

MAXIMIZER™ LICENSE AND MAINTENANCE AGREEMENT

TERMS AND CONDITIONS

If you have signed an order form(s) (or written binding purchase order(s) or request) with Maximizer Services Inc. (“Maximizer”) or its Certified Solution Provider (defined below) which references these terms and conditions (an “Order Form”) then **THE FOLLOWING TERMS AND CONDITIONS WILL GOVERN YOUR USE OF THE MAXIMIZER PROPRIETARY COMPUTER PROGRAMS, WORKFLOW AUTOMATION SERVER AND/OR MICROSOFT SQL SERVER IDENTIFIED AS BEING LICENSED BY YOU IN THE ORDER FORM, AS WELL AS THE PROVISION OF MAINTENANCE SERVICES TO YOU BY MAXIMIZER. IN ADDITION, IF YOU ARE PURCHASING A LICENSE TO USE THE WORKFLOW AUTOMATION SERVER AND/OR MICROSOFT SQL SERVER, YOU ACKNOWLEDGE THAT, IN ADDITION TO YOUR OBLIGATIONS UNDER THIS AGREEMENT, AS A FURTHER CONDITION OF YOUR USE OF THE WORKFLOW AUTOMATION SERVER AND MICROSOFT SQL SERVER YOU WILL BE REQUIRED TO AGREE TO THE TERMS OF THE END USER LICENSE AGREEMENTS REQUIRED BY VINEYARDSOFT CORPORATION LOCATED AT www.maximizer.com/license-agreements/vineyardsoft.html (FOR THE WORKFLOW AUTOMATION SERVER) AND MICROSOFT CORPORATION LOCATED AT www.maximizer.com/license-agreements/microsoft-sql-server.html (FOR THE MICROSOFT SQL SERVER) OR OBTAINED FROM YOUR CERTIFIED SOLUTION PROVIDER OR MAXIMIZER (BY REQUEST MADE TO accounting@maximizer.com). IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS SET OUT BELOW, DO NOT SIGN THE ORDER FORM OR USE THE MAXIMIZER PROPRIETARY COMPUTER PROGRAMS, WORKFLOW AUTOMATION SERVER AND/OR MICROSOFT SQL SERVER;** to do so would violate national and international copyright and intellectual property laws.

1. DEFINITIONS

In this Agreement (including the Order Form), the following terms and expressions have the following meanings:

“**Certified Solution Provider**” means a reseller of the Licensed Software that has been authorized by Maximizer to, and has met and maintained Maximizer’s requirements for, selling and supporting the Licensed Software. You can confirm whether any entity is a Certified Solution Provider of Maximizer by contacting accounting@maximizer.com.

“**Contract Year**” means each 12 month period commencing on the Effective Date and on each anniversary thereafter.

“**Designated Technical Support Contact**” means an individual designated by You in writing to Maximizer to represent You and be the primary contact point in respect of Maintenance provided by Maximizer or its designee. Such individuals, restricted to 3 of Your employees, must be sufficiently technically competent to communicate, receive and implement instructions relating to the Licensed Software and the hardware upon which it is configured. You may change the person so designated to another person by providing written notice to Maximizer.

“**Effective Date**” means (a) if You purchase the license to the Licensed Software directly from Maximizer, then the date on which You accept and sign the Order Form provided to you by Maximizer, or (b) if You purchase the license to the Licensed Software from a Certified Solution Provider, then the date on which Maximizer delivers the Licensed Software to You. **Whether or not stated as being subject to Maximizer’s acceptance in the Order Form, and whether or not provided directly to Maximizer or a Certified Solution Provider, Maximizer reserves the right to reject any order that you may place before delivery to You of the Licensed Software or Supplemental Licenses that is the subject of the Order Form.**

“**Error**” means a situation where the Licensed Software does not substantially conform to the Warranty set out in Section 9 of this Agreement in a material respect under circumstances in which You are using the Licensed Software in accordance with the terms of this Agreement and the Licensed Software Documentation for applications of the such Licensed Software as are

stated in the applicable Licensed Software Documentation, and with hardware and network configurations which are stated in the Licensed Software Documentation to be required for the proper use or functioning of, or are compatible with, the Licensed Software.

"Incident" means each instance that You report an Error to Maximizer or otherwise request Technical Support from Maximizer.

"Licensed Software" means the: (a) Maximizer proprietary computer programs identified as being licensed by You in the Order Form; and (b) if identified in the Order Form as being licensed by You, one or both of the Workflow Automation Server and/or Microsoft SQL Server.

"Licensed Software Documentation" means the user manual and other written material relating to the Licensed Software that Maximizer makes available (directly or through its Certified Solution Providers) to users of that same Licensed Software. If You have licensed under this Agreement the Workflow Automation Server or Microsoft SQL Server, then the "Licensed Software Documentation" also includes the Workflow Automation Server documentation and/or Microsoft SQL Server documentation, respectively that Maximizer makes available (directly or through its Certified Solution Providers) to users of that same Licensed Software by Maximizer.

"Licensed Users" means the total number of Your employees authorized in the Order Form for each such Licensed Software itemized in the Order Form plus any Supplemental Licenses purchased pursuant to (and as defined in) Section 5.

