



## *Managed Services Provider Agreement*

### **1. INTRODUCTION**

- 1.1. This Managed Services Provider Agreement (“**MSPA**”) between Winmill Software, Inc., (“**Winmill**”), and your organization, (“**Customer**”), is effective on the date set forth in the referencing Transaction Document which identifies the “**Start Date**” and specifies the terms and conditions agreed between the Parties as a foundation for their relationship as further defined in the applicable Modules.
- 1.2. With respect to the Product Offering, additional terms shall be included in a Module, while terms specific to each individual order from Customer shall be set forth in the Transaction Document(s) for such order.
- 1.3. This MSPA may incorporate any applicable Module referenced in the “**Governing Contract**” section of the applicable Transaction Document.

### **2. DEFINITIONS**

- 2.1. “**Agreement**” means this MSPA, the applicable Module, the applicable Transaction Document, and any document incorporated expressly therein by reference.
- 2.2. “**Affiliate**” means any person or entity which directly or indirectly owns, controls, is controlled by, or is under common control with a party, where control is defined as owning or directing more than fifty percent (50%) of the voting equity securities or a similar ownership interest in the controlled entity.
- 2.3. “**Confidential Information**” means any information, maintained in confidence by the disclosing Party, communicated in written or oral form, marked as proprietary, confidential, or otherwise so identified, or any information that by its form, nature, content, or mode of transmission would be deemed confidential or proprietary to a reasonable recipient, including, without limitation, Product Offerings, Documentation, the Agreement, Transaction Documents, Winmill provided pricing, and any benchmarking data or results.
- 2.4. “**Documentation**” means the technical product specifications or user manuals published by Winmill and/or Original Manufacturer.
- 2.5. “**Licensed Software**” means the computer software of the Original Manufacturer(s) that the Original Manufacturer has authorized Winmill to make available and license to Customer pursuant to this Agreement and under the applicable Module pursuant to the applicable Transaction Document. Licensed Software may be provided individually or packaged as a software appliance and includes all versions and releases provided in the Winmill Maintenance Manual, if applicable.
- 2.6. “**Module**” means the additional terms and conditions applicable to services provided by Winmill or a Product Offering. If a Product Offering includes both on-premises software and SaaS, then each applicable Module applies.
- 2.7. “**Order Confirmation**” means an electronic receipt, issued by Winmill, confirming the Product Offering title, version, quantity (based on metric, meter and/or model), and Support acquired.
- 2.8. “**Original Manufacturer**” mean the owner of the Licensed Software and its affiliates.
- 2.9. “**Party**” or “**Parties**” means individually and/or collectively Winmill and/or the Customer.
- 2.10. “**Personal Data**” means any information relating to (i) an identified or identifiable person and, (ii) an identified or identifiable legal entity (where such information is protected similarly as personal data or personally identifiable information under applicable data protection laws), provided in connection with the Agreement.
- 2.11. “**Product Offering**” means the individual offering (such as software, services, education, software as a service, or support) licensed to Customer by Winmill pursuant to this Agreement.

- 2.12. **“Product-Specific Terms and Conditions” or “PSTC”** means that separate document entitled “Winmill Product-Specific Terms and Conditions” that provides additional terms and conditions related to the specific SaaS and on-premises software Product Offerings being offered to Customer. The Product-Specific Terms and Conditions include the operating parameters, data and data center location(s), applicable audit standards, availability standards and any other details for the specific Product Offerings as published or made available by Winmill. The Product-Specific Terms and Conditions may define provisioning and management processes.
- 2.13. **“Taxes”** means any applicable sales tax, value-added tax (VAT), goods and services tax (GST), consumption tax, ISS, PIS and COFINS or any other applicable taxes.
- 2.14. **“Term”** means the period during which the Product Offering is provided as specified in the Transaction Document.
- 2.15. **“Transaction Document”, “Order Form”, or “Order”** means a mutually agreed ordering document such as a Winmill quote, order form, or statement of work for the specific Product Offering licensed or purchased. Either Transaction Documents are executed or, in the case of a quote and purchase order (“PO”), a PO referencing such quote is issued and that issuance constitutes acceptance of the quote and formation of contract.
- 2.16. **“Winmill Maintenance Manual”** means that certain Winmill support and maintenance manual for the Products Offerings as it may be revised from time to time by Winmill. The current version of the Winmill Maintenance Manual may be found here: <https://www.winmill.com/terms>.

### **3. ORDERING AND DELIVERY**

- 3.1. Under the terms of this Agreement and subject to the terms of the applicable Module(s), Customer and any Customer Affiliate incorporated in the same jurisdiction as Customer, may purchase Product Offerings directly from Winmill, and Winmill shall provide the specific Product Offering. All Customer Affiliates incorporated in a different jurisdiction than Customer, must sign a participation agreement with Winmill to adopt and adhere to the terms of this Agreement.
- 3.2. The Product Offerings will be delivered by electronic delivery (ESD).
- 3.3. In the event of a payment or set off issue relating to one Product Offering, such payment issue will not impact any other obligation to pay for any Product Offering provided to Customer.

### **4. CONFIDENTIALITY**

- 4.1. The Parties agree that, when receiving Confidential Information from the disclosing Party, the receiving Party shall hold it in confidence and shall not disclose nor use such information except as necessary to carry out the purpose of this Agreement. The receiving Party shall treat the disclosing Party’s Confidential Information confidentially and in the same manner as it treats its own proprietary and/or confidential information, which shall not be less than a reasonable standard of care. Confidential Information may be disclosed to receiving Party’s employees, affiliates, agents, financial advisors, contractors, and attorneys on a need-to know basis and the receiving Party shall ensure that such persons preserve and use such Confidential Information pursuant to the terms of the Agreement.
- 4.2. The receiving Party may disclose Confidential Information in connection with a judicial or administrative proceeding to the extent that such disclosure is required under applicable law or court order, provided that the receiving Party shall, where reasonably possible, give the disclosing Party prompt and timely written notice of any such proceeding and shall offer reasonable cooperation in any effort of the disclosing Party to obtain a protective order.

- 4.3. For the purposes of the Agreement, the term “Confidential Information” excludes: (i) information which the receiving Party has been authorized in writing by the disclosing Party to disclose without restriction; (ii) information which was rightfully in the receiving Party’s possession or rightfully known to it prior to receipt of such information from the disclosing Party; (iii) information which was rightfully disclosed to the receiving Party by a third Party having proper possession of such information, without restriction; (iv) information which is part of or enters the public domain without any breach of the obligations of confidentiality by the receiving Party; and (v) information which is independently developed by the receiving Party without use or reference to the disclosing Party’s Confidential Information.
- 4.4. Nothing in the Agreement will (i) preclude Winmill from using the ideas, concepts and know-how which are developed in the course of providing any Product Offerings to Customer or (ii) be deemed to limit Winmill’s rights to provide similar Product Offerings to other customers. Customer agrees that Winmill may use any feedback provided by Customer related to any Product Offering for any Winmill business purpose, without requiring consent including reproduction and preparation of derivative works based upon such feedback, as well as distribution of such derivative works.
- 4.5. The receiving Party agrees, upon request of the disclosing Party, to return to the disclosing Party all Confidential Information in its possession or certify the destruction thereof.
- 4.6. In the event of a breach of this section 4, the disclosing Party may not have an adequate remedy at law. The Parties therefore agree that the disclosing Party may be entitled to seek the remedies of temporary and permanent injunction, specific performance, or any other form of equitable relief deemed appropriate by a court of competent jurisdiction. For any Confidential Information that constitutes a trade secret under applicable law, the obligations of this section will continue for so long as such trade secret status is maintained by the disclosing Party. For all other Confidential Information, the foregoing obligations shall extend for five (5) years from the date of initial disclosure.

## **5. FEES**

- 5.1. To the extent permitted by law, Customer shall issue and provide Winmill a purchase order (“**PO**”), or a series of POs, for the full term and total fees that are due contemporaneously with the execution of each Transaction Document. Winmill reserves the right to invoice Customer for any use of the Product Offerings in excess of the Authorized Use Limitation at Winmill’s then-current list price.
- 5.2. Unless an alternative date of payment is set out on the Transaction Document, payment is due upon the due date specified on the invoice. Customer agrees to pay Taxes in addition to the fees when such payments are due. Customer (a) may only withhold tax as required by law, subject to the application of any reduced rate allowed in an income tax treaty or otherwise, (b) shall request all documentation required for the reduction of withholding tax, and (c) shall provide proof of payment of the withholding tax for credit relative to the applicable invoice(s).
- 5.3. If indicated on the Transaction Document, Customer may pay any initial payment due to Winmill on or before the due date (as stated in the applicable Transaction Document) through a same day fed wire. For other payments required of Customer due to Winmill, Winmill will send Customer an at least thirty (30) days prior to each respective due date. Winmill reserves the right to change credit or payment terms at Winmill’s discretion if Customer’s financial condition or previous payment history so warrant.
- 5.4. A Customer issued PO may be used to accept terms of a Transaction Document in place of a signature on the Transaction Document, provided that Customer references the Transaction Document in the PO and includes the appropriate reference number, if applicable.
- 5.5. If a payment due date falls on a weekend or a holiday the payment shall be payable by Customer to Winmill

on the business day immediately prior to such date.

