

## **eMaximation™ Terms of Use (“TERMS”)**

THIS LICENSE AGREEMENT (hereinafter "Agreement") is made by and between eMaximation, LLC ("eMaximation") with offices located at 58 South Park Square, Suite N, Marietta, GA USA 30060 and the company named in the attached Service Agreement (hereinafter "Licensee"). This agreement states terms and conditions under which eMaximation authorizes Licensee to use the services and tools described in the Service Agreement and available at its website [www.eMaximation.com](http://www.eMaximation.com).

### **RECITALS**

eMaximation desires to grant and Licensee desires to obtain, a license to permit parties authorized by Licensee to access the eMaximation Internet Application, an online database marketing system (hereinafter "the eMaximation System"), via the Internet, and to use the tools and services available as part of the eMaximation System. THEREFORE, eMaximation and Licensee agree as follows:

**1. Definitions.** As used herein, the following words shall have the following meanings:

1.1 "Contact Information" means the name, address, telephone number and/or email address associated with a Lead.

1.2 "Lead" means Contact Information obtained by a Licensee or its agents from an individual who is interested in receiving information on possible business and franchise opportunities while this Agreement is in effect.

1.3 "Qualification Information" means information about an individual's specific ability to complete a business or franchise acquisition. This information includes financial information, marital status, date of birth, and other personal information that a prospective franchisee may provide as part of the self-qualification process.

1.4 "Qualified Lead" means a Lead that has been supplemented with Qualification Information provided by the individual who requested business information from Licensee or its agents while this Agreement is in effect.

1.5 "Webmercial" means a webpage on eMaximation servers that delivers multi-media content provided by the Licensee.

**2. License Rights.**

2.1 License Grant and Restrictions. In consideration of the license fees set forth in the Service Agreement and subject to the requirements contained herein, eMaximation grants Licensee a nonexclusive, non-transferable, non-assignable right and license to permit Licensee and Licensee's employees and agents to input Leads into the eMaximation System and to use the functions of the eMaximation System as described in the Service Agreement. eMaximation reserves all rights not expressly granted to Licensee.

2.2 Modifications. eMaximation may modify the eMaximation System or terms of this Agreement, excluding pricing, by giving Licensee at least ninety (90) days prior written notice. In the event that Licensee does not agree with such modifications, it can terminate the Agreement pursuant to Section 11.2 below without penalty. Notwithstanding the foregoing, eMaximation reserves the right to change the eMaximation System or any non-material terms of this Agreement so long as such changes are not adverse to Licensee at any time if such change is needed to comply with evolving legal requirements or to address any reasonable allegation that the System or its use by any licensee infringes any intellectual property or other proprietary right.

### **3. Fees and Payment Terms.**

3.1 **Fees.** Licensee shall pay the fees for its use of the eMaximation System as set forth in the Service Agreement. These fees shall be paid by credit card, wire transfer, or company check (unless eMaximation agrees in writing to another payment method in the Service Agreement), and Licensee agrees to execute all documents required for this purpose. Licensee's failure to pay undisputed amounts due to eMaximation under this Licensing Agreement within forty-five (45) days of Licensee's receipt of invoice will give eMaximation the right to terminate all licenses, support, hosting and administration, although all amounts due shall remain due and payable. eMaximation agrees to provide Licensee a written notice 30 days prior to termination of services and the opportunity to remedy any non-payment during that 30-day period.

3.2 **Late Payments.** Licensee shall use its best efforts to ensure that all payments are made regularly and promptly. Undisputed payments made more than forty-five (45) days after the due date are subject to a 1.5% late fee. In the event that eMaximation is required to initiate legal action to collect money owed to it by Licensee, in addition to any other relief granted, the prevailing party shall also be entitled to recover all reasonable out-of-pocket costs and expenses (including, without limitation, attorney's fees) incurred in connection with such action.

### **4. Licensee Obligations.**

4.1 **Password Protection of the System.** Licensee shall be responsible for enabling and maintaining passwords, selecting users qualified to access the eMaximation System, and distributing passwords to such users. Licensee agrees to use commercially reasonable efforts to ensure that each user protects its passwords and prevents unauthorized parties from obtaining access to the eMaximation System. Licensee shall inform eMaximation promptly of any actual or potential unauthorized access to a password or to the eMaximation System that Licensee actually is or becomes aware of.