"Maintenance" means the Maximizer CRM Maintenance, Workflow Maintenance and Microsoft SQL Maintenance, in each case if and as purchased by You in the Order Form, and as further described in Section 6.

"Microsoft SQL Server" means the Third Party Software product of Microsoft Corporation designed by Maximizer to be bundled with the Licensed Software and identified in the Order Form.

"Service Release" means a non-scheduled release of the Licensed Software that modifies the Licensed Software as a result of revisions to the current release, or corrections and/or fixes to the current release of the Licensed Software that Maximizer generally makes available at no additional cost to its customers purchasing Maintenance for such Licensed Software.

"Technical Support" means (i) telephone, e-mail and/or other forms of support at the discretion of Maximizer to Designated Technical Support Contacts to provide a reasonable level of guidance to You respecting the use of the Licensed Software; and (ii) subject to the limitations set out in this Agreement, responding to reports of Errors in the Licensed Software and determining if the reported Error is a result of a problem in the Licensed Software or an environmental, configuration, installation or other problem not included in Maintenance. As described below, Technical Support is only available to You if You have purchased Silver Maintenance or Gold Maintenance for the applicable Contract Year. Technical Support does not include remote or on-site implementation; database administration; system, network or network security configuration; web server or web server security configuration; software customization; or training.

"Third Party Software" means online, Web-based applications and offline software products that are provided by third parties but interoperate with the Licensed Software.

"Version Release" means a scheduled release of the Licensed Software provided by Maximizer that adds and/or enables a new feature, an innovation, performance improvement, or a major enhancement to the previous release of the same Licensed Software that Maximizer generally makes available at no additional cost to its customers purchasing Maintenance for such Licensed Software.

“Workaround” means a change in the procedures followed by You to avoid an Error without substantially impairing the use of the Licensed Software.

“Workflow Automation Server” means the Third Party Software product of Vineyardsoft Corporation designated by Maximizer to be bundled with the Licensed Software and identified in the Order Form.

“You” and **“Your”** refers to the Licensee. Maximizer and You are collectively the **“Parties”** to this Agreement, and are individually a **“Party”**.

2. LICENSE GRANT

As of the Effective Date, Maximizer grants to You a non-exclusive, limited right to use the Licensed Software identified as being licensed or sublicensed to You on the Order Form and the corresponding Licensed Software Documentation solely for Your business operations, subject always to the terms of this Agreement and restricted to the number of Licensed Users [as confirmed by an audit performed at Maximizer’s discretion](#). Any Version Releases or Service Releases of the Licensed Software that may be delivered to You by Maximizer or its Certified Solution Provider will be considered Licensed Software under the terms of this Agreement, except they are not covered by the Limited Warranty applicable to the Licensed Software, to the extent permitted by applicable law.

As provided in Section 5, Supplemental Licenses may be obtained from Maximizer by You and will be subject to the terms of this Agreement.

3. OWNERSHIP

Maximizer retains all ownership and intellectual property rights to the Licensed Software, the Licensed Software Documentation and any software and documentation provided to You by Maximizer pursuant to, or in connection with, this Agreement, with the exception only that the rights in the Workflow Automation Server, Microsoft SQL Server and Third Party Software and the documentation corresponding thereto are retained by the third party owners of such software and documentation. You may copy the Licensed Software and Licensed Software Documentation only for backup purposes and further provided Your use of any is subject to the terms of this Agreement.

4. RESTRICTIONS

You may not, without the prior express written authorization of Maximizer: sub-license, re-license, rent, lease, assign, or copy the Licensed Software except as authorized under this Agreement; allow access to, or use of, the Licensed Software or Licensed Software Documentation by more than the number of Licensed Users; use the Licensed Software or Licensed Software Documentation for any use other than for Your internal business purposes; directly or indirectly disassemble, de-compile, reverse-engineer, transcribe, translate, adapt, modify or in any manner change the Licensed Software; or, remove or modify any Licensed Software or Licensed Software Documentation markings or any notice of proprietary rights.

5. SUPPLEMENTAL LICENSES

If, after the Effective Date, and subject to the other terms and conditions set out in this Agreement, You subsequently enter into additional Order Forms to purchase additional licenses (**“Supplemental Licenses”**) of the Licensed Software (which may include adding additional Licensed Users, additional or new Licensed Software or upgrades), those Supplemental Licenses will be included under this Agreement. In order to be eligible to purchase Supplemental Licenses, You must be current with Your Fee Payments and in full compliance with Your other obligations under this Agreement.

6. MAINTENANCE

6.1 Mandatory Maintenance

During the first Contract Year, you are required to purchase Maintenance for the Licensed Software. Your purchase of Maintenance for all subsequent Contract Years is optional.

6.2 Maximizer CRM Maintenance

Gold Maintenance is included in the purchase price specified in the Order Form.

“**Silver Maintenance**” is a level of Maximizer CRM Maintenance that provides the benefits of Bronze Maintenance described above plus provides to You a maximum of 5 Incidents per Contract Year provided that the total time spent on all such Incidents (including Incidents reported as part of Workflow Maintenance or Microsoft SQL Maintenance) combined cannot exceed a maximum of 5 hours in total per Contract Year and does not include support for MaxExchange or MaxSync.

