

MASTER SERVICES AGREEMENT

This Master Services Agreement (“MSA”) governs the relationship and is agreed to by and between Wincourse Technologies, LLC, a North Carolina limited liability company, with the address of 6012 Bayfield Parkway, #144, Concord, NC 28027 (“Wincourse”) and Customer (the “Customer”), who has executed a Quote with Wincourse and thereby agreed to this MSA.

WHEREAS, Wincourse is engaged in the business of providing, directly or indirectly (through third party service providers), global information technology consulting, technology maintenance, support, end-user help desk, backup and disaster recovery services, telecommunication services and other outsourced services to its clients. Customer wishes to engage Wincourse and Wincourse is willing to provide Customer with certain Services (as defined below) in accordance with the terms and conditions contained herein.

1. SCOPE; SERVICES

- a. **Scope.** This MSA governs all services that Wincourse performs for Customer, as well as any services, licenses, or products that we sell or re-sell, to Customer (collectively, the “Services”).
- b. **Quotes.** The Services may be defined in order set forth in a Quote (“Quote”), proposal, or statement of work (collectively, a “SOW”), or they may be defined by the actual Services provided to Customer and our invoicing of same. If no written Quote or SOW exists, then in this document Quote or SOW shall include the actual Services provided to Customer and for which Customer are, or for which Customer have been, invoiced by Wincourse. **By accepting the Quote or SOW, Customer agree to the terms of this Agreement.**
- c. **Conflict.** If there is a material difference between the language in a Quote or SOW and the language in this Agreement, then the language of the Quote or SOW will control, except in situations involving warranties, limitations of liability, or termination of this MSA. Under those limited circumstances, the terms of this Agreement will control unless the Quote or SOW expressly states that it is overriding the conflicting provisions of this Agreement.
- d. **Changes/Addendums.** Upon written request from Customer, additional services and products may be added to this MSA upon the execution by both parties of an additional Change Quote Request and Addendum covering such service or product, which in turn, the said Addendum will become a part of this MSA on the date it is signed by Wincourse.
- e. **No Resale.** Unless otherwise authorized by Wincourse in writing, Customer shall use Services provided hereunder solely for Customer’s business purposes and shall not resell the Services provided by Wincourse.

2. FEES; PAYMENT

- a. **Fees.** You agree to pay the fees, costs, and expenses described in each Quote and SOW and any Addendum and for all non-refundable Third-Party Products purchased by Wincourse on your behalf. You are responsible for sales tax and any other taxes or governmental fees associated with the Services and Third-Party Products. If Customer qualify for a tax exemption, Customer must provide Wincourse with a valid certificate of exemption or other appropriate proof of exemption. You are also responsible for all freight, insurance, and taxes (including but not limited to import or export duties, sales, use, value add, and excise taxes).
- b. **Schedule.** Fees are due and payable in advance of the provision of the Services or delivery of products (including Third Party Products), unless otherwise stated in a Quote or SOW. For monthly recurring fees, they will be invoiced in arrears and all invoices are due upon receipt and become past due Thirty (30) days after the invoice date. All payment for Services hereunder shall be paid in US dollars.
- c. **Nonpayment.** Fees and other invoiced amounts that remain unpaid for more than thirty (30) days after the date on the invoice will be subject to interest on the unpaid amount(s) until and including the date payment is received, at the lower of either 1.5% per month or the maximum allowable rate of interest permitted by applicable law. We reserve the right, but not the obligation, to suspend part or all of the Services without prior notice to Customer in the event that any portion of undisputed fees are not timely received by us, and monthly or recurring charges shall continue to accrue during any period of suspension. Notice of disputes related to fees must be received by Wincourse within sixty (60) days after the applicable Service is rendered or the date on which Customer pay an invoice, whichever is later; otherwise, Customer waives Customer right to dispute the fee thereafter. A re-connect fee may be charged to Customer if we suspend the Services due to Customer nonpayment. **Please note: Suspended services may result in mission-critical services becoming unavailable or inaccessible; therefore, time is of the essence in the performance of all payment obligations by Customer.**
- d. Customer shall provide Wincourse with credit information as requested and the provisions of any products or service hereunder is subject to credit approval.
- e. In the event of any change in applicable law, regulation, rule or order, or an increase in the originally quoted costs of an underlying Third-Party Service (for example increased license fees for a EULA as set forth in Section 6) materially increases costs or other terms of delivery of products and services under this MSA, Wincourse and Customer agrees that Wincourse may pass such increased costs through to the Customer.