- 5.6. Failure to timely remit payment of all amounts set forth in a Transaction Document or under any other agreement with any Winmill entity after written notice from Winmill and a reasonable opportunity to remit such payment by Customer and to the full extent permitted by applicable law, shall (1) relieve Winmill of any support obligations hereunder, and (2) suspend all Customer subscription use rights until payment is tendered at which time use rights and support shall recommence. Winmill reserves the right to impose late fees as may be permitted by law on any past due amounts.
- 5.7. During the Term of any Transaction Document, Winmill may increase the fees under the Transaction Document for the Product Offerings up to 7% annually by providing Customer with advance notice in writing no fewer than ninety (90) days prior to such changes taking place.
- 5.8. Winmill may assign its payment rights in, or grant a security interest in, this Agreement and any associated Transaction Document to a third party without requiring such third party to be liable for the obligations of Winmill under this Agreement or Transaction Document, provided that (1) Winmill remains directly responsible for performance of its duties hereunder, and (2) Customer's obligations are not otherwise affected.

## **6. TITLE**

- 6.1. The applicable Original Manufacturer and/or Winmill retains all right, title, copyright, patent, trademark, trade secret and all other proprietary interests to all Product Offerings and any derivatives thereof. No title, copyright, patent, trademark, trade secret or other right of intellectual property not expressly granted under the Agreement is exchanged between the Parties. Customer shall give immediate written notice to Winmill of any claim of infringement of which it becomes aware with respect to any of the intellectual property (i.e. copyright, patent, trademark, trade secret or any other intellectual property right) of Original Manufacturer and/or Winmill. Customer agrees not to use, copy, modify, transfer, download, merge, or make any translation or derivative work of Original Manufacturer and/or Winmill except as expressly provided in this MSPA. In no event shall the Customer: (i) cause or permit the disassembly, reverse compilation or other decoding of any software of Original Manufacturer and/or Winmill; or (ii) remove or destroy any copyright notices, other proprietary markings or confidentiality legends placed upon or contained within any software of other information of Original Manufacturer and/or Winmill. Customer further agrees not to impair or infringe Original Manufacturer's and/or Winmill's intellectual property and shall maintain the same free of all liens, taking all reasonable steps to confirm proper ownership of and title in such intellectual property.

## **7. WARRANTY**

- 7.1. Each Party represents and warrants that it has the legal power to enter into the Agreement.
- 7.2. Winmill represents and warrants that it owns or otherwise has sufficient rights to grant Customer the rights defined in any Transaction Document and/or Module.
- 7.3. CUSTOMER ACKNOWLEDGES AND AGREES THAT IT IS SOLELY RESPONSIBLE FOR (1) SELECTING CONFIGURATIONS, POLICIES, AND PROCEDURES IN THE PRODUCT OFFERING(S) THAT ARE CONFIGURABLE INCLUDING, WITHOUT LIMITATION, THE SELECTION OF FILTERED CATEGORIES AND WEB APPLICATION CONTROLS, AND FOR ASSURING THAT THE SELECTION (A) CONFORMS TO CUSTOMER'S POLICIES AND PROCEDURES AND (B) COMPLIES WITH ALL APPLICABLE LAWS.
- 7.4. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ABOVE WARRANTIES AND THOSE SET FORTH WITHIN THE APPLICABLE TRANSACTION DOCUMENTS AND/OR MODULES ARE THE SOLE WARRANTIES PROVIDED BY WINMILL. NO OTHER WARRANTIES, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE,

NONINFRINGEMENT, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, INCLUDING THAT THE PRODUCT OFFERING WILL OPERATE UNINTERRUPTED OR IS ERROR FREE, OR ANY WARRANTY ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE, RELATING TO THE PRODUCT OFFERINGS, ARE MADE BY WINMILL OR ITS SUPPLIERS.

## **8. INDEMNIFICATION**

- 8.1. Winmill will indemnify, defend and/or, at its option, settle any third party claims that Customer's use of the specific Product Offering licensed or purchased by Customer under this Agreement infringes any valid US patent or copyright within the jurisdictions where Customer is authorized to use the Product Offering at the time of delivery provided that: (i) Customer gives Winmill prompt written notice thereof and reasonable cooperation, information and assistance in connection therewith; (ii) Winmill shall have sole control and authority with respect to defense or settlement thereof; and (iii) Customer takes no action that is contrary to Winmill's interest. Winmill may, at its option and expense: (a) procure for Customer the right to continue to use the Product Offering; (b) repair, modify or replace the Product Offering so that it is no longer infringing; or (c) provide a pro-rated refund of the fees paid for the Product Offering which gave rise to the indemnity calculated against the remainder of the Term from the date it is established that Winmill is notified of the third party claim. If the Product Offering is Licensed Software, and is licensed on a perpetual basis, an amortization schedule of three (3) years shall be used for the basis of the refund calculation.
- 8.2. Winmill shall have no liability: (i) in the event the allegation of infringement is a result of a modification of the Product Offering except a modification by Winmill, (ii) if the Product Offering is not being used in accordance with Winmill's specifications, related documentation and guidelines, (iii) if the alleged infringement would be avoided or otherwise eliminated by the use of a Winmill published update or patch, (iv) if the alleged infringement is a result of use of the Product Offerings in combination with any third party product, (v) any Deliverable provided by Winmill in accordance with Customer's specifications, (vi) any claim relating to open source software or freeware technology that is not embedded by Winmill into the Product Offerings, (vii) any Product Offering provided on a no-charge, beta, or evaluation basis, or (viii) if the applicable fees due for the specific Transaction Document have not been paid or Customer is otherwise in breach of this Agreement. The indemnifications contained herein shall not apply and Winmill shall have no liability in relation to any Product Offering produced by Winmill at the specific direction of Customer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE FOREGOING PROVISIONS STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF WINMILL REGARDING CLAIMS OF INFRINGEMENT, AND THE EXCLUSIVE REMEDY AVAILABLE TO CUSTOMER WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS.
- 8.3. Each Party shall indemnify the other against all damages, fees, (including reasonable attorney's fees) fines, judgments, costs and expenses finally awarded as a result of a third-party action alleging a bodily injury or death which arises under the Agreement, provided that such liabilities are the proximate result of gross negligence or intentional tortious conduct on the part of the indemnifying Party.
- 8.4. Customer shall indemnify Winmill against any claim that any data, materials, items, or information supplied to Winmill under the Agreement infringes any US patent, copyright, or trademark within the jurisdictions where Winmill is provided with such information.

## **9. LIMITATION OF LIABILITY**

- 9.1. EXCEPT IN THE CASE OF A BREACH OF CONFIDENTIALITY, TITLE, AND OF THIRD PARTY CLAIMS ARISING UNDER THE INDEMNIFICATION SECTION, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW A) NEITHER PARTY (INCLUDING ANY OF WINMILL'S SUPPLIERS) SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES OF ANY NATURE, INCLUDING, BUT NOT NECESSARILY

LIMITED TO, LOSS OF PROFIT, DAMAGES RELATING TO MONIES SAVED OR FEES GENERATED AND OR ANY LOSS OF CUSTOMER DATA BY USE OF ANY PRODUCT OFFERING OR ANY SERVICES PROVIDED, REGARDLESS OF WHETHER A PARTY WAS APPRISED OF THE POTENTIAL FOR SUCH DAMAGES; AND B) IN NO EVENT WILL A PARTY'S LIABILITY FOR DIRECT DAMAGES, EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE PRODUCT OFFERING OR SERVICES THAT GAVE RISE TO THE BREACH IN THE TWELVE MONTHS PRIOR TO THE DATE SUCH BREACH OCCURRED. 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. WINMILL'S SUPPLIERS HAVE NO LIABILITY UNDER THE AGREEMENT, AND CUSTOMER MAY NOT BRING CLAIMS DIRECTLY AGAINST THEM.

- 9.2. IN NO EVENT SHALL CUSTOMER'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 MODULE, AND THAT THE PRICES OF SERVICES AND PRODUCTS ARE DETERMINED IN PART BY TAKING INTO ACCOUNT THE EXISTENCE OF THE LIMITATIONS.
- 9.3. WINMILL'S AGGREGATE LIABILITY FOR CUSTOMER'S USE OF ANY LICENSED SOFTWARE ON AN EVALUATION BASIS WILL NOT EXCEED \$5,000 USD.