“**Gold Maintenance**” is a level of Maximizer CRM Maintenance that provides the benefits of Bronze Maintenance described above plus provides to You an unlimited number of Incidents and hours in the Contract Year for which Gold Maintenance was purchased and, if applicable, includes Technical Support in relation to MaxExchange or MaxSync as long as, and to the extent that, such support is at that time being generally provided by Maximizer to its Gold Maintenance customers.

6.3 Workflow Automation Server Maintenance

If you have purchased a license to the Workflow Automation Server and are required (in the first Contract Year) or elect (in subsequent Contract Years) to purchase Maintenance in respect of the Workflow Automation Server, then You must ensure that you also purchase either the Silver Maintenance or Gold Maintenance, which include certain levels of Technical Support (as described above). Workflow Maintenance is not available to You if you do not purchase Maximizer CRM Maintenance at all or purchase Bronze Maintenance. Maintenance for the Workflow Automation Server is provided as follows:

(a) **Workflow Automation Server First Tier Technical Support** - Maximizer will provide first tier Technical Support to Your Designated Technical Support Contacts regarding the Workflow Automation Server. First tier Technical Support does not include items set out in Second Tier WAS Maintenance (described below) or Error corrections.

(b) **Workflow Automation Server Second Tier Maintenance** - Second tier support will be provided by Vineyardsoft Corporation to Maximizer, being advanced problem diagnosis and Error corrections (the “**Second Tier WAS Maintenance**”). Maximizer will provide to You the results of the Second Tier WAS Maintenance but **Maximizer will not be responsible for any failure of Vineyardsoft Corporation to correct Errors in the Workflow Automation Server or for the performance of Vineyardsoft Corporation.**

(c) **Upgrades** - Maximizer will, at Your written request, provide to You all Version Releases or Service Releases to the Workflow Automation Server that Vineyardsoft Corporation makes generally available at no additional cost to Maximizer for distribution to its licensees of the Workflow Automation Server. Such Version Releases or Service Releases to the Workflow Automation Server may not be co-terminus with Version Releases or Service Releases to the Maximizer proprietary Licensed Software or the Microsoft SQL Server;

(collectively, the “**Workflow Maintenance**”). The amount of Technical Support you are entitled to receive as part of Workflow Maintenance will be limited unless you purchased Gold Maintenance (described above). If you have purchased Silver Maintenance, then all Incidents reported and Technical Support received as part of any of Silver Maintenance, Workflow

Maintenance and Microsoft SQL Maintenance (described below) may not together exceed a maximum of 5 Incidents per Contract Year and the total time spent on all such Incidents combined cannot exceed a maximum of 5 hours in total per Contract Year irrespective of whether that Technical Support relates to any Maximizer proprietary Licensed Software, Workflow Automation Server or the Microsoft SQL Server.

6.4 Microsoft SQL Server Maintenance

If you have purchased a license to the Microsoft SQL Server and are required (in the first Contract Year) or elect (in subsequent Contract Years) to purchase Maintenance in respect of the Microsoft SQL Server, then You must ensure that you also purchase either the Silver Maintenance or Gold Maintenance, which include certain levels of Technical Support (as described above). Microsoft SQL Maintenance is not available to You if you do not purchase Maximizer CRM Maintenance at all or purchase Bronze Maintenance. Maintenance for the Microsoft SQL Server is provided as follows:

(a) **Microsoft SQL Server First Tier Technical Support** - Maximizer will provide first tier Technical Support to Your Designated Technical Support Contacts regarding the Microsoft SQL Server. First tier Technical Support does not include items set out in Second Tier SQL Maintenance (described below) or Error corrections.

(b) **Microsoft SQL Server Second Tier Maintenance** - Second tier support will be provided by Microsoft Corporation to Maximizer, being advanced problem diagnosis and Error corrections (the "**Second Tier SQL Maintenance**"). Maximizer will provide to You the results of the Second Tier SQL Maintenance but **Maximizer will not be responsible for any failure of Microsoft Corporation to correct Errors in the Microsoft SQL Server or for the performance of Microsoft Corporation.**

(c) **Upgrades** - Maximizer will, at Your written request, provide to You all Version Releases or Service Releases to the Microsoft SQL Server that Microsoft Corporation makes generally available at no additional cost to Maximizer for distribution to its licensees of the Microsoft SQL Server. Such Version Releases or Service Releases to the Microsoft SQL Server may not be co-terminus with Version Releases or Service Releases to the Maximizer proprietary Licensed Software or the Workflow Automation Server;

(collectively, the "**Microsoft SQL Maintenance**"). The amount of Technical Support you are entitled to receive as part of Microsoft SQL Maintenance will be limited unless you purchased Gold Maintenance (described above). If you have purchased Silver Maintenance, then all Incidents reported and Technical Support received as part of any of Silver Maintenance, Workflow Maintenance and Microsoft SQL Maintenance may not together exceed a maximum of 5 Incidents per Contract Year and the total time spent on all such Incidents combined cannot exceed a maximum of 5 hours in total per Contract Year irrespective of whether that Technical Support relates to any Maximizer proprietary Licensed Software, the Workflow Automation Server or the Microsoft SQL Server.

