
WINTHROP INTELLIGENCE™ SOFTWARE AGREEMENT

TCM Contract # 2021-423

This **WINTHROP INTELLIGENCE SOFTWARE AGREEMENT** (the "Agreement"), dated July 28, 2021 (the "Effective Date"), is made by and between Winthrop Intelligence, LLC, a limited liability company organized under the laws of Wyoming ("WY"), and University of North Texas (the "Customer"), with offices located at 1301 S. Bonnie Brae St., Denton, TX 76207.

PURPOSE OF THIS AGREEMENT

During the Term (as defined below) WI shall make available to Customer the software described in the descriptive materials located at <http://winthropintelligence.com/tour-winad/> (the "Software"). This Agreement shall set forth the terms and conditions to which WI shall provide access and use of such Software to Customer during the Term or any subsequent renewal Term.

TERMS AND CONDITIONS**1. Term; Termination; Survival of Provisions**

1.1. The Software shall be provided by WI to Customer during the term set forth in Exhibit A. After the initial term set forth in Exhibit A, or any renewal thereof, the Agreement may renew for successive one (1) year terms, upon mutual agreement of both parties.

1.2. This Agreement may be terminated for cause by either party immediately and without further notice if the other party defaults in the performance of any of its material obligations under this Agreement and does not cure the default within thirty (30) days after receipt of notice in writing from the non-defaulting party. Upon termination for cause by Customer, WI shall promptly refund the pre-paid Software Fee (as defined below) to Customer on a pro-rata basis.

1.3. The following sections of this Agreement shall continue in full force and effect upon termination of this Agreement or expiration of the Term: 1.4, 5, and 7.

1.4. Upon termination of this Agreement for any reason, WI shall return to the Conference (as defined below) any Documents (as defined below) regarding any Conference Members (as defined below) provided by Customer to WI except to the extent that such Conference Members are subject to open records laws. WI further agrees that upon any such termination they shall make no other use of any such Documents except for such documents or reports from Conference Members who are subject to open records laws.

2. Licenses

2.1. Subject to the provisions of this Agreement, WI grants to the Customer a non-exclusive, non-transferable, revocable, limited license for up to ten (10) Customer employees to concurrently access and use the Software during the Term. Any such access or use of the Software shall be solely in a manner consistent with the terms of this Agreement. Except for the license granted in this Section 2.1, the Customer acknowledges that it acquires no other rights to the Software and that all right, title and interest in and to the Software shall remain with WI and its licensors. The Customer shall not decompile copy, disassemble, modify, decrypt, translate, extract or otherwise reverse engineer the Software.

2.2. If the Customer is an athletic conference ("Conference"), and the Conference elects to provide Documents from private institutions that are Conference members ("Conference Member(s)"), in conjunction with use of the Conference Database and Reports portion of the Software, WI shall then provide access to the such portion of the Software to Conference Members who are not then current customers of WI and who provide Documents to WI pursuant to this Agreement. In that case, Customer who is a Conference acknowledges that it is in the parties' mutual interest for WI to obtain records relating to private institution Conference Members in a timely and cost effective manner (all such documents, including the NCAA Financial Reports, as defined below, shall be collectively referred as the "Documents"). Customer agrees to make every commercially reasonable effort to provide WI with the Documents that are in the possession of such Conference Members and/or the Conference, as reasonably requested by WI for the purpose of WI providing the Software; and to provide the Documents without redaction at no cost at WI (notwithstanding the provisions of Section 6.4 below). Further, the Conference shall make available to WI the NCAA Revenues and Expenses Reporting document that is filed annually with the NCAA by each such private institution Conference Member (these reports shall be referred to as the "NCAA Financial Reports"). The NCAA Financial Reports shall be provided to WI in both an XLS and PDF format via email to a designated WI employee. The Conference shall make available to WI the current NCAA Financial Reports, all subsequent NCAA Financial Reports and, at the sole discretion of Conference, past NCAA Financial Reports. All such subsequent NCAA Financial Reports shall be provided to WI

within ten days following the NCAA's submission deadline or any extension, as applicable. Subject to the license to use the Documents granted to WI in this Section 2.2, WI shall treat all Documents as confidential and with the same degree of care with respect to preserving its confidentiality as WI accords to information of a similar nature regarding WI or its business, but in no event less than reasonable care. Any such access or use of the Software shall be solely in a manner consistent with the terms of this Agreement.

2.3. Customer shall not (a) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Software; (b) modify or make derivative works based upon the Software; (c) create Internet "links" to the Software or "frame" or "mirror" the Software on any other server or wireless or Internet-based device; (d) interfere with or disrupt the integrity or performance of the Software or the data contained therein; or (e) attempt to gain unauthorized access to the Software or its related systems or networks.

