

## **Secure Flex Premium General Terms and Conditions Schedule**

In addition to the Service Agreement between WIN and Customer, including any document incorporated by reference therein (collectively the “Agreement”), of which this Schedule is a part, Customer agrees that the following terms and conditions apply to the Secure Flex Premium service (the “Service”) provided to Customer by WIN. Unless otherwise defined herein, capitalized terms shall have the same meaning as defined in the Agreement.

**Definitions:** The following capitalized terms are used with the meaning set forth below:

**“Service(s)”**: means, services provided by Thrive (including maintenance, support, security, hosting, procurement, development, integration, administrative and other services), including those to be provided on a one-time basis and those to be provided on a recurring basis.

**“Service Order”**: means a “Service Order” signed by the Parties referencing this Agreement and describing the Services to be provided to Customer by Thrive on behalf of WIN in accordance with this Agreement and setting forth the price and other terms and conditions on which WIN is to provide such Services.

**“Service Provisioning Date”**: means for each recurring Service to be provided under a Service Order the date as of which WIN or Thrive on behalf of WIN makes such Service available for use by Customer.

**“Service Provisioning Completion Date”**: means for each Service Order the Service Provisioning Date for the last of the recurring Services to be provisioned and made available for use by Customer under such Service Order.

### **1. SERVICES.**

**(a) General.** This Agreement governs Services WIN, Thrive or Thrive’s affiliates may provide or sell to Customer. Services will only be delivered to Customer pursuant to one or more Service Orders. Once executed by both Parties, a Service Order becomes part of this Agreement, although the terms of a Service Order will govern only the Services described in that Service Order. The terms and conditions set forth in a Service Order will control any discrepancy between that Service Order and these General Terms and Conditions.

**(b) Price Changes.** Pricing for Services are subject to change as follows:

(i) WIN may pass on to Customer the actual price increases imposed on WIN by Thrive or Third-Party Providers (as referenced in Section 4 below) for goods and services included in or among the Services sold to Customer pursuant to one or more Service Orders. WIN will notify Customer at least 30 days in advance of any such increases and provide Customer supporting documentation of all Third-Party Provider price increases.

**(c) Minimum Hardware, Operating System and Software Standards.**

Customer agrees to maintain the minimum hardware, operating system and software standards (and licenses therefor) set forth in each Service Order or otherwise necessary to

receive the Services, which may include, among other matters, versions of operating systems and hardware, security, data protection and environmental (HVAC, and electrical power) controls and network bandwidth requirements (such minimum standards, as the same may be changed or supplemented by WIN or by Thrive from time-to-time being referred to as “Minimum Standards”). Unless otherwise contemplated by a Service Order, WIN has no duty to assure or assess whether or not Customer’s network meets Minimum Standards and shall have no responsibility for any loss, damages, costs or delays Customer incurs or realizes as a result of or in connection with the failure or malfunction of any part of Customer’s network or systems that do not meet Minimum Standards. Customer will reimburse WIN for the out-of-pocket expenses WIN incurs and will pay WIN (at the hourly rates specified in the applicable Service Order) for the additional time WIN devotes to the provision of Services as a result of or arising in connection with Customer’s network components managed by WIN not adhering to the Minimum Standards. Customer will also adhere to any Thrive Acceptable Use Policies that may be in effect from time to time and applicable to all Thrive customers, which will be communicated or made available by Thrive on its website, and which will be deemed incorporated by reference herein.

**(d) Access to Customer Facilities and Equipment.** Customer will provide WIN and Thrive, as appropriate, access to and right to use all Customer’s facilities, including all hardware and software owned, leased or licensed by Customer, to the extent reasonably necessary to enable WIN and Thrive, as the case may be, to provide Services to Customer in accordance with these General Terms and Conditions and any Service Order.

WIN shall not be liable for any damages, costs, or delays in the provision of Services by WIN under any Service Order arising in connection with Customer’s procurement of any equipment from a party other than in accordance with this Agreement (such procurement by Client referred to as a “Customer Third Party Procurement”). Customer will reimburse WIN and/or Thrive, as applicable, for the out-of-pocket expenses WIN or Thrive incurs and will pay (at the hourly rates specified in the applicable Service Order) for the additional time devoted to the provision of Services as a result of or arising in connection with any Customer Third Party Procurement.