## **10. TERM & TERMINATION**

- 10.1. This MSPA shall continue in effect unless otherwise terminated in accordance with this section.
- 10.2. This MSPA, applicable Module(s), and the applicable Transaction Document may be terminated by either Party (a) upon a material breach by the other Party, provided that, in each instance of a claimed breach: (i) the non-breaching Party notifies the breaching Party in writing of such breach; and (ii) the breaching Party fails to cure such breach within thirty (30) days (or such other period as mutually agreed by the Parties) from receipt of such notice; (b) upon insolvency of the other Party, if permitted by law. The foregoing notwithstanding, any breach by Customer of licenses or rights granted pursuant to this Agreement will constitute an incurable material breach by Customer; and, Winmill may immediately terminate all of Customer's use rights and licenses, (subscription-based, perpetual, access, and use), upon written notice to Customer, and Customer must either: a) delete all full or partial copies of the Licensed Software and SaaS instances from all computing or storage equipment and verify such deletion in a statement signed by a Vice-President or a duly authorized representative sent to [ppmsupport@winmill.com](mailto:ppmsupport@winmill.com), or b) return to Winmill all full or partial copies of the Licensed Software. Such termination shall not relieve Customer from its obligations as set forth within the related Transaction Document.
- 10.3. Termination does not release either Party from any liability which, at the time of such termination, had already accrued to the other Party or which is attributable to a period prior to such termination, nor preclude either Party from pursuing any rights or remedies it may have under law or in equity with respect to any breach of this MSPA or the Agreement. In the event of termination by Winmill for an uncured material breach by Customer, all fees shall immediately become due and payable.
- 10.4. On or after the termination date, with the exception of any Fully Paid-Up perpetual licenses (where the amount of "Fully Paid-Up" licenses will equal the total whole number of licenses earned prior to the termination and are assumed to be paid for equally over the initial term of the associated Support Services), Customer must either: a) delete all full or partial copies of the Licensed Software from all computing or storage equipment, and verify such deletion in a statement signed by a Vice-President or a duly authorized representative and sent to [ppmsupport@winmill.com](mailto:ppmsupport@winmill.com), or b) return to Winmill all full or partial copies of the



Licensed Software.

- 10.5. Once Customer’s verification or the Licensed Software copies are received and only if the termination is due to a default by Winmill, Winmill will pay Customer, a pro-rata refund of any License, SaaS/Cloud Service, Support Services, or other fees Customer pre-paid (“Refund Fees”) in accordance with the paragraph below. Refund Fees will be calculated on the number of days remaining in the term (which for the purposes of this calculation will be deemed to commence from the date Customer’s verification or the Licensed Software copies are received) of the offering eligible for the refund. If the Licensed Software is licensed as a perpetual license and the associated Support Services is in its initial term, Customer, will receive a pro-rated refund of the cash consideration paid to Winmill based on the initial payment schedule and shall be entitled to keep the whole number of perpetual licenses Fully Paid-Up through such date, absent language to the contrary in the applicable order.
- 10.6. An Order may not be terminated without cause.

**11. GOVERNING LAW AND DISPUTE RESOLUTION**

- 11.1. **Choice of Law; Venue.** The exclusive governing law, jurisdiction, designated arbitral body, arbitration rules and seat shall be as set forth below; except for any action related to non-payment, which may be brought in any court of competent jurisdiction:

Governing Law	Jurisdiction	Arbitration Organization, Rules, and Seat
State of New York	State and/or Federal Courts located in Manhattan, New Jersey	The American Arbitration Association (“AAA”); AAA Commercial Arbitration Rules; Seat of arbitration in Manhattan, New York.

The Agreement will not be governed by the following, the application of which is hereby expressly excluded: (a) the conflict of law rules of any jurisdiction, (b) the United Nations Convention on Contracts for the International Sale of Goods, and (c) the Uniform Computer Information Transactions Act, as enacted in any jurisdiction. The Parties further agree to accept service of process in accordance with the rules/procedures of the arbitral body or relevant court (as applicable), except that the Parties hereto irrevocably waive any objection that service of process must conform to the Hague Service Convention or other applicable law or treaty regarding service of process.

- 11.2. **Dispute Resolution.** Any dispute, claim or controversy arising out of relating to this MSPA (“**Dispute**”) shall be resolved as provided in this Section.
  - 11.2.1. **Mediation.** The Parties shall attempt to resolve all Disputes by mediation administered by the American Arbitration Association in accordance with its Mediation Procedures in effect on the date of this MSPA, unless Winmill and Customer 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.

11.2.2. Arbitration. Except as set forth in this paragraph, any Dispute which is not resolved by mediation as set forth above, shall be resolved by confidential arbitration. The place of the arbitration, governing law and applicable rules shall be as set forth in Section 11.1 (Choice of Law; Venue). The arbitral tribunal shall consist of three (3) arbitrators: one selected by each Party, and the third to be agreed upon by the Parties (and if agreement cannot be reached, designated by the arbitral body), which third arbitrator shall be the Chairperson. The language of the arbitration shall be English. The dispute shall be finally settled within twelve (12) months after constitution of the arbitral tribunal. The Parties agree to request a written explanation/opinion in connection with any award. Judgment on the award rendered by the arbitrators may be enforced in any court having jurisdiction thereof. Notwithstanding anything to the contrary in this paragraph, either Party may: (i) apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory injunctive relief; or (ii) seek redress in any court of competent jurisdiction in order to enforce its intellectual property rights or protect Confidential Information. The Parties shall have a right to appeal an arbitral award to a court of competent jurisdiction in order to set aside the award.

11.3. In any formal action or proceeding arising from a Dispute or relating to non-payment, the prevailing Party shall be entitled to recover its costs and reasonable attorneys' fees from the other Party.

## 12. GENERAL TERMS

12.1. Amendments. The terms of the Agreement may only be amended by mutual written agreement of the Parties.

12.2. No Hiring. During the term of this MSPA and for one (1) year thereafter, neither party will (a) solicit any employee or contractor of the other party for employment, or for engagement as a contractor, or (c) hire as an employee or engage as a contractor. For purposes of clarification, the phrase "solicit" will not include any employment of the other party's personnel through the means of public advertisements or job postings. Violation of this prohibition shall result in the violating party immediately paying to the violated party twice the employee's annual compensation.

12.3. Force Majeure. Except for payment obligations and obligations pertaining to non-disclosure, notwithstanding any contrary provision in the Agreement, neither Party will be liable for any action taken, or any failure to take any action required to be taken, in the event and to the extent that the taking of such action or such failure arises out of causes beyond a Party's control, including, without limitation, war, civil commotion, act of God, pandemic, epidemic, strike or other stoppage (whether partial or total) of labor, any law, decree, regulation or order of any government or governmental body (including any court or tribunal).

12.4. Order of Precedence. Any conflict or inconsistency among or between the terms and conditions of the documents comprising the Agreement shall be resolved according to the following order of precedence, from the document with the greatest control to the least: (1) the Transaction Document; (2) if applicable, the Original Manufacturer's global Data Processing Addendum (DPA) to the extent one is in place between the Parties, (3) the applicable Product-Specific Terms and Conditions, (4) the relevant Module; (5) this MSPA. Notwithstanding this Order of Precedence, any terms that may appear on a Customer's purchase order that vary from the Agreement (including without limitation pre-printed terms) shall be deemed null and void.

12.5. 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 CUSTOMER, 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 MSPA SHALL SUPERSEDE ANY AND ALL TERMS IN ANY PURCHASE ORDER.

- 12.6. **Independent Contractors.** The Parties expressly agree that the relationship between them is that of customer-independent contractor. Neither party is, nor shall be considered to be, an agent, distributor, partner, joint venturer or representative of the other party for any purpose, and neither party shall have the authority to act on behalf of, or in the name of, or to bind the other party in any manner whatsoever.
- 12.7. **Personal Data.** Related to the provision of the Product Offerings where Broadcom, Inc. ("Broadcom") is the Original Manufacturer.
- 12.7.1. **Broadcom as Controller.** Broadcom may process limited Personal Data as a controller in accordance with, and for the purposes defined in, Broadcom's Privacy Policy available at <https://www.broadcom.com/privacy> in compliance with applicable data protection laws. Those purposes include: (i) management of Customer relationship; (ii) sales administration; (iii) communications related to technical support, new versions or updates; (iv) marketing of Product Offerings; (v) development of threat intelligence for the purposes of ensuring fraud prevention and network and information security; (vi) development and enhancement of the Product Offerings; and (vii) compliance with applicable laws and regulations.
- 12.7.2. **Broadcom as Processor.** Where Broadcom processes Personal Data within Customer Data on behalf of Customer, Broadcom's global Data Processing Addendum (DPA), located at <https://www.broadcom.com/privacy>, applies.
- 12.8. **Assignment.** Neither Party shall assign the Agreement or any of its rights or delegate any of its duties under the Agreement, either by operation of law, agreement, or any other process, without the prior written consent of the other Party, except that Winmill shall have the right to assign the Agreement or any of its rights or delegate any of its duties under the Agreement at any time to any Winmill Affiliate(s), or to a successor in interest of all or substantially all of the business to which the Agreement relates. Subject to the foregoing, the Agreement will be binding upon, enforceable by, and inure to the benefit of the parties and their respective successors and assigns. Any attempted assignment in violation of this section shall be null and void.
- 12.9. **Import/Export.** Customer acknowledges that the Product Offering(s) is subject to import and export laws and regulation, including in the specific case of the U.S. the Export Administration Regulations, and agrees to comply with all applicable import and export laws and regulations. Customer agrees that the Product Offering(s) will not be exported, reexported or transferred in violation of export control laws or used for any purpose connected with chemical, biological or nuclear weapons or missile applications, nor be transferred or resold, if Customer has knowledge or reason to know that the Product Offering(s) are intended or likely to be used for such purpose. Customer represents and warrants that: (a) Customer and any Authorized User, are not, and are not acting on behalf of: (1) any person who is a citizen, national, or resident of, or who is controlled by, the government of any country to which the United States has prohibited export transactions; or (2) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List, or any similar applicable designated persons list.
- 12.10. **Legal Compliance.** Both Parties shall comply with applicable federal, state, local laws, regulations and ordinances, and all other applicable laws and regulations in the performance of this agreement and use of any Product Offering. Winmill may suspend performance if Customer is in violation of applicable laws, regulations, or ordinances or in the event of a security risk to a Product Offering or its users.

