
End User License Agreement eMembership

IMPORTANT — READ THIS AGREEMENT CAREFULLY

This end user license agreement (“EULA”) is a legal contract between You (either an individual or a single entity) and Winmill Software, Inc. (“Winmill”) for the eMembership Software product that Winmill licenses to You. **WINMILL IS WILLING TO LICENSE THE SOFTWARE TO YOU ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS AND CONDITIONS IN THIS EULA. YOU ACCEPT AND AGREE TO BE BOUND BY THE TERMS OF THIS EULA BY USING THE SOFTWARE. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON, COMPANY, OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS.**

1. DEFINITIONS

- 1.1 **Affiliates:** means an entity that is directly or indirectly controlled by or is under common control with such party, where “control” means an ownership, voting or similar interest representing fifty percent (50%) or more of the total interests then outstanding of the relevant entity.
- 1.2 **Client:** means a Device running, accessing or utilizing, directly or indirectly, the ServerSoftware.
- 1.3 **Confidential Information means:** (i) the Software and Documentation; (ii) the technology, ideas, know-how, documentation, processes, algorithms and trade secrets embodied in the Software; (iii) any software keys related to the Software; and (vi) any other information in written or electronic media that is identified as “confidential,” “proprietary” or with a similar legend at the time of such disclosure.
- 1.4 **Data:** means information about your organization that is stored in the Software (or stored on our servers and accessed *via* the Software), whether loaded by initial data conversion, data entry, subsequent data upload, or any other means.
- 1.5 **Device:** means any physical or virtual environment, node, server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.
- 1.6 **Documentation:** means documentation regarding the Software that is provided or made available to You by Winmill either as prepackaged documentation or as work for hire, either in print or electronic form, and which may include end user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software.
- 1.7 **Equipment:** means any physical asset, sub-component or grouping thereof.
- 1.8 **EULA:** means this end user license agreement.
- 1.9 **Feature:** means an add-on functionality and libraries to the Software.
- 1.10 **Letter of Agreement:** means the signed agreement related to the use of the Software that is signed by You containing, or referencing, specific information regarding the Scope and License Term.
- 1.11 **License Term:** means the duration of the Software license as specified in the Letter of Agreement or other agreement between the parties.



1.12 **License Type:** means, with regard to the Software, a user license, a Server license, a Capacity Based license or a Named Software license. The License Types may be used individually or in combination with other License Types.

1.13 **Production Environment:** is the live computer environment where the Software is being used by You for its intended purpose. Production Environment is not a development, testing or staging environment.

1.14 **Reseller/OEM Product:** means a product into which a system integrator or original equipment manufacturer has integrated the Software.

1.15 **Scope:** is the collection of services that Winmill will provide to You in conjunction with the implementation of Software. Documentation that defines Scope is referenced in a Letter of Agreement.

1.16 **Server:** means any Device that hosts Server Software and can be run, accessed, or used by another Device.

1.17 **Software:** includes any of the following: Winmill's computer software, programs, technology, cloud application, services, firmware and associated media and any updates, upgrades or enhancements thereto, or portions thereof including but not limited to Winmill's eMembership software.

1.18 **Third Party Software:** means third-party software furnished with or as part of the Software.

1.19 **You:** means the purchaser or licensee of the Software and/or the user of the Software.

1.20 **Winmill :** means Winmill Software, Inc., a Nevada corporation, and its Affiliates, having a principal place of business at 1501 Broadway, 12th Floor New York, NY 10036.

2. GRANT OF LICENSE

2.1 This EULA grants access to the Software by an unlimited number of Your employees or Your authorized contractors from any location, for the License Term specified in Your initial Letter of Agreement or subsequent renewal Letters of Agreement.

2.2 Subject to Your compliance with all the terms and conditions of this EULA, Your timely payment of any applicable implementation fee, license fee, maintenance and support fee, and/or hosting fee, and Your compliance with the activation process if applicable, Winmill grants You a limited, personal, nontransferable, non-exclusive license during the License Term to use the Software for Your own internal business purposes. You are responsible for ensuring your personnel and authorized contractors comply with all relevant terms of this EULA and any failure to comply will constitute a breach by You. Any use of the Software by authorized contractors shall be solely for Your internal business purposes.

2.3 You are responsible for all telecommunication or Internet connections and associated fees required to access or use the Software, as well as all hardware and software on Your site.

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- You may not reverse assemble, reverse engineer, decompile, translate or create derivative works based on the Software or Documentation. You may not work around or bypass any technical restrictions or limitations in the Software.
- You may not use the Software or Documentation to make Software training materials to be sold, licensed, used, or distributed, except for Your internal use of Documentation copied in



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- Except as expressly stated herein, You may not sublicense, rent, resell, lease, or transfer the Software without Winmill's prior written consent.
- You may not use the Software beyond the License Type or License Term You have purchased in your Letter of Agreement.
- You may not use any Confidential Information to contest the validity of any intellectual property of Winmill or its licensors.

3.3 Other Restrictions:

- You may not use any tool, utilities, programming techniques or command lines to provide enhanced interfacing to the Software beyond authorized Winmill available interfaces.

