



## MASTER SERVICE AGREEMENT

### 1. SERVICES

1.01 Services. This Master Service Agreement (“Agreement”) states the terms and conditions by which WIN, LLC or its Affiliates (“WIN”) will deliver and the entity identified on a Service Request (“Customer”) will procure various services or goods (“Services”), upon the execution of one or more of such Service Requests (individually a “Service Request” or “SR”). Within this Agreement WIN and Customer may each be individually referred to as a “Party” or collectively as the “Parties.”

1.02 Service Requests. Each Service Request shall identify the Service(s) to be provided to Customer, the recurring and any non-recurring charges for such Service(s), the Service Term, and other material terms. All Services requested by Customer are subject to availability and capacity of facilities which will be determined by WIN.

1.03 Service Descriptions. Descriptions of the Services (the “Service Descriptions”) along with additional definitions, terms, conditions, policies, and information applicable to each particular Service are provided in the Service Descriptions, Technical Specifications, and Terms of Service schedule, available at <https://wintechnology.com/win-service-descriptions/> (or such successor location as designated by WIN). WIN may make modifications to the Service Descriptions or particular components thereof from time-to-time, provided that such modifications do not materially degrade any functionality or features of the Services.

1.04 Equipment and Software. Where applicable, title to any equipment and risk of loss or damage during shipment passes from WIN to Customer upon delivery to the carrier (F.O.B. Origin, freight collect). All equipment orders are subject to equipment availability. Title to software provided to Customer under this Agreement or any SR will remain with the Third-Party Provider. Customer’s rights in such software are specified in the license agreement between such Third-Party Provider and Customer.

1.05 Third-Party Service(s). WIN may procure from a third party (“Third-Party Provider”) services that facilitate, construct, or provide the Service(s) requested by Customer (“Third-Party Services”), and Customer acknowledges and agrees that: (a) the Third-Party Services will be provided by a Third-Party Provider; (b) WIN is authorized to act as an agent of Customer in procuring Third-Party Services on Customer’s behalf; (c) the Third-Party Service(s) will function and perform in accordance with the service level obligations provided by the Third-Party Provider; (d) any rights, remedies, outage credits, or other service-specific terms that the Customer may have or be entitled to under this Agreement are limited to those available pursuant to the terms of the Third-Party Provider; (e) Customer will be responsible for paying all costs for any Third-Party Services; and (f) if the Customer cancels or terminates any Service which includes a Third-Party Service prior to the conclusion of the Service Term, then Customer will pay



any cancellation and/or early termination charges assessed by the Third-Party Provider for the cancellation or termination of such Third-Party Services.

## **2. BILLING; PAYMENT; TAXES**

2.01 Payment Terms. The Service Request shall set forth the charges for the Service(s) and Customer agrees to pay, in accordance with this Section 2.01, all fees, costs, Taxes, and expenses set forth therein. Recurring charges will be billed monthly in advance, except for charges that are dependent upon usage of Service(s), which will be billed in arrears. Non-recurring charges will be invoiced upon execution of the applicable Service Request. All payments are due in U.S. currency within thirty (30) days of the invoice date (the “Due Date”). All invoices will be sent to Customer’s address set forth in the Service Request. WIN may, in addition to any other available remedies, impose a late payment charge (“Late Fee”) at the interest rate of one and one-half percent (1.5%) per month, or the highest rate allowed by law, whichever is lower, on any past due balance. In addition to the Late Fee and any other rights and remedies it may have, if Customer fails to pay or reasonably dispute any invoices by the Due Date, WIN reserves the right to: refuse to provide new Service(s); request a deposit and/or wire transfer for such late amount; suspend the provision of any or all Service(s) if Customer fails to pay any past due amounts within five (5) days of receipt of written notice; and/or exercise any termination rights it may have under this Agreement.