**(e) WIN Equipment.** Customer will maintain and protect the equipment and other hardware and tangible goods placed by WIN or Thrive, as the case may be, in the Customer’s possession or control (and that is not Customer’s property) in connection with the provision of Services (collectively, “WIN Hardware”) in good working condition, reasonable wear and tear excepted, and will not modify, disassemble, decompile, reverse engineer, rent, lease, loan, transfer, or copy such WIN Hardware (including any software or firmware that is part of, incorporated into or running on the same). Customer assumes all risk of compliance with any government regulation relating to the operation of WIN Hardware, as well as the loss, damage, theft, or destruction thereof, while it is in the Customer’s possession or control or that of its agents, including any carrier (except any carrier transporting WIN Hardware from WIN to Customer), and Customer will reimburse WIN for any costs of necessary repair or replacement (including shipping costs). Customer will keep WIN Hardware free of all security interests, liens, and other encumbrances.

**2. TERM.** This Agreement is effective as of the date hereof and, unless earlier terminated as permitted herein, will continue in effect during the Term or continuation of any Service Order (as defined therein) entered in connection herewith and thereafter in accordance with Section 9(e) below.

**3. PAYMENTS.**

**(a) Fees and Charges.** Customer agrees to pay WIN the fees, charges, expenses and other amounts for the or each Service specified in a Service Order during the Term of and as provided in such Service Order and in these General Terms and Conditions. In addition, Customer will be responsible for payment of all applicable sales and other taxes, and all surcharges and handling fees levied by third party suppliers, on Services provided by WIN.

**(b) Commencement of Billing.** WIN will, subject to Section 3(f) below, bill Customer for Products included in a Service Order five (5) business days after WIN notifies Customer that the same is ready for shipment to Customer's site (without regard to delays in Customer's acceptance thereof). WIN will begin billing for one-time Services included in a Service Order upon commencement of such one-time Services. WIN will begin billing for each recurring Service included in a Service Order beginning (60) sixty days from the date of Customer's execution of such Service Order or, if earlier, beginning on the Service Provisioning Date of such Service, and continuing through the end of the Term of such Service Order as set forth therein.

**(c) Payment of Invoices.** Invoices for fees, charges and other amounts charged hereunder, whether for Products, Services or otherwise, will be due and payable in full within thirty (30) days of the date of invoice therefor. WIN may charge Customer a finance charge of one and one-half percent (1.50%) per month on balances (other than those disputed pursuant to Section 3(d) below) for which payment has not been received within thirty (30) days of the date of such invoice.

**(d) Disputes.** If Customer in good faith disputes any portion of an invoice, Customer will promptly pay the undisputed portion of the invoice and submit to WIN a written claim within thirty (30) days of the due date thereof as provided in Section 3(c) above describing in reasonable detail the basis of the dispute, including claims of any breaches or failure of service by WIN or Thrive, and including any relevant supporting documentation. After receipt of such claim, WIN will undertake an investigation of the disputed charges, and, subject to WIN's rights under Section 9 below, both Parties agree to make a good faith attempt to resolve the dispute promptly. Any failure by Customer to submit a written dispute of charges with the information specified above within such thirty-day period will be deemed final agreement by Customer without defense or counterclaim with all charges on the invoice for all purposes. Customer will be liable to WIN for all reasonable fees and expenses, including reasonable attorney's fees and litigation costs, that WIN incurs to collect amounts due to WIN from Customer under or in connection with this Agreement or any Service Order.

**(e) Expenses.** Customer agrees to reimburse WIN for all reasonable and ordinary out-of-pocket expenses incurred by WIN in delivering Services to Customer, such as parking, out-of-area travel expenses, international phone calls, and pay-per-incident third party support calls. WIN will itemize such expenses on Customer's invoices and will not incur

any single expense greater than \$250 without Customer's prior written approval.