4.2 **Hardware, Software and Connectivity.** Licensee shall be fully responsible for procuring, installing and maintaining the necessary hardware, software and Internet connectivity as may be required to access or operate the eMaximation System.

4.3 **Lawful Use.** Licensee, on behalf of itself and all of its users, agrees that Licensee and its users shall only use the eMaximation System for lawful purposes. Without limiting the foregoing, Licensee shall use commercially reasonable efforts to ensure that its users do not use the eMaximation System in a manner which (i) would result in any transmission of material in violation of any international, federal, state or local laws, including, without limitation, laws pertaining to the use of data and to franchise and business opportunity laws; (ii) would in any way violate or infringe upon any party's privacy rights, rights of publicity or any other rights of any person or entity; or (iii) would display, transmit, or store material which is unlawful, abusive, obscene, threatening, libelous or defamatory.

### **5. eMaximation Obligations.**

5.1 **Training.** Upon execution of the Service Agreement, eMaximation shall provide, free of charge, telephone training sufficient for users to set up and operate the eMaximation System. Additionally, eMaximation shall provide to Licensee, free of charge, on-line manuals or instructions as may be available to operate the eMaximation System.

5.2 **Support.** eMaximation agrees to use commercially reasonable efforts to provide Licensee with up to 4 hours per month of ongoing consultation support, at no additional cost to Licensee, regarding the functionality of the eMaximation System during regular business hours (Eastern Time), Monday through Friday, excluding holidays. This support is available via telephone (on a staff-available basis), electronic mail and fax.

5.3 **Data Backups.** eMaximation agrees to maintain backups of data in a manner consistent with the service description and with industry standard best practices. eMaximation is not required to return any

data to Licensee and recommends Licensee maintain a library of the data entered for its own records. Licensee is responsible for using the eMaximation export features to create their own independent backups of their data.

## **6. Proprietary Rights.**

6.1 The eMaximation System. eMaximation and/or its licensors shall hold ownership of and title to the eMaximation System and its software, eMaximation contents, and software documentation. Access to the eMaximation System is provided to Licensee only to allow Licensee to exercise the rights granted to Licensee under this Agreement. Except as expressly permitted hereunder, Licensee agrees not to directly or indirectly: (a) copy, print, display, publish or transmit all or any part of the eMaximation System without eMaximation's prior written permission; (b) modify or translate the eMaximation system, create any derivative works or otherwise merge or utilize all or any part of the eMaximation system with or into other computer programs or other materials; (c) in any manner decompile, reverse compile, reverse engineer, decode, disassemble, or otherwise attempt to derive source code from all or any part of the eMaximation system; (d) use the eMaximation system other than for its intended purpose; or (e) access or attempt to access any Leads or Qualified Leads submitted by any party other than Licensee or its agents. Further, Licensee agrees to not remove or alter, or permit any third party to remove or alter, any notices on, contained within or affixed to any eMaximation system, or any media containing the eMaximation system, regarding copyright, patent, trademark or other proprietary rights, restrictions on use or confidentiality. Both parties agree that the terms of this Agreement and all related discussions shall be kept confidential by the parties. In no event will eMaximation use or disclose any information from any leads.

In the event that Licensee receives any request from an individual who has submitted a Lead to opt out of receiving future communications about franchise opportunities, Licensee shall promptly provide that information to eMaximation so that eMaximation may also flag the associated Lead in its database for opt out treatment. In the event that Licensee provides content to eMaximation for use in Webmercials or email campaigns, all such content (and the copyrights contained therein) shall be owned by Licensee, and Licensee hereby gives eMaximation a non-exclusive, non-transferable, non-assignable right and license to use such content (including Licensee trademarks and other trademarks contained therein) during the term of this Agreement solely for the purpose of fulfilling its obligations with respect to delivery of that content to individuals who have submitted Leads or Qualified Leads. In the event that eMaximation develops such content for Licensee, the proprietary technical framework used for such content shall be owned by eMaximation. eMaximation hereby gives Licensee a license to use such the technical framework during the term of this Agreement for its internal business purposes.