2.02 Disputed Amounts. Customer shall have the right to dispute any invoiced amount Customer reasonably believes is incorrect (the “Disputed Amount”). Such disputes shall be resolved in accordance with Section 12.06. Customer shall have waived any dispute related to a Disputed Amount unless Customer delivers to WIN a written statement outlining the dispute by the Due Date. Notwithstanding the foregoing, Late Fees shall apply for Disputed Amounts, but shall not be due and payable until the dispute is resolved and only if resolved in WIN’s favor, provided Customer: (i) pays all undisputed charges on or before the Due Date and (ii) delivers a written statement of Disputed Amounts to WIN by the Due Date. In the event such dispute is resolved in favor of WIN, Customer agrees to pay the Disputed Amount together with applicable Late Fees within ten (10) days of resolution. In the event such dispute is resolved in favor of Customer, Customer will receive a credit for the Disputed Amount and applicable Late Fees applied by WIN. In the event the dispute cannot be resolved within the time period set forth in Section 12.06 (unless WIN has agreed in writing to extend such period) all Disputed Amounts together with Late Fees shall become due and payable, and this provision shall not be construed to prevent Customer from pursuing any available legal remedies.

2.03 Taxes and Other Fees. Any applicable federal, state, or local use, gross receipts, excise, sales, or privilege taxes; tariffs, franchise fees or other taxes; duties; or similar liabilities (including, without limitation, Federal Universal Service Fund fees) charged to or against WIN because of any Service(s) furnished to Customer (“Taxes”) shall be paid by Customer. Taxes does not include any income, employment, or other similar fees or taxes incurred by WIN. Customer shall indemnify, defend, and hold WIN harmless from payment and reporting of all such Taxes, including costs, expenses, and penalties incurred by WIN in settling, defending, or appealing any claims or actions brought against WIN related to, or arising from, Customer’s non-payment of Taxes. Unless WIN has received a copy of applicable tax



exemption certificates, Customer will be required to pay all taxes, fees, and surcharges.

2.04 Immediate Suspension. WIN may temporarily suspend Customer's right to access or use any portion of or all of the Services immediately if WIN believes that: (i) Customer's use of the Services poses an immediate risk or is adversely impacting the Services or systems of WIN, any other WIN client, or any third party; (ii) Customer's use of the Service does or will subject WIN or its Affiliates to liability; (iii) Customer is not in compliance with the terms of this Agreement or any SR; (iv) Customer fails to pay any invoice by the Due Date, or (iv) Customer's actions violate any law or regulation. If WIN suspends Customer's right to access or use any portion of the Services, Customer remains responsible for all fees and other charges Customer incurs during the period of suspension.

2.05 Performance Bond. At its sole discretion, WIN shall have the right to require Customer to provide a performance bond with a corporate surety satisfactory to WIN. If Customer fails to provide such bond following WIN's request, WIN shall have the right to terminate this Agreement or any Service Request without further obligation or penalty.

### **3. TERM; TERMINATION**

3.01 Term. Any effective Service Request shall be governed by the terms of this Agreement until such Service Request is terminated or expires (the "Term").

3.02 Service Term. Each Service Request shall be in effect for the term stated in the Service Request ("Initial Service Term"). Each Service Term shall commence upon the Service Activation Date (defined below). Unless otherwise expressly provided in the Service Request, upon the expiration thereof each Service Request shall automatically renew for successive one-month terms (each a "Renewal Service Term" and together with the Initial Service Term, the "Service Term") unless either Party provides written notice of non-renewal to the other Party at least thirty (30) days prior to the end of the then-current Service Term ("Non-Renewal Notice Period"). WIN may increase any charges payable by Customer during any Renewal Service Term by providing written notice of the new applicable charges at any time prior to the end of the then-current Service Term; provided, however, if WIN delivers such notice during the Non-Renewal Notice Period, Customer shall have thirty (30) days from the date of WIN's notice to give notice of non-renewal.

3.03 Service Activation Date. "Service Activation Date" means the date Service is available for use by Customer and the Service Term commences.