**(f) Timing of Products Orders.** WIN reserves the right to delay procuring Products from third party suppliers pending WIN 's receipt from Customer of payment of all or any portion (as determined by WIN in its discretion) of the price therefor set forth in the Service Order providing for such Products. WIN will notify Customer of any requirement that WIN receive payment for Products in advance of WIN 's ordering the same from third party suppliers and WIN will not be responsible thereafter for any damages, costs or delays Customer experiences as a result of the timing of the delivery of such Products to Customer under any Service Order.

#### **4. THIRD PARTY GOODS & SERVICES.**

**(a) Third Party Providers.** Customer acknowledges that Services may include or incorporate goods or services manufactured, produced and/or delivered by third parties ("Third-Party Providers"). WIN hereby assigns to Customer any warranties provided by Third Party Providers of goods and services that are resold by WIN (to the extent permitted to be so assigned or passed through) and Customer agrees to pursue all defective product, quality, breach of warranty and other claims directly against such Third-Party Providers and not against WIN. WIN will not be responsible for any such claims; however, WIN will reasonably assist Customer in resolving any performance, quality, breach of warranty or other claims of Customer with the applicable Third-Party Providers of such goods or services. Customer acknowledges that some Products cannot be returned or cancelled once ordered. At the request of Customer, WIN will make a reasonable attempt to return Products to the Third-Party Provider and Customer agrees to reimburse WIN for any restocking fees and other out-of-pocket expenses WIN may incur in connection therewith. However, Customer agrees that WIN is under no obligation to take back from Customer any Products ordered from WIN if WIN is unable to return those same Products to the Third-Party Provider. Risk of loss or damage for Products purchased from Third-Party Providers will pass to Customer when such Products are delivered to Customer, unless otherwise agreed in advance in writing by Customer and WIN.

**(b) Software Licensing.** WIN may use its own third-party software licenses in provisioning Services under a Service Order, including among others, antivirus, antispyware and monitoring software (the "Software"). WIN 's licenses to use such Software are and will remain WIN 's property exclusively, and except as provided herein, Customer will obtain no right to such licenses or the source code of the Software licensed thereby. WIN hereby grants to Customer a non-exclusive, worldwide, royalty-free, non-assignable and non-sublicensable, license to use the Software solely in connection with Services for which such Software is utilized (a "License"), which License will terminate immediately upon termination of such Services. WIN may terminate such License and any Services for which such License is utilized if it determines that WIN or a Customer has breached the terms of the License. Upon termination of the License, Customer will immediately cease to use the Software and related documentation and certify to WIN within ten (10) days after termination that Customer has, at WIN 's option, either destroyed or returned to WIN the Software and all documentation and related information, and all copies thereof, whether or not modified or merged into other materials.

## 5. **DISCLAIMER, LIMITATION OF LIABILITY AND INDEMNIFICATION.**

**(a) Technology Limitations.** Customer acknowledges that no network, system, device, hardware, software, or component can be made fully secure and, accordingly, agrees that neither WIN nor Thrive shall be liable for damages arising from or in connection with loss of data or breach of privacy of information technology systems except to the extent that WIN 's or Thrive's gross negligence or fraud (and not, e.g., equipment failure, software failure, "phishing" attacks or other fraudulent acts of third parties, or Customer's failure to follow WIN 's or Thrive's advice) is the direct and primary cause of such loss or breach.

### **(b) Warranty Disclaimer.**

OTHER THAN THE WARRANTIES EXPRESSLY SET FORTH IN A SERVICE ORDER, [WIN] MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING PRODUCTS OR SERVICES AND EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

### **(c) Limitation of Liability.**

(i) IN NO EVENT SHALL [WIN] OR THRIVE BE LIABLE FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT OR ANY BREACH HEREOF, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF WIN AND/OR THRIVE HAVE BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

(ii) EXCEPT IN THE CASE OF [WIN] 'S OR THRIVE'S GROSS NEGLIGENCE OR FRAUD NEITHER [WIN] NOR THRIVE SHALL IN ANY EVENT BE LIABLE FOR DAMAGES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES HEREUNDER IN AN AMOUNT EXCEEDING THE AMOUNT OF FEES FOR SERVICES PAID OR PAYABLE BY CLIENT TO WIN IN RESPECT OF THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE EVENT GIVING RISE TO SUCH LIABILITY OCCURED.