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- 12.11. **Critical Applications.** The Product Offerings are not fault tolerant and use of the offerings is prohibited for on-line control equipment in hazardous environments requiring fail-safe performance, such as the operation of aircraft navigation or aircraft communications systems, air traffic control, life support systems, human implantation, nuclear facilities or systems, weapons systems, or any other application where failure of the offering could lead to death, personal injury, or severe physical or environmental damage.
- 12.12. **Announcements.** Neither Party may issue press releases relating to the Agreement without approving the content with the other Party. Either Party may include the name and logo of the other Party in lists of customers or vendors in accordance with the other Party's standard guidelines.
- 12.13. **Marketing.** Customer agrees that Winmill may refer to Customer by name, logo, trade name, service marks and trademarks ("Marks") and may briefly reference Customer's business in Winmill's marketing, promotional and other related materials and on Winmill's web site, and Customer hereby grants Winmill a limited license to do so.
- 12.14. **Notice.** Any notice required or permitted by the Agreement shall be given in writing, will refer to the Agreement and will be personally delivered or sent by a reputable overnight courier service (e.g., FedEx, UPS, DHL, etc.), electronic transmission (email ) or registered or certified mail (return receipt requested) to the other Party's legal department at the address set forth in the Agreement, or such other address as is provided by notice as set forth herein. Notices shall be deemed effective upon electronic confirmation; and if delivered via certified mail or overnight courier, notice shall be deemed effective upon confirmation of delivery.
- 12.15. **Headings.** The section headings used herein are for information purposes only and shall not affect the interpretation of any provision of this Agreement.
- 12.16. **Counterparts.** This MSPA 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.
- 12.17. **Validity.** In the event any term or provision of the Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of the Agreement.
- 12.18. **Third Parties.** This Agreement shall not create any rights in favor of, or any obligations owed by, any third party unless otherwise expressly defined in any Module. The Parties agree that any action arising from this Agreement shall solely be brought by Customer or Winmill.
- 12.19. **Waiver.** Waiver of a breach of the Agreement will not constitute a waiver of any later breach. 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.
- 12.20. **Survival.** Sections pertaining to Dispute Resolution, Choice of Law, Confidentiality, Title, Warranty, Limitation of Liability, Termination, No-Hiring, intellectual property, and Import Export shall survive termination of this MSPA.
- 12.21. **Entire Agreement.** The Agreement and all documents incorporated by reference therein shall comprise the entire agreement as pertaining to the subject matter thereof and all other prior representations, proposals, and other such information exchanged by the Parties concerning the subject matter is superseded in their entirety by the Agreement.



## *On-Premises Software Module*

### 1. INTRODUCTION

- 1.1. This Module for Licensed Software deployed on the Customer's hardware ("**On-Premises Software Module**") between Winmill Software, Inc., ("**Winmill**"), and Customer, ("**Customer**"), is effective on the date set forth in the referencing Transaction Document, and specifies the terms and conditions which apply to Licensed Software that Winmill will license to Customer and the Support that applies. This Module does not apply to Software as a Service (SaaS) product offerings.
- 1.2. This On-Premises Software Module incorporates by reference the terms of the MSPA effective on the date set forth in the referencing Transaction Document between Winmill and Customer. Any capitalized terms used in this On-Premises Software Module shall have the meanings given in the MSPA unless otherwise provided herein.

### 2. DEFINITIONS

- 2.1. "**Authorized End Users**" means Customer, Customer Affiliate(s) and their employees and independent contractors (but excluding any outsourcer, facilities management provider, managed service provider, or application service provider unless Customer explicitly takes full responsibility and liability for such party's act and omissions) that are bound by terms and conditions no less restrictive than those contained herein and are acting on behalf of Customer and not a third party.
- 2.2. "**Authorized Use Limitation**" or "**Meter**" means the quantity of the Licensed Software licensed in accordance with the License Metric specified in the Transaction Document.
- 2.3. "**Distributed Software**" means the Licensed Software that is generally used for independent usage across individuals systems or hardware based on the License Metric in a decentralized form of computing.
- 2.4. "**License Metric**" means the specific criteria for measuring the usage of the Licensed Software (such as MIPS, CPUs, Cores, tiers, servers, or users).
- 2.5. "**Perpetual License**" means a license to use Licensed Software for an indefinite period subject to compliance with the Agreement.
- 2.6. "**Product-Specific Terms and Conditions**" means that separate document entitled "Winmill Product-Specific Terms and Conditions" that provides additional terms and conditions related to the specific SaaS and on-premises software Product Offerings being offered to Customer. The Product-Specific Terms and Conditions include the operating parameters, data and data center location(s), applicable audit standards, availability standards and any other details for the specific Product Offerings as published or made available by Winmill. The Product-Specific Terms and Conditions may define provisioning and management processes.
- 2.7. "**Subscription**" or "**UMF**" (Usage and Maintenance Fee) license means a license to use Licensed Software for a specific period of time which shall include Support unless otherwise stated in a Transaction Document.
- 2.8. "**Support**" (which may also be referred to as "**Maintenance**") means technical support for the Licensed Software described in the Winmill Maintenance Manual. Support may also contain "**Content Updates**" provided by Winmill for use with the Software intended to be updated, including, but not limited to, data, signatures, definitions, rules, policies, and URLs used by the Licensed Software, and may include content produced as a result of Customer's use of the Licensed Software.
- 2.9. "**Territory**" means the geographic region (Americas, EMEA, APAC) where Customer is authorized to install

the Licensed Software as indicated by the “Ship To” location in the Transaction Document, unless more broadly or narrowly granted in the Transaction Document. Americas is defined as the continents of North and South America. EMEA is defined as the continents of Europe (including the surrounding islands such as UK and Ireland) and Africa, and the Middle Eastern countries in the continent of Asia, south of, and including Turkey and west of Iran. APAC is defined as all countries not in Americas or EMEA geographic regions.

- 2.10. “**Third Party Hardware**” means the physical hardware device or server provided by a third party and not Winmill.
- 2.11. “**Winmill Maintenance Manual**” means that certain Winmill support and maintenance manual for the Products Offerings as it may be revised from time to time by Winmill. The current version of the Winmill Maintenance Manual may be found here: <https://www.winmill.com/terms>.

### **3. SOFTWARE OFFERING & OBLIGATIONS**

- 3.1. Subject to the Customer’s compliance with the Agreement, Winmill grants the Customer a limited, nonexclusive, non-transferable license in object code form, for the Term to:
  - 3.1.1. Install and deploy the Licensed Software in the Territory up to the Authorized Use Limitation.
  - 3.1.2. Permit Authorized End Users to remotely use the Licensed Software for Customer’s and Customer Affiliates’ internal business wherever located. Customer hereby expressly agrees that a breach by an Authorized End User of the Agreement shall be considered to be a breach by and the responsibility of the Customer.
  - 3.1.3. Make a reasonable number of copies of the Licensed Software for disaster recovery “cold standby,” backup and archival purposes. Use of such copies is limited to testing Customer’s disaster recovery procedures and effectiveness and as is necessary during any reasonable period subsequent to the occurrence of an actual disaster during which Customer cannot operate the Licensed Software.
  - 3.1.4. Relocate Licensed Software to a new Customer location within the Territory upon prior written notice.
- 3.2. The Licensed Software is subject to use Meter(s) and model(s) limitations as set forth within Product-Specific Terms and Conditions (**PSTC**) identified in applicable Transaction Document(s). The Licensed Software’s specifications, product use rights and specified operating environment information may be found in the Documentation accompanying the Licensed Software, if available (e.g., a user manual, user guide, or readme.txt or notice.txt file). The PSTC and/or Product Use Rights form an integral part of applicable Transaction Document and are incorporated by reference. If the applicable version of the Software is not specifically listed within the applicable Transaction Document, the PSTC and/or Product Use Rights for the most recent prior version shall apply.
- 3.3. The grant of license is contingent upon Customer’s compliance with the following obligations set out under this provision and Customer agrees that, except as expressly set forth in the Agreement or to the extent permitted by applicable law, it shall not: (i) make available, provide or sub-license the Licensed Software or its results/outputs in any form other than to Authorized End Users, (ii) make any use of the Licensed Software for which it has not paid, (iii) cause or permit de- compilation, reverse engineering, or otherwise translate or derive source code from all or any portion of the Licensed Software; (iv) modify, unbundle, enhance or create derivative works of the Licensed Software and/or Documentation; (v) rent, sell, lease,

