

**MAXIMIZER SERVICES INC.**

**PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (“**Professional Services Agreement**”) is made as of \_\_\_\_\_ (the “**Effective Date**”), between Maximizer Services Inc. with a principal place of business at 260-60 Smithe St, Vancouver, BC, Canada V6B 0P5 (“**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.

<b>MAXIMIZER SERVICES INC.</b>	_____
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)