3.04 Termination for Cause. Either Party may immediately terminate this Agreement or any Service Request without further obligation (i) if the other Party breaches any material term or condition of this Agreement and does not cure such breach within thirty (30) days (ten (10) days for non- or late payment) following receipt of a written notice from the non-breaching Party; or (ii) if the other Party has had an Insolvency Event. An "Insolvency Event" means making a general assignment for the benefit of a Party's creditors; filing a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or



acquiescing in reorganization or similar relief; or having an involuntary petition in bankruptcy or other insolvency protection filed against the applicable Party. Other than as expressly provided in this Agreement, neither Party shall have the right to terminate this Agreement or any Service Request during a Service Term.

**3.05 Termination Due to Changes in Permits, Law, or Unforeseen Circumstances.** In the event that (i) any certificate, permit, license, or approval applied for or issued is canceled, expires, lapses, or is otherwise withdrawn or terminated that impacts the costs or terms of delivery of the Service by WIN; or (ii) any change in applicable law, regulation, decision, rule, or order materially increases the costs or other terms of delivery of the Service, WIN and Customer will negotiate, in good faith, regarding how to address and change the Services. In the event the Parties are unable to reach agreement within thirty (30) days after WIN's delivery of written notice requesting negotiation, then WIN may modify this Agreement or the relevant Service Request(s) upon written notice to Customer, to the extent necessary to address such change, or terminate the Agreement or Service Request(s). If WIN elects to modify the Agreement, Customer may terminate the affected Service Request(s) by delivering written notice of termination to WIN no later than thirty (30) days after its receipt of WIN's notice. Notwithstanding anything to the contrary in the Agreement, WIN shall have the right to terminate any Service Request upon three (3) months' Notice to Customer.

**3.06 Early Termination Liability.** In the event Customer terminates this Agreement or any Service after the Service Activation Date but prior to the end of the Service Term for any reason other than for Cause under Section 3.04 above, or a change in circumstances under Section 3.05 above, or if WIN terminates the Agreement or any Service Request due to any reason provided hereunder, Customer shall pay to WIN an early termination fee equal to the amount Customer would have owed to WIN for Services for the duration of the Service Term (the "Early Termination Liability" or "ETL"). To the extent the Early Termination Liability is deemed to be liquidated damages, Customer acknowledges that the amount of damage WIN would suffer as a result of Customer's early termination of Services or WIN's termination for Cause is difficult to estimate and that the Early Termination Liability reflects the Parties' reasonable estimation of the anticipated damages WIN may incur. In the event Customer cancels any Service Request after the execution of the Service Request but prior to the Service Activation Date, Customer shall pay to WIN Early Termination Liability equal to three (3) months' worth of monthly recurring charges for the applicable Service, plus any actual construction costs, non-recurring charges, and cancellation fees charged to WIN by its Third-Party Providers as a result of Customer's cancellation. Any amounts paid to WIN by Customer prior to such cancellation will not be refundable.

#### **4. SERVICE LEVEL AGREEMENT AND ACCEPTABLE USE POLICIES**

Any policies, terms, conditions, and provisions applicable to the acceptable use of the Services or any applicable service level commitment will be described in the Service Descriptions or Service Request, or both, as applicable. If WIN determines that there is a misuse or an abuse of Service(s), WIN may immediately restrict, suspend, or discontinue providing Service(s), without liability on the part of WIN. WIN shall, to the extent doing so does not interfere with its ability to prevent abuse of Service, notify



Customer before taking Service interrupting action, and will attempt to limit any restriction, suspension, or discontinuance under this section to the locations, content, or Services with respect to which the abuse is taking place.

## 5. NOTICES

All notices required or permitted hereunder must be given in writing and, except for maintenance and routine notices the Parties agree to send and receive electronically or otherwise, shall be considered properly given if hand-delivered, mailed first class mail (postage prepaid and return receipt requested), or sent by express overnight courier at the address specified below or such other address as a Party may specify in writing pursuant to this section, or sent by electronic mail to the address below (“Notice”). All notices shall be deemed delivered: five (5) days after deposit (if sent by U.S. Mail), or upon verification of receipt (if sent by commercial overnight delivery service or electronic mail).