assign, or transfer the Licensed Software or use the Licensed Software to provide hosting, service bureau, on demand or outsourcing services for the benefit of a third party; (vi) remove any proprietary notices, labels, or marks on or in any copy or version of the Licensed Software or Documentation; (vii) claim any rights in the Licensed Software other than its right to use, (viii) export or use the Licensed Software in violation of US or other applicable laws and regulations, or (ix) use the Product Offerings for any prohibited end use, such as for nuclear technology applications, missile, or other military guidance systems and biological weaponry, or major radiation exposure field applications. Any right that is not granted to Customer under this On-Premises Software Module, the MSPA or a Transaction Document is reserved to Winmill. Customer may not use the Software in an electronic communications network that is used wholly or mainly for the provision of publicly available electronic communications services (“**Public Network**”) in a manner that violates the rights to privacy or freedom of expression as outlined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (collectively, “International Human Rights Standards”), of any individual user who directly accesses the Internet or otherwise transmits data through a Public Network, provided the foregoing shall not limit use of the Software in a Public Network to restrict, monitor, collect or process data accessed or transmitted by individual users based upon exceptions to the rights of privacy or freedom of expression that are recognized by International Human Rights Standards. In order to better understand and meet its customers’ needs, Winmill may collect, use, analyze and retain Customer’s metadata, system topography information, and/or operations data and, in a confidential and anonymous manner, aggregate such data with similar usage data of other Winmill customers.

#### 3.4. Audit.

3.4.1. Customer agrees to provide verified reports and records reasonably requested by Winmill to verify Customer’s compliance with the Authorized Use Limitation and License Metric defined in the Transaction Document or appropriate PSTC. These reporting and verification obligations remain in effect during the Term of the Product Offering and for twelve (12) months thereafter. Customer agrees that, upon thirty (30) days’ prior written notice, Winmill or an independent third party may audit Customer’s compliance with the MSPA, On-Premises Software Module and the Transaction Document, remotely or at Customer’s facilities. Customer shall cooperate in good faith with such audit, which Winmill agrees will be confidential, and commercially reasonable in nature and time. If Customer’s self-verification or Winmill’s audit reveals any unpaid or unlicensed use, Winmill shall provide written notification to Customer and within thirty (30) days of such written notification, Customer shall order at Winmill’s then-current list price, a sufficient number of such Product Offering(s) and any applicable Support to cover its past or current use in excess of the Authorized Use Limitation and License Metric. If an audit reveals an underpayment of ten percent (10%) or more of total fees owed for the review period, Customer will also reimburse Winmill for its reasonable audit expenses.

3.5. Customer may request licenses to the Software that may be used only to upgrade or replace hardware, change data centers, or upgrade to a newer version of the Software (“**Migration Licenses**”). Customer may only use Migration Licenses for the period granted by Winmill. Migration Licenses to the Software are provided “AS IS” without indemnification, support, or warranty of any kind, express or implied. Winmill’s aggregate liability (excluding indirect damages, for which Winmill expressly disclaims all liability) for any claim arising from Customer’s use of the Migration Licenses will not exceed \$5,000 USD.

3.6. If the Licensed Software is provided to Customer for evaluation purposes Section 3.1 (License Grant) is

replaced with the following:

- 3.6.1. Winmill grants to Customer a non-exclusive, temporary, royalty-free, non-assignable license to use the Licensed Software solely for internal non-production evaluation subject to the applicable PSTC and/or Product Use Rights supplement. Such evaluation license shall terminate (i) on the end date of the pre-determined evaluation period or (ii) sixty (60) days from the date of initial installation of the Licensed Software, if no such evaluation period is pre-determined (“**Evaluation Term**”). Customer is solely responsible to take appropriate measures to back up its system and take other measures to prevent any loss of files or data. The Software may contain an automatic disabling mechanism that prevents its use after a certain period of time. Upon expiration of the Evaluation Term, Customer must cease use of the Licensed Software and uninstall or destroy all copies of the software. Winmill shall accept no liability for Customer’s use of the Licensed Software for evaluation purposes. All other terms and conditions of this Agreement shall otherwise apply to Customer’s evaluation of the software.
- 3.6.2. THE SOFTWARE PROVIDED FOR EVALUATION MAY NOT BE TRANSFERRED AND IS PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND. THE ACCOMPANYING SOFTWARE DOCUMENTATION IS PROVIDED FOR THE PURPOSE OF DESCRIBING THE SOFTWARE; WINMILL DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, OR OTHER WINMILL COMMITMENTS, OBLIGATIONS, OR LIABILITIES, IN SUCH SOFTWARE.

#### **4. HARDWARE OBLIGATIONS**

- 4.1. Winmill does not provide support or maintenance for any Third-Party Hardware. Winmill will provide Customer with reasonable assistance with Customer’s support claims against such third party related to any Third Party Hardware.

#### **5. SUPPORT OFFERING**

- 5.1. If Support is purchased as set forth within a Transaction Document, Winmill will provide Customer with purchased Support in accordance with and subject to the terms and conditions of the Winmill Maintenance Manual. If Content Updates are included as part of Maintenance, Customer is granted the right to receive and use Content Updates as and when they are made generally available, for the Maintenance term, and only for the quantity, indicated on the applicable Transaction Document(s). This Agreement does not otherwise give Customer the right to obtain or use Content Updates, and any unauthorized access to or use of Content Updates is deemed a breach of this Agreement. Upon expiration or termination of the Maintenance Term, Customer must uninstall any Software component that facilitates the receipt of Content Updates and use of Content Updates after expiration or termination of the Maintenance term is a material breach of this License Agreement.
- 5.2. Software Updates/Upgrades, as provided pursuant to guidelines, may only be obtained for the Authorized Use Limitation or quantity indicated in the applicable Transaction Document. Any Software Updates/Upgrades to an existing license do not modify or alter Customer’s Authorized Use Limitation or quantity. If Customer is permitted to transfer its licenses to a different Licensed Software title, then Customer may receive a new Transaction Document on the condition that Customer cease using the replaced Licensed Software prior to use of such replacement Licensed Software. Software Updates/Upgrades are subject to the then-current version of this agreement.

#### **6. THIRD PARTY TERMS**



6.1. In the event that the Licensed Software contains third-party software components, additional terms, notices and/or information that may be applicable to such third-party software components may be found in the Licensed Software available on the Original Manufacturer's website.

**7. SOFTWARE PERFORMANCE WARRANTY**

7.1. For Distributed Software. Winmill warrants that the Distributed Software as defined in the Transaction Document will operate materially in accordance with the applicable specifications set forth within the Documentation for a period of ninety (90) days after delivery of the Licensed Software subject to Customer's compliance with the Agreement.

**8. SOFTWARE PERFORMANCE WARRANTY REMEDY**

8.1. If Winmill has breached either warranty set forth in the section entitled: Performance Warranty, Customer's remedy is for Winmill to, in consultation with Customer, to either (i) use reasonable efforts consistent with industry standards to cure the defect, or (ii) replace the Licensed Software(s) with one that materially complies with the Documentation, or (iii) terminate the license and provide a pro rata refund of the license fees paid and or Support fees. If option (iii) applies, the pro rata refund shall be calculated on the number of months left remaining on the Term of the applicable Transaction Document or if the Licensed Software is licensed under Perpetual License, using (only for purposes of a refund calculation) an amortization schedule of three (3) years. The above warranty remedies are Winmill's sole obligation and Customer's sole and exclusive remedy for the breach of the above warranty.

8.2. Warranty remedies are conditioned upon (i) any error or defect reported is reasonably reproducible by Winmill, (ii) the Licensed Software is not modified and is being used in accordance with Winmill Documentation, and (iii) the breach is not attributable in whole or in part to any non-Winmill product(s) or service(s).



## *SaaS Module*

### **1. INTRODUCTION**

- 1.1. This Module for Software as a Service (“SaaS Module”) between Winmill Software, Inc. (“Winmill”), and Customer, (“Customer”), is effective on the date set forth in the referencing Transaction Document, and specifies the terms and conditions which apply to SaaS that Winmill will provide to Customer.
- 1.2. This SaaS Module incorporates by reference the terms of the MSPA effective on the date set forth in the referencing Transaction Document between Winmill and Customer. Any capitalized terms used in this SaaS Module shall have the meanings given in the MSPA unless otherwise provided herein.