3. **TERM AND TERMINATION**

- a. Unless a longer term is indicated on a Quote, the term (“Term”) of this agreement and any quantity of items listed on a Quote shall be a minimum of 12 months commencing on the effective date of this MSA. After the 12th month, the Customer can terminate the MSA under the condition that the Customer provides a written notice thirty (30) days from the termination date. This MSA will auto-renew for another 12-month Term at the end of the 12th month if no notice is provided.
- b. The installation date for the Customer’s services shall be provided at the time the service has been requested. Billing under any Quote, SOW or Addendum referenced in section 2a of this MSA will begin upon the earlier of the actual installation of the Customer’s service or 30 days after the scheduled installation date referenced above. The billings under any other Quote, SOW or Addendum of this MSA will begin upon the earlier of the initiation of the Services outlined therein or 30 days from the installation date of the Customer’s equipment.
- c. Wincourse may terminate this MSA and discontinue providing the Services hereunder without liability upon the occurrence of a Customer Default (as defined below). For purposes of this Agreement, a “Customer Default” means:
 - i. Customer’s failure to pay past due balance within thirty (30) days after written notice thereof;
 - ii. Customer’s violation of any law, rule, regulation, or policy of any governmental authority;
 - iii. Customer’s material misrepresentations in any information provided to Wincourse;
 - iv. Customer’s fraudulent use of the products or services provided under this MSA;
 - v. Customer’s failure to cure its breach of any provision of the MSA within thirty (30) days following written notice thereof provided by Wincourse;
 - vi. Customer’s filing for bankruptcy, reorganization or failing to discharge any involuntary petition thereafter within sixty (60) days; or
- d. In the event Customer has a past due balance, Wincourse reserves the right to limit or restrict the Customer’s access to the services provided to Customer by Wincourse and any Customer owned equipment located within. The Customer will be notified of any such restrictions, in writing, via e-mail. Such access will be fully restored to the Customer upon prompt payment of all past due balances.
- e. Customer may terminate this MSA and discontinue paying for service hereunder without liability upon the occurrence of a Wincourse Default (as defined below). For purposes of this Agreement, a “Wincourse Default” means:
 - i. Wincourse Technologies’ violation of any law, rule, regulation, or policy of any governmental authority;
 - ii. Wincourse Technologies’ material misrepresentations in any information provided to Customer;
 - iii. Wincourse Technologies’ fraudulent use of the products or services provided under this MSA;
 - iv. Wincourse Technologies’ failure to cure its breach of any provision of the MSA within thirty (30) days following written notice thereof provided by Customer;
- v. Wincourse Technologies’ filing for bankruptcy, reorganization or failing to discharge any involuntary petition thereafter within sixty (60) days.

4. **LIMITED WARRANTIES; LIMITATIONS OF LIABILITY/INDEMNIFICATION**

1. **Hardware / Software Purchased Through Wincourse.** All hardware, software, peripherals, subscriptions, or accessories purchased through Wincourse (“Third Party Products”) are nonrefundable once the applicable purchase order is placed in Wincourse’s queue for delivery. Wincourse will use reasonable efforts to assign, transfer and facilitate all warranties (if any) and service level commitments (if any) for the Third Party Products to you, but will have no liability whatsoever for the quality, functionality or operability of any Third Party Products, and we will not be held liable as an insurer or guarantor of the performance, uptime or usefulness of any Third Party Products. All Third-Party Products are provided “as is” and without any warranty whatsoever as between Wincourse and you (including but not limited to implied warranties).
2. **Liability Limitations. This paragraph limits the liabilities arising under this Agreement or any Quote, SOW or Addendum and is a bargained-for and material part of this Agreement.** You acknowledge and agree that Wincourse would not enter into any Quote, SOW, or Addendum (or this Agreement) unless Wincourse could rely on the limitations described in this paragraph. In no event shall either party be liable for any indirect, special, exemplary, consequential, or punitive damages, such as lost revenue, loss of profits (except for fees due and owing to Wincourse), savings, or other indirect or contingent event-based economic loss arising out of or in connection with this Agreement, any Quote or SOW, or the Services, or for any loss or