4. NO WARRANTY

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4.3 THE SOFTWARE MAY BE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET OR BE USED IN CONNECTION WITH HARDWARE AND OTHER PRODUCTS THAT ARE CONNECTED TO THE INTERNET. YOU ACKNOWLEDGE AND AGREE THAT WINMILL DOES NOT OPERATE OR CONTROL THE INTERNET AND THAT: (I) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIRABLE DATA OR SOFTWARE; OR (II) UNAUTHORIZED USERS (G., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE YOUR DATA, WEB-SITES, COMPUTERS, OR NETWORKS. WINMILL WILL NOT BE RESPONSIBLE FOR THOSE ACTIVITIES.

4.4 SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

5. LIMITATION OF REMEDIES

- Winmill agrees to use reasonable efforts to correct any defects in the Software. If Winmill is unable, through reasonable efforts and after a reasonable period of time, to correct defects in the Software so



that the Software substantially functions as intended, Your sole remedy is to terminate this EULA upon 30 days written notice to Winmill. If the Software defects are not corrected by the 30th day after your notice of termination, your obligations under this EULA will terminate and Winmill will, as its sole obligation to You, refund to you any pre-paid license fees that accrue during the period following termination of this EULA.

6. SUPPORT SERVICES:

Winmill shall provide managed services to support Your implementation of the Software, according to the most recent eMembership Hosting Terms, which are available on the Winmill website <https://winmill.com/about-us/terms.aspx>.

7. INDEMNIFICATION:

Winmill will pay costs and damages finally awarded in any suit against You to the extent based on a finding that the design of Software licensed hereunder by Winmill infringes any patent, utility model, copyright, or trademark granted or registered in the United States, provided that You: (i) promptly inform Winmill of the alleged infringement in writing; (ii) provide Winmill the exclusive right to defend and settle the suit, at Winmill's expense; and (iii) provide all reasonable information and assistance requested for the defense. Winmill shall have no liability for any infringement that is based upon or arises out of: (a) compliance with Your instructions, specifications, designs or Software modifications required by You; (b) use of Software in Your or a third-party process; (c) combinations with other equipment, software or materials not supplied by Winmill; or (d) if applicable, Your failure to implement any update to the Software furnished by Winmill. In the event any Software is determined or believed by Winmill to infringe the rights of a third party, Winmill may, at its sole option and expense, elect to: (a) modify the Software so that it is non-infringing, (b) replace the Software with non-infringing Software that is functionally equivalent or superior in performance, (c) obtain a license for You to continue to use the Software as provided hereunder, or (d) if none of the foregoing can be achieved despite the reasonable efforts of Winmill, terminate the license for the infringing Software and refund to You the license fees paid by You for such Software during the period that You were unable to use the Software due to such infringement, prorated over sixty (60) months from the date of this EULA on a straight-line basis. The foregoing states the sole and exclusive obligations of Winmill for intellectual property infringement.

8. LIMITATION OF LIABILITY

8.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WINMILL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION OR DATA, FOR BUSINESS INTERRUPTION, FOR LOST SAVINGS, FOR LOSS OF PRIVACY, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THIS EULA OR THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2 SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

8.3 WINMILL'S MAXIMUM CUMULATIVE LIABILITY RELATIVE TO ALL CLAIMS AND LIABILITIES, INCLUDING THAT WITH RESPECT TO DIRECT DAMAGES AND OBLIGATIONS UNDER ANY INDEMNITY, WHETHER OR NOT INSURED, WILL NOT EXCEED THE INITIAL IMPLEMENTATION (PER THE ORIGINAL



LETTER OF AGREEMENT) FEES PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM OR LIABILITY DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY.

8.4 ALL OF THE DISCLAIMERS AND LIMITATIONS OF REMEDIES AND/OR LIABILITY THROUGHOUT THIS EULA WILL APPLY REGARDLESS OF ANY OTHER CONTRARY PROVISION OF THIS EULA OR ANY OTHER AGREEMENT BETWEEN YOU AND WINMILL AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE.

9. TERM AND TERMINATION

9.1 This EULA takes effect upon Your use of the Software in a Production Environment and remains effective until terminated for any reason. This EULA will also automatically terminate if You fail to comply with any term or condition of this EULA. You agree upon termination of this EULA to cease using the Software. This EULA shall terminate after the period of the subscription or Licensed Term has lapsed. Termination of this EULA will automatically terminate all licenses granted herein. The protections in this EULA relating to intellectual property protection, confidentiality, disclaimers, and liability limitations shall survive any termination or expiration of this EULA.

9.2 This Software will cease to operate at the expiration of your License Term or earlier termination of this License.

9.3 Your early termination of this EULA for any reason other than a Winmill breach shall result in immediate payment by you of all remaining licensing fees, support and/or hosting fees, through the end of the full term designated by Your then-active Letter of Agreement. You shall also pay Winmill a *pro rata* amount, based on the percentage of work complete, of any fees associated with in-process enhancements to the Software requested by You.

10. PREPRODUCTION RELEASES

10.1 As an accommodation to You, Winmill may provide You with a preproduction release of the Software (often labeled a "beta release" or "preview release"). These releases are for testing purposes and are not suitable for production use.