2.4. Except for those licenses granted in Sections 2.1 and 2.2 above, Customer agrees it shall be a material breach of this Agreement if its users of the Software share or provide access to or use of the Software to anyone else. Notwithstanding the termination provisions of section 1.2 above, WI may terminate this Agreement, without notice and without having to refund any portion of the Software Fee, if Customer's users of the Software share or provide access to or use of the Software to anyone else.

3. Use of Software and, Support

3.1. WI shall provide Customer with a User ID and password for each user identified in Section 2.1 or 2.2 that will permit Customer to access and use the Software. Customer is solely responsible for the security and use of each user's ID and password. Customer agrees that each user identified in Sections 2.1 or 2.2 who obtains a User ID and password to use the Software pursuant to this Agreement shall: (a) choose a strong and secure password; (b) keep their password secure and confidential; and (c) not share or transfer User ID and password with any other person or entity. If the security of the user ID and/or password is compromised, Customer shall promptly contact WI at (800) 218-2280 or by email at security@WinthropIntelligence.com.

3.2. WI shall provide email based support concerning use of the Software Monday through Friday (excluding Federal holidays) from 9:00 AM to 5:00 PM (Central Standard Time). All inquiries concerning support and use of the Software shall be sent to support@WinthropIntelligence.com by one named representative selected by Customer.

4. Payment and Billing

4.1. The Software shall be provided at the fee set forth in Exhibit A (the "Software Fee"). WI shall invoice Customer for the Software Fee on the Effective Date. The Software Fee shall be paid by Customer to WI by check, by use of Customer's credit card or through Customer authorized ACH. Customer hereby authorizes WI to use Customer's credit card information or Customer's ACH authorization, as provided on Exhibit A or otherwise, to accept payment for the Software Fees. Customer shall pay the Software Fee in accordance with Exhibit A. WI will not be responsible for any costs associated with Customer paying WI the Software Fee. In addition to any other rights granted to WI herein, WI reserves the right to suspend or terminate this Agreement and the Customer access to the Software if the Customer fails to pay any amount due within thirty (30) days of the payment due date.

4.2. To the extent that Customer has agreed to a Term that is 36 months or longer in Exhibit A, WI warrants to Customer that the Software Fee for the Initial Term shall not be greater than that charged to any of WI's then current other customers who have entered into a contract of equal (or lesser) duration of initial Term. If WI Software offers new software that is complimentary to the Software during the Term, then Customer may license such software ("Additional Software") from WI under the terms of the Agreement at WI's then-current list price, if WI does not include such modules at no charge as a part of the Software under the terms of the Agreement. In cases where WI does charge separately for such Additional Software, WI warrants that the Software Fee attributable to Additional Software obtained by Customer during the initial Term of the Agreement shall be no greater than the Software Fee attributable to Additional Software charged to any then current WI's customers who have entered into a contract of equal (or lesser) commitment period.

5. **Limitation of Liability.** EXCEPT FOR THE OBLIGATIONS SET FORTH IN SECTION 2 ABOVE (LICENSES), IN NO EVENT SHALL (A) EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RELATING TO THE LOSS OF PROFITS, INCOME, GOODWILL OR DATA, OR THE INABILITY TO UTILIZE THE SOFTWARE; OR (B) ONE PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY EXCEED THE SOFTWARE FEES ACTUALLY PAID BY CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

6. Representations and Warranties

6.1. WI represents and warrants that: (a) it has the power and authority to enter into this Agreement and to perform all of its obligations; (b) the performance of such obligations will not conflict with or result in a breach of any agreement to which WI is a party or is otherwise bound; (c) its performance under this Agreement shall comply with all applicable laws, rules and regulations; (d) it is the owner or authorized licensee of the Software; (e) has undertaken commercially reasonable efforts and steps to verify the accuracy of the data contained within the Software, including keeping such data current; and (f) regarding Customer's access to the Software during the Term, WI shall use commercially reasonable efforts to make the Software available 24 hours a day, 7 days a week except for: (i) planned downtime (of which WI shall give notice to the Customer name representative), or (ii) any unavailability caused by circumstances beyond WI's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, or Internet service provider failures or delays, or unpredicted functionality glitches.