## **7. Confidentiality.**

7.1 "Confidential Information" means information related to the business of either party (1) that derives economic value, actual or potential, from not being generally known to or readily ascertainable by other persons who can obtain economic value from its disclosure or use; and (2) that is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Assuming those criteria are met, Confidential Information includes (without limitation) (a) technical and non-technical data related to formulas, patterns, designs, compilations, computer programs, hardware and software systems, inventions, methods, techniques, and processes, (b) marketing, financial and other business information and plans; and (c) all information associated with Leads or Qualified Leads. All rights to information associated with Leads or Qualified Leads shall be and remain the property of Licensee. Confidential Information shall not include any information that is generally available to the public, that is lawfully and without breach of agreement disclosed to the Receiving Party by a third party (including other referral network websites) without restriction, that was independently developed by the Receiving Party, or that does not otherwise qualify for protection as confidential information under applicable law.

7.2 Trade Secrets. eMaximation asserts that the technology underlying the eMaximation System (including, without limitation, the system code and database technologies) constitutes trade secrets under Georgia law and shall be protected as both Confidential Information and a Trade Secret.

7.3 Obligation of Confidentiality. Each Party agrees that as a Receiving Party it shall use commercially reasonable efforts to maintain the confidentiality of any Confidential Information received and to only use the Confidential Information for the purpose(s) for which it was disclosed. Each party agrees that it shall only disclose Confidential Information of the other party as reasonably necessary (1) to fulfill its obligations hereunder and conduct business as contemplated herein, (2) to comply with a specific, applicable law or subpoena (and only then upon notice to the other party so that it may seek an appropriate protective order), or (3) to enforce its rights under this Agreement, including disclosures by eMaximation as needed to enforce this Agreement or to respond to third party claims against it based on Licensee's intentional misuse of the eMaximation System or (4) as permitted by law or to provide information to law enforcement agencies. Upon termination or earlier expiration of this Agreement, eMaximation shall, at Licensee's option, return to Licensee or destroy any Confidential Information received from Licensee under this Agreement.

7.4 Duration of Confidentiality Obligations. The Obligation of Confidentiality shall continue during the term of this Agreement and shall continue for one (1) year after the expiration or termination of this Agreement for all Confidential Information and shall further survive indefinitely for any Confidential Information that also qualifies as a Trade Secret or Lead data.

## **8. Limited Warranty; Disclaimer of All Other Warranties.**

8.1 Limited Warranty. eMaximation warrants that (a) it has full power to enter into this agreement, (b) the eMaximation System will substantially conform to its published specifications when installed (as set forth in descriptive literature published by eMaximation), (c) that the hosting facility, process and procedures used in connection with the eMaximation System conform to industry standards and security protocols, (d) the eMaximation System components will maintain a 99.99% uptime service level excluding schedule upgrade and maintenance periods, and (e) no data or content produced or provided in connection with its obligations under this Agreement shall be presented in summary or other form to any third party without the prior written consent of Licensee.

8.2 Exclusive Remedies for Breach of Warranty. If Licensee believes that the eMaximation System does not perform as warranted in any material respect, Licensee must notify eMaximation in writing, stating the nature of the claim or defect. eMaximation's sole obligation will be (in its sole discretion) to use commercially reasonable efforts to correct or modify the eMaximation System so that it substantially conforms to its published specifications or to terminate this Agreement and refund the applicable license fees.

8.3 DISCLAIMER OF WARRANTIES. The warranty given in Section 8.1(b) above is the SOLE WARRANTY given by eMaximation with respect to the eMaximation System, its software, tools, services or documentation. OTHER THAN THE WARRANTY GIVEN IN SECTION 8.1(b) ABOVE, EMAXIMATION MAKES NO WARRANTIES WITH RESPECT TO THE SOFTWARE, THE EMAXIMATION SYSTEM, THE SERVICES OR THE TOOLS OR ANY DOCUMENTATION PROVIDED BY EMAXIMATION. IN PARTICULAR:

(a) WITH RESPECT TO THE SYSTEM, LICENSEE UNDERSTANDS AND AGREES THAT COMMUNICATIONS VIA THE INTERNET ARE SUBJECT TO UNEXPECTED OUTAGES DUE TO EQUIPMENT FAILURE OR SOFTWARE FAILURE THAT CAN OCCUR AT VARIOUS LOCATIONS, MUCH OF WHICH IS NOT UNDER THE CONTROL OF EITHER EMAXIMATION OR LICENSEE. EMAXIMATION MAKES NO WARRANTIES OR REPRESENTATIONS WHATSOEVER ABOUT CONNECTIVITY, AVAILABILITY OF THE SYSTEM, OR DELIVERY OF ANY CONTENT.