6.5 Technical Support – Additional Terms and Conditions

Additional details for accessing Technical Support as part of Silver Maintenance, Gold Maintenance, Workflow Maintenance or Microsoft SQL Maintenance can be found at www.maximizer.com/support/. These are subject to change from time to time without notice to You and at the sole discretion of Maximizer. Maximizer's obligation to provide Technical Support as part of Silver Maintenance, Gold Maintenance, Workflow Maintenance or Microsoft SQL Maintenance is subject to Your compliance with the following conditions: (i) that You ensure that the Licensed Software is installed and implemented by Maximizer or a Certified Solution Provider, (ii) that the Licensed Software is operated in accordance with all instructions set out in the applicable Licensed Software Documentation for such Licensed Software, (iii) You assign a Designated Technical Support Contact sufficiently trained and qualified to manage and support the Licensed Software, (iv) Your written notification to Maximizer in writing of any Error within 10 days of the appearance thereof in sufficient detail to enable Maximizer to reproduce the Error, (v) Your prompt and proper installation of all corrections and updates made available to You by Maximizer or a

Certified Solution Provider, (vi) that You implement procedures necessary to safeguard the integrity and security of the Licensed Software from unauthorized access and for reconstructing any lost or altered files resulting from catastrophic failure, and (vii) that You procure, install and maintain all equipment, telephone lines, data, communications interfaces and other hardware at Your site, and allow Maximizer access as needed to the Licensed Software via remote trouble-shooting, chat session, the Internet or other methods authorized by Maximizer, as Maximizer determines is needed for the purpose of providing the Maintenance.

6.6 Adjustments

30 days prior to the **period** in which such reductions are to be effective otherwise the amounts owing by You to Maximizer for the Maintenance for that **period** will be calculated based on the higher of the amount that Maximizer is entitled to charge to You under this Agreement or the amount determined using the same number of Licensed Users, type of Licensed Software and category of Maintenance, or otherwise as were in effect for the **period** immediately preceding that renewal **period**.

6.7 Excluded Services

Maintenance does not include remote or on-site implementation; database administration; system, network or network security configuration; web server or web server security configuration; software customization; or training. Except to the extent specifically provided in this Agreement with respect to the Workflow Automation Server and Microsoft SQL Server, Maximizer is not responsible for providing the Maintenance in relation to any Third Party Software that may be included in the Licensed Software.

6.8 Additional Services Available for Separate Purchase by You

Maximizer acknowledges that You may wish to purchase on-site or additional services from Maximizer to assist You with Your use of the Licensed Software but which are not part of the Maintenance provided for the Maintenance Fees. Therefore, if You wish to have Maximizer provide to You services not covered by Maintenance (such as remote or on-site implementation, database administration, system, network or network security configuration, software customization or training in connection with your use of the Licensed Software) and provided Maximizer determines that it is able to provide such services to You when requested, then You will be required to enter into a Maximizer CRM Professional Services Agreement or other agreement required by Maximizer and containing Maximizer's standard terms and conditions for such services and You will be required to pay to Maximizer the current rates charged by Maximizer for such services at the time the services are performed.

6.9 Errors Not Caused by the Licensed Software

If Maximizer reasonably believes that a problem You report may not be due to an Error in the Licensed Software, Maximizer will notify You and shall have no obligation to proceed further unless You provide written instruction to do so. If upon resolution of the problem Maximizer notifies You that the problem is not a result of an Error in the Licensed Software and You request that Maximizer provide assistance to You to resolve that problem, then You will pay for time and materials incurred by Maximizer or its Certified Solution Provider in resolution of such problem at Maximizer's rates for such services and materials in effect at the time such services and materials are provided. Invoices for such amounts will be payable by you as set out in Section 7.4. For greater certainty, other than to provide You with Version Releases or Service Releases, Maximizer has no obligations under Bronze Maintenance to provide any Technical Support with respect to diagnosis or correction of Errors.

6.10 No Technical Support for Altered Versions

Even if you have purchased Maintenance, Maximizer has no obligation to correct Errors or provide Technical Support on any Licensed Software that has been altered or modified by You.

6.11 Expiry of Technical Support

As Maximizer (and, if applicable, Vineyardsoft Corporation, Microsoft Corporation or other Third Party Software providers) make available Version Releases or Service Releases to the Licensed Software, Maximizer may cease to provide Technical Support (as part of Maintenance) for any and all prior versions or releases of the applicable Licensed Software, as Maximizer may determine in its sole discretion. **FOR GREATER CERTAINTY, IF MAXIMIZER DETERMINES THAT IT WILL NO LONGER PROVIDE TECHNICAL SUPPORT FOR A PRIOR VERSION RELEASE OF ANY LICENSED SOFTWARE, MAXIMIZER WILL HAVE NO OBLIGATION WHATSOEVER TO PROVIDE ANY TECHNICAL SUPPORT WITH RESPECT TO THAT PRIOR VERSION RELEASE AND ALL EARLIER VERSIONS AND MAXIMIZER WILL BE RELIEVED OF ALL OBLIGATIONS UNDER THIS AGREEMENT RELATING TO THE PROVISION OF TECHNICAL SUPPORT FOR SUCH EARLIER VERSIONS OR RELEASES EVEN IF YOU HAVE CONTINUED TO PURCHASE MAINTENANCE.** Version Releases supported by Maximizer at any given time are listed at maximizer.com/support.