**(d) Mutual Indemnification.** Subject to the terms and conditions hereof, each Party (an "Indemnifying Party") shall defend at its own expense the other Party, including the other Party's directors, officers, employees, agents and affiliates (collectively, the "Indemnified Party", and for purposes of this Section 5(d), Thrive shall be an "Indemnified Party"), from and against any and all third-party claims, demands, suits or actions to the extent resulting from or arising out of the Indemnifying Party's (i) grossly negligent acts or omissions or fraud in connection with this Agreement, (ii) violation of any statute, law, ordinance or regulation, or (iii) infringement of any patent, copyright, trademark, trade secret or other intellectual property or other rights of a third party (each, an "Indemnifiable Claim"). Without limitation of the foregoing, the Indemnifying Party shall indemnify and hold harmless the Indemnified Party from and against any and all damages, judgments, awards, expenses, and costs (including without limitation those of the type described in Section 5(c)(i) above) that are awarded and

payable to the third party by a court of competent jurisdiction with respect to an Indemnifiable Claim or that are payable pursuant to a settlement thereof made or approved by the Indemnifying Party. The Indemnifying Party shall have right to defend any Indemnifiable Claim with counsel of its choosing.

## **6. INTELLECTUAL PROPERTY RIGHTS.**

(a) **WIN Intellectual Property.** WIN, or Thrive, as the case may be, retains right, title and interest in and to the Services, all intellectual property rights contained therein, and all modifications, alterations, derivative works and enhancements made thereto (collectively, "WIN IP"). Customer may not modify or create derivative works from or copy any ideas, Features, functions or graphics of the Services or WIN IP or modify or make derivative works based thereon or offer the Services on a timeshare or service bureau (including software-as-a-service) basis. Customer may use WIN IP in accordance herewith and any Service Order solely as necessary to utilize Services for its own account and otherwise will not disclose or use WIN IP for any purpose.

(b) **Customer Intellectual Property.** Customer retains all right, title and interest in and to all of Customer's intellectual property rights transmitted by or on behalf of Customer to WIN or Thrive, as the case may be, in connection with the Services (collectively, "Customer IP"). WIN may not modify or create derivative works from or copy any ideas, features, functions or graphics of the Customer IP or modify or make derivative works based thereon. WIN and Thrive, as appropriate, may use Customer IP in accordance herewith and any Service Order in connection with the provisioning of Services to Customer and otherwise will not disclose or use Customer IP for any purpose.

**7. CONFIDENTIALITY.** The Parties acknowledge that in connection with this Agreement each may receive from the other certain non-public information regarding the other Party's financial condition, suppliers, clients, business plans and other information not generally known to the public, including, without limitation, the terms and conditions of this Agreement ("Confidential Information"). The Party receiving Confidential Information of the other Party will not except as is required by law or legal process disclose such Confidential Information (i) to any person known by the receiving Party to be competitor of the other Party or (ii) to other third parties other than the receiving Party's employees, representatives and contractors who are bound by confidentiality obligations comparable to those set forth herein and who need to know such Confidential Information for purposes of the receiving Party's performance or receipt of the benefits of this Agreement, and will not use Confidential Information except in connection therewith. A Party that has received tangible embodiments of Confidential Information shall promptly return to the disclosing Party or destroy such Confidential Information upon the disclosing Party's request; provided that the receiving Party is not obligated to delete, purge or expunge Confidential Information maintained on its backup servers and similar devices in the ordinary course of its business (but nevertheless remains obligated under this Section 7 with respect to any such retained Confidential Information). The obligation to maintain the confidentiality of Confidential Information shall continue for so long as this Agreement shall remain in effect and for a period of two (2) years after the termination hereof, except that the obligation to maintain the confidentiality of trade secrets shall continue in perpetuity. If the Parties have entered into a separate non-disclosure or other agreement regulating the use or disclosure of the Parties' respective information, then the terms of such

separate agreement will control in the event of a conflict between such separate agreement and this Section 7.

