

These Terms & Conditions comprise a MASTER AGREEMENT ("Agreement") between WinMill Software, Inc., a Nevada corporation, with a principal address of 420 Lexington Avenue, Suite 455, New York, NY 10170, ("WinMill") and Client signatory to a WinMill Software Letter of Agreement or Statement of Work ("Client"). Each is a "Party" or collectively, the "Parties". This Agreement governs the purchase of Products and Services by Client from WinMill and takes effect on the date a Letter of Agreement or applicable Statement of Work has been signed.

## 1. Definitions.

### 1.1 Certain Defined Terms. For purposes of this Agreement:

"Client Technology" means Client's network, routers, switches, computers, communication lines and other equipment, hardware, software or data used in Client's business.

"Products" means any third-party hardware, software, documentation, accessories, cabling, material, supplies, parts, and other goods, and any related Product Maintenance, that WinMill resells to Client, except any Product Maintenance specifically included in any Services.

"Product Maintenance" means any maintenance and support of any hardware, software, documentation, accessories, cabling, material, supplies, parts, or other goods that are performed by a third party.

"Purchase Order" means a purchase order or other similar document or communication from Client to WinMill delivered in connection with a sales quote.

**1.2 Other Defined Terms.** If a capitalized term used in this Agreement is not defined in Section 1.1 above, then that term shall have the definition ascribed to that term elsewhere in this Agreement.

## 2. Orders.

Client shall place an order for Products (each, an "Order") by submitting the Order to WinMill on Client's standard Purchase Order form, an alternate order form approved by WinMill, or electronic means acceptable to WinMill. Client's Order shall be deemed to incorporate these terms and conditions with or without reference in the Order to this Agreement. Orders for Products shall identify the Products, unit quantities, part numbers, descriptions, applicable prices and requested delivery dates. All Orders are subject to acceptance by WinMill, which acceptance may be evidenced by either a written confirmation of WinMill acceptance sent by mail, facsimile, or other electronic means, or by shipment of the Products. Except as provided in Section 8.2 below, no Orders for Products may be terminated, cancelled, or rescheduled without WinMill's consent. If Client asks WinMill to cancel or reschedule a Product Order less than ten (10) days before the original scheduled shipping date, and WinMill consents to such cancellation or reschedule, then such Order shall be subject to a charge of fifteen percent (15%) of the total invoice amount relating to the affected Products. This charge shall not be applicable to a cancelled or rescheduled Product Order for software.

## 3. Products.

**3.1 Delivery and Title.** Most software Products shall be delivered to Client via electronic download. For those that are not, and for all hardware products, all shipments by WinMill are F.O.B. Origin (WinMill's facility or the facilities of any WinMill supplier) and all transportation charges shall be paid by Client in addition to the price of the Products. Subject to WinMill's right of stoppage in transit, delivery of the Products to the carrier shall constitute delivery to Client and title and risk of loss shall thereupon pass to Client. Selection of the carrier and delivery route shall be made by WinMill unless specified by Client. WinMill shall use commercially reasonable efforts to initiate shipment and schedule delivery as close as possible to Client's requested delivery dates. Client acknowledges that delivery dates provided by WinMill are estimates only and that WinMill is not liable for failure to deliver on such dates, provided that WinMill will use commercially reasonable efforts to inform Client of delivery status. WinMill reserves the right to make deliveries in installments. Delivery of a quantity which varies from the quantity specified shall not relieve Client of the obligation to accept delivery and pay for the Products delivered. Delay in delivery of one installment shall not entitle Client to cancel other installments.

**3.2 Acceptance and Returns.** All sales are final except with respect to Products that do not meet applicable manufacturer's specifications or that are not identified in the Order. Inspection and acceptance of the Products shall be Client's responsibility. Client is deemed to have accepted the Products unless written notice of rejection is received by WinMill within ten (10) days after delivery of the Products. Client waives any right to revoke acceptance thereafter. Client

shall report any discrepancy in shipment quantity or damage within ten (10) days after delivery. No return of Products shall be accepted by WinMill without a Return Material Authorization ("RMA") and associated number, which may be issued by WinMill in its sole discretion. Returned Products must be in their original, unaltered, undamaged condition, and must be returned in the original manufacturer's shipping cartons complete with all packing materials. All Products for return shall be returned freight prepaid in the manner specified in the RMA. If returned Products are claimed to be defective, a complete description of the nature of the defect must be included with the returned Products. Products not eligible for return shall be returned to Client, freight collect.