CUSTOMER:	Customer Notices will be delivered to the address listed on the relevant Service Request.
WIN:	WIN, LLC 4955 Bullis Farm Road Eau Claire, WI 54701 Attn: Legal Department contracts@wintechnology.com

## 6. WAIVER AND INDEMNIFICATION

6.01 Waiver. Each Party (the “Indemnifying Party”) hereby releases and shall indemnify the other Party; its parents, subsidiaries, and Affiliates (as defined below); and its and their respective directors, officers, agents, successors, assigns, representatives, and employees (the “Indemnified Party”) from and against any penalties, fines, or forfeitures imposed by a governmental authority or expenses associated therewith (including without limitation litigation costs and reasonable attorney’s fees) arising out of any failure or refusal by the Indemnifying Party or any telecommunications service customer of the Indemnifying Party to comply with any law, statute, regulation, rule, ordinance, order, injunction, writ, decree, or award of any government or political subdivision thereof; or any agency, authority, bureau, commission, department, or instrumentality thereof; or any court, tribunal, or arbitrator applicable to the furnishing or use of telecommunications services.

6.02 Indemnity. Each Party shall indemnify, defend, protect, and hold harmless the Indemnified Party from and against any claim, damage, loss, liability, injury, cost, and expense (including reasonable attorney’s fees and expenses) (“Claim”) in connection with any loss or damage to property, personal injury, bodily injury, or death suffered by the Indemnified Party and/or third parties resulting in whole or in part from the negligence or willful misconduct of the Indemnifying Party, its employees, contractors,



and/or agents in connection with such Party's exercise of its rights and performance of its obligations under this Agreement.

6.03 Notice of Claim. Each Party will promptly notify the other of any Claims brought against the Indemnified Party which are subject to indemnification under this Agreement. Failure to give prompt notice will not relieve the Party of its obligations to indemnify the Indemnified Party, except and only to the extent the Party is actually prejudiced by such delay.

6.04 Procedure. A Party may not settle any Claim subject to indemnification under this Agreement without the consent of the Indemnified Party. In the event a Party does not, within fifteen (15) days after it receives written notice of a Claim from an Indemnified Party, agree in writing to accept the defense of, and assume all responsibility for, such Claim, then the Indemnified Party will have the right to defend against, negotiate, settle, or otherwise resolve the Claim in such a manner as the Indemnified Party deems appropriate, in their sole discretion, subject to the Party's obligations to pay for defense of the Claims and payment of any Losses.

## **7. WARRANTY, DAMAGES AND LIMITATION OF LIABILITY**

7.01 Disclaimer of Warranty. Except as otherwise expressly stated in this Agreement, WIN MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE PROVIDED OR EQUIPMENT OR SOFTWARE PROVIDED HEREUNDER. THE SERVICES AND EQUIPMENT ARE PROVIDED ON AN "AS IS" AND "WHERE IS" BASIS. WIN, ITS AFFILIATES, AND ITS LICENSORS MAKE NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, REGARDING THE SERVICES OR EQUIPMENT, AND DISCLAIM ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED OR EXPRESS WARRANTIES (I) OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT; (II) ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE; (III) THAT THE SERVICES OR EQUIPMENT WILL BE UNINTERRUPTED, ERROR FREE, OR FREE OF HARMFUL COMPONENTS; AND (IV) THAT ANY CONTENT, INCLUDING CUSTOMER CONTENT OR THIRD-PARTY CONTENT, WILL BE SECURE OR NOT OTHERWISE BE LOST OR DAMAGED. WIN MAKES NO WARRANTY REGARDING NETWORK SECURITY; ENCRYPTION EMPLOYED BY ANY SERVICE; THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED, OR LOAD BALANCED; OR THAT WIN'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO CUSTOMER'S DATA.

7.02 Disclaimer of Certain Damages. Except where it has an indemnification obligation to the Customer, WIN in no event shall be liable to Customer for any indirect, consequential, incidental, special, punitive, or other damages, including without limitation loss of use, interruption of business, loss of data, loss of profits, cost of capital, loss of goodwill, or increased operating costs, arising out of or in any way connected with this Agreement or any Service, even if WIN has been advised of the possibility of such





damages.

