

MAXIMIZER SOFTWARE SOLUTIONS PTY. LTD.

ON PREMISES SUBSCRIPTION AGREEMENT

This Subscription Agreement (“**Agreement**”) is made as of _____ (the “Effective Date”), by and between, Maximizer Software Solutions Pty. Ltd. with an address of P.O. Box 629, North Sydney, New South Wales, 2059 (“**Maximizer**”), and _____ (“**Customer**”), with a principal place of business at _____.

Maximizer has developed certain software, as further described below, and provides maintenance and support for that software. Customer desires to license a subscription to the Software and Maximizer desires to provide a subscription to the Software (as defined below) on the terms and conditions set forth herein.

This Agreement sets forth the terms and conditions under which Maximizer will license the Software (as defined below) to the Customer. Customer’s access to and use of the Software is governed solely by the terms of this Agreement which supersedes the terms of any other prior writing or understanding between the parties.

THE PARTIES HAVE READ AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING THOSE TERMS CONTAINED ON THE FOLLOWING PAGES HEREOF.

The parties have caused this Agreement to be effective as of the Effective Date set forth above.

MAXIMIZER SOFTWARE SOLUTIONS PTY. LTD.	_____
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

TERMS AND CONDITIONS

1. **DEFINITIONS.** As used in this Agreement:
 - 1.1 **“Agreement”** means these Terms and Conditions and the Order Form incorporated by reference into this Agreement.
 - 1.2 **“Claim”** is defined in Section 11.2.
 - 1.3 **“Confidential Information”** means all information regarding a party’s business, including, without limitation, technical, marketing, financial, employee, planning, and other confidential or proprietary information, disclosed under this Agreement, that is clearly identified as confidential or proprietary at the time of disclosure or that the receiving party knew or should have known, under the circumstances, was considered confidential or proprietary. Confidential Information includes the Software or the Documentation and the terms of this Agreement.
 - 1.4 **“Credentials”** is defined in Section 3.1.
 - 1.5 **“Discloser”** is defined in Section 5.1.
 - 1.6 **“Documentation”** means the designated final user manuals, handbooks, online materials, specifications or forms furnished by Maximizer that describe the features, functionality or operation of the Software and Technical Environment.
 - 1.7 **“Fees”** is defined in Section 4 hereof.
 - 1.8 **“Initial Term”** is defined in the Order Form.
 - 1.9 **“Key”** is defined in Section 3.6 hereof.
 - 1.10 **“License Report”** is defined in Section 3.6 hereof.
 - 1.11 **“Maximizer Website”** means <https://maximizer.com>.
 - 1.12 **“Maximizer Technology”** is defined in Section 7.1.
 - 1.13 **“Order Form”** means the order documents representing the initial subscription to the Software (and any subsequent modifications to the subscription agreed to between the parties in writing from time to time) that, upon execution, are incorporated in and made a part of this Agreement from time to time.
 - 1.14 **“Recipient”** is defined in Section 5.1.
 - 1.15 **“Service Providers”** is defined in Section 2.5.
 - 1.16 **“Software”** means the on-premise object code version of the Maximizer Software specified in the Order Form and excluding Third Party Applications.
 - 1.17 **“Technical Environment”** means the technology, including hardware and software and system requirements, owned or licensed by Customer in which the Software is installed to Customer in accordance with this Agreement as described in the Documentation.
 - 1.18 **“Third Party Applications”** refers to online and offline software products that are provided by third parties that interoperate with the Software.

1.19 “Usage Data” metadata and other information regarding the performance, functionality and operability of the Software, which may include data on the use of the Software.

1.20 “Users” means Customer’s employees, representatives, consultants, contractors or agents who are authorized to use the Software on behalf of Customer and have been supplied user identifications and passwords for this purpose.

2. SOFTWARE.

2.1 Subscription to the Software. Subject to all of the terms of this Agreement, including, without limitation, the payment of the Fees set forth in Section 4 hereof, Maximizer hereby grants a non-exclusive, limited, non-transferable, non-sublicensable right to install the Software in the Technical Environment in the jurisdiction of installation, and to use the Software for the number of Users identified in the Order Form in accordance with this Agreement, solely for Customer’s internal business purposes only, and subject to any other usage limitations described in the Order Form or this Agreement. Customer may not transfer or sub-license any access, use or permission to the Software. Customer may order the Software under the Agreement by placing written and signed orders on an Order Form. Only the execution of an Order Form by Customer and by Maximizer constitutes a binding contract between those parties. Customer agrees that its purchase of the subscription is neither contingent upon the delivery of any future functionality, features or services, or dependent upon any oral or written public comments made by Maximizer with respect to future functionality or features.