6.12 Your Reporting Obligations

You acknowledge that in order to receive Technical Support with respect to a possible Error as part of Silver Maintenance, Gold Maintenance, Workflow Maintenance or Microsoft SQL Maintenance, You are responsible for providing documentation sufficient for Maximizer, Vineyardsoft Corporation or Microsoft Corporation, as applicable, to reproduce the possible Error on a master copy of the Licensed Software, including, without limitation, a written, detailed description of the possible Error, log files, core dumps, data files, and any other information requested by Maximizer.

6.13 Term for Provision of Maintenance

Maximizer will provide the Maintenance ordered by You on the Order Form for licenses paid in full and current under this [agreement](#).

7. FEES

7.1 License Fees

You will pay to Maximizer or, if so designated in the Order Form, the Certified Solution Provider, the up-front license fee for the Licensed Software (and any Supplemental Licenses) as set out in the applicable Order Form(s) (the "**License Fee**"), including fees based on the number of named Licensed Users for the Licensed Software and applicable shipping and handling charges.

7.2 Maintenance Fees

In addition to the License Fee to be paid for the Licensed Software (as set out in the Order Form) and any Supplemental Licenses, You will pay annual fees for each Contract Year for the Maintenance in an amount equal to:

- (a) in the case of the Workflow Maintenance, subject to increase as set out below, 20% of list price of the Workflow Automation Server, such list price to be determined as of the date on which the annual renewal term begins for each Contract Year; and

(b) in the case of the Microsoft SQL Maintenance, subject to increase as set out below, 25% of list price of the Microsoft SQL Server, such list price to be determined as of the date on which the annual renewal term begins for each Contract Year;

(collectively, as applicable, the "**Maintenance Fee**"). Prior to the commencement of any Contract Year, Maximizer may increase the price of Workflow Maintenance and/or Microsoft SQL Maintenance as Maximizer, in its sole discretion, considers appropriate to reflect any price or cost increases imposed on Maximizer in respect of the Workflow Maintenance and/or Microsoft SQL Maintenance. The Maintenance Fee for the first Contract Year of Maintenance will be payable by You at the same time as payment of the License Fee and will be made to either Maximizer or the Certified Solution Provider as set out in the Order Form. **Even if You originally ordered the Licensed Software from a Certified Solutions Provider, all Maintenance Fees for each subsequent Contract Year (after the first Contract Year) will be invoiced to You by Maximizer and will be paid by You directly to Maximizer (and not to the Certified Solutions Provider).**

7.3 Failure to Pay Maintenance Fee

If You do not pay to Maximizer the Maintenance Fee within 30 days of the date on which it was due, Maximizer may, in its sole discretion, refuse to provide to You the Maintenance until the Maintenance Fee is paid in full.

7.4 Supplemental Licenses

For each Supplemental License purchased by You, in addition to any License Fee applicable to such Supplemental Licenses as set out on the applicable Order Form, You will pay to Maximizer, or, if Your Order Form specifies that payment for Supplemental Licenses is to be paid to a Certified Solution Provider, then to a Certified Solution Provider, a supplemental Maintenance Fee for the remaining portion of the Contract Year in which the Supplemental Licenses are purchased by You. If You paid the \$1,000 minimum for Gold Maintenance or \$500 minimum for Silver Maintenance, this will be taken into account for the calculation of the supplemental Maintenance Fee so that a Maintenance Fee on any Supplemental Licenses will not be payable until your total Maintenance Fees payable for all Licensed Software and Supplemental Licenses exceeds the \$1,000 or \$500 minimums.

7.5 General Payment Terms

You will pay Maximizer all fees and other amounts due under this Agreement within 30 days of the respective invoice due date. You will pay interest on overdue amounts at the rate of 1½% per month or 18% per annum. You will also be liable for all reasonable costs, including legal fees and expenses, collection fees and court costs, incurred by Maximizer in respect of legal proceedings or other third party actions initiated to collect any unpaid amounts owing under this Agreement.

7.6 Taxes

All payments, fees and other charges payable by You under this Agreement are exclusive of all taxes, levies and assessments of any jurisdiction. You agree to bear and be responsible for the payment of all such taxes (including without limitation sales, use, excise, import or export, value added taxes, governmental permit fees or license fees), levies and assessments imposed on either party arising out of this Agreement, excluding any tax based on Maximizer's net income and will provide to Maximizer evidence of such payment. If any taxes are required to be withheld by You, You will pay to maximizer such grossed-up amount as would be necessary to provide Maximizer the full amount of the payments, fees and other charges that would have been otherwise payable under this Agreement.

7.7 Maximizer's Right to Direct Payment to be Made to Maximizer Instead of a Certified Solution Provider

If at any time Maximizer notifies you in writing that the Certified Solution Provider from whom You purchased a license to the Licensed Software is not (or is no longer) a "Certified Solution Provider" for the Licensed Software or is no longer authorized to collect License Fees, Supplemental License fees or Maintenance Fees, then notwithstanding the terms of the Order Form or this Agreement, all future amounts owing by You under this Agreement (as License Fees, Supplemental License fees, Maintenance Fees or otherwise) will be paid directly to Maximizer.