**7.03 Limitation of Liability.** To the maximum extent permitted by law, the total, cumulative liability for WIN arising out of or related to this Agreement or the Services, whether based on contract, in tort or any other legal or equitable theory, shall be limited to the amounts paid by Customer for the Service giving rise to the Claim during the three (3) month period preceding the first event giving rise to liability; provided, however, that the foregoing clause is not intended, and shall not be deemed, to limit or restrict in any way any coverage or benefits provided under any applicable insurance policy. The existence of more than one claim shall not enlarge this limit. WIN will not be responsible to Customer or any third party for any compensation, reimbursement, or damages arising in connection with (i) Customer's inability to use the Services or equipment, including as a result of: any termination or suspension of this Agreement or Customer's use of or access to the Services; WIN's discontinuation of any or all of the Services; any unanticipated or unscheduled downtime of all or a portion of the Services for any reason, including as a result of power outages, system failures, or other interruptions; or any errors, omissions, delays, outages, failures, or interruptions of any Services; (ii) the cost or procurement of substitute goods, equipment, or Services; (iii) any investments, expenditures, or commitments by Customer in connection with this Agreement or Customer's use of or access to the Services or equipment; or (iv) any unauthorized access to, alteration of, or the deletion, destruction, damage, loss, or failure to store any of Customer's content or other data.

**7.04 Transmission Responsibility.** Customer shall have full responsibility and liability for all signals or content Customer transmits over WIN's network. WIN shall have no responsibility or liability for any material contained in the signals transmitted by Customer over WIN's network, including any responsibility or liability with respect to the content of what is transmitted or any copyright or other intellectual property right therein, and Customer agrees to indemnify and hold WIN and any Third-Party Providers harmless with respect to any Claims therefrom.

**7.05 Exclusive Remedy.** The remedies set forth in this Section 7 shall be Customer's exclusive remedies, and WIN's sole obligation and liability, for any claim: (i) that the Services do not conform to applicable warranty obligations; or (ii) that the Services are defective.

**7.06 Basis of the Bargain.** Customer acknowledges that WIN sets its prices and has entered into this Agreement, including each Service Request, in reliance on the warranty disclaimers, representations, liquidated damages, exclusions of damages and limitations of liability and that the same form an essential basis of the bargain between the Parties. Accordingly, such shall survive and apply even if later found to have failed of their essential purpose.

## **8. INSURANCE**

During the Term, each Party shall maintain insurance as follows:

- (a) Workers' compensation insurance complying with the law of the state or states in which the Services are to be provided and Employer's Liability Insurance with limits of \$1,000,000 for



each accident, including occupational disease coverage with limits of \$1,000,000 for each employee, with a \$1,000,000 policy limit.

- (b) Comprehensive general liability insurance, including premises, operations, products and completed operations, contractual, broad form property damage, independent contractors, and personal injury coverage with the following minimum limits: personal injury - \$1,000,000 each person and \$1,000,000 each accident; property damage - \$1,000,000 each accident.
- (c) Automobile liability insurance for owned, hired, and non-owned autos: \$1,000,000 combined single limit bodily injury/property damage.
- (d) Excess liability insurance in an amount not less than \$2,000,000.

Upon a Party's request, each Party shall provide the other Party with a certificate of insurance, evidencing the insurance requirements set forth herein.