### **2. DEFINITIONS**

- 2.1. “**Authorized Use Limitation**” or “**Meter**” means the limitation on usage of SaaS as measured by the Billing Metric specified in the Transaction Document or relevant Product-Specific Terms and Conditions (PSTC).
- 2.2. “**Authorized Users**” means Customer, its employees and independent contractors and/or Customer Affiliates or as otherwise defined in the Product-Specific Terms and Conditions, that access and use SaaS provided that they are bound by terms and conditions no less restrictive than those contained in the Agreement and solely to the extent that they are acting on behalf of Customer or Customer Affiliates.
- 2.3. “**Billing Metric**” means the metric for billing SaaS to Customer as defined in the Product-Specific Terms and Conditions (e.g., users, transactions, etc.).
- 2.4. “**Customer Data**” means any information uploaded by Authorized Users or Customer authorizes access for processing by Winmill and/or Original Manufacturer on behalf of Customer in the course of accessing and using SaaS.
- 2.5. “**Data Center Region**” means a geographic region that is served by one or more facilities hosting Winmill Product Offerings. Winmill Data Center Regions are set out in the Product-Specific Terms and Conditions.
- 2.6. “**Force Majeure Event**” means an event that arises out of causes beyond a Party’s reasonable control, including, without limitation, war, civil commotion, act of God, strike or other stoppage (whether partial or total) of labor, any law, decree, regulation or order of any government or governmental body (including any court or tribunal) and/or delays or outages caused by an internet service provider or independent (not a Party’s subcontractor) hosting facility.
- 2.7. “**Non-Production**” means any Customer deployed environment that is not Production such as development, test, staging, demonstration, or training environments.
- 2.8. “**Production**” means the “live” environment of SaaS that Customer uses as their primary business environment.
- 2.9. “**Product-Specific Terms and Conditions**” or “**PSTC**” means that separate document entitled “Winmill Product-Specific Terms and Conditions” that provides additional terms and conditions related to the specific SaaS and on-premises software Product Offerings being offered to Customer. The Product-Specific Terms and Conditions include the operating parameters, data and data center location(s), applicable audit standards, availability standards and any other details for the specific Product Offerings as published or made available by Winmill. The Product-Specific Terms and Conditions may define provisioning and management processes.
- 2.10. “**SaaS**”, “**SaaS Offering**”, “**Online Service**”, or “**Cloud Service**” means the version of the Winmill software and/or type of service defined in the Transaction Document and made available to Authorized Users via

the Internet.

- 2.11. **“SaaS Support”** means support of the SaaS Offering so it operates materially in accordance with the Documentation.
- 2.12. **“Scheduled Downtime”** means planned downtime of SaaS availability for periodic and required maintenance events, including but not limited to, upgrades and updates to the SaaS and data center infrastructure where Winmill provides notice to Customer at least 72 hours in advance.
- 2.13. **“Service Level Availability”** or **“SLA”** means the targeted availability levels measured in the Production environment, as specified in the Product-Specific Terms and Conditions, which may vary according to each SaaS Offering and its component capabilities.
- 2.14. **“Security Breach”** means access to Customer Data by an unauthorized person or entity.
- 2.15. **“Subscription Term”** means the initial or renewal period of the subscription to a SaaS Offering as set out in the Transaction Document.
- 2.16. **“Trial Period”** means the period of time that Customer accesses and uses SaaS for evaluation, proof of concept, or trial set out in the Transaction Document. If no time is indicated, then the period shall be set for thirty (30) days from the effective date of the Transaction Document. For avoidance of doubt, only a Transaction Document which explicitly states that it is for trial or evaluation by the Customer shall be considered a trial use.
- 2.17. **“Winmill Maintenance Manual”** means that certain Winmill support and maintenance manual for the Products Offerings as it may be revised from time to time by Winmill. The current version of the Winmill Maintenance Manual may be found here: <https://www.winmill.com/terms>.

### **3. SAAS OFFERING**

- 3.1. Subject to the Customer’s compliance with the Agreement, Winmill provides Customer a nontransferable and non-exclusive right for Customer and its Authorized Users to access and use SaaS for the Customer’s internal business use during the Subscription Term in accordance with the Agreement.
- 3.2. If SaaS is provided on a trial basis, Customer agrees to access and use SaaS solely for trial and evaluation purposes during the Trial Period, in accordance with the usage restrictions set forth in the Transaction Document. At the end of the Trial Period, Customer’s right to access and use SaaS automatically expires and Customer agrees to cease accessing and using SaaS and to de-install any agents or copies of software provided as part of the SaaS and certify to Winmill in writing that all copies or partial copies of any such software have been deleted from Customer’s computer libraries and/or storage devices and destroyed. If Customer desires to continue its use of SaaS beyond the Trial Period, Customer may enter into a Transaction Document and pay the applicable fees. DURING TRIAL PERIODS, CUSTOMER AGREES TO ACCESS AND USE SUCH SAAS ON AN AS IS BASIS AND AGREES THAT WINMILL PROVIDES NO WARRANTIES, SLAS OR INDEMNITIES ARISING OUT OF SUCH ACCESS AND USE. ANY DATA ENTERED OR CONFIGURATION OF THE SAAS DURING THE TRIAL PERIOD WILL NOT BE STORED OR AVAILABLE AFTER THE TRIAL PERIOD.

### **4. FEES**

- 4.1. The Authorized Use Limitation and associated fees shall be as set out on the Transaction Document. Customer agrees that the purchase of any SaaS is not contingent on Winmill providing any future features or functionalities.
- 4.2. For Subscription Terms that are invoiced in advance, Customer may increase the Authorized Use Limitation

or Meter amount at any time, by executing a Transaction Document for additional SaaS. If Customer's current use of a SaaS offering exceeds the Authorized User Limitation or Meter amount shown on Customer's applicable Transaction Document, then Customer, must promptly submit a new order for the additional use, which will be invoiced at the then-current rates, or as mutually agreed upon by the Parties, through the current Subscription Term, and the aggregate Authorized Use Limitation or Meter amount will be the basis for any renewal of the Subscription. Winmill reserves the right to invoice Customer for any additional use, at the then-current rates, if a corresponding order is not promptly received.

## **5. CUSTOMER DATA**

- 5.1. Customer exclusively owns all rights, title and interest in and to all Customer Data. Customer Data will be stored and processed in the applicable Data Center Region. Winmill shall not access Customer's user accounts, or Customer Data, except in response to SaaS or technical issues where Customer requests or consents to such access in consultation with Winmill.
- 5.2. Original Manufacturer may collect, modify and analyze metadata and/or operations data which does not contain any Customer Data, such as system log files, configuration, performance, usage data and transaction counts which relate to system utilization and performance statistics, all as deemed necessary by Original Manufacturer.
- 5.3. Customer may access Customer Data, reports and/or information through SaaS until the end of the Subscription Term. Deletion of Customer Data will occur either (a) after the end of the Subscription Term or (b) as specified in the Product-Specific Terms and Conditions. Customer is responsible for ensuring that it has necessary copies of Customer Data prior to expiration or termination.
- 5.4. Customer is responsible for obtaining all approvals and consents required by any third parties to use the SaaS. Winmill is not in default of its obligations if it cannot provide the SaaS when approvals or consents have not been obtained or any third party otherwise validly prevents Winmill from providing the SaaS. Customer is responsible for its account information, passwords and other login credentials and must notify Winmill immediately of any known unauthorized possession or use of your credentials.
- 5.5. In case of a Force Majeure Event, Customer acknowledges and agrees that Customer Data may not be fully recoverable beyond the last restoration archive point, the frequency of which is described in the Product-Specific Terms and Conditions.
- 5.6. Customer agrees not to provide any health, payment card, biometric, or similarly sensitive personal information that imposes specific data security obligations for the processing of such data unless it is a supported feature in the Documentation of the applicable SaaS Offering and Customer completes the appropriate agreements with Winmill, if applicable.

## **6. SECURITY**

- 6.1. Winmill will maintain and administer a security policy with physical and technical safeguards designed to protect the security, integrity and confidentiality of the Customer Data. Winmill runs security background checks on all operations staff. Winmill shall adhere to and subject such policies and practices to an audit under the compliance criteria defined in the applicable Product-Specific Terms and Conditions.
- 6.2. Winmill is not responsible for unauthorized access, alteration, theft or destruction of Customer Data arising from Customer's own or its Authorized Users' actions or omissions in contravention of the Documentation. Customer's ability to recover any lost data resulting from Winmill's misconduct is limited to restoration by Winmill from the most recent back-up.

- 6.3. In the event that Winmill has determined that a Security Breach will or is likely to cause harm to the Customer or an Authorized User, Winmill will, as promptly as practicable but in no event later than as required by law, provide Customer with notice of the Security Breach. After initial notification, Winmill will keep Customer updated at periodic intervals on the steps taken by Winmill to investigate the Security Breach including providing a reasonably detailed incident report, including measures to be taken by the Customer to minimize potential damages. Such report will be provided promptly following completion of the report. The Parties understand and agree that if Winmill is prevented by law or regulation from providing such notice(s) and/or reports within the time frames, such delay shall be excused. In the event of a security risk to a SaaS Offering or its users, Winmill may suspend Customer's use of that SaaS Offering.