6.2. WI warrants to the Customer that the Software shall be performed in accordance with the functional descriptions of the Software found at <http://winthropintelligence.com/tour-winad/>. If the Software fails to so conform to that description of the Software, then WI shall, as the Customer's sole remedy, make a commercially reasonable effort to correct the Software; provided however Customer shall be entitled to the refund set forth in Section 1.2 upon termination for cause by Customer if WI is unable to cure. All warranty claims related to the Software must be made within the then current Term for such Software.

6.3. The Customer represents and ~~warrants~~ **agrees** that: (a) it has the power and authority to enter into this Agreement and to perform all of its obligations; (b) the performance of such obligations will not conflict with or result in a breach of any agreement to which the Customer is a party or is otherwise bound; and (c) its performance under this Agreement, and its use of the Software, shall comply with all applicable laws, rules, regulations and policies, including, but not limited to, those established by the university or college which Customer is associated, the athletic conference which the Customer is a participant or member and the National Collegiate Athletic Association.

6.4. Customers who are public institutions and subject to open records law agree that they shall, subject to applicable law, (a) provide certain information to WI, as reasonably requested by WI, pursuant to applicable open records laws, but without regard to any residency requirement, on a timely basis (i.e. in less than thirty days following WI's request); and (b) provide copies of all such information without redaction to WI at a total cost of \$.10 per page or \$100 annually, whichever is less. Except to the extent that such information is made available by Customer at a public website that permits WI to access and then download all such information shall be provided by Customer to WI through use of WI's digital upload feature (the feature is further described here: (<http://winthropintelligence.com/tour-winad/#fndtn-contract-upload>)).

6.5. OTHER THAN AS SET FORTH IN THIS SECTION 6, WI SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WI DOES NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE; (B) THE SOFTWARE WILL MEET ALL OF THE CUSTOMER'S REQUIREMENTS; OR (C) ALL ERRORS OR DEFECTS WILL BE CORRECTED.

7. Other Provisions

7.1. In the event that WI is unable to provide the Software because of any cause reasonably beyond its control, including, without limitation, acts of God, WI shall promptly give notice to the Customer and shall take all measures to resume performance. If the period of non- performance exceeds thirty (30) days from the receipt of notice, the Customer may give written notice to WI terminating this Agreement effective upon receipt.

7.2. Neither Party may assign this Agreement to any person or entity without the prior written permission of the other party, which shall not be unreasonable withheld.

7.3. This Agreement, along with Exhibit A and the applicable the descriptive materials located at <http://winthropintelligence.com/tour-winad/>, which are hereby incorporated by reference, **and attached Standard Addendum to agreement** constitutes the entire understanding of the parties and supersedes all prior discussions and agreements with respect to its subject matter. This Agreement may be amended only by written instrument signed by both parties.

7.4. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. The failure of WI to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by WI in writing.

7.5. Either party may give notice by personal service, by nationally recognized overnight courier service (e.g. FedEx or DHL) or by written communication sent by certified mail, return receipt requested, to the address noted above. Such notice shall be deemed to have been given upon delivery in the case of personal service or overnight courier and the expiration of forty-eight (48) hours after above mailing or posting.

7.6. This Agreement may be executed in one or more counterparts, each of which shall be deemed a duplicate original and all of which, when taken together, shall constitute one and the same document.

7.7. If collection efforts related to non-payment or late payment of WI invoices proves necessary, Customer agrees to pay all fees incurred by that process, including reasonable attorney fees and court costs.

WINTHROP INTELLIGENCE, LLC

Signature: _____
Name: _____
Title: _____
Date: 8/18/2021

UNIVERSITY OF NORTH TEXAS

Signature: _____
Name: _____
Title: _____
Date: 8/18/2021

EXHIBIT A to the WINTHROP INTELLIGENCE SOFTWARE AGREEMENT dated July 28, 2021 by and between Winthrop Intelligence, LLC and University of North Texas (the "Agreement")

Initial Term of Software:

Software Term Start-Date: September 1, 2021 (Subject to timely receipt of payment. Access to and use of the Software shall not commence until receipt of payment)

Software Term End-Date: August 31, 2024

Software Fee and Payment:

The annual Software Fee for the Software during the initial Term is \$40,500, payable as follows: \$13,500 due on or before September 1, 2021; \$13,500 due on or before September 1, 2022; and \$13,500 due on or before September 1, 2023.

The Software Fee for subsequent renewal Terms shall be the then-current retail list price. The Software Fee shall be due upon receipt of an invoice.

This Exhibit A is subject to the terms and conditions of the Agreement.