8. TERMINATION OR EXPIRY

If You or Maximizer breach the terms of this Agreement and fail to correct the breach within 30 days of written notification from the other Party, the non-breaching Party may, at its discretion, terminate this Agreement and Your right to use of the Licensed Software and Licensed Software Documentation by providing written notice of termination to the other Party. Upon termination of this Agreement for any reason or the expiry of this Agreement at the end of the Initial Term or any Renewal Term if not renewed pursuant to Section 7, You will immediately cease use of the Licensed Software and Licensed Software Documentation and You must pay all accrued fees or other amounts due under this Agreement within 30 days of the date of termination and, at Maximizer's election, either return to Maximizer all copies of the Licensed Software and Licensed Software Documentation or provide Maximizer with a signed "Certificate of Destruction" signed by Your president confirming the destruction of all copies of the Licensed Software and Licensed Software Documentation. Except as otherwise expressly agreed in this Agreement or required under applicable laws, in the event that this Agreement or Your license to the Licensed Software is terminated or expires, You will not be entitled to a refund of any fees or other amounts paid.

9. WARRANTY

As long as you are complying with the terms and conditions of this Agreement, subject to the disclaimers and limitations of Maximizer's liability in Sections 11 and 12 of this Agreement, for so long as you have purchased and maintained in good standing Maintenance for the applicable Licensed Software, Maximizer warrants that the Licensed Software (other than the Workflow Automation Server, Microsoft SQL Server and any other Third Party Software) for which it is then currently providing to You Maintenance will substantially conform with all material operational features and material performance characteristics as described in the Licensed Software Documentation provided to You concurrent with the delivery to You of such Licensed Software (the "**Performance Warranty**"). Maximizer further warrants that the Licensed Software (i) shall not contain any software routine (e.g., back door, time bomb, Trojan horse, worm) that will disable, lock, erase or otherwise harm Your software, hardware or data; and (ii) shall not contain any other "lockout", self-help code or other disabling code or device that will otherwise prevent or restrict use of the Licensed Software (e.g., password, CPU or time restrictions or "dongle") – collectively the "**No Disabling Software Warranty**". The Performance Warranty and the No Disabling Software Warranty are collectively referred to herein as the "**Warranty**". **THE WARRANTY WILL IMMEDIATELY END IF YOU DO NOT PURCHASE OR MAINTAIN IN GOOD STANDING MAINTENANCE FOR THE APPLICABLE LICENSED SOFTWARE.** The Warranty does not cover problems caused by accident, abuse or use of the Licensed Software in a manner inconsistent with this Agreement or the Licensed Software Documentation. **Maximizer makes no representation and warranty whatsoever respecting the Workflow Automation Server, Microsoft SQL Server or any other Third Party Software.**

10. INDEMNIFICATION

If a person makes a claim against You stating that Maximizer's Licensed Software (excluding the Workflow Automation Server, Microsoft SQL Server and Third Party Software) infringes their copyright, patent or trade-secret rights in Canada or the United States of America, Maximizer will indemnify You in respect of all direct damages arising from a claim, suit or proceeding made against You which is based on such a claim, provided that You (i) provide written notification to Maximizer within 30 days of

receiving notice of the claim; (ii) give Maximizer sole control of the defence and any settlement negotiations; and (iii) give Maximizer the information, authority, and assistance that it may reasonably require to defend against or settle the claim. Following notice of such an infringement claim, or if Maximizer believes such a claim is likely, Maximizer may fulfill its obligations under this indemnity by, at Maximizer's sole expense and option by (i) procuring the right to continue using the Licensed Software; (ii) replacing or modifying all or part of the Licensed Software to make it non-infringing; or (iii) terminating Your license to the Licensed Software that is the subject of such infringement claim and refunding to You a portion of the License Fees paid by you for such Licensed Software (based on a two (2) year straight-line amortization from the Effective Date) and unearned portion of any prepaid Maintenance Fees for such Licensed Software in the Contract Year in which Maximizer terminates Your license to the Licensed Software (based on a 365 day Contract Year).

Maximizer shall not be liable to You under the provisions of this indemnity for any claim based upon or arising out of (a) the use of the Licensed Software in combination with other software or hardware not approved by Maximizer, to the extent that such use is the subject matter of such claim; (b) the use of the Licensed Software in a manner or for a purpose other than that described in the Licensed Software Documentation to the extent that such use is the subject matter of such claim; (c) the use of the Licensed Software in a modified condition, to the extent that such modification is the subject matter of such claim; or (d) a claim in which the alleged infringing element arose as a result of, or is based on either (i) the disclosure by You to Maximizer of any confidential or proprietary information of a third party or (ii) the specification by You of modifications to the Licensed Software requested by You, to the extent that such confidential or proprietary information or specification is the subject matter of such claim.

THE FOREGOING STATES YOUR EXCLUSIVE REMEDY WITH RESPECT TO ANY INFRINGEMENT CLAIM.