## **7. SAAS SUPPORT**

- 7.1. Customer shall be provided with SaaS Support during the Subscription Term in accordance with Winmill Maintenance Manual.
- 7.2. Winmill, in its sole discretion, will provide Customer as much notification as reasonably possible and will generally aim to provide twelve (12) months' notice of the last date of an Online Service's availability. Winmill will provide such notification to Customer's then-current business or technical contact, and/or by publication on the applicable administrator portal for the Online Service(s). Once an Online Service is no longer available, Customer will no longer have access to or use of the Online Service.

## **8. MAINTENANCE AND UPGRADES**

- 8.1. Winmill may make changes or updates to the SaaS, SaaS infrastructure (such as compute infrastructure, storage technology, security, technical configurations, hosting facilities within Data Center Region, etc.), or SLA that do not materially degrade the deployment and consumption of the SaaS Offering during the Subscription Term including to reflect changes in technology, industry practices, and/or patterns of system use.

## **9. CUSTOMER RESPONSIBILITIES**

- 9.1. Customer is responsible for all activities that occur in, or are related to, user accounts including the data, information stored or transmitted when accessing SaaS. All applications residing within Customer's environment or installed on third party service provider's environments on behalf of Customer that integrate to SaaS shall be managed and supported by Customer. Customer is also responsible for managing components that are downloaded onto their environment such as web browser-based software plug-ins that extend SaaS.
- 9.2. The SaaS Offerings do not include Customer configurations, nor policies and procedures implemented and set by Customer that are available through the SaaS Offering. Customer acknowledges and agrees that it is solely responsible for selecting its configurations and assuring that the selection conforms to its policies and procedures and complies with all applicable laws and regulations in jurisdictions in which Customer is accessing the SaaS Offering(s).
- 9.3. As Customer may integrate or utilize third party links to other software, hardware or other services which are associated with, or otherwise available through the SaaS, Customer agrees that it and/or Customer Affiliates, its Authorized Users and anyone acting on their behalf shall use such third-party links at their sole discretion. Winmill shall have no responsibility or liability with respect to such third-party links used by Customer and/or Customer Affiliates, its Authorized Users or for any act or omission of any such third party provider. Customer must: (a) take appropriate steps to protect Customer Data; (b) notify Winmill as soon

as possible if Customer believes its account has been compromised; and (c) reasonably cooperate with Winmill to resolve issues related to Customer's use of the Cloud Service.

- 9.4. Customer shall not: (i) make SaaS available to any third party not authorized or as otherwise contemplated by the Agreement; (ii) send or store code that can harm or result in damage to SaaS (including but not limited to malicious code and malware); (iii) willfully interfere with or disrupt the integrity of SaaS or the data contained therein; (iv) attempt to gain unauthorized access to the SaaS or its related system or networks; (v) use SaaS to provide services to third parties except as expressly permitted by the Agreement; (vi) use SaaS in order to cause harm such as overload or create multiple agents for the purpose of disrupting operations of a third party; (vii) remove or modify any program markings or any notice of Winmill's or its licensors' proprietary rights; (viii) perform or disclose any benchmark or performance tests on the SaaS; or (ix) perform or disclose any of the following security testing of the SaaS environments or associated infrastructure: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, penetration testing or any other test or procedure not authorized in the Documentation. A breach by the Customer of its obligations under this section shall be considered a material breach of the Agreement.

## **10. WARRANTY**

- 10.1. Winmill warrants that during the Subscription Term, the SaaS shall perform materially in accordance with the applicable Documentation subject to Customer's compliance with the Agreement. During any Trial Period, this warranty shall not apply.
- 10.2. Customer warrants that (i) it has the right to transmit Customer Data and any data or information as may be required for the purposes of accessing SaaS, (ii) it is responsible for all activities that occur in user accounts, and (iii) it shall not misuse SaaS by sending spam or otherwise duplicative or unsolicited messages or store infringing, obscene, threatening, or otherwise unlawful material or material that is harmful to children or violates third party privacy rights.

## **11. WARRANTY REMEDY**

- 11.1. If it is established that Winmill has breached the above warranty, Winmill may, at its option, (i) use reasonable efforts to cure the defect in the SaaS; (ii) replace the SaaS with SaaS that materially conforms to the specifications in the Documentation; (iii) in the event Winmill cannot, after commercially practicable attempts to do so, achieve the remedies in (i) or (ii), Winmill may terminate the subscription to the SaaS and provide a refund to Customer or Winmill Partner of pre-paid, unused fees calculated against the remainder of the Subscription Term as of the effective date of such termination. Customer must report the alleged breach of warranty with reasonable specificity in writing within thirty (30) days of its occurrence to benefit from this warranty and the remedies stated herein. The above warranty remedies are Winmill's sole obligation and Customer's sole and exclusive remedy for breach of the above warranty.

## **12. SERVICE LEVEL COMMITMENT**

- 12.1. The Service Level Availability is measured against reports that Winmill runs on a regular basis based on objective criteria. Reports are available to Customer upon request. If Customer cannot access SaaS during the Subscription Term, Customer should contact Winmill to receive SaaS Support.
- 12.2. If it is determined by Customer and confirmed by Winmill that SaaS is unavailable beyond the default threshold identified in the applicable Product-Specific Terms and Conditions measured on a monthly basis during three contiguous months, then Customer has the right to elect any of the remedies specified therein.



- 12.3. The following events shall be excluded from the calculation of Service Level Availability: (i) Force Majeure Event; (ii) outages due to Scheduled Downtime; (iii) outages based on Customer networks or domain name server issues; (iv) Customer's configuration, scripting, coding drafted by Customer without Winmill's authorization or knowledge; (v) internet outages; (vi) outages requested by Customer; (vii) Customer changes to its environment which hinder SaaS production; (viii) outages to remedy a security vulnerability or as required by law and (ix) inability for Customer to log in to SaaS service because of dependence on non-Winmill provided services or components (e.g., Lightweight Directory Access Protocol (LDAP) in Customer's environment).

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## ***Services Module***

### **1. Introduction.**

- 1.1 This Module for services (the “**Services Module**”) to be provided by Winmill Software, Inc., (“**Winmill**”) to Customer, (“**Customer**”), is effective on the date set forth in the referencing Transaction Document, and specifies the terms and conditions which apply to services that Winmill will provide to Customer.
- 1.2 This Services Module incorporates by reference the terms of the MSPA effective on the date set forth in the referencing Transaction Document between Winmill and Customer. Any capitalized terms used in this Services Module shall have the meanings given in the Managed Services Provider Agreement between Winmill and Customer (“**MSPA**”) unless otherwise provided herein.

### **2. Definitions.**

- 2.1 ***Certain Defined Terms.*** For purposes of this Module:

“Confidential Information” when used without a modifier shall mean each applicable party’s Confidential Information as separately defined in the MSPA.

“Customer Confidential Information” means Customer Technology and information which relates to Customer’s research, development, systems, employees, customers, or business that Customer designates in writing to Winmill as confidential.

“Customer Technology” means Customer’s network, routers, switches, computers, communication lines and other equipment, hardware, software or data used in Customer’s business.

“Deliverables” means work product created by Winmill for Customer as work for hire, as defined by a Statement of Work, and shall include all application source code, images, designs, business and analytic processes, architectural design documents, plans, blueprints, manuals, diagrams, activity reports, security assessments, and other written materials.

“Purchase Order” means a purchase order or other similar document or communication from Customer to Winmill delivered in connection with a sales quote or a SOW.

“Services” means specific business or technology consulting services, requested by Customer that are set forth in a particular SOW.

“Statement of Work” or “SOW” means a statement of work, quote, letter of agreement or other agreement (and any appendices, attachments and exhibits thereto) that defines the services to be performed by Winmill under this Module.

“Winmill Confidential Information” means: (i) this Module and any Orders and SOWs; (ii) Winmill Materials and Winmill Resources; (iii) other information which relates to Winmill’s business (including methods, processes or techniques utilized in Winmill Resources); and (iv) other non-public information, including sales quotes, business plans, clients, technology, or financials that Winmill designates in writing to Customer as confidential.

“Winmill Materials” means all work product that is owned by Winmill, is not a work for hire Deliverable, and is provided to Customer as part of or in conjunction with a Statement of Work, Winmill Materials may include software programs, application modules, scripts, patent applications, trade secrets, technical and non-technical data, business methods and models, drawings, processes, formulas, ideas, concepts, know-how, techniques, sketches, models, inventions, processes, algorithms, formulas, and including information regarding experiments, developments, designs and specifications.

“Winmill Resources” means all software, documentation, information and materials used by Winmill, or by Winmill’s contractors on behalf of Winmill, in Winmill’s performance under this Module.