interruption of data, technology or services, or for any breach hereof or for any damages caused by any delay in furnishing Services under this Agreement or any Quote or SOW, even if a party has been advised of the possibility of such damages; however, reasonable attorneys' fees awarded to a prevailing party (as described below) shall not be limited by the foregoing limitation. Except for your payment obligations and your indemnification obligations described in this Agreement, a responsible party's ("Responsible Party's") aggregate liability to the other party ("Aggrieved Party") for damages from any and all claims or causes whatsoever, and regardless of the form of any such action(s), that arise from or relate to this Agreement (collectively, "Claims"), whether in contract, tort, indemnification, or regular or gross negligence, shall be limited solely to the amount of the Aggrieved Party's actual and direct damages, not to exceed the amount of fees paid by you (excluding hard costs for licenses, hardware, etc.) to Wincourse for the specific Service upon which the applicable claim(s) is/are based during the one (1) month period immediately prior to the date on which the cause of action accrued. The foregoing limitations shall not apply to the extent that the Claims are caused by a Responsible Party's willful or intentional misconduct. Similarly, a Responsible Party's liability obligation shall be reduced to the extent that a Claim is caused by, or the result of, the Aggrieved Party's willful or intentional misconduct, or gross negligence.

3. Each party (an "Indemnifying Party") agrees to indemnify, defend, and hold the other party (an "Indemnified Party") harmless from and against any and all losses, damages, costs, expenses or liabilities, including reasonable attorneys' fees, (collectively, "Damages") that arise from, or are related to, the Indemnifying Party's breach of this Agreement. The Indemnified Party will have the right, but not the obligation, to control the intake, defense and disposition of any claim or cause of action for which indemnity may be sought under this section. The Indemnifying Party shall be permitted to have counsel of its choosing participate in the defense of the applicable claim(s); however, (i) such counsel shall be retained at the Indemnifying Party's sole cost, and (ii) the Indemnified Party's counsel shall be the ultimate determiner of the strategy and defense of the claim(s) for which indemnity is provided. No claim for which indemnity is sought by an Indemnified Party will be settled without the Indemnifying Party's prior written consent, which shall not be unreasonably delayed or withheld.

5. **CONFIDENTIALITY**

1. **Defined.** For the purposes of this Agreement, Confidential Information means any and all non-public information provided to us by you, including but not limited to your customer data, customer lists, internal documents, and related information. Confidential Information will not include information that: (i) has become part of the public domain through no act or omission of Wincourse, (ii) was developed independently by us, or (iii) is or was lawfully and independently provided to us prior to disclosure by you, from a third party who is not and was not subject to an obligation of confidentiality or otherwise prohibited from transmitting such information.
2. **Use.** Wincourse will keep your Confidential Information confidential and will not use or disclose such information to any third party for any purpose except (i) as expressly authorized by you in writing, or (ii) as needed to fulfill our obligations under this Agreement.
3. **Due Care.** Wincourse will exercise the same degree of care with respect to the Confidential Information we receive from you as we normally take to safeguard and preserve our own confidential and proprietary information, which in all cases will be at least a commercially reasonable level of care.
4. **Compelled Disclosure.** If we are legally compelled (whether by deposition, interrogatory, request for documents, subpoena, civil investigation, demand, or similar process) to disclose any of the Confidential Information, we will immediately notify you in writing of such requirement so that you may seek a protective order or other appropriate remedy and/or waive our compliance with the provisions of this Section. Wincourse will use its best efforts, at your expense, to obtain or assist you in obtaining any such protective order. Failing the entry of a protective order or the receipt of a waiver hereunder, we may disclose, without liability hereunder, that portion (and only that portion) of the Confidential Information that we have been advised, by written opinion from our counsel, that we are legally compelled to disclose.
5. **Business Associate.** If we enter into a business associate agreement ("BAA") with you for the protection of personal health information, then the terms of the BAA will be read in conjunction with the terms of the confidentiality provisions of this Agreement. The terms that protect confidentiality most stringently shall govern, and conflicting privacy- or confidentiality-related terms shall be governed by the BAA.