**3.3 Export Control.** The sale, resale or other disposition of Products and any related technology or documentation are subject to the export control laws, regulations and orders of the United States and may be subject to the export and/or import control laws and regulations of other countries. Client agrees to comply with all such laws, regulations and orders and acknowledges that it shall not directly or indirectly export any Products to any country to which such export or transmission is restricted or prohibited. Client acknowledges its responsibility to obtain any license to export, re-export or import as may be required.

**3.4 Intellectual Property.** If a Product Order includes software or other intellectual property that is owned by WinMill or a third party, such software or other intellectual property is provided by WinMill to Client subject to any applicable copyright(s) and user license(s), the terms and conditions of which may be set forth in a license agreement (from WinMill or such third party) (a) accompanying such software or other intellectual property, or (b) a license agreement or other terms and conditions from WinMill or such third party as set forth in a statement of work, letter or agreement, purchase order or otherwise. Nothing herein shall be construed to grant any rights or license to use any software or other intellectual property in any manner or for any purpose not expressly permitted by such license agreement.

## 4. Payment Terms.

**4.1 Prices.** Prices shall be as specified by WinMill and shall be valid for the period specified in the WinMill sales quote. If no period is specified, prices shall be valid for thirty (30) days. Notwithstanding the foregoing, prices shall be subject to increase in the event of an increase in WinMill's costs or other circumstances beyond WinMill's reasonable control. Prices are exclusive of taxes, impositions and other charges, including sales, use, excise, value added and similar taxes or charges imposed by any government authority; domestic and international shipping charges; forwarding agent's and broker's fees; consular fees; document fees; and import duties. If WinMill shall be liable for or shall pay any of the foregoing (with the exception of any WinMill income or employee taxes), same shall be paid by Client to WinMill in addition to the price of the Products.

**4.2 Due Date; Late Payments.** Amounts due for each Product (other than Product Maintenance) may be invoiced by WinMill upon delivery of the Product to the carrier at the point of origin; as such, an order for multiple Products may result in multiple invoices. Amounts due for Product Maintenance may be invoiced by WinMill upon WinMill's receipt of the applicable third party invoice for such Product Maintenance. Client agrees to pay the net amount of each invoice without offset or deduction within 30 days after the date of WinMill's invoice (unless otherwise noted on the invoice). If any amount is not paid upon the due date, WinMill shall be entitled to receive the amount due plus interest thereon at the rate of 1.5% per month (or such lower rate as shall be the highest permissible contract rate under applicable law) on all amounts that are not paid on or before the date due.

**4.3 Credit Approval; Application of Payment.** All Orders are subject to credit approval by WinMill. Any payment received from Client may be applied by WinMill against any obligation owing from Client to WinMill.

**4.4 Security Interest.** Client hereby grants to WinMill a security interest in each and every Product purchased hereunder, together with any proceeds thereof. Client hereby irrevocably appoints WinMill and/or its designee as its attorney-in-fact to execute and file any financing statements or other applicable documents that are necessary to perfect WinMill's security interest. WinMill shall have all rights and remedies for breach provided under applicable law with respect

to each security interest. As to each Product, WinMill's security interest shall terminate when WinMill has received all amounts due to WinMill for that Product.

**4.5 Leasing Option.** WinMill may from time to time, in its sole discretion, offer Client the option of leasing Products through a third party instead of directly purchasing the Products from WinMill. The Client must provide WinMill with notice and the identity of the lessor before WinMill accepts the applicable Order. The exercise of this option is subject to acceptance by WinMill on terms and conditions established by WinMill in its sole discretion, which shall include: (i) prior to shipment of the Products or commencement of the Services, Client must provide WinMill with the lessor's purchase order; and (ii) no later than five (5) days after the delivery of all of subject Products or commencement of the subject Services, Client must provide WinMill and the lessor with a signed "Certificate of Acceptance" or other similar document used to confirm the lease arrangement for the applicable Products and/or Services. Client shall be solely responsible for the lease transaction, and shall remain liable for all of its payment obligations and other obligations hereunder notwithstanding such lease.