11. DISCLAIMER

OTHER THAN THE LIMITED WARRANTIES UNDER SECTIONS 9 AND 10 MAXIMIZER PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE LICENSED SOFTWARE, LICENSED SOFTWARE DOCUMENTATION OR ANY OTHER MATTERS RELATED TO THIS AGREEMENT. TO THE EXTENT NOT PROHIBITED BY LAW, MAXIMIZER DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT.

MAXIMIZER DOES NOT GUARANTEE THAT THE LICENSED SOFTWARE OR THE MAINTENANCE WILL MEET YOUR REQUIREMENTS, PERFORM ERROR-FREE OR UNINTERRUPTED, THAT MAXIMIZER WILL CORRECT ALL LICENSED SOFTWARE ERRORS, INCLUDING WITHOUT LIMITATION NON CONFORMITY WITH THE LIMITED WARRANTY, OR THAT MAXIMIZER, VINEYARDSOFT CORPORATION, OR MICROSOFT CORPORATION WILL CORRECT ALL ERRORS, WHETHER DIAGNOSED AS SUCH OR NOT. MAXIMIZER SUPPLIES THE LICENSED SOFTWARE AND THE MAINTENANCE "AS IS" AND TO THE EXTENT PERMITTED BY LAW, THE LIMITED WARRANTY IS EXCLUSIVE AND TAKES THE PLACE OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY, CUSTOM, USAGE, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, TITLE, AND ACCURACY.

NONE OF MAXIMIZER, VINEYARDSOFT CORPORATION, MICROSOFT CORPORATION OR ANY OTHER THIRD PARTY LICENSORS OF ANY THIRD PARTY SOFTWARE WARRANT THAT THE LICENSED SOFTWARE, WORKFLOW AUTOMATION SERVER, MICROSOFT SQL SERVER OR OTHER THIRD PARTY SOFTWARE WILL INTEGRATE ERROR-FREE WITH ALL AVAILABLE APPLICATIONS AND OPERATING SYSTEMS, INCLUDING WITHOUT LIMITATION THOSE UTILIZED BY YOU.

12. LIMITATION OF LIABILITY

NEITHER YOU, MAXIMIZER, VINEYARDSOFT CORPORATION, MICROSOFT CORPORATION OR ANY OTHER THIRD PARTY LICENSORS OF ANY THIRD PARTY SOFTWARE WILL BE LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THIS AGREEMENT), DATA, OR DATA USE. MAXIMIZER'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR IN TORT, OR OTHERWISE, WILL IN NO EVENT EXCEED, IN THE AGGREGATE, THE LICENSE FEES ACTUALLY PAID BY YOU IN RESPECT OF THE LICENSED SOFTWARE THAT IS THE SUBJECT OF SUCH CLAIM BY YOU OR, IF THE CLAIM RELATES TO MAINTENANCE, THE MAINTENANCE FEES PAID BY YOU IN THE MOST RECENT CONTRACT YEAR BEFORE SUCH CLAIM WAS MADE BY YOU. YOU ACKNOWLEDGE THAT THE LICENSE FEE AND MAINTENANCE FEE REFLECTS THIS ALLOCATION OF RISK. ANY DAMAGE IN YOUR FAVOUR AGAINST MAXIMIZER WILL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY YOU UNDER THIS AGREEMENT AND ANY SUCH REFUND AND CREDIT WILL APPLY TOWARDS THE LIMITATION OF LIABILITY. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

13. NON-SOLICITATION OF MAXIMIZER'S EMPLOYEES

During the term of this Agreement, and for a period of one year thereafter, You will not hire or offer to hire or allow Your affiliates to hire or offer to hire any employee of Maximizer, or any person who was an employee of Maximizer during the six months prior to You hiring or offering to hire such person, unless otherwise agreed to by Maximizer in writing.

14. CHANGES TO THE LICENSED SOFTWARE, THE MAINTENANCE AND THE LICENCE FEE

Notwithstanding anything else to the contrary in this Agreement, You acknowledge and agree that Maximizer reserves the right at any time: (a) not to release or to discontinue release of any Licensed Software, (b) to change its list price for the Licensed Software (including Supplemental Licenses), (c) to change any of the services that it currently offers in connection with the Maintenance, and (d) to alter features, specifications, capabilities, functions, release dates, general availability or other characteristics of the Licensed Software or Maintenance or, as they relate to future purchases by You or subsequent renewal terms for the Maintenance, the terms and conditions applicable to such licenses and/or Maintenance.

15. ACKNOWLEDGEMENT REGARDING NEW OR DIFFERENT PRODUCTS, VERSION RELEASES AND SERVICE RELEASES

You acknowledge that Maximizer may develop and market new or different computer programs or editions of the Licensed Software that use portions of the Licensed Software or that perform all or part of the functions performed by the Licensed Software. Nothing contained in this Agreement will give You any rights with respect to such new or different computer programs or editions.

16. EXPORT CONTROL

Canadian and United States of America export control laws and other applicable export and import laws govern Your use of the Licensed Software, including technical data. You will not: (a) export, directly or indirectly, the Licensed Software or any direct product thereof in violation of these laws, or (b) use the Licensed Software for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation.