6. ADDITIONAL TERMS; THIRD PARTY SERVICES

- a. **EULAs.** Portions of the Services may require you to accept the terms of one or more third party end user license agreements (“EULAs”). If the acceptance of a EULA is required in order to provide the Services to you, then you hereby grant us permission to accept the EULA on your behalf. EULAs may contain service levels, warranties and/or liability limitations that are different than those contained in this Agreement. **You agree to be bound by the terms of such EULAs and will look only to the applicable third-party provider for the enforcement of the terms of such EULAs.** If, while providing the Services, we are required to comply with a third-party EULA and the third-party EULA is modified or amended, we reserve the right to modify or amend any applicable SOW with you to ensure our continued compliance with the terms of the third-party EULA.
- b. **Third Party Services.** Portions of the Services may be acquired from, or rely upon, the services of third-party manufacturers or providers, such as (but not limited to) data hosting services, domain registration services, and data backup/recovery services (“Third Party Service”). Not all Third-Party Services may be expressly identified as such in a Quote, SOW or Addendum, and at all times we reserve the right to utilize the services of any third party provider or to change third party providers in our sole discretion as long as the change does not materially diminish the Services to be provided to you under an Quote, SOW or Addendum. Wincourse will not be responsible, and will be held harmless by you, for the failure of any third-party provider or manufacturer to provide Third Party Services to Wincourse or to you.
- c. **Data Loss.** Under no circumstances will we be responsible for any data lost, corrupted or rendered unreadable due to (i) communication and/or transmissions errors or related failures, (ii) equipment failures (including but not limited to silent hardware corruption-related issues), or (iii) our failure to backup or secure data from portions of the network environment that were not expressly designated in the applicable SOW as requiring backup or recovery services. Unless expressly stated in a Quote, SOW or Addendum, we do not warrant or guarantee that any maintained storage device or functionality, data backup device or functionality, or load balancing functionality will operate in an error-free manner.
- d. **BYOD.** You hereby represent and warrant that we are authorized to access all devices, peripherals and/or computer processing units, including mobile devices (such as notebook computers, smart phones, and tablet computers) that are connected to the network environment (collectively, “Devices”), regardless of whether such Devices are owned, leased or otherwise controlled by you. Unless otherwise stated in a Quote, SOW or Addendum, Devices will not receive or benefit from the Services while the devices are detached from, or unconnected to, the network environment. Client is strongly advised to refrain from connecting Devices to the network environment where such devices are not previously known to Wincourse and are not expressly covered under a Wincourse managed service plan (“Unknown Devices”). Wincourse will not be responsible for the diagnosis or remediation of any issues in the network environment caused by the connection or use of Unknown Devices in the network environment, and we will not be obligated to provide the Services to any Unknown Devices.
- e. **Licenses.** Unless otherwise noted in a Quote, SOW or Addendum or Quote, all Wincourse Equipment is licensed to you, and is neither owned by you nor leased to you. Upon the expiration or termination of an applicable SOW, your license to use the Wincourse Equipment shall immediately terminate, and thereafter all Wincourse Equipment must be returned to us immediately at your expense. All configurations on Wincourse Equipment are our proprietary information and will not be circumvented, modified, or removed by you without our prior written consent. In addition, upon the expiration or termination of an applicable SOW, all licenses to any software or cloud-based service provided to you under the SOW shall immediately terminate; however, you will be responsible for all license fees that accrued up to the date of termination, as well as any license fees imposed on you if the SOW was terminated by us For Cause or by you without cause.

f. **Access.** You hereby grant Wincourse the right to monitor, diagnose, manipulate, communicate with, retrieve information from, and otherwise access the network environment as necessary to enable us to provide the Services. It is your responsibility to secure, at your own cost and prior to the commencement of any Services, any necessary rights of entry, licenses (including software licenses), permits or other permissions necessary for Wincourse to provide Services to the network environment and, if applicable, at your designated premises, both physically and virtually. Proper and safe environmental conditions must be provided and assured by you at all times. Wincourse shall not be required to engage in any activity or provide any Services under conditions that pose or may pose a safety or health concern to any personnel, or that would require extraordinary or non-industry standard efforts to achieve.