## 5. Warranties and Disclaimers.

**5.1 Product Warranties.** ALL PRODUCTS ARE PROVIDED BY WINMILL "AS IS." WINMILL MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO ANY PRODUCTS AND EXPRESSLY EXCLUDES AND DISCLAIMS THE WARRANTY OF NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY. WinMill hereby transfers to Client, to the extent transferable, whatever transferable warranties and indemnities WinMill receives from the manufacturer of the Products, including any transferable warranties and indemnities respecting patent infringement. Client, recognizing that WinMill is not the manufacturer of Product, expressly waives any claim that Client may have against WinMill based upon any alleged or actual product liability or infringement of any patent, copyright, trade secret, or other intellectual property right with respect to any Product, as well as any right to indemnification from WinMill on account of any such claim made against Client by a third party.

**5.2 Disclaimers.** EXCEPT FOR THE EXPRESS LIMITED REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT, ALL OTHER REPRESENTATIONS AND WARRANTIES CONCERNING SERVICES, DELIVERABLES, WINMILL MATERIALS, OR PRODUCTS PROVIDED BY WINMILL, EXPRESS, IMPLIED OR STATUTORY, ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, CONDITION, OR INCREASED EFFICIENCY OF USE OF CLIENT TECHNOLOGY. WINMILL DOES NOT AUTHORIZE ANY PERSON TO ASSUME FOR IT THE OBLIGATIONS CONTAINED HEREIN.

## 6. Infringement and Indemnification.

**6.1 Infringement.** WinMill agrees to defend or settle, at its option or discretion, any claim against Client alleging that any Deliverable or WinMill Material directly infringes any U.S. patent, copyright, or trademark; provided that: (i) the subject Deliverable or WinMill Material is used strictly as permitted by this Agreement; and (ii) Client gives WinMill prompt written notice of each such claim, tenders to WinMill the defense or settlement of each such claim at WinMill's expense, and cooperates with WinMill, at WinMill's expense, in defending or settling each such claim. If WinMill receives notice of an alleged infringement, or if Client's use of the subject Deliverable or WinMill Material shall be prevented by permanent injunction, WinMill may, at its sole option and expense, procure for Client the right to continue using such items as provided hereunder, modify such items so that they are no longer infringing, or replace such items with other items of equal or superior functional capability. THE RIGHTS GRANTED TO CLIENT UNDER THIS SECTION 6.1 SHALL BE CLIENT'S SOLE AND EXCLUSIVE REMEDY AND WINMILL'S SOLE OBLIGATION FOR ANY ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHT.

**6.2 Indemnification.** Client shall, at its sole expense, defend (through attorneys selected by or acceptable to WinMill), indemnify, and hold harmless WinMill and any of its parents, affiliates and subsidiaries from any and all third party claims, lawsuits, actions, demands, losses or causes of actions, damages, benefits, judgments, settlements, costs, expenses, taxes, contributions, penalties

or fines arising from: (i) any negligent act or omission or willful misconduct on the part of Client (and/or its employees and/or any person or entity acting on Client's behalf); (ii) any injuries or death to any WinMill personnel, or any damage to WinMill's property, arising in connection with the Services, except as may result from the gross negligence or willful misconduct of WinMill or its employees or agents; (iii) the occurrence or nonoccurrence of any event alleged to be proximately caused by the failure of any Client Technology; (iv) any claim that the Client Technology, including the use of the Client Technology by WinMill, infringes any third party patent, trademark, copyright or other right; or (v) any claim based on WinMill compliance with Client's designs, specifications or instructions, or modification of any products by parties other than WinMill, or use in combination with other products.

## 7. Limitations of Liability.

**7.1** NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE, INCLUDING, WITHOUT LIMITATION, BUSINESS INTERRUPTION, REMOVAL, REINSTALLATION, OR REPROCUREMENT COSTS, LOSS OF PROFIT, REVENUE, DATA, CUSTOMERS, OR GOODWILL, OR CLIENT TECHNOLOGY DAMAGE, FAILURE OR MALFUNCTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS OF LIABILITY APPLY TO ALL CAUSES OF ACTION OR CLAIMS OF RELIEF UNDER ANY OTHER LEGAL OR EQUITABLE THEORY, INCLUDING TORT, INDEMNIFICATION, BREACH OF CONTRACT, AND BREACH OF WARRANTY.