2.2 Additional Users. Access to the Software cannot be shared with anyone other than a User. If Customer wishes to add additional Users, Customer will purchase subscriptions to the Software for such additional Users through an Order Form. Upon mutual execution of any such additional Order Form, Customer may make Software available to the additional Users on the terms and conditions set forth in this Agreement and each executed additional Order Form. Customer acknowledges and agrees that the number of User cannot be decreased during the relevant subscription term stated on any Order Form.

2.3 Support. Subject to the terms of this Agreement, including, without limitation, the payment of the Fees set forth in Section 4 hereof, Maximizer will use commercially reasonable efforts to provide support services in accordance with its support policy as set out in the Maximizer Website.

2.4 Reserved Rights. Except for the express license granted to Customer under this Agreement, Maximizer reserves all right, title and interest in the Software.

2.5 Service Providers. Notwithstanding any other provision of this Agreement, Customer may in their discretion engage independent contractors and service providers, including third parties to whom Customer outsources some or all of their information system requirements (collectively “**Service Providers**”) to assist Customer to use the Software pursuant to the license granted in Section 2.1 and to provide services regarding the Software, and may provide access to the Software to Service Providers and authorize Service Providers to use the Software only for those purposes, provided that Customer is responsible for the Service Providers’ use of the Software.

3. CUSTOMER’S USE OF THE SOFTWARE.

3.1 Access and Security Guidelines. Each User will be assigned a unique user identification name and password (“**Credentials**”) for access to and use of the Software. Customer will be responsible for ensuring the security and confidentiality of its Credentials. Credentials cannot be shared or used by more than one User, but may be reassigned to an entirely new User, *provided that* Credentials may not be provided to any individual who is not a User. Customer will prevent unauthorized access to, or use of, the Software, and notify Maximizer promptly of any such unauthorized use. At all times, Customer will comply with all applicable local, state, federal, and foreign laws in using the Software.

3.2 Customer Responsibilities. Customer is responsible for: (a) procuring and maintaining communication services, including high speed Internet connections between Customer’s systems and the Technical Environment and Software, and will also be responsible for the system requirements described in the Maximizer Website; (b) ensuring that the Software is used solely for Customer’s internal business purposes and in accordance with the Documentation;

(c) ensuring Users comply with this Agreement; (d) obtaining all necessary consents for Maximizer to provide, use and copy data for the purpose of the Software and for creating Usage Data, and the exercise of Maximizer's rights pursuant to Section 7.2 below; (e) assigning, recording, and controlling the issuance of all Credentials; and (f) using best efforts to prevent unauthorized access or use of the Maximizer Software.

3.3 Use Restrictions. Customer is responsible for all activities that occur under Customer and User accounts. Customer will not, will not attempt to: (a) make the Software available to anyone other than Users; (b) reverse engineer, disassemble or decompile any component of the Software or Maximizer Technology, in whole or in part, including to gain access to the Software source code or any trade secrets embodied in the Software, whether to determine design, structure, concepts and methodology behind the Software or otherwise, or to incorporate it within any software product or developed software of Customer's own or any third party's creation; (c) interfere in any manner with the operation of the Software or any other aspect of the Software; (d) sublicense or transfer any of Customer's rights under this Agreement; (e) otherwise use the Software for the benefit of a third party or to operate a service bureau; (f) modify, copy or make derivative works or competitive products or services based on any part of the Software or Maximizer Technology; (g) use the Software or Maximizer Technology to store, transmit, email, post or publish in any manner whatsoever any data or other material for any purpose that menaces or harasses any person, involves the publication of false, defamatory, or pornographic material, violates privacy rights, promotes racism, hatred or bigotry, constitutes spam mail or junk mail, infringes on the intellectual property of any third party, could reasonably be expected to harm Maximizer's reputation or otherwise violates any laws; (h) otherwise use the Software or Maximizer Technology in any manner that exceeds the scope of this Agreement; (i) export or allow access to the Software in violation of applicable law; (j) modify, adapt, translate or otherwise make any changes to the Software or any part thereof; (k) remove any proprietary notice, product identification, copyright or other notices embedded within the Software; (l) disclose or publish any performance or capacity statistics or the results of any benchmark test performed on the Software; or (m) to the extent that the Customer's systems or software connects with or initiates calls to any system, hardware or software of Maximizer, not to interfere with or disrupt the integrity or performance of such systems or the data contained therein. Customer will ensure that Users comply with the foregoing restrictions.