i. **Citrix Specific**

1. With the exception of planned maintenance or unexpected system outages, Customer agrees to provide Wincourse at all times access to the Customers Citrix License Server.
2. Customers agree that Wincourse shall be permitted to install their remote access software on the Customers Citrix License Server.
3. Customer agrees to installing our LogicMonitor Collector Service on the Customers License Server, permitting Wincourse to proactively monitor the customers license server and usage.
4. Customer agrees to register their Citrix License Server with the Citrix License Usage Service. Wincourse will facilitate this.
5. Customer acknowledges that usage of Wincourse Citrix SPLA licenses are month to month and that the Customer does not own nor entitled to Citrix license usage beyond the scope of this agreement.
6. Customer must maintain in good standing with Wincourse Master Services Agreement
7. Failure to comply with any of the above requirements will be a violation of Wincourse License Usage agreement and may result in immediate revocation of all Citrix SPLA Licenses

6. **OWNERSHIP**

Each party is, and will remain, the owner and/or licensor of all works of authorship, patents, trademarks, copyrights, and other intellectual property owned or licensed by such party (“Intellectual Property”), and nothing in this Agreement or any Quote, SOW or Addendum shall be deemed to convey or grant any ownership rights or goodwill in one party’s Intellectual Property to the other party.

7. **ARBITRATION**

Except to enforce payment for Service by Wincourse, any dispute, claim or controversy arising from or related to this Agreement, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration before one arbitrator to be mutually agreed upon by the parties. The arbitration shall be administered and conducted by JAMS pursuant to its arbitration rules for commercial arbitration (the “Rules”). In the event of any inconsistency between the Rules and the procedures set forth below, the procedures set forth below will control. The arbitrator will be experienced in contract, intellectual property and information technology transactions. If the parties cannot agree on an arbitrator within fifteen (15) days after a demand for arbitration is filed, JAMS shall select the arbitrator. The arbitration shall take place in Cabarrus County, North Carolina. The arbitrator shall determine the scope of discovery in the matter; however, it is the intent of the parties that any discovery proceedings be limited to the specific issues in the applicable matter, and that discovery be tailored to fulfill that intent. The cost of the arbitration shall be split evenly between the parties; however, the party prevailing in the arbitration shall be entitled to an award of its reasonable attorneys’ fees and costs. Notwithstanding the foregoing, Wincourse shall not be required to send collections-related matters to arbitration unless the amounts subject to collection were timely disputed by you in good faith.

8. **MISCELLANEOUS**

- a. **Compliance.** Unless otherwise expressly stated in a Quote, SOW or Addendum, the Services are not intended, and will not be used, to bring Client into full regulatory compliance with any rule, regulation, or requirement that may be applicable to Client’s business or operations. Depending on the Services provided, the Services may aid Client’s efforts to fulfill regulatory compliance; however, the Services are not (and should not be used as) a compliance solution.
- b. **Disclosure.** You warrant and represent that you know of no law or regulation governing your business that would impede or restrict our provision of the Services, or that would require us to register with, or report our provision of the Services (or the results thereof), to any government or regulatory authority. You agree to promptly notify us if you become subject to any of the foregoing which, in our discretion, may require a modification to the scope or pricing of the Services.