**7.2** IN NO EVENT SHALL CLIENT'S RECOVERY FROM WINMILL FOR ANY CLAIM EXCEED (I) THE PURCHASE PRICE PAID FOR THE PRODUCT GIVING RISE TO THE CLAIM, OR (II) THE AMOUNTS PAID FOR THE PRODUCT MAINTENANCE OR SERVICES GIVING RISE TO THE CLAIM THAT WERE PROVIDED DURING THE SIX (6) MONTHS PRECEDING THE CLAIM. THIS LIMITATION IS CUMULATIVE AND NOT PER INCIDENT. THE PARTIES ACKNOWLEDGE AND AGREE THAT ALL OF THE LIMITATIONS ARE AN ESSENTIAL ELEMENT OF THIS AGREEMENT, AND THAT THE PRICES OF SERVICES AND PRODUCTS ARE DETERMINED IN PART BY TAKING INTO ACCOUNT THE EXISTENCE OF THE LIMITATIONS.

**7.3** No action arising out of the performance of any Services pursuant to this Agreement may be brought by either party more than two (2) years after such cause of action accrues, except that an action for nonpayment may be brought within two (2) years of the date of the last payment.

## 8. Term and Termination.

**8.1 Term.** This Agreement shall be effective as of the Effective Date, and shall remain in full force until the Product has been delivered, unless otherwise terminated under the terms of this Section 8.

### 8.2 Termination.

**8.2.1** Subject to the terms of Section 8.3 below, either party may terminate this Agreement for any reason (with or without cause) at any time by giving the other party at least sixty (60) days' prior written notice, provided that the party seeking termination is not in default under this Agreement.

**8.2.2** If WinMill believes in good faith that Client's ability to make payments may be impaired, or if Client fails to pay any invoice when due and does not make such payment within ten (10) days after receipt of notice from WinMill of such failure, WinMill may, in its sole discretion, either: (i) suspend delivery or performance of any, or any remaining balance thereof, until such payment is made; or (ii) terminate any Order, or any remaining balance thereof. In either event, Client shall remain liable to pay for any Products already shipped.

**8.2.3** Either party may terminate an Order upon a material breach by the other party, if the breaching party does not cure the breach within (a) thirty (30) days after receipt of written notice from the other party specifying a non-monetary breach, and (b) five (5) days after receipt of written notice from the other party specifying a monetary breach.

### 8.3 Effects of Termination.

**8.3.1** All Orders existing at the time of termination of this Agreement shall remain in effect and shall be performed under the terms of this

Agreement (all of which shall survive with respect to such Orders), except for any Orders terminated under Section 8.2 above.

**8.3.2** If Client terminates an Order or a portion thereof, then Client shall pay for all work in process (including charges for labor and materials) and all Products ordered as of the effective date of termination for the particular Order, as applicable.

**8.3.3** The exercise of the right to terminate this Agreement and any Order shall be in addition to any other right and remedy provided in this Agreement or existing at law or equity that is not otherwise excluded or limited under this Agreement.

## 9. Miscellaneous Provisions.

**9.1 Force Majeure.** Neither party to this Agreement shall be liable for delays or failures in performance under this Agreement (other than the payment obligations or breach of confidentiality requirements) resulting from acts or events beyond the reasonable control of such party, including acts of war, terrorism, acts of God, earthquake, flood, embargo, riot, sabotage or dispute, governmental act or failure of the Internet, power failure, energy interruption or shortages, other utility interruption, telecommunications interruption provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.

**9.2 Entire Agreement; Construction; Modifications.** This Agreement, including any and all Orders, constitutes the entire understanding between the parties related to this Agreement which understanding supersedes and merges all prior understandings and all other proposals, letters, agreements, oral or written. The parties further agree that there are no other inducements, warranties, representations or agreements regarding the matters herein between the parties except as expressly set in this Agreement. In the event of any conflict between this Agreement and any sales quote or Order, this Agreement shall control. As used herein, the term "including" shall mean "including, without limitation"; the term "includes" as used herein shall mean "includes, without limitation"; and terms appearing in the singular shall include the plural and terms appearing in the plural shall include the singular. This Agreement may not be modified, amended or altered in any manner except by a written agreement signed by both parties, and any attempt at oral modification shall be void and of no effect.

