewal at least 60 days before the end of the current subscription term. Customer must notify Maximizer of any downgrades, reductions in Authorized Users, or other partial discontinuation of Services within such 60 day period prior to Renewal. The Fees for any Renewal will be at Maximizer's then-current prices, which will be made available to Customer upon request.
- 11.2 Termination. In addition to any other express termination right set forth in this Agreement:
- (i) Maximizer may terminate this Agreement, effective immediately on written Notice to Customer, if Customer: (A) fails to pay any amount when due hereunder, and such failure continues more than 30 days after written Notice thereof; or (B) breaches any of its obligations under Section 2.3 or Section 6;
  - (ii) either party may terminate this Agreement, effective on written Notice to the other party, if the other party materially breaches this Agreement, and such breach remains uncured 30 days after the non-breaching party provides the breaching party with written Notice of such breach; or
  - (iii) either party may terminate this Agreement, effective immediately upon written Notice to the other party, if the other party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, liquidator or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
- 11.3 Effect of Expiration or Termination. Upon expiration or termination of this Agreement, Customer shall immediately discontinue use of the Maximizer Technology, and without limiting Customer's obligations under Section 6, Customer shall delete, destroy, or return all copies of the Maximizer Technology and certify in writing to the Maximizer that the Maximizer Technology has been deleted or destroyed. Customer will have up to 30 days from the effective date of termination to request a copy of all Customer Data stored by the Maximizer Technology (a "**Backup Request**"). Upon full payment of all outstanding Fees within 30 days of expiration or termination,



Maximizer will provide complimentary Backup Requests using Maximizer's standard processing and data formats (e.g. .BAK format). Maximizer may delete the Customer Data if no Backup Request is made, or if payment of Fees is not received, within such 30 day period. Any custom processing, data formats (e.g. CSV), or services performed by Maximizer for a Backup Requests shall be charged to Customer at Maximizer's then-current rates, and Customer must pay such fees in advance of Maximizer's fulfillment of any Backup Request. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Customer to any refund, except as expressly stated in this Agreement.

- 11.4 Survival. Section 1, Section 2.3, Section 2.4, Section 2.5, Section 2.6, Section 3.2, Section 5, Section 6, Section 7, Section 8, Section 9, Section 10, Section 11.3, and Section 12 shall survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

## **12. Miscellaneous**

- 12.1 Entire Terms. This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, constitute the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersede all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter.
- 12.2 Interpretation. In the event of any inconsistency, the following order of precedence governs: (i) first, this Agreement, excluding its Exhibits; (ii) second, the DPA (if applicable); (iii) third, the Privacy Policy; and (iv) the Order Form(s); provided that the DPA or Order Form signed by Maximizer and Customer may modify this Agreement by expressly referencing the section being modified. Any reference to the word "include" or similar terms shall be construed to be followed by the words "without limitation".
- 12.3 Notices. Each party shall deliver all notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "**Notice**") in writing and addressed to the other party at the addresses set forth on the Order Form. Notices will be deemed validly and effectively given: (a) on the date of receipt, if delivered by personal delivery, or by a nationally recognized overnight courier (with all fees prepaid); (b) upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "read receipt" function, as available, return email or other form of written acknowledgment), if delivered by email; provided that any Notice sent to Maximizer by email shall be sent to [legal@maximizer.com](mailto:legal@maximizer.com).
- 12.4 Force Majeure. In no event shall either party be liable to the other party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control ("**Force Majeure Event**"), including acts of God, epidemics, pandemics, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of Law or any action taken by a governmental or public authority, including imposing an embargo.
- 12.5 Amendments and Modifications. Maximizer may amend this Agreement at any time by posting such amendment on [www.maximizer.com](http://www.maximizer.com) or within the Service, provided that any amendment will not be effective until Renewal or Customer otherwise enters a new Order Form. Customer will be deemed to have accepted the amendment upon Renewal or such new Order Form. Maximizer may attempt to provide Notice of such amendment, however, such amendment is still effective even if such Notice is deficient. Except as described in the preceding sentences in this Section 12.5, no other amendment to or modification of this Agreement is effective unless it is in writing and mutually signed by both parties.
- 12.6 Waiver. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- 12.7 Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 12.8 Logo Usage. Maximizer may use Customer's name, trademark, and logo in a press releases, advertising, and promotional materials, and Customer consents to any such reference.
- 12.9 Governing Law. This Agreement and all related documents, and all matters arising out of or relating to this Agreement and the Services, whether in contract, tort, statute, or otherwise, are governed by, and construed in accordance with, the Laws of the Province of British Columbia without giving effect to principles of conflict of Laws. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. Any action, litigation, or proceeding of any kind arising from or relating to this Agreement or the Services must be brought in a court sitting in British Columbia, Canada, and each party irrevocably submits to the