3.4 Audit & Monitoring. During the term of this Agreement and for a period of 12 months after expiration or termination of this Agreement:

- (a) Maximizer may cause at its own expense an audit of Customer's compliance with the terms of this Agreement. Any such audit will be conducted by Customer and/or its representatives at Customer's facilities and will not unreasonably interfere with Customer's business activities. If such audit reveals any noncompliance by Customer with this Agreement, Customer will promptly cure any such noncompliance, including without limitation through the payment of any and all fees otherwise owed to Maximizer during the period of noncompliance; provided, however, that the obligations under this Section 3.4 do not constitute a waiver of Maximizer's termination rights or any other rights or actions that it may have under law or contract; and
- (b) without limiting Section 3.4(a) Maximizer may, but is not obligated, to monitor on a real-time or other basis, Customer use of the Software for Customer's compliance with this Agreement.

Tracking and Reporting. Customer acknowledges that the Software may include a software component to track usage of the Software which may auto-report such usage to Maximizer on an ongoing basis, or be available for Maximizer to access at any time. Further, Customer agrees not to impede, disable or otherwise undermine such software component's operation, and that such component provides Usage Data and other data to Maximizer.

3.6 License Keys. Subject to Customer's payment of the applicable Fees in the applicable Order Form and terms and conditions of this Agreement, Licensor shall provide Customer with an applicable key associated with the Software (each, a "Key"). The Key enables user count, time and other similar restrictions, such that if such use of the User count is exceeded, the license Term is not renewed, or other violations of the license grant occur, then use of the Software will no longer be available to the Customer. Customer acknowledges and agrees that the Key may enable quantities or products greater than Customer's license entitlement and that Customer's usage rights are limited by the license entitlement and not necessary what is enabled by the Key. Customer agrees and acknowledges that it may use up to the licensed quantities purchased in an Order Form for the applicable Term. If Customer temporarily exceeds the licensed quantities or use of the Software, Customer will provide the License Report outlined in subsection (c)

below and promptly pay within 30 days the additional license Fees associated with the increased quantities or use specified in the Order Form, and a failure to make payment is a material breach of this Agreement. Customer represents, warrants and covenants to each of the following:

- (a) Customer shall not make the Key available to any third party.
- (b) Customer shall be responsible for maintaining the confidentiality of the Key and is fully responsible for all activities that occur under each Key.
- (c) On a quarterly basis during the Term, pursuant to terms in the applicable Order Form, Customer shall submit a capacity license report to Licensors, signed by an authorized signatory of Customer, detailing the use of applicable capacity managed for each product and Key for all environments (“**License Report**”) including the name and quantity (unit of measure) of the applicable products deployed by Customer.
- (d) Customer shall not, nor attempt to, destroy, disable or circumvent in any way the Key and the use and time limitations set by it. Any attempt by Customer to exceed the use of the Software beyond these limitations will automatically and immediately terminate the license to use the Software under this Agreement.

4. FEES, PAYMENT AND SUSPENSION OF SOFTWARE.

As consideration for the subscription to the Software and the support services provided by Maximizer under this Agreement, Customer will pay Maximizer the fees (“**Fees**”) set forth in and in accordance with the initial Order Form and any subsequent Order Form that may be executed by the Parties from time to time. All Fees will be billed in advance on an annual basis and are due upon receipt of invoice, unless otherwise agreed to in an Order Form. Overdue amounts will accrue interest at the rate of 12% per annum, or at the highest legal interest rate, if less. Customer will reimburse Maximizer for all expenses (including reasonable attorneys’ fees) incurred by Maximizer to collect any amount that is not paid when due. All Fees owed by Customer in connection with this Agreement are exclusive of, and Customer will pay, all taxes of any jurisdiction that may be levied upon Customer in connection with this Agreement. Customer agrees to bear and be responsible for the payment of all such taxes (including without limitation sales, use, excise, import or export, value added, governmental permit fees or license fees), levies and assessments imposed on either party arising out of this Agreement, except for employment taxes and taxes based on Maximizer’s net income, and will provide to Maximizer evidence of such payment. If any taxes are required to be withheld by Customer, Customer 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. Maximizer reserves the right (in addition to any other rights or remedies Maximizer may have) to discontinue the Software and suspend all Credentials and Customer’s access to the Software if any Fees set forth in the Order Form are more than thirty (30) days overdue, until such amounts (and any other unpaid fees owed to Maximizer) are paid in full. Customer will maintain complete, accurate and up-to-date Customer billing and contact information at all times.