**8. HIRING OF REPRESENTATIVES.** For so long as this Agreement remains in effect and for a period of one (1) year thereafter, neither Party will employ, hire, contract with, or otherwise engage, or seek to employ, hire, contract with, or otherwise engage, any individual who at any time in the preceding twelve (12) months was an employee of the other Party (or of Thrive) involved in the provisioning or receiving of Services under any Service Order. The Parties agree that any breach of this Section 8 will result in irreparable injury to the other Party for which monetary damages alone would not be an adequate remedy. Therefore, the Parties agree that in the event of a breach or threatened breach of this Section 8 by the other Party, the non-breaching Party will be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or threatened breach without the necessity proving the inadequacy of money damages or of posting a bond or other security.

**9. TERMINATION.**

**(a) Termination of Agreement and Service Orders for Breach of Terms.**

(i) Breach of terms of General Terms & Conditions. Each Party may notify the other Party if the other Party breaches the terms of these General Terms and Conditions, which notice will describe in reasonable detail the nature of such breach and including relevant supporting documentation. Unless the breaching Party within thirty (30) days of its receipt of such notice either cures or remedies the breach described in such notice in all material respects or provides the other Party with a reasonable written plan for doing so, the other Party may, without limitation of its other rights and remedies under applicable law, terminate this Agreement by providing written notice of termination to the breaching Party.

(ii) Breach of terms of a Service Order. Each Party may notify the other Party if the other Party breaches the terms of any Service Order, which notice will describe in reasonable detail the nature of such breach and including relevant supporting documentation. Unless the breaching Party within thirty (30) days of its receipt of such notice either cures or remedies the breach described in such notice in all material respects or provides the other Party with a reasonable written plan for doing so, the other Party may, without limitation of its other rights and remedies under applicable law, terminate those Services under such Service Order as to which such breach relates (and not this Agreement, other Services provided under such Service Order or any other Service Order as may then be in effect) by providing written notice of termination to the breaching Party.

**(b) Suspension or Termination of Services by WIN for Failure to Pay.**

Notwithstanding the provisions of Section 9(a) above, in the event Customer does not timely make payments under this Agreement (other than amounts timely disputed in accordance with Section 3(d) above, pending the resolution of such disputes) and such payment(s) is (are) not made by Customer within five (5) days of receiving written notice thereof from WIN (which notice may be delivered to Customer in the same manner as WIN sends invoices to Customer in the ordinary course), WIN may, without limitation of its other rights and remedies under applicable law, suspend or terminate providing Services to Customer under any or all Service Orders as may then be in effect, and WIN will have no

liability for any damages incurred or realized by Customer as a result of such suspension or termination of any such Services. No such suspension or termination of Service under a Service Order due to Customer's non-payment will relieve Customer of its obligations to pay all charges and other amounts and otherwise comply with and fulfill its obligations under this Agreement, including under that or any other Service Order as may be in effect. If Services are suspended for non-payment, lapse in service will not count towards completion of the Term of such Services.

**(c) Suspension.** Notwithstanding the provisions of Section 9(a) above, WIN may suspend the Services immediately upon notice to Customer if: (i) Customer materially violates (or WIN believes in good faith that Customer has materially violated) any provision of this Agreement or any provision of the applicable Thrive Acceptable Use Policy (<https://thrivenextgen.com/acceptable-use-policy/>); (ii) there is an unusual and material spike or increase in Customer's use of the Services and WIN believes, in good faith, that such traffic or use is fraudulent or materially and negatively impacting the operating capability of the Services; or (iii) WIN determines in good faith that its provision of the Services is prohibited by applicable Law; or (iv) WIN determines in good faith that Customer is using the Products or Services in violation of applicable law or for an otherwise unlawful purpose. Notwithstanding the foregoing, WIN will use commercially reasonable efforts to (x) provide Customer as much prior notice as possible of any situation that it is aware of that could lead to a right to suspend described in this subsection, and (y) work with Customer to remedy any situation that could lead to a right to suspend described in this subsection if such situation can be remedied.

**(d) Duties Upon Termination or Expiration.**

(i) Payment of Obligations/Return of Property. Upon the expiration or termination of this Agreement or any Service Order, Client will pay the full amount of all unpaid invoices issued under any outstanding Service Order and any other payment obligations specified in each outstanding Service Order (other than amounts timely disputed in accordance with Section 3(d) above, pending the resolution of such disputes). In addition, excluding any software and hardware that is Customer's property, Customer will return to WIN all software and hardware provided to WIN or by Thrive in good working condition (ordinary wear and tear excepted) and free from all liens, charges and encumbrances within thirty days of termination of this Agreement or the applicable Service Order(s).