17. U.S. GOVERNMENT END USERS

If you are a U.S. Government agency, in accordance with Section 12.212 of the Federal Acquisition Regulation (48 CFR 12.212 (October 1995)) and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement (48 CFR 227.7202-1, 227.7202-3 (June 1995)), you hereby acknowledge that the Licensed Software constitutes "Commercial Computer Software" and that the use, duplication, and disclosure of the Licensed Software by the U.S. Government or any of its agencies is governed by, and is subject to, all of the terms, conditions, restrictions, and limitations set forth in this standard commercial license Agreement. In the event that, for any reason, Sections 12.212, 227.7202-1 or 227.7202-3 are deemed not applicable, you hereby acknowledge that the Government's right to use, duplicate, or disclose the Licensed Software are "Restricted Rights" as defined in 48 CFR Section 52.227-19(c)(1) and (2) (June 1987), or DFARS 252.227-7014(a)(14) (June 1995), as applicable. Contractor/manufacturer is Maximizer.

18. NO MODIFICATIONS TO THIS AGREEMENT BY CERTIFIED SOLUTIONS PROVIDERS

Maximizer's Certified Solutions Providers (or any other authorized distributors or resellers) do not have the right to make modifications to this Agreement or to make any additional representations, commitments or warranties binding on Maximizer.

19. GENERAL**19.1 Relationship**

You and Maximizer are independent contractors and are not agents, joint venturers, partners or employees of one another, and Maximizer will not be obligated by any agreements or representations made by You to any person, nor with respect to any other action by You, nor will Maximizer be obligated for any damages to any person whether caused by Your actions, failure to act, negligence or wilful conduct. If you entered into the Order Form with, or provided an Order Form to, an authorized Certified Solution Provider, You acknowledge that Maximizer is an intended third party beneficiary of your obligations to the Certified Solution Provider set out in that Order Form and that Maximizer may enforce directly against you the terms of the Order Form and this Agreement as if Maximizer was a direct party thereto.

19.2 Use of Name

You acknowledge that Maximizer may make reference to You and Your relationship to Maximizer in press releases, advertising and promotional materials and You consent to any such reference.

19.3 Waiver of Jury Trial

Each party hereby waives any right to a jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

19.4 Audit

During the term of the license under this Agreement and for a period of five (5) years thereafter, Maximizer may audit Your use of the Licensed Software and You will cooperate and provide Maximizer with reasonable assistance and access to information, so long as Maximizer gives You 45 days advance written notice. You will pay any deficiencies in License Fees, Maintenance Fees or other amounts which are discovered by Maximizer's audit of You within 10 days of discovery. This Section 19.4 will survive the termination of this Agreement.

19.5 Notice

Except as otherwise specified in this Agreement, all notices, permissions and approvals will be in writing and will be deemed to have been given upon: (i) personal delivery, (ii) the fifth business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (i) in the case only of a notice by Maximizer to You, the first business day after sending by email to the email address set out in the Order Form. Notice to You will be addressed to the system administrator designated by You under the Order Form, and in the case of billing notices, to the relevant billing contact designated by You. The address and contact person for any notices by You to Maximizer will be to Maximizer Services Inc., 208 West 1st Ave., Vancouver, BC, Canada V5Y 3T2, Facsimile: 604-681-6001, Attention: Controller.

19.6 Entire Agreement; Waiver

This Agreement and the applicable Order Form constitute the entire agreement between the parties relating to the subject matter of this Agreement and supersede or replace all prior or contemporaneous agreements or representations. If any terms of this Agreement are found to be invalid or unenforceable, the remaining provisions will remain effective. No failure or delay by a party in exercising any right or power under this Agreement will operate as a waiver of that right or power, and the single or partial exercise of a right or power under this Agreement will not preclude any other or future exercise of that or any other right or power.

19.7 Assignment

This Agreement may not be assigned or sublicensed by You without the prior written approval of Maximizer. Maximizer may subcontract or delegate the provision of any or all of the Licensed Software or otherwise assign its rights in this Agreement at any time without Your consent.

19.8 Amendments

This Agreement may be amended at any time by mutual agreement of the parties in writing. Maximizer further reserves the right to make changes to other parts of this Agreement to reflect changes in or required by law or to reflect changes in business practices, provided that any amendments will only have prospective effect and will not materially adversely affect the license granted to You under this Agreement, by providing You with notice and, unless required by law, will not materially adversely impair the license granted to You under this Agreement prior to the date such amendment becomes effective. Notice of such amendments may either be provided to You in accordance with Section 19.5 or by posting notice of the amendments on the Maximizer website at <http://www.maximizer.com/license-agreements/>. If You do not accept such amendments, You may terminate this Agreement at any time within the 60 day period following notice by Maximizer, by delivering written notice to Maximizer of Your intention to terminate. If You do not deliver notice to Maximizer terminating this Agreement within the 60 day time period, You will be deemed to have accepted the amendment.

19.9 Governing Jurisdiction

This Agreement in all respects shall be governed and interpreted in accordance with only the laws of the Province of British Columbia, and the Parties hereby irrevocably attorn exclusively to the Courts of the Province of British Columbia. This Agreement will not be governed by the conflict of law rules of any other jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.