5. CONFIDENTIAL INFORMATION.

5.1 Obligation. Each party that is a recipient (the “**Recipient**”) of Confidential Information of the other party (the “**Discloser**”) agrees (a) to hold the Discloser’s Confidential Information in strict confidence, (b) to limit access to the Discloser’s Confidential Information to those of its employees or agents having a need to know and who are bound by confidentiality obligations at least as restrictive as those contained herein, and (c) not to use the Discloser’s Confidential Information for any purpose except as expressly permitted hereunder. Notwithstanding the foregoing, the Recipient will not be in violation of this Section 5.1 with regard to a disclosure that was in response to a valid order or requirement by a court or other governmental body, *provided that* the Recipient gives the Discloser prior written notice of such disclosure in order to permit the Discloser to seek confidential treatment of such information.

5.2 Exceptions. The restrictions on use and disclosure of Confidential Information set forth above will not apply to any Confidential Information, or portion thereof, which (a) is or becomes a part of the public domain through no act or omission of the Recipient, (b) was in the Recipient's lawful possession prior to the disclosure, as shown by the Recipient's competent written records, (c) is independently developed by the Recipient without reference to the Discloser's Confidential Information, as shown by the Recipient's competent written records, or (d) is lawfully disclosed to the Recipient by a third party without restriction on disclosure.

6. THIRD PARTY LINKS & MATERIALS

The Software may contain links to services, websites or resources not owned or provided by Maximizer. Maximizer has no responsibility for the services, sites, resources, content, privacy policies, or practices of any third party. 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 any such content, goods or services available on or through any such third party websites or services. Access and use of third party websites, including the information, material, products and services on third party websites or available through third party websites, is solely at Customer's own risk. Use, reproduction and distribution of components of the Software licensed under an open source software license are governed solely by the terms of that open source software license and not this Agreement.

7. OWNERSHIP.

7.1 Maximizer Technology. Customer acknowledges that Maximizer retains all right, title and interest in and to the Software, Documentation, and all software, materials, systems, formats, interfaces, information, data, content and Maximizer proprietary information, Usage Data and technology used by Maximizer or provided to Customer in connection with the Software or this Agreement (the "**Maximizer Technology**"), and that the Maximizer Technology is protected by intellectual property rights owned by or licensed to Maximizer. 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. Maximizer will have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Software any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Users, relating to the Software. In addition to any other right hereunder or at law, Maximizer may suspend, limit or deny access or use of any Maximizer Technology for any use of Maximizer Technology contrary to the terms of this Agreement.

7.2 Customer Data. Customer retains all right, title and interest in and to any data, information or information contained in any database, template or other similar document provided by Customer under this Agreement.

8. TERM AND TERMINATION.

8.1 Term. The Initial Term of this Agreement will commence on the Effective Date and continue until the expiration of the last Order Form between Maximizer and Customer, unless terminated earlier pursuant to Section 8.2 hereof. Software purchased by Customer is licensed for use under Section 2.1 on the start date specified in the applicable Order Form and automatically renews for additional periods equal to the initial subscription period, unless either party gives the other written notice of non-renewal of this Agreement at least ninety (90) days before the end of the then-expiring subscription term. If the term of any Order Form is longer than the term of the Agreement, the terms and conditions of the Agreement will survive until the expiry of the term in the Order Form. The Fees for any renewal period under an Order Form will be at Maximizer's then-current prices, which will be made available to Customer upon request.

8.2 Maximizer Termination. Maximizer may terminate this Agreement: (a) immediately without notice if Customer or any Users breach any of the terms or conditions set out in Section 3.2; (b) immediately without notice if Customer becomes subject to a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; or (c) upon written notice if Customer materially breaches this Agreement and does not cure such breach (if curable) within thirty (30) days after receiving written notice of such breach.

8.3 Customer Termination. Customer may terminate this Agreement: (a) upon written notice if Maximizer materially breaches this Agreement and does not cure such breach (if curable) within thirty (30) days after written notice of such breach; or (b) upon written notice 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.

8.4 Effect of Termination. Upon the termination of this Agreement, Customer will cease immediately to use the Software, and Maximizer will cease providing any support services. Upon termination of this Agreement for any other reason, no refunds will be provided to Customer and amounts owed to Maximizer under this Agreement before such termination will become immediately due and payable.

8.5 Termination & Survival. Upon the termination of this Agreement, each party will return to the other all property (including any Confidential Information) of the other party in its possession or control. The rights and duties of the parties under Sections 4, 5, 7, 8, 10, 11, 12, 13.2, 13.3 and 13.5 will survive the termination or expiration of this Agreement.