WINTHROP INTELLIGENCE, LLC

Signature

:

Name:

Title:

Date: 8/18/2021

UNIVERSITY OF NORTH TEXAS

Signature:

Name:

Title:

Date: 8/18/2021

STANDARD ADDENDUM TO AGREEMENT

Contracts with the University of North Texas System and the University of North Texas (collectively, "UNT") are subject to the following terms and conditions, which are incorporated for all purposes into the Agreement to which they are attached. In the event of a conflict between the Agreement and this Addendum to Agreement, this Addendum shall govern. Any term or condition of the Agreement that is not superseded by a term or condition of this Addendum shall remain in full force and effect.

Payment. In accordance with Chapter 2251 of the Texas Gov't Code: (a) payment shall be made no later than thirty days following the later of (i) delivery of the goods or completion of the services and (ii) delivery of an invoice to UNT; and (b) interest, if any, on past due payments shall accrue and be paid at the maximum rate allowed by law. Vendor must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur. Invoices and any required supporting documents must be presented to: University of North Texas – Business Service Center, 1112 Dallas Dr. Ste. 4000, Denton, TX 76205.

Eligibility to Receive Payment. By entering into and performing under this Agreement, Vendor certifies that under Section 231.006 of the Texas Family Code and under Section 2155.004 of the Texas Gov't Code, it is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

Tax Exempt. UNT is exempt from the payment of taxes and will provide necessary documentation confirming its tax exempt status.

Breach of Contract Claims Against UNT. Chapter 2260 of the Texas Gov't Code establishes a dispute resolution process for contracts involving goods, services, and certain types of projects. To the extent that Chapter 2260, Texas Gov't Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by the parties to attempt to resolve any claim for breach of contract against UNT that cannot be resolved in the ordinary course of business.

Governing Law and Venue. This Agreement shall be construed and enforced under and in accordance with the laws of the State of Texas. The Agreement is made and entered into, and is performable in whole or in part in Denton County, Texas, and venue for any suit filed against UNT shall be subject to the mandatory venue statute set forth in § 105.151 of the Texas Education Code.

No Excess Obligations. In the event this Agreement spans multiple fiscal years, UNT's continuing performance under this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the contract by the Texas State Legislature. If the Legislature fails to appropriate or allot the necessary funds, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act, UNT shall issue written notice to Vendor that UNT may terminate the Agreement without further duty or obligation.

Travel Expenses. Reasonable travel, meals, and lodging expenses shall be charged in accordance with and shall not exceed State of Texas travel, meal, and lodging reimbursement guidelines applicable to employees of the State of Texas.

Delivery. Delivery shall be FOB Destination.

Insurance. UNT, as an agency of the State of Texas, is insured for general liability insurance under a self-insurance program covering its limits of liability. The parties agree that such self-insurance by UNT shall without further requirement, satisfy all insurance obligations of UNT under the Agreement.

Public Information. UNT shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Vendor shall make public information available to UNT in an electronic format. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this contract and Vendor agrees that the contract can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter. Further, Vendor agrees (1) to preserve contracting information for the duration of the contract and according to UNT records retention requirements; (2) to promptly provide contracting information to UNT when requested; and (3) upon completion of the contract to provide, at no cost, all contracting information to UNT or to preserve all contracting information according to UNT's records retention requirements.

Required Posting of Contracts on Website. Vendor acknowledges and agrees that UNT is required by Section 2261.253 of the Texas Gov't Code to post each contract it enters into for the purchase of goods or services from a private vendor on its Internet website, including any terms and conditions otherwise marked confidential and/or proprietary.

Israel Non-Boycott Verification. If the Agreement is subject to Texas Gov't Code Section 2271.002, Vendor hereby represents, verifies, and warrants that it does not boycott Israel and will not boycott Israel during the term of the Agreement.

Limitations. UNT is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on UNT property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers, and limitations on legal rights, remedies, requirements, and processes; limitations of time in which to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; and indemnities. Terms and conditions relating to these limitations will not be binding on UNT, except to the extent not prohibited by the Constitution and the laws of the State of Texas.

VENDOR: Winthrop Intelligence, LLC

UNIVERSITY OF NORTH TEXAS

By:



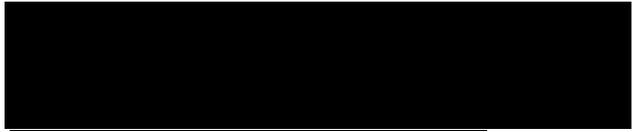
Name:

Title:

Date:

8/18/2021

By:



Title:

Date:

8/18/2021

Declaration of Procurement Method

The attached contract document has been issued as a result of either a sole source or proprietary justification approved by the University of North Texas System Procurement Department.

The approved justification form is on file with the UNT System Procurement Department records.