**9.3 Purchase Orders.** WinMill SPECIFICALLY OBJECTS TO ANY ADDITIONAL TERMS BEING ADDED THROUGH A PURCHASE ORDER OR SIMILAR DOCUMENT. IF A PURCHASE ORDER IS REQUIRED BY CLIENT, THE PARTIES AGREE THAT ANY ADDITIONAL TERMS CONTAINED THEREIN SHALL NOT BECOME PART OF THE AGREEMENT BETWEEN THE PARTIES AND SPECIFICALLY THAT THE TERMS OF THIS AGREEMENT SHALL SUPERSEDE ANY AND ALL TERMS IN ANY PURCHASE ORDER.

**9.4 Assignment.** Neither party may assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other party. Any attempted assignment or delegation by one party without such consent will be void and the other party may immediately terminate this Agreement for cause. Except as provided above, this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and their successors and assigns. Each party agrees that this Agreement may be assigned by the other party to a successor or an acquiring organization.

**9.5 No Waiver.** The waiver or failure of either party to exercise any right in any respect provided for herein shall not be deemed to be a waiver of any further right hereunder.

### 9.6 Governing Law; Dispute Resolution.

**9.6.1 Mediation.** The parties shall attempt to resolve their claims, disputes, and matters arising out of or relating to this Agreement, or the breach thereof, by mediation administered by the American Arbitration Association in accordance with its Mediation Procedures in effect on the date of

the Agreement, unless WinMill and Client agree to a different mediation process. A request for mediation shall be made in writing, delivered to the other party and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a request for arbitration but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 30 days from the date of filing, unless stayed for a longer period by agreement of the parties. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in New York, New York unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**9.6.2 Arbitration.** Any claims, disputes, and matters arising out of or relating to this Agreement, or the breach thereof, which are not resolved by mediation shall be subject to arbitration which shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules in effect on the date of the Agreement, unless both parties select another arbitral forum to which both parties consent to in writing. The demand for arbitration shall be made within a reasonable time after written notice of the claim, dispute or other matter in question has been given, and in no event shall notice be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations, whichever shall first occur. The location of the arbitration proceedings shall be in New York, New York. The parties agree that the AAA Optional Rules for Emergency Measures of Protection shall apply to the arbitration to permit injunctive relief and the parties agree to comply with same. The award rendered by the Arbitrator shall be final and judgment may be entered upon it in accordance with applicable law. The Arbitrator shall be required to adhere to the terms of this Agreement and all provisions of the Contract Documents, and shall base the award only upon the evidence presented. The parties will share in the arbitrator's fee. The arbitrator will have the discretion and authority to award fees and costs to the prevailing party if there is a determination the other party acted in bad faith.

**9.6.3 Governing Law.** New York law shall govern this Agreement and any arbitration. No Federal Acquisition Regulations shall be construed to apply to WinMill without WinMill's written agreement thereto. The United Nations Convention for the International Sale of Goods shall not apply to this Agreement. If any provision of this Agreement is held to be contrary to law, then the remaining provisions of this Agreement will remain in full force and effect.

**9.7 Survivability.** All provisions of this Agreement relating to confidentiality, non-disclosure, intellectual property, disclaimers, limitation of liability, indemnification, payment, and no hiring, and any other provisions which must survive in order to give effect to their meaning, shall survive the termination of this Agreement.

**9.8 Notices.** Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given: (i) if by facsimile, hand delivery or by delivery service, upon receipt thereof; or (ii) if mailed, three days after deposit in the U.S. mail, postage prepaid. All notices shall be addressed to the parties at the addresses specified on an Order.

**9.9 Headings; Counterparts.** The headings contained in this Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement. This Agreement may be executed in two or more original or facsimile counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.

**9.10 No Third Party Beneficiaries.** Nothing contained in this Agreement is intended, or shall be interpreted, to create third party beneficiaries of or under this Agreement.