9. DOCUMENTATION & SOFTWARE.

The Software will operate in a manner substantially as described in the Documentation. Customer's sole remedy for any failure of the Software to meet the Documentation will be Maximizer using reasonable efforts to provide the support services described in Section 2.3 to cause the Software to operate as described in the Documentation. Notwithstanding any other provision of this Agreement, Maximizer is not responsible or liable to provide support services for: (a) issues arising by accident, abuse or use of the Software in a manner inconsistent with this Agreement or the Documentation, or resulting from events beyond Maximizer's reasonable control; (b) issues arising from any third party services, service provider, software, application, hardware or services; (c) issues arising by the failure of Customer to have or meet minimum system requirements or installation other than in the Technical Environment; or (d) issues arising from downtime or other interruptions in Customer's access to the Software.

10. WARRANTY DISCLAIMER.

MAXIMIZER MAKES NO WARRANTY CONCERNING THE SOFTWARE OR SERVICES, AND CUSTOMER ACKNOWLEDGES THAT MAXIMIZER'S SOLE OBLIGATION WITH REGARD TO THE SOFTWARE IS TO PROVIDE THE SUPPORT SERVICES DESCRIBED IN SECTION 2.3. ACCORDINGLY, THE SOFTWARE, MAXIMIZER TECHNOLOGY AND ALL OTHER DATA, MATERIALS, AND DOCUMENTATION PROVIDED IN CONNECTION WITH THIS AGREEMENT BY MAXIMIZER AND ITS SUPPLIERS ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITHOUT CONDITIONS, REPRESENTATIONS OR WARRANTIES OF ANY KIND. MAXIMIZER AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. MAXIMIZER DOES NOT WARRANT THAT THE SOFTWARE WILL PERFORM ERROR-FREE, UNINTERRUPTED, COMPLETELY SECURE, OR VIRUS-FREE. MAXIMIZER MAKES NO REPRESENTATIONS THAT THE SOFTWARE IS APPROPRIATE OR AVAILABLE FOR USE IN THE LOCATION OF THE CUSTOMER. THOSE WHO ACCESS OR USE THE SOFTWARE ARE RESPONSIBLE TO ENSURE THAT THEIR USE IS IN COMPLIANCE WITH APPLICABLE LOCAL LAW.

11. INDEMNITY.

11.1 By Customer. If any action is instituted by a third party against Maximizer arising out of or relating to (a) Customer's use of the Software (including claims by any customer or business partner of Customer), (b) Customer's breach of any term, condition or warranty in this Agreement, (c) Customer's installation of or use any third party software or Third Party Applications, or (d) Customer's use of the Software, including, but not limited to, in a way that contravenes any applicable law or regulation, Customer will defend such action at its own expense on behalf of Maximizer and will pay all damages attributable to such claim which are finally awarded against Maximizer or paid in settlement of such claim.

11.2 Conditions. Maximizer will (a) promptly notify Customer of any third-party claim, suit, or action for which it is seeking an indemnity under Section 11.1 (each a “**Claim**”), and (b) give Customer the sole control over the defense of such Claim. Customer may settle or compromise a Claim without Maximizer’s prior approval of any such settlement or compromise *only if* (x) such settlement involves no finding or admission of any breach by Maximizer, (y) such settlement has no effect on any other claim that may be made against Maximizer or any defense that Maximizer may assert in any such claim, and (z) the sole relief provided in connection with such settlement is monetary damages that are paid in full by Customer. Upon the Customer’s assumption of the defense of such Claim, Maximizer will cooperate reasonably with Customer in such defense, at Customer’s expense.

12. LIMITATION OF LIABILITY.

MAXIMIZER’S TOTAL CUMULATIVE LIABILITY TO CUSTOMER FOR ANY AND ALL CLAIMS ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT OR THE SOFTWARE (UNDER ANY LEGAL THEORY INCLUDING CLAIMS IN NEGLIGENCE, CONTRACT OR TORT), WILL NOT EXCEED THE AMOUNTS ACTUALLY PAID TO MAXIMIZER UNDER THIS AGREEMENT BY CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING WHEN THE CAUSE OF ACTION FIRST AROSE. ALL CLAIMS THAT CUSTOMER MAY HAVE AGAINST MAXIMIZER WILL BE AGGREGATED TO SATISFY THIS LIMIT AND MULTIPLE CLAIMS WILL NOT ENLARGE THIS LIMIT. IN NO EVENT WILL MAXIMIZER BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (UNDER ANY LEGAL THEORY INCLUDING CLAIMS IN CONTRACT OR TORT), INCLUDING, BUT NOT LIMITED TO, INTERRUPTED COMMUNICATIONS, LOST DATA OR LOST PROFITS, AND DAMAGES THAT RESULT FROM INCONVENIENCE, DELAY OR LOSS OF USE OF ANY INFORMATION OR DATA OR OF THE SOFTWARE, EVEN IF MAXIMIZER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