(b) LICENSEE FURTHER UNDERSTANDS AND AGREES THAT THE POTENTIAL EXISTS FOR ANY INTERNET-BASED SYSTEM TO BE PENETRATED UNLAWFULLY FOR THE PURPOSE OF THEFT OR DAMAGE OF MATERIAL. WHILE EMAXIMATION WILL USE REASONABLE EFFORTS TO SECURE ITS SYSTEM, EMAXIMATION MAKES NO WARRANTIES REGARDING SYSTEM SECURITY, AND LICENSEE USES THE EMAXIMATION SYSTEM AT ITS OWN RISK.

(c) EMAXIMATION MAKES NO REPRESENTATIONS OR WARRANTIES AROUND DATA ENTRY OR WEBMERCIAL CONTENT. LICENSEE IS COMPLETELY RESPONSIBLE FOR ENTRY OF ALL LEADS AND FOR THE CONTENTS FOR ALL WEBMERCIALS. EMAXIMATION IS ALSO NOT RESPONSIBLE FOR THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED BY INDIVIDUALS IN QUALIFIED LEADS.

(d) EMAXIMATION SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

**9. Limitation of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT OR OTHERWISE FOR ANY PUNITIVE DAMAGES, OR INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, SUCH AS LOST PROFITS, LOST OPPORTUNITIES, LOST SAVINGS AND THE LIKE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ADDITIONALLY, THE CUMULATIVE LIABILITY OF EITHER PARTY FOR ANY AND ALL CLAIMS ARISING UNDER THIS AGREEMENT, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE, IS LIMITED TO THE TOTAL AMOUNT OF FEES PAID BY LICENSEE DURING THE PRECEDING TWELVE (12) MONTH PERIOD.

**10. Indemnification.**

10.1 By Licensee. Licensee agrees, at its expense, to defend, indemnify and hold harmless eMaximation, its officers, directors and employees from and against all direct damages, costs and expenses (including reasonable attorneys' fees) incurred in any suit, claim or proceeding brought against eMaximation based on or arising out of Licensee's intentional misuse of the eMaximation System, eMaximation's delivery of Licensee's content, and/or Licensee's gross negligence or willful misconduct. eMaximation shall promptly notify Licensee in writing of any such claim, permit Licensee to assume the defense of such claim, and cooperate with any reasonable requests of Licensee in connection with such defense.

10.2 By eMaximation. eMaximation agrees, at its expense, to defend, indemnify and hold harmless Licensee, its affiliates, officers, directors and employees from and against all direct damages, costs and expenses (including reasonable attorneys' fees) incurred in any suit, claim or proceeding brought against Licensee based on or arising out of (1) a third party's claim that the eMaximation System infringes a U.S. patent, copyright, or trademark, (2) a breach by eMaximation of any of its representations or warranties under this Agreement, or (3) eMaximation's gross negligence or willful misconduct; provided that, with respect to claims under subsection (1) above, Licensee promptly notifies eMaximation in writing of the existence of such claim, permits eMaximation to assume the defense of such claim, and cooperates with any reasonable requests of eMaximation in connection with such defense. The foregoing obligation does not apply with respect to product or portions or components thereof not supplied under this Agreement, or eMaximation systems (i) made in whole or in part in accordance to Licensee specifications, (ii) which are modified by Licensee, if the alleged infringement relates to such modification, (iii) combined with other products, processes or materials where the alleged infringement arises solely as a result of such combination, (iv) where Licensee continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (v) where the eMaximation system is incident to an infringement not resulting primarily from the Product or is not strictly in accordance with the license granted in this Agreement. In the event of any such claim of infringement, eMaximation shall also have the right, in its sole discretion, to modify or replace the allegedly infringing components or to terminate the license with respect to such components.