jurisdiction and venue of any such court in any such action or proceeding, except for applications for injunctive relief by Maximizer. If a dispute arising under this Agreement results in litigation, the non-prevailing party will pay the court costs and reasonable attorneys' fees of the prevailing party.

- 12.10 Assignment. Customer may not assign or otherwise transfer any of its rights or delegate or otherwise transfer any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of Law or otherwise, without the prior written consent of Maximizer. Any purported assignment, transfer, or delegation in violation of this Section will be null and void. This Agreement is binding upon and inures to the benefit of the parties and their respective permitted successors and assigns.
- 12.11 Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 6 or, in the case of Customer, Section 2.3, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at Law, in equity or otherwise.

## **Exhibit A: Professional Service Terms**

### **1. General.**

- 1.1 **Scope.** The Agreement shall apply to Professional Services, subject to the modifications in these Professional Service Terms. Capitalized terms used but not defined in these Professional Service Terms shall have the meanings defined in the Agreement.
- 1.2 **Changes.** Maximizer will provide the Professional Services specifically described in the Statement of Work. Any additional work beyond the scope of the Statement of Work must be documented in writing in a change order mutually signed by both parties (“Change Order”). Each Change Order shall be deemed to modify and form part of the Statement of Work. Maximizer shall be under no obligation to perform work in excess of the estimate contained in the Statement of Work without a signed Change Order.
- 1.3 **Scheduling.** Professional Services shall be scheduled at a date and time subject to availability of Maximizer personnel and resources. Any unused pre-purchased Professional Services shall expire 12 months from the execution date of the Statement of Work, unless expressly stated otherwise in the Statement of Work. Customer acknowledges that Maximizer allocates resources once the Professional Services are scheduled, and if Customer postpones the Professional Services, then Customer will be responsible for any additional costs or charges incurred by Maximizer as a result of such postponement.
- 1.4 **Fees.** Customer will pay Maximizer, or its Business Partner, all Fees described in the Statement of Work (as modified by any Change Orders). If an upfront payment is applicable, Maximizer will not assign internal resources or begin the Professional Services until such payment is made.
- 1.5 **External Issues.** Maximizer will not be responsible for external issues such as technological inconsistencies caused by non-standard system configurations, technical failures, or other issues not directly related to Maximizer Technology.
- 1.6 **Customer Security.** Maximizer will not be responsible for security settings as they relate to any component of Customer’s information technology infrastructure, including databases, database servers, application servers, internet servers, Customer software, or Third-Party Products.
- 1.7 **No License.** These Professional Service Terms and any Statement of Work do not grant any use, access or license rights to the Services or Maximizer Technology. Customer must enter into a separate Order Form with Maximizer for any rights to use, access or license the Services or Maximizer Technology.
- 1.8 **Intellectual Property.** Maximizer owns all right, title, and interest in and to Intellectual Property rights resulting from the Professional Services, including any improvements or modifications to Maximizer Technology resulting from the Professional Services. Upon full payment of the Fees for the Professional Services, Maximizer grants Customer a non-exclusive, non-transferable right to access and use any customization, configuration, and implementation resulting from the Professional Services solely as needed to access Services during the Term of the Agreement. This Section shall apply in addition to all other terms regarding Intellectual Property in the Agreement.