(ii) Termination Status Reporting; Further Services. WIN will upon expiration or termination of any Service under any Service Order and receipt of all amounts then due and payable to WIN under this Agreement as relates to such expired or terminated Service (other than amounts timely disputed in accordance with Section 3(d) above, pending the resolution of such disputes) (i) report to Customer on the status of the Service as reasonably requested by Customer and, if requested by Customer, (ii) assist Customer in winding down or transferring the terminated or expired Service to Customer or its designee (such assistance being referred to as "Migration Services") in accordance with a mutually agreed separate Service Order signed by the Parties setting forth the terms and conditions thereof, which will include, among other terms to which Parties may agree, Customer agreeing to pay WIN for such Migration Services, if applicable, at the hourly rates set forth in the Service Order under which such Service was provided (and if no such rates are set forth in such Service Order, then at hourly rates agreed to by the Parties). Except as set forth above in this Section 9(d)(ii)



and, if applicable, any Service Order providing for the provision of Migration Services, WIN will have no duty or obligation to provide any Products or Service or any other service or assistance to Customer following the expiration or termination of a Service in accordance herewith.

**(e) Survival.** The following provisions will survive any expiration or termination of this Agreement: Section 3 (Payments), Section 4 (Third Party Products & Services), Section 5 (Warranties, Disclaimer and Limitation of Liability), Section 6 (Intellectual Property Rights), Section 7 (Confidentiality), Section 8 (Hiring of Representatives), this Section 9 (Termination), Section 10 (Force Majeure), and Section 12 (General Terms).

**10. FORCE MAJEURE.** Except for payment obligations, neither Party will be liable for any failure or delay in performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances or causes beyond its reasonable control, including, without limitation, fire, pandemics or other casualty, acts of God, fiber cuts or Internet delays, delay or failure of Third-Party Providers, war, terrorism, or other violence or criminal acts, any law, order, requirement or act of any government or governmental agency or authority or other causes beyond the reasonable control of such Party. A Party affected by such a *force majeure* event shall inform the other Party promptly upon the occurrence thereof (including a reasonable estimate of the additional time required for resumed performance to the extent determinable) and such Party shall use reasonable commercial efforts to resume performance hereunder as soon as reasonably practicable.

**11. INSURANCE.** WIN will maintain insurance providing at least \$1,000,000 commercial general liability coverage, as well as statutory workers compensation coverage. Upon Customer's request, WIN will deliver to Customer promptly a certificate of insurance made out by the applicable insurer(s) or their authorized agents as evidence of the insurance required under this Section and for any material policy amendments thereto. At Customer's request, Customer will be identified as an additional insured ATIMA (as their interests may appear) on such certificate of insurance.

**12. GENERAL TERMS.**

**(a) Governing Law; Jurisdiction; Venue.** This Agreement will be governed by and construed in accordance with the internal laws of the [Insert Home State of Reseller], without regard to the conflicts or choice of law provisions thereof that would give rise to the application of the domestic substantive laws of any other jurisdiction. The Parties agree that any proceeding arising out of or relating to this Agreement will be brought only in, and hereby submit irrevocably to the jurisdiction of, the state or federal courts sitting in the [Insert Home State of Reseller], and hereby waive any objections to the jurisdiction, venue or convenience of any such courts. EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

**(b) Assignment.** Neither Party may assign its rights or delegate its duties hereunder without the prior written consent of the other Party; provided that either Party may assign its rights hereunder to, and cause its obligations hereunder to be assumed by, a successor to substantially all of the assets or business of such Party. If there is any

assignment or delegation in violation of any of the foregoing restrictions, the non-breaching Party may terminate this Agreement and all Service Orders as may then be in effect upon written notice within ninety (90) days after notice or discovery of such assignment.

**(c) Headings.** The section headings herein are for ease of reference and convenience only and are not to be considered in the interpretation of this Agreement.