13. GENERAL PROVISIONS

13.1 Assignment. Customer may not assign any rights or obligations arising under this Agreement, whether by operation of law or otherwise, without the prior written consent of Maximizer. An assignee must agree in writing, in advance, to be bound by the terms and conditions of this Agreement. Subject to the foregoing limitation, this Agreement will inure to the benefit of and will be binding on the successors and assignees of the parties.

13.2 Governing Law and Venue. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia, Canada 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 or proceeding arising from or relating to this Agreement 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.

13.3 Notices. Any notice or other communication required or permitted under this Agreement and intended to have legal effect must be given in writing to the other party at the address set forth above (each party may change its address from time to time upon written notice to the other party of the new address). Notices will be deemed to have been given upon receipt (or when delivery is refused) and may be (a) delivered personally, (b) sent via certified mail (return receipt requested), (c) sent via email, or (d) sent by recognized air courier service.

13.4 Entire Agreement. This Agreement is the entire understanding and agreement of the parties, and supersedes any and all previous and contemporaneous understandings, agreements, proposals or representations, written or oral, between the parties, as to the subject matter hereof. Only a writing signed by both parties may modify it.

13.5 Severability and Waiver. In the event that any provision of this Agreement is held to be invalid or unenforceable, the valid or enforceable portion thereof and the remaining provisions of this Agreement will remain in full force and effect. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. All waivers must be in writing.

Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

13.6 Amendment. Maximizer may 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 after notice and will not be effective until the then-current Order Form expires or upon any renewal of the Software. Notice of such amendments will be provided to Customer by posting notice of the amendments on the Maximizer Website. Customer will be deemed to have accepted the amendment on ordering any new Software, or renewing or extending any Software under an existing Order Form.

13.7 Relationship of the Parties. The parties to this Agreement are independent contractors, and no agency, partnership, franchise, joint venture or employee-employer relationship is intended or created by this Agreement.

13.8 Counterparts. This Agreement may be executed in counterparts, which taken together will form one legal instrument.

MAXIMIZER SOFTWARE SOLUTIONS PTY. LTD.

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“**Professional Services Agreement**”) is made as of _____ (the “**Effective Date**”), between Maximizer Software Solutions Pty. Ltd. with an address of P.O. Box 629, North Sydney, New South Wales, 2059 (“**Maximizer**”), and _____ (“**Customer**”), with a principal place of business at _____ is incorporated by reference into the Order Form, dated _____ between the parties.

Customer has subscribed to the Maximizer software pursuant to a Maximizer Subscription Agreement (either On Premise or SaaS) (in either case, a “**Maximizer Subscription Agreement**”) between Customer and Maximizer, and Customer also wishes to acquire Professional Services (as defined below) on the terms and conditions set forth herein, and further described in the Statement of Work.

This Agreement sets forth the terms and conditions under which Maximizer will provide the Professional Services. Customer’s access to and use of any Maximizer software, service or products are governed by the terms of the applicable Maximizer Subscription Agreement.

This Agreement is separate to the Maximizer Subscription Agreement.

THE PARTIES HAVE READ AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS PROFESSIONAL SERVICES AGREEMENT, INCLUDING THOSE TERMS CONTAINED ON THE FOLLOWING PAGES.

The parties have caused this Agreement to be effective as of the Effective Date set forth above.

MAXIMIZER SOFTWARE SOLUTIONS PTY. LTD.	_____
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

TERMS AND CONDITIONS

1. DEFINITIONS. As used in this Agreement:

1.1 “Agreement” means this Professional Services Agreement, and the Statement of Work, incorporated by reference into this Agreement.

1.2 “Change Request” is defined in Section 2.2.

1.3 “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.

1.4 “Professional Services” means the implementation or services delivered by Maximizer to Software as specifically set out in the Statement of Work.

1.5 “Statement of Work” means the documents outlining the details and scope of the Services (and any subsequent modifications to the Services, agreed to between the parties in writing from time to time) substantially in the form attached hereto as *Exhibit A*, which, upon execution, is incorporated into and made a part of this Agreement.