## **9. FORCE MAJEURE**

Any delay or failure of performance by any Party (other than a failure to comply with payment obligations) is not a breach of the Agreement to the extent that such delay or failure is caused by events beyond the reasonable control of the Party affected, including but not limited to acts of God; embargoes; governmental restrictions; strikes; riots; insurrection; wars or other military action; actions or effects of any extraterrestrial invasion or material; civil disorders; acts of terrorism; rebellion; fires; explosions; accidents; fiber cuts; floods; vandalism; sabotage; or any other act, event, or occurrence, regardless of whether similar to the foregoing, that is beyond the reasonable control of the Party affected (hereinafter referred to as "Force Majeure Event"). A Party whose performance is affected by a Force Majeure Event will promptly provide relevant details to the other Party and the obligations of the Party giving such notice will be suspended to the extent caused by the Force Majeure Event so long as the Force Majeure Event continues, and the time for performance of the affected obligation will be extended by the delay caused by the Force Majeure Event. If the affected Party is prevented by the Force Majeure Event from performing its obligations with regard to Services for thirty (30) days, then either Party may immediately terminate the affected Service by giving notice of termination to the other Party, provided that in the case of termination by Customer, Customer first provides WIN a reasonable opportunity to replace affected Services with comparable Services. Upon such termination, WIN is entitled to payment of: (i) all accrued but unpaid charges incurred through the date of such termination, and (ii) any termination charges or other costs or expenses incurred by WIN for the cancellation of Third-Party Services. The Parties shall otherwise bear their own costs and WIN shall be under no further liability to perform the Services affected by the Force Majeure Event and Customer is relieved of monthly recurring charge obligations for the duration of the Service Term.

## **10. CONFIDENTIAL INFORMATION**

10.01 Confidential Information. Except as required by law or regulation, each Party shall, during the Term and for three (3) years thereafter, use the other Party's Confidential Information only for the purposes of this Agreement, will not disclose it to third parties except as provided below, and will protect





it from disclosure using the same degree of care it uses for its own similar Confidential Information (but no less than a reasonable degree of care). Notwithstanding the foregoing, the obligation to maintain the confidentiality of trade secret information shall survive as long as the information disclosed qualifies as trade secret information under applicable law. A Party may disclose the other Party's Confidential Information to its employees, agents, suppliers, and subcontractors (including professional advisors and auditors) who have a need to know and who are bound to protect it from unauthorized use and disclosure under the terms of a written agreement at least as protective of the other Party's Confidential Information as this Agreement. In any case, a Party is responsible for the treatment of Confidential Information by any third party to whom it discloses it under the preceding sentence. In addition, information, whether or not Confidential Information, may be disclosed by a receiving Party as may be required or authorized by applicable law, rule, regulation, or lawful process provided the receiving Party first notifies the disclosing Party in order to permit the disclosing Party to seek protective arrangements. Confidential Information (excluding CPNI that is also Confidential Information) remains the property of the disclosing Party and, upon written request of the disclosing Party, must be returned or destroyed. "Confidential Information" is nonpublic or proprietary information or materials relating to the disclosing Party or any information which the disclosing Party marks or identifies as "confidential" at the time of disclosure. If there is a breach or threatened breach of this confidentiality provision, the disclosing Party may be entitled to seek specific performance and/or injunctive or other equitable relief as a non-exclusive remedy. In the event the Parties have signed a separate confidentiality agreement which applies to the Service(s), the terms of this clause will take precedence over that agreement to the extent of any inconsistency. WIN may use Customer information, including but not limited to Confidential Information, to (i) to perform its obligations and exercise its rights under this Agreement; (ii) in accordance with WIN's privacy policy (available at <https://wintechnology.com/privacy-policy/> (or such successor location as designated by WIN), and (iii) as may be required by law.

**10.02 General Skills and Knowledge.** Notwithstanding anything to the contrary in the Agreement, WIN will not be prohibited or enjoined at any time by Customer from utilizing any skills or knowledge of a general nature acquired during the course of providing the Service(s), including, without limitation, information publicly known or available or that could reasonably be acquired in similar work performed for another customer of WIN.

**10.03 Publicity.** Neither WIN nor Customer may make any news release, public announcement, denial, or confirmation concerning all or any part of the Services or this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Customer grants WIN the right to use its name and logo in sales or advertising materials, including its website, so long as specific details about the Service(s) provided remain confidential. This clause does not prevent a Party from announcing the existence of the Agreement internally (e.g., to its employees and Affiliates).

**10.04 Customer Proprietary Network Information (CPNI).** WIN acknowledges that it has a duty, and Customer has a right, under federal and/or state law to protect the confidentiality of Customer's Proprietary Network Information ("CPNI"). Such CPNI includes information about the telecommunications Services purchased by Customer from WIN or its Affiliates, Customer billing



information, and charges incurred by Customer. WIN may share Customer's CPNI and other Confidential Information with its Affiliates to provide services.