- c. **Security.** You understand and agree that no security solution is one hundred percent effective, and any security paradigm may be circumvented and/or rendered ineffective by certain malware, such as certain ransomware or rootkits that were unknown to the malware prevention industry at the time of infection, and/or which are purposely or intentionally downloaded or installed into the network environment. Wincourse does not warrant or guarantee that all malware or malicious activity will be capable of being detected, avoided, quarantined, or removed, or that any data deleted, corrupted, or encrypted by such malware (“Impacted Data”) will be recoverable. Unless otherwise expressly stated in a Quote, SOW or Addendum, the recovery of Impacted Data is not included in the scope of a Quote, SOW or Addendum. **You are strongly advised to (i) educate your employees to properly identify and react to “phishing” activity (i.e., fraudulent attempts to obtain sensitive information or encourage behavior by disguising oneself as a trustworthy entity or person through email), and (ii) obtain insurance against cyberattacks, data loss, malware-related matters, and privacy-related breaches, as such incidents can occur even under a “best practice” scenario. Unless a malware-related incident is caused by our intentionally malicious behavior or our gross negligence, we are held harmless from any costs, expenses, or damages arising from or related to such incidents.**
- d. **Non-Solicitation.** Each party (a “Restricted Party”) acknowledges and agrees that during the term of this Agreement and for a period of one (1) year following the termination of this Agreement, the Restricted Party will not, individually or in conjunction with others, directly or indirectly solicit, induce or influence any of the other party’s employees with whom the Restricted Party worked as a result of this Agreement, to discontinue or reduce the scope of their business relationship with the other party, or recruit, solicit or otherwise influence any employee or contractor of the other party to discontinue his/her employment or agency relationship with the other party. In the event of a violation of the terms of the restrictive covenants in this section, the parties acknowledge and agree that the damages to the other party would be difficult or impracticable to determine, and in such event, the Restricted Party will pay the other party as liquidated damages and not as a penalty an amount equal to fifty percent (50%) percent of that employee’s first year of base salary with the defaulting party (including any signing bonus). In addition to and without limitation of the foregoing, any solicitation or attempted solicitation for employment directed to a party’s employees by a Restricted Party will be deemed to be a material breach of this Agreement, in which event the affected party shall have the right, but not the obligation, to terminate this Agreement or any then-current SOW immediately For Cause.
- e. **Non-Circumvention.** During the term of this Agreement, you agree not to offer, pursue, or engage in any transaction with any contractor designated by Wincourse to provide Services to you where your efforts are intended to, or may, circumvent or encourage the circumvention of the Services in whole or in part.
- f. **Assignment.** Neither this Agreement nor any Quote, SOW or Addendum may be assigned or transferred by a party without the prior written consent of the other party. This Agreement will be binding upon and inure to the benefit of the parties hereto, their legal representatives, and permitted successors and assigns. Notwithstanding the foregoing, we may assign our rights and obligations hereunder to a successor in ownership in connection with any merger, consolidation, or sale of substantially all of the assets of our business, or any other transaction in which ownership of more than fifty percent (50%) of our voting securities are transferred; provided, however, that such assignee expressly assumes our obligations hereunder.
- g. **Amendment.** Unless otherwise expressly permitted under this Agreement, no amendment or modification of this Agreement or any Quote, SOW or Addendum will be valid or binding upon the parties unless such amendment or modification is originated in writing by Wincourse, specifically refers to this Agreement or the SOW being amended, and is accepted in writing (email or electronic signature is acceptable) by you.
- h. **Time Limitations.** The parties mutually agree that, unless otherwise prohibited by law, any action for any matter arising out of this Agreement or any Quote, SOW or Addendum (except for issues of nonpayment by Client) must be commenced within six (6) months after the cause of action accrues or the action is forever barred.
- i. **Severability.** If any provision hereof or any Quote, SOW or Addendum is declared invalid by a court of competent jurisdiction, such provision will be ineffective only to the extent of such invalidity, illegibility or unenforceability so that the remainder of that provision and all remaining provisions of this Agreement or any Quote, SOW or Addendum will be valid and enforceable to the fullest extent permitted by applicable law.
- j. **Other Terms.** Wincourse will not be bound by any terms or conditions printed on any purchase order, invoice, memorandum, or other written communication supplied by you unless such terms or conditions are incorporated into a duly executed SOW, or unless we have expressly acknowledged the other terms and, thereafter, expressly and specifically accepted such other terms in writing.
- k. **No Waiver.** The failure of either party to enforce or insist upon compliance with any of the terms and conditions of this Agreement, the temporary or recurring waiver of any term or condition of this Agreement, or the granting of an extension of the time for performance, will not constitute an Agreement to waive such terms with respect to any other occurrences.
- l. **Merger.** This Agreement, together with any and all Quotes and SOWs, sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements or understandings related to the Services; however, any payment obligations that you have or may have incurred under any prior superseded agreement are not nullified by this Agreement and remain in full force and effect. No representation, promise, inducement, or statement of intention has been made by either party which is not embodied herein. Wincourse will not be bound by any of our agents’ or employees’ representations, promises or

inducements if they are not explicitly set forth in this Agreement or any Quote or SOW. Any document that is not expressly and specifically incorporated into this Agreement or SOW will act only to provide illustrations or descriptions of Services to be provided and will not modify this Agreement or provide binding contractual language between the parties. The foregoing sentence shall not apply to any business associate agreement required under HIPAA, which the parties may (if required) enter into after the Effective Date of this Agreement.