2.2 **Other Defined Terms.** If a capitalized term used in this Module is not defined in Section 2.1 above, then that term shall have the definition ascribed to that term elsewhere in this Module or the MSPA.

### 3. **Orders.**

Customer shall place an order for Services (each, an “Order”) by executing and delivering to Winmill a SOW. Customer’s Order shall be deemed to incorporate these terms and conditions with or without reference in the Order to this Module.

### 4. **Services.**

4.1 **SOWs.** The Services provided by Winmill to Customer under this Module, and any additional terms and conditions for such Services, shall be defined in a SOW. SOWs may include: (i) a description of the Services and the Deliverables to be provided by Winmill; (ii) the timeframe for the Services and compensation to be paid to Winmill; (iii) any additional terms and conditions for the Services; and (iv) each party’s responsibilities. Each SOW must be signed by a duly authorized representatives of the Customer to be effective (provision of an SOW to Customer by Winmill implicitly provides Winmill authorization). Notwithstanding the foregoing, any changes to a SOW shall be made in writing and signed by duly authorized representatives of both parties. Each SOW shall be attached to, incorporated into, and governed by this Module by reference.

4.2 **Personnel.** Winmill and Customer shall each designate a project representative. All Winmill and Customer personnel assigned to participate on their behalf shall be knowledgeable in their assigned areas of responsibility. Unless otherwise provided in a SOW, each party has the right to determine the assignment and re-assignment of its personnel. Winmill’s obligations under this Module may be performed by divisions, subsidiaries, or affiliates of Winmill. Winmill also may engage services of independent contractors or subcontractors selected by Winmill to assist Winmill in the performance of its duties hereunder.

### 4.3 **Ownership and License.**

4.3.1 **Ownership.** All rights and title to any Deliverables shall belong to Customer when delivered to and fully paid for by Customer. All rights and title to Winmill Materials shall belong to Winmill, subject to the license expressly granted in this Module. All rights and title to Winmill Resources shall belong to Winmill, without any license with respect thereto Customer or any third party. All rights not expressly granted by Winmill hereunder are reserved by Winmill.

4.3.2 **License.** Subject to Customer’s performance under this Module, including without limitation the timely payment of all amounts owed to Winmill, Winmill hereby grants to Customer a nonexclusive, nontransferable, limited license (without the right to grant sublicenses), to use and execute Winmill Materials, so long as they are not used for the manufacture or marketing of goods or services competitive with those of Winmill, subject to all other provisions of this Module and the MSPA.

4.4 **Customer Obligations.** In connection with the Services provided under each SOW, Customer shall, at all times and diligently and in good faith, comply with Winmill’s reasonable requests to furnish Winmill, at Customer’s expense: (i) all technical matter, data, information and operating supplies, together with knowledgeable personnel, as reasonably determined by Winmill to be necessary for the performance of the SOW; (ii) access to Customer Technology, and Customer personnel; and (iii) any other specific obligations of the Customer set forth on a SOW.

## 5. Payment Terms.

- 5.1 **Prices.** Prices shall be as specified by Winmill and shall be valid for the period specified in the Winmill sales quote or the SOW (as applicable). 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 Customer to Winmill in addition to the price of the Products and Services.
- 5.2 **Expenses.** Reimbursable expenses must be pre-approved by Customer. Customer shall reimburse Winmill for pre-approved expenses incurred in connection with the performance of the Services, including travel expenses, lodging, meals, parking fees, copying charges, delivery charges, postage, telephone charges and other related expenses.
- 5.3 **Due Date; Late Payments.** Amounts due for Services may be invoiced by Winmill monthly or as otherwise expressly provided in the SOW. Customer 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.
- 5.4 **Credit Approval; Application of Payment.** All SOWs and Orders are subject to credit approval by Winmill. Any payment received from Customer may be applied by Winmill against any obligation owing from Customer to Winmill.

## 6. Customer Technology.

Customer agrees that if, in the course of performing the Services, it is necessary for Winmill to access or use the Customer Technology, Winmill is hereby granted and shall have a nonexclusive, royalty-free license, during the term of this Module, to access and use the Customer Technology solely for the purposes of delivering the Services to Customer.

## 7. Warranties and Disclaimers.

### 7.1 Service Warranties.

7.1.1 **Winmill Services.** Winmill warrants that Winmill shall provide the Services in a professional, workmanlike manner consistent with this Module and generally accepted industry standards of care and competence.

7.1.2 **Third Party Services.** Winmill makes no independent warranty with respect to any Services performed by a third party. Winmill hereby transfers to Customer whatever transferable warranties and indemnities Winmill receives from the applicable third parties that perform Services ("Service Providers"), including any transferable warranties and indemnities respecting patent infringement.

7.2 **Disclaimers.** EXCEPT FOR THE EXPRESS LIMITED REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS MODULE, 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, NONINFRINGEMENT, TITLE, CONDITION, OR INCREASED EFFICIENCY OF USE OF CUSTOMER TECHNOLOGY. WINMILL DOES NOT AUTHORIZE ANY PERSON TO ASSUME FOR IT THE OBLIGATIONS CONTAINED HEREIN.

## **8. Infringement.**

8.1 ***Infringement.*** Winmill agrees to defend or settle, at its option or discretion, any claim against Customer 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 Module; and (ii) Customer 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 Customer'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 Customer 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 CUSTOMER UNDER THIS SECTION 9.1 SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND WINMILL'S SOLE OBLIGATION FOR ANY ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHT.

## **9. Limitations of Liability.**

The Customer's remedies and Winmill's liability is limited by the terms and conditions of the MSPA.

## **10. Insurance.**

Winmill and Customer, respectively, shall be responsible, at their own cost and expense, for maintaining in effect the following types and amounts of insurance insuring against claims, demands or actions arising out of or in relation to the Services provided pursuant to this Module: (i) workers' compensation insurance in an amount sufficient by virtue of the laws of the states where the Services are performed; (ii) general liability insurance in which the limit of liability for injuries, including accidental death, and property damage, is no less than \$1,000,000 for any one occurrence; and (iii) automobile liability insurance in which the limit of liability for injuries, including accidental death, and property damage is no less than \$1,000,000 for any one occurrence. Such insurance shall be underwritten by companies qualified to do business in the state in which the Services are to be performed. Each party shall, upon the reasonable request of the other party, deliver a validly executed certificate of insurance evidencing the above.

## **11. Customer Assumption of Risk.**

Notwithstanding anything to the contrary contained anywhere in this Module (including any SOWs), Customer understands and acknowledges that in the normal course of business a risk exists that unauthorized persons or entities may, among other things, gain access to, attach and/or impair the confidentiality, integrity, availability and/or operability of the Customer Technology, including misappropriation, alteration, disabling or erasure of Customer Technology whether at the time of implementation or at some unknown future time, and/or other actions that could temporarily or permanently cause damage to all or part of the Customer Technology and/or business operations resulting in economic harm to Customer. Customer understands, acknowledges, accepts, and assumes the risk that events such as those described above may occur notwithstanding that Winmill has used reasonable efforts to provide any Services in a professional, workmanlike manner.

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## 12. Term and Termination.

12.1 **Term.** This Module shall be effective as of the Effective Date, and shall remain in full force until the is SOW completed unless otherwise terminated under the terms of this Section 12.

### 12.2 **Termination.**

12.2.1 Subject to the terms of Section 12.3.1 below, either party may terminate this Module 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 Module.

12.2.2 If Winmill believes in good faith that Customer's ability to make payments may be impaired, or if Customer 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 SOW or Order, or any remaining balance thereof, until such payment is made; or (ii) terminate any SOW or Order, or any remaining balance thereof. In either event, Customer shall remain liable to pay for any Services already performed.

12.2.3 Either party may terminate a SOW or an Order upon a material breach of the SOW or Order 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 .

### 12.3 **Effects of Termination.**

12.3.1 All SOWs and Orders existing at the time of termination of this Module shall remain in effect and shall be performed under the terms of this Module (all of which shall survive with respect to such SOWs and Orders), except for any SOWs or Orders terminated under Section 12.2 above.

12.3.2 If Customer terminates a SOW or Order or a portion thereof, then Customer shall pay for all work in process (including charges for labor and materials) as of the effective date of termination for the particular SOW or Order, as applicable. For fixed-fee projects, Customer shall pay a pro-rata percentage of the entire project cost, based on the work effort expended through termination date, as determined exclusive by Winmill. For time and materials services, Customer will pay Winmill for all hours worked through the date of termination.

12.3.3 If a SOW specifies a term for which Winmill shall provide Services to Customer (e.g., 36 months), and that SOW is terminated by Winmill for cause (including nonpayment) or by Customer without cause, then all future, recurring Service fees associated with the remaining term of such SOW shall become immediately due and payable, and shall be paid by Customer to Winmill upon the effective date of such termination.

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

12.3.5 Termination terms for application hosting, co-location and disaster recovery services are subject to additional termination terms & conditions to be supplied with SOW.