**11. Term and Termination.**

11.1 Term. The term of this Agreement shall be for a period of one (1) year from the Effective Date. Thereafter, this Agreement may be renewed by mutual agreement of the parties for successive one (1)

year periods until terminated in accordance with Section 11.2 or 11.3 below. eMaximation agrees to provide Licensee a 30-day notification period prior to renewal of services.

11.2 Termination for Convenience. Either party may terminate this Agreement upon sixty (60) days prior written notice without penalty. Upon termination, Licensee shall have no right to use, and shall cease the use of, the eMaximation system or any portion thereof, and it shall immediately pay eMaximation for all outstanding fees and charges incurred through the effective date of termination. If eMaximation terminates this Agreement within the first 180 days, a prorated portion of any setup fees will be returned to Licensee.

11.3 Termination for Breach. Either Party may terminate this Agreement immediately upon receipt of written notice if the other party breaches any material obligation herein and fails to remedy such breach within thirty (30) calendar days of receiving written notice of the particulars of such breach from the other party. Additionally, either party may terminate this Agreement upon written notice if the other party is going into liquidation, whether compulsory, or voluntarily (other than for the purpose of an amalgamation or reconstruction), or is having a receiver appointed, or is compounding with the creditors, or is taking or surrounding any similar action in consequence of debt; provided that any such termination shall be without prejudice to the rights or remedies of either party in respect of an antecedent breach of this Agreement.

## 12. General Provisions.

12.1 Assignment. This Agreement and the licenses granted herein are not assignable by Licensee or eMaximation without the prior written consent of the other party, other than (i) to an entity that acquires the assets or business of such party or (ii) in a corporate reorganization or restructuring involving Licensee. This Agreement shall be binding upon the parties' respective successors and assigns.

12.2 Relationship of the Parties. Each party is acting as an independent contractor and not as an agent, partner, licensee, franchise or joint venture of the other party.

12.3 Severability. Should any part of this Agreement violate any law or should any part be held invalid or unenforceable by a court with jurisdiction, then such part shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law, and the remainder of this Agreement shall remain in full force and effect.

12.4 No Waiver. No failure or delay by either party in exercising any term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other shall not constitute consent to, waiver of, or excuse of any other or subsequent breach.

12.5 Force Majeure. Neither party shall be liable for delays in the performance of any of its obligations hereunder due to causes beyond its reasonable control, which shall include, but not be limited to Acts of God, strikes and inability to obtain labor services, or materials on time, or energy or fuel crises.

12.6 Entire Agreement. The Agreement contains the full agreement between the parties and supersedes all other prior or contemporaneous communications between the Parties (whether written or oral) regarding its subject matter. Except for modifications made in accordance with Section 2.2 above, no modifications, amendments or supplements to this Agreement shall be binding upon the parties unless made in writing and executed by both Parties.

12.7 Governing Law. This Agreement shall be governed by and construed according to the substantive laws of the State of Georgia without regard to its conflicts of law principles.

12.8 Notices, Agent for Notice. Any notice required to be given by this Agreement shall be in writing and shall be deemed to have been duly given: (i) three (3) business days after the date of mailing, if

mailed in the United States by registered or certified mail, postage prepaid, with return receipt requested, (ii) when delivered, if delivered personally, (iii) when transmitted, if sent by facsimile, provided a confirmation of transmission is produced by the sending machine and a copy of such facsimile is promptly sent by another means specified in this paragraph; or (iv) on the first business day following the date of sending, if sent by overnight U.S. Postal Service mail or a nationally recognized overnight courier service with a reliable method for tracking delivery, in each case to the other party at its address as set forth below or at such other address as such party shall have specified in a notice given in accordance with this paragraph. For purposes of 17 U.S.C. 512(c) and 37 C.F.R. 201.38, eMaximation's agent for notice is: Copyright Agent, eMaximation, 58 South Park Square, Suite N, Marietta, GA 30060.

12.9 Headings. Headings used in the Agreement are for the convenience of reference only and shall not be used to construe or interpret this Agreement.

12.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.