- m. **Force Majeure.** Neither party will be liable to the other party for delays or failures to perform its obligations under this Agreement or any Quote, SOW or Addendum because of circumstances beyond such party's reasonable control. Such circumstances include, but will not be limited to, any intentional or negligent act committed by the other party, or any acts or omissions of any governmental authority, natural disaster, act of a public enemy, acts of terrorism, riot, sabotage, disputes or differences with workmen, power failure, communications delays/outages (including but not limited to ISP-related outages), delays in transportation or deliveries of supplies or materials, cyberwarfare, cyberterrorism, or hacking, malware or virus-related incidents that circumvent then-current anti-virus or anti-malware software, and acts of God.
- n. **Survival.** The provisions contained in this Agreement that by their context are intended to survive termination or expiration of this Agreement will survive. If any provision in this Agreement is deemed unenforceable by operation of law, then that provision shall be excised from this Agreement and the balance of this Agreement shall be enforced in full.
- o. **Insurance.** Wincourse and you will each maintain, at each party's own expense, all insurance reasonably required in connection with this Agreement or any Quote, SOW or Addendum, including but not limited to, workers compensation and general liability. Wincourse agrees to maintain a general liability policy with a limit not less than \$1,000,000 per occurrence. All of the insurance policies described herein will not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to the other party.
- p. **Governing Law; Venue.** This Agreement and any Quote, SOW or Addendum will be governed by, and construed according to, the laws of the state of North Carolina. You hereby irrevocably consent to the exclusive jurisdiction and venue of Cabarrus County, North Carolina, for any and all claims and causes of action arising from or related to this Agreement.
- q. **No Third-Party Beneficiaries.** The Parties have entered into this Agreement solely for their own benefit. They intend no third party to be able to rely upon or enforce this Agreement or any part of this Agreement.
- r. **Notices; Writing Requirement.** Where notice is required to be provided to a party under this Agreement, such notice may be sent by U.S. mail, overnight courier, fax or email as follows: notice will be deemed delivered three (3) business days after being deposited in the United States Mail, first class mail, certified or return receipt requested, postage prepaid, or one (1) day following delivery when sent by FedEx or other overnight courier, or one (1) day after notice is delivered by fax or email. Notice sent by email will be sufficient only if (i) the sender emails the notice to the last known email address of the recipient, and (ii) the sender includes itself in the "cc" portion of the email and preserves the email until such time that it is acknowledged by the recipient. Notwithstanding the foregoing, any notice from you to Wincourse regarding (a) any alleged breach of this Agreement by Wincourse, or (b) any request for indemnification, or (c) any notice of termination of this Agreement or any Quote, SOW or Addendum, must be delivered to Wincourse either by U.S. mail or fax, unless such requirement is expressly and specifically waived by Wincourse. All electronic documents and communications between the parties, including email, will satisfy any "writing" requirement under this Agreement.
- s. **Independent Contractor.** Wincourse is an independent contractor, and is not your employer, employee, partner, or affiliate.
- t. **Data Access/Storage.** Some of the Services may be provided by persons outside of the United States and/or your data may occasionally be accessed, viewed, or stored on secure servers located outside of the United States. You agree to notify us if your company requires us to modify these standard service provisions, in which case additional (and potentially significant) costs will apply.
- u. **Counterparts.** The parties intend to sign, accept and/or deliver any Quote, Agreement, SOW, or any Addendum amendment in any number of counterparts, and each of which will be deemed an original and all of which, when taken together, will be deemed to be one agreement. Each party may sign, accept, and/or deliver any Quote, this Agreement, any Quote, SOW or Addendum or any amendment electronically (e.g., by emailed acceptance, digital signature, and/or electronic reproduction of a handwritten signature) or by reference (as applicable).