10.2 Such releases are provided on an "as is" basis, WITHOUT WARRANTIES OF ANY KIND. USE OF BETA RELEASES IS AT YOUR SOLE RISK.

11. GOVERNMENT RESTRICTED RIGHTS:

If You are a branch or agency of the United States Government, the following provision applies. The Software and Documentation are comprised of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 (SEPT 1995) and are provided to the Government (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 (JUN 1995) and 227.7202-3 (JUN 1995).

12. EXPORT CONTROLS:

The Software and Documentation supplied by Winmill under this EULA are subject to export controls under the laws and regulations of the United States ("U.S.") and any other applicable countries' laws and regulations. You shall comply with such laws and regulations governing export, re-export, import, transfer and use of Winmill Software and Documentation and will obtain all required U.S. and local authorizations, permits, or licenses. You and Winmill each agree to provide the other information, support documents,



and assistance as may reasonably be required by the other in connection with securing authorizations or licenses.

13. AUDIT:

You agree that Winmill may audit Your use of the Software for compliance with these terms, upon reasonable notice. You agree to cooperate fully with Winmill and its authorized agents in any such audit to assist in accurately determining Your compliance with the terms and conditions of this EULA. Winmill and its authorized agents will comply with Your reasonable security regulations while on Your premises. In the event that such audit reveals any use of the Software by You other than in full compliance with the terms of this EULA, You shall reimburse Winmill for all reasonable expenses related to such audit in addition to any other liabilities You may incur as a result of such non-compliance.

14. OWNERSHIP

14.1 The Software and Documentation are protected by copyright and other intellectual property laws and treaties. Winmill retains the title, copyright, and other intellectual property rights in the Software and Documentation. You do not acquire any rights, express or implied, other than those expressly granted in this EULA. The Software and Documentation are licensed, not sold. Nothing in this EULA constitutes a waiver of our rights under U.S. or international copyright law or any other law.

14.2 You may provide Winmill with suggestions, comments or other feedback with respect to the Software. Feedback is voluntary. Winmill may use feedback for any purpose, including improvement of the Software, without obligation or restriction of any kind. Winmill retains the sole title, copyright, and other intellectual property rights all improvements and enhancements to the Software even if such enhancement were based on Your suggestions or feedback. You have no rights in any of the improvements or enhancements to the Software.

14.3 You agree that a material breach of this EULA adversely affecting Winmill's intellectual property rights may cause irreparable injury to Winmill for which monetary damages would not be an adequate remedy, and Winmill shall be entitled to seek equitable relief in addition to any remedies it may have hereunder or at law.

15. CONFIDENTIAL INFORMATION:

You shall not use or disclose any Confidential Information, except as expressly authorized by this EULA, and shall protect all such Confidential Information using the same degree of care which You use with respect to Your own similarly valuable proprietary information, but in no event with safeguards less than a reasonably prudent business would exercise under similar circumstances. You shall take prompt and appropriate action to prevent unauthorized use or disclosure of the Confidential Information.

16. DATA:

Your Data in the Software belongs to You. Winmill shall not use it any way other than to support Your use of the Software. You may request a full database extract of your Data from Winmill at no charge twice in any given calendar year; You may request additional extracts of your Data at any time for an additional service fee. Upon termination of this EULA and Your use of the Software, Winmill shall provide to You a complete and current copy of Your Data in database extract form, and shall then delete all copies of Your Data from Winmill systems.



17. ASSIGNMENT:

You may not assign this EULA, in whole or in part, without Winmill's prior written consent. Any attempt to assign this EULA without such consent will be null and void. Subject to the foregoing, this EULA will bind and inure to the benefits of each party's permitted successors and assigns.

18. GOVERNING LAW:

This EULA shall be governed by the laws of the State of New York, without regard to any conflict of laws provisions. The United Nations Convention on the International Sale of Goods will not apply. You agree to bring any action in connection with this EULA or the Software exclusively in the state or federal courts of New York, and You further agree to the jurisdiction of the state and federal courts of New York for any action that Winmill brings against You.

19. THIRD PARTY SOFTWARE:

The Software may be integrated with third party software which requires You to accept and be bound by notices and/or additional terms and conditions. Winmill does not resell or profit from the use of third-party software; You will be required to contract directly with any such third parties, and accept any terms and conditions as required.

20. MISCELLANEOUS

20.1 This EULA, and any amendment or addendum to this EULA that accompanies the Software, is the complete and exclusive agreement between Winmill and You, and supersede all prior agreements, whether written or oral, relating to the Software provided and the Documentation. No additional or different terms in any purchase order or other similar document furnished by You will be binding on Winmill and all such terms are deemed rejected. This EULA may not be changed or modified except by an instrument in writing signed by a duly authorized representative of Winmill. If for any reason a court of competent jurisdiction finds any provision of this EULA or portion thereof, to be unenforceable, that provision of the EULA shall be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this EULA shall continue in full force and effect.

20.2 The parties acknowledge that they have required the EULA to be drafted in English. In the event of a conflict between the English and other language versions, the English version will prevail.