1.6 “Service Fees” is defined in Section 2.3 hereof.

1.7 “Software” means Maximizer software, software as a service or other product that is licensed or provided to Customer under the Maximizer Subscription Agreement.

1.8 “Term” is defined in Section 10.1 hereof.

2. PROFESSIONAL SERVICES

2.1 Scope. Maximizer will provide the Professional Services specifically described in the Statement of Work.

2.2 Change Requests. Any requested additional work, beyond the scope of the Statement of Work (“Change Requests”), must be approved in writing as further outlined in the Statement of Work. No work in excess of the estimate contained in the Statement of Work will be completed without a executed Change Request signed by both parties.

2.3 Fees. Customer will pay Maximizer all fees or other amounts due under this Agreement, plus any and all applicable taxes upon receipt of invoice (the “Service Fees”). Overdue amounts will accrue interest at the rate of 12% per annum, or at the highest legal interest rate, if less. Customer will reimburse Maximizer for all expenses (including reasonable attorneys’ fees) incurred by Maximizer to collect any amount that is not paid when due. No Professionals Services will be provided until all Service Fees are received by Maximizer, unless otherwise expressly agreed to in writing by Maximizer.

2.4 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 products or actions.

2.5 Customer Security. Maximizer will not be responsible for security settings as they relate to any component of Customer’s information technology infrastructure including but not limited to, databases, database servers, application servers, and Internet information servers, or the Software.

3. NO LICENSE. This Agreement does not grant any use, access or license rights to the Software. Customer must enter into a separate Maximizer Subscription Agreement with Maximizer for any rights to use, access or license the Software..

4. INTELLECTUAL PROPERTY. Maximizer will own all Intellectual Property associated with the Software developed, created, modified, customized or provided pursuant to this Agreement. Once payment has been received in full for the Professional Services to be provided under this Agreement, inclusive of all Change Requests, the configurations to the Software are hereby licensed to the Customer pursuant to the Maximizer Subscription

Agreement, provided that such configurations are not supported as part of the Software unless expressly agreed to by Maximizer in the Maximizer Subscription Agreement and related Order Form.

5. PAYMENT AND POSTPONEMENT

5.1 Payment. Upon the execution of this Agreement, Maximizer will invoice Customer for 100% of the estimated Service Fees for the Professional Services. Upon receipt of the Services Fees, Maximizer will assign internal resources to provide the Professional Services. The Deposit is non-refundable. Only upon receipt by Maximizer of the Deposit will Maximizer commence the Services.

5.2 Postponement. Should Customer wish to postpone the Professional Services contemplated under this Agreement, Customer will be responsible for any additional costs or charges incurred by Maximizer as a result of such postponement.

6. SERVICES VALIDITY. Unless otherwise specified or required due to the timelines agreed upon by Maximizer and Customer's project teams, any unused pre-purchased Professional Services shall expire twelve (12) months from the execution date of the applicable Order Form.

7. TAXES. All Service Fees owed by Customer in connection with this Agreement are exclusive of, and Customer will pay, all sales, use, excise and other taxes of any jurisdiction that may be levied upon Customer in connection with this Agreement. Customer agrees to bear and be responsible for the payment of all such taxes (including without limitation sales, use, excise, import or export, value added, governmental permit fees or licence 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 Customer, Customer 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. DISCLAIMERS AND LIMITATION OF LIABILITY

8.1 DISCLAIMER. THE PROFESSIONAL SERVICES, AND ALL MATERIALS AND DOCUMENTATION PROVIDED IN CONNECTION WITH THIS AGREEMENT BY MAXIMIZER AND ITS SUPPLIERS ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. MAXIMIZER AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

8.2 LIMITATION OF LIABILITY. MAXIMIZER'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER FOR ANY AND ALL CLAIMS ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT (UNDER ANY LEGAL THEORY INCLUDING CLAIMS IN CONTRACT OR TORT), THE SERVICES AND THE MAXIMIZER SYSTEM, WILL NOT EXCEED THE AMOUNTS ACTUALLY PAID TO MAXIMIZER BY CUSTOMER IN THE TWELVE (12) MONTH PERIOD UNDER THIS AGREEMENT IMMEDIATELY PRECEDING THE CUSTOMER'S FORMAL WRITTEN NOTICE OF THE CLAIM FOR LIABILITY HEREUNDER. ALL CLAIMS THAT CUSTOMER MAY HAVE AGAINST MAXIMIZER WILL BE AGGREGATED TO SATISFY THIS LIMIT AND MULTIPLE CLAIMS WILL NOT ENLARGE THIS LIMIT. IN NO EVENT WILL MAXIMIZER BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (UNDER ANY LEGAL THEORY INCLUDING CLAIMS IN CONTRACT OR TORT), INCLUDING, BUT NOT LIMITED TO, INTERRUPTED COMMUNICATIONS, LOST DATA OR LOST PROFITS, AND DAMAGES THAT RESULT FROM INCONVENIENCE, DELAY OR LOSS OF USE OF ANY INFORMATION OR DATA OR OF THE MAXIMIZER SYSTEM OR SERVICES, EVEN IF MAXIMIZER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