## **11. INTELLECTUAL PROPERTY.**

For purposes of this Agreement, "Intellectual Property Rights" means all: (a) patents (whether or not patentable or reduced to practice) or inventions, all improvements, and all patent applications; (b) registered and unregistered trademarks, tradenames, service marks, insignia, trade dress, and logos, together with all associated goodwill; (c) registered and unregistered copyrights both published and unpublished including any moral rights; (d) internet domain names and registration rights, uniform resource locators, internet or worldwide web sites or protocol addresses, and all related content and programming; (e) trade secrets; and (f) other intellectual property and related proprietary rights, interests, and protections recognized by applicable law. All patents, copyrights, trademarks, service marks, trade dress, software, processes, materials, inventions, designs, code and works of authorship, including derivatives therefrom or thereof, ("IP") now owned by WIN, including all derivatives therefrom or thereof, (collectively the "WIN IP") shall be and remain the sole and exclusive property of WIN, and this Agreement does not transfer any title to WIN IP to Customer. Unless otherwise expressly provided in a Service Description, all IP now owned by Customer, including all derivatives therefrom or thereof, (collectively the "Customer IP") shall be and remain the sole and exclusive property of Customer and this Agreement does not transfer any title to any Customer IP to WIN. Each Party agrees that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from any IP owned by the other. WIN does not, and will not, provide any Services on a "work for hire" or "work made for hire" basis in connection with this Agreement, and Customer acknowledges the same. In performing the Services, WIN may create certain Deliverables for Customer as required under a SR. For purpose of this Agreement, "Deliverables" means any materials developed or created for Customer in the performance of the Services, including but not limited to any Intellectual Property Rights. Any Deliverables produced by WIN in performing Services under this Agreement will be the sole exclusive property of WIN, unless otherwise agreed to in a SR. Any deliverables created by WIN shall not be treated as "works for hire" as defined in 17 USC § 101 of the United States Code, and all Intellectual Property Rights in all materials provided by WIN for Services rendered or equipment provided shall remain with WIN.

## **12. MISCELLANEOUS**

12.01 Assignment. This Agreement shall be binding upon and shall inure to the benefit of the assignees, transferees, or successors of the Parties, provided that Customer shall not assign, transfer, or sublet any of its rights or obligations hereunder whether by obligation of law, change of control, or otherwise without the prior written consent of WIN, which consent shall not be unreasonably withheld. Assignment between a Party and a majority owned parent, Affiliate, or subsidiary shall not require the consent of the other Party. "Affiliate" means any person or entity controlling, controlled by, or under common control with a Party.



12.02 Conflicts. In the event of any conflict between any term or condition of a Service Request and this Agreement, the terms and conditions of this Agreement will control, unless the conflicting provisions of the Service Request expressly provide that the Parties intend for such conflicting provisions to supersede the Agreement.

12.03 Construction. In construction of this Agreement, words used in the singular shall include the plural and the plural the singular, and “or” is used in the inclusive sense, in all cases where such meanings would be appropriate.

12.04 Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of WIN or Customer shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

12.05 Dispute Resolution. Any controversy, claim, or dispute, including those related to Disputed Amounts (collectively “Disputed Claims”) arising out of or relating to this Agreement (including incorporated terms), except for claims relating to indemnity, infringement, or confidentiality obligations or matters relating to injunctions, specific performance, or other equitable relief (“Equitable Claims”) shall attempt to be resolved informally between the Parties using the process set forth herein.

- (a) *Procedure*. Within five (5) days of the receiving written notice of a Disputed Claim, the non-notice providing Party shall designate a representative as a point of contact to attempt to resolve the Disputed Claim. Any Disputed Claims arising during the Term shall in all instances be initially referred to the Parties’ designated representatives who shall attempt to render a mutually agreeable resolution of the Disputed Claim, in writing, within ten (10) business days of such referral.
- (b) *Additional Remedies*. In the event that any Disputed Claims cannot be resolved within the ten (10) business day time period, the Parties may, subject to the limitations contained in this Agreement, seek any remedy available at law or equity.
- (c) *Continued Performance*. During the resolution of Disputed Claims as provided in this Section, the Parties shall continue in good faith to perform their obligations under this Agreement.