**(d) Interpretation.** Neither Party shall be considered the drafter of this Agreement or any schedule, addendum or exhibit as may be made part thereof so as to give rise to any presumption or convention regarding construction hereof or any such other writing.

**(e) Integration; Severability.** Except as provided in Section 7 above with respect to separate nondisclosure or confidentiality agreements between the Parties, this Agreement, including any Service Orders, sets forth the entire agreement and understandings between the Parties hereto with respect to the subject matter hereof, and merges all previous and contemporaneous discussions and negotiations between the Parties and supersedes and replaces any other agreement that may be in effect as of the date hereof between the Parties or their respective subsidiaries or other affiliates with respect to the subject matter hereof. This Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision hereof will be prohibited or invalid under any such law, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating or nullifying the remainder of such provision or any other provisions of this Agreement. If any one or more of the provisions of this Agreement is for any reason held to be excessively broad as to duration, geographical scope, activity or subject, such provisions will be construed by limiting and reducing it so as to be enforceable to the maximum extent permitted by applicable law.

**(f) Relationship with Thrive.** *Customer: (i) agrees to accept performance of WIN's obligations under this Agreement to provide Services directly from Thrive and will work directly and cooperate with Thrive in connection therewith; (ii) agrees that Thrive has no duty or obligation to Customer under this Agreement in connection with the delivery of Services and covenants not sue Thrive or seek to hold Thrive liable with respect to any damages as may arise in connection therewith, it being understood that Customer will look to WIN and other third parties, as appropriate, to recover any such damages; (iii) acknowledges that Thrive is being paid by WIN for Services Thrive provides to Customer on behalf of WIN, and understands that Thrive has the right to terminate the provision of Services to Customer if Thrive is not timely paid by WIN therefor; (iv) agrees that Thrive shall have no liability to Customer with respect to any damages Customer incurs in connection with Thrive suspending or terminating the provision of Products or Services following WIN's failure to pay Thrive therefor; and (v) Thrive is third-party beneficiary of this Agreement.*

**(f) Third-Party Beneficiaries.** Except for Thrive, there are no third-party beneficiaries of this Agreement or any schedule, addendum or exhibit as may be made part hereof.

**(g) Residual Knowledge.** Nothing herein shall be construed to prevent or in any way limit WIN from using general knowledge, skill and expertise acquired in the performance of this Agreement in any current or subsequent engagement or business. Neither WIN nor any Customer shall have any interest in such engagements or business.

**(h) Signatures, Amendments and Waivers and Exercise of Rights.**

(i) **Signatures.** This Agreement and amendments or modifications hereof and consents and waivers relating hereto may be executed, issued and accepted electronically (via authenticated digital or similar electronic means) and will be effective when transmitted bearing a copy of a manual, digital or electronic signature.

(ii) **Amendments and Waivers.** Amendments to and waivers of the provisions of this Agreement must be in writing (including in a digital format) and signed as provided in Section 12(h)(i) above.

(iii) **Exercise of Rights.** Except as otherwise provided herein, no failure to exercise or delay in exercising any right, power or remedy will operate as a waiver thereof; nor will any single or partial exercise of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

(i) **Notices.** Notices required or permitted to be provided hereunder will be in writing and, except as otherwise provided herein, will be valid and sufficient if delivered in person or sent by nationally recognized overnight courier or by email addressed to the Parties at the addresses listed on the cover page of this Agreement. Notices will be deemed received by the Party to whom notice is addressed on the date delivered, if delivered in person or by email, or on the next business day after being provided to a nationally recognized overnight courier service, delivery charges prepaid, for next day delivery.

(j) **Publicity.** Each Party (and Thrive) may use the other Party's name and logo on its website and printed materials to identify WIN and Thrive (as appropriate) as a service provider to Customer.

(k) **Independent Contractor.** Each of the Parties is an independent contractor and neither Party is, nor will be considered to be, an agent, distributor or representative of the other. All personnel supplied or used by each Party will be its employees or subcontractors and each Party assumes full responsibility for the actions of such personnel and for the payment of their compensation (including, if applicable, withholding of income taxes and the payment and withholding of social security and other payroll taxes), workers' compensation, disability benefits and the like to the extent applicable.