9. GOVERNING JURISDICTION. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia, Canada 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 or proceeding arising from or relating to this Agreement 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, which is expressly excluded.

10. TERM AND TERMINATION.

10.1 Term. The initial term of this Agreement will commence on the Effective Date and continue until the expiration of Statement of Work between Maximizer and Customer (the "**Term**"), unless terminated earlier pursuant to Sections 10.2 or 10.3 hereof.

10.2 Maximizer Termination. Maximizer may terminate this Agreement: (a) immediately without notice if Customer becomes subject to a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; or (b) upon written notice if Customer materially breaches this Agreement and does not cure such breach (if curable) within thirty (30) days after receiving written notice of such breach; or (c) immediately without notice if the Maximizer Subscription Agreement terminates or expires for any reason.

10.3 Customer Termination. Customer may terminate this Agreement: (a) upon written notice if Maximizer materially breaches this Agreement and does not cure such breach (if curable) within thirty (30) days after written notice of such breach; or (b) upon written notice if Maximizer becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; or (c) immediately without notice if the Maximizer Subscription Agreement terminates or expires for any reason.

10.4 Effect of Termination. Upon the termination of this Agreement Maximizer will cease immediately to provide the Professional Services. Upon expiration or termination of this Agreement for any reason, any amounts owed to Maximizer under this Agreement before such expiry or termination will become immediately due and payable.

10.5 Termination & Survival. Upon the termination of this Agreement, each party will return to the other all property of the other party in its possession or control. The rights and duties of the parties under Sections 4, 5, 6, 7, 8, 9, 10, 11.2, 11.3, and 11.4 will survive the termination or expiration of this Agreement.

11. GENERAL PROVISIONS

11.1 Assignment. Neither party may assign any rights or obligations arising under this Agreement, whether by operation or law or otherwise, without the prior written consent of the other; *except* that either party may assign this Agreement without consent of the other party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Customer agrees that Maximizer may subcontract certain aspects of the Services to qualified third parties, *provided that* any such subcontracting arrangement will not relieve Maximizer of any of its obligations hereunder. An assignee must agree in writing, in advance, to be bound by the terms and conditions of this Agreement. Subject to the foregoing limitation, this Agreement will inure to the benefit of and will be binding on the successors and assignees of the parties.

11.2 Notices. Any notice or other communication required or permitted under this Agreement and intended to have legal effect must be given in writing to the other party at the address set forth above (each party may change its address from time to time upon written notice to the other party of the new address). Notices will be deemed to have been given upon receipt (or when delivery is refused) and may be (a) delivered personally, (b) sent via certified mail (return receipt requested), (c) sent via email, or (d) sent by recognized air courier service.

11.3 Entire Agreement. This Agreement is the entire understanding and agreement of the parties, and supersedes any and all previous and contemporaneous understandings, agreements, proposals or representations, written or oral, between the parties, as to the subject matter hereof. Only a writing signed by both parties may modify it.

11.4 Severability and Waiver. In the event that any provision of this Agreement is held to be invalid or unenforceable, the valid or enforceable portion thereof and the remaining provisions of this Agreement will remain in full force and effect. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. All waivers must be in writing. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

11.5 Amendment. Maximizer may 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 after notice and will not be effective until the then-current Order Form expires or upon any renewal of the Services. Notice of any such amendments will be provided to Customer by posting notice of the amendments on the Maximizer website here: <https://www.maximizer.com>. Customer will be deemed to have accepted the amendment on ordering any new Professional Services, or renewing or extending any Professional Services under an existing Order Form.

11.6 Relationship of the Parties. The parties to this Agreement are independent contractors, and no agency, partnership, franchise, joint venture or employee-employer relationship is intended or created by this Agreement.

11.7 Counterparts. This Agreement may be executed in counterparts, which taken together will form one legal instrument.

EXHIBIT “A”
STATEMENT OF WORK
(Attached)