12.06 Non-Solicitation of Employees. Unless agreed to in advance by WIN, Customer agrees that during the term of this Agreement and for a period of one (1) year following the expiration or termination of this Agreement or any Services (the “Nonsolicitation Period”), Customer shall not, directly or indirectly, solicit, entice, or attempt to persuade any employee of WIN to leave employment of WIN for any reason. In the event that Customer, or its affiliate, desires to hire, retain, or contract with any current WIN employee or any former WIN employee (“Restricted Person”) during the Nonsolicitation Period, Customer must first seek WIN’s consent. In the event that WIN grants Customer the right to hire, retain, or contract with a Restricted Person and the Restricted Person accepts an offer of employment from Customer, Customer shall pay WIN a placement fee of fifty percent (50%) of the annual wage the Restricted Person was paid by WIN over the twelve (12) month period immediately prior to the Restricted Person’s termination of employment with WIN. If Customer hires, retains, or contracts with a Restricted



Person without first obtaining the consent of WIN, Customer shall pay WIN a fee of one hundred percent (100%) of the Restricted Person's annual wages paid by WIN over the twelve (12) month period prior to the Restricted Person's termination of employment with WIN.

12.07 Import/Export Control. Customer agrees to comply fully with all applicable import and export laws and regulations related to the Services or equipment acquired by Customer under this Agreement for the country where each Service or equipment was acquired by Customer as well as with all applicable United States export laws (collectively, the "Export Laws"). Customer shall not, and shall not permit any third party to: (i) export or transmit the Services or equipment, directly or indirectly, in violation of Export Laws, including to a country subject to a U.S. embargo; (ii) access or use the Services or equipment in violation of any Export Laws; or (iii) provide access to the Services or equipment across international boundaries except in compliance with any Export Laws, including those of the originating country.

12.08 Entire Agreement; Amendment. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The documents and Exhibits referred to herein are integral parts hereof and are hereby made a part of this Agreement. WIN may update the terms and conditions of this Agreement from time to time.

12.09 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, without reference to its conflicts of laws principles. The parties agree that any dispute arising out of or related to this Agreement or any Service Request provisioned hereunder shall be subject to the sole jurisdiction of the state and federal courts located in Eau Claire County, Wisconsin. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act ("UCITA") shall not apply to this Agreement.

12.10 Headings. The headings of the Articles are strictly for convenience and shall not in any way be construed as amplifying or limiting any of the terms of this Agreement.

12.11 Legal Intercepts. Transmissions passing through WIN facilities may be subject to legal intercept and monitoring activities by WIN, its suppliers, or local authorities in accordance with applicable legal requirements. To the extent consent or notification is required by Customer or end users under applicable data protection or other laws, Customer grants its consent and represents that it will have at all relevant times the necessary consents from all end users.

12.12 Non-Waiver. The failure by one Party to require performance of any provision shall not affect that Party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

12.13 Performance. All actions, activities, consents, approvals, and other undertakings of the Parties in this Agreement shall be performed in a reasonable and timely manner.



12.14 Relationship of Parties. This Agreement does not create a partnership, joint venture, or other employment relationship between WIN and Customer.

12.15 Severability. If any term, condition, or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by either Party hereunder, shall be held invalid or unenforceable under any applicable laws, such invalidity or unenforceability shall not affect any other terms, conditions, or provisions of this Agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable.

12.16 Survival. Certain provisions of this Agreement and Service Requests shall have full force and effect after expiration or termination, including but not limited to the clauses entitled: Disclaimer of Certain Damages, Limitation of Liability, Indemnification, Confidentiality, Survival, and any other clauses which by their nature should survive, including those relating to governing law.

12.17 Third-Party Beneficiaries. This Agreement shall not provide any person not a Party to this Agreement with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference to this Agreement.

12.18 Well-Known Meanings. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.