

The NKD-Group, Inc. Software as a Service (SaaS) Subscription Agreement

Effective Date: January 1, 2020

Scope

This Software as a Service (SaaS) Agreement (the "Agreement") is a software distribution model in which a third-party provider (Cloud-Host) hosts applications and makes them available to you ("Client") over the Internet. Supported third-party host are: Nutanix, Inc., and Cybele Software. This document sets forth the obligations and conditions between the Client and The NKD Group, Inc, a Delaware limited liability company ("Provider"), relating to your use of the Service defined herein. Please read this Agreement carefully. Your use of the Services is expressly conditioned on your acceptance of this Agreement.

Recitals

- A. The Provider is the owner of specific proprietary computer software known as **WinORS**, **WinORS_{fx}**, **WinORS_{e-AI}**, **WinORS_{e-AI 2017}**, **WinORS-xxxx** (the "Software").
- B. Provider provides and sells subscriptions to access and use the Software on the specified website notified to the subscribers (the "Services").
- C. The Client desires to use the Services for educational purposes.
- D. Provider and Client acknowledge and agree that this Agreement shall be effective and in force immediately upon the date that Client voluntarily purchases the subscription by clicking the "Buy" icon (the "Effective Date").

NOW, THEREFORE, in consideration for the mutual promises contained herein and other good and valuable consideration, the parties agree as follows:

I. Software Subscription

- a. Provider grants to Client and Client accepts from the Provider, a limited, non-exclusive, non-transferable right to access and use the Services solely for Client's personal use. The Services shall not be used by Client on behalf of, third parties that are not authorized under this Agreement. Client shall use its best efforts to ensure

that the Services are used in accordance with the terms and conditions of this Agreement. The Client acknowledges that its right to use the Services will be web-based only according to the terms of this Agreement and the Software will not be installed on any servers or other computer equipment owned or controlled by Client or otherwise provided to Client.

- b. The use of the Services by Client pursuant to this Agreement shall be subject to any end-user agreement, terms of use, and privacy policy applicable to the Cloud-host.

II. Intellectual Property Rights.

- a. The Client acknowledges that all right, title, and interest in and to the Services and the Software, together with its codes, sequences, derivative works, organization, structure, interfaces, any documentation, data, trade names, trademarks, or other related materials (collectively, the "Provider IP"), is, and at all times shall remain, the sole and exclusive property of Provider. The Provider IP contains trade secrets and proprietary information owned by Provider and is protected by United States copyright laws (and other laws relating to intellectual property). Except the right to use the Services, as expressly provided herein, this Agreement does not grant any rights to Client to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered) or any other rights or licenses concerning the Services or the Software.
- b. Client shall not attempt, or directly or indirectly allow any Authorized User or other third parties to try to copy, modify, duplicate, create derivative works from, frame, mirror, republish, reverse compile, disassemble, reverse engineer, download, transmit or distribute all or any portion of the Services and Software in any form or media or by any means.
- c. The provisions of paragraph II shall survive the termination of this Agreement.

III. Subscription Fee.

- a. The Client shall pay to Provider the subscription fee ("Subscription Fee") in the amount and for the duration that Client has entered and agreed to pursuant to the sign-up page for this Agreement.
- b. The Subscription Fee is for one semester of use (17 weeks) or one summer term (5 weeks). Use beyond the subscription period requires the payment of a new subscription fee. All payments to

the Provider via the secure purchase portal are due on or before the first day of the Subscription Period.

- c. Client hereby authorizes PADDLE to submit the Client-identified method of payment for the subscription period to the payment vendor. Subscription payments are not prorated for any reason.
- d. The purchase portal is a secure web site hosted by [PADDLE](#). At a minimum, payment through the PADDLE service requires a valid credit card, debit card, or PayPal account. By using the PADDLE service, you agree to accept the terms of this Agreement and those of the purchase portal. The Client hereby authorizes PADDLE to submit the Client-identified method of payment for the subscription period to the payment vendor.
- e. Subscription payments are not prorated for any reason.
- f. If the PADDLE authorization is denied, the Client's subscription is automatically terminated.

IV. Accessibility/Performance.

Provider shall use commercially reasonable efforts to make the Services (except those controlled by the Cloud-host) available on a 24x7 basis (twenty-four hours per day, seven days per week) during the Term. Exceptions will be for (i) scheduled system back-up or other on-going maintenance as required and planned by Provider, or (ii) for any unforeseen cause beyond Provider's reasonable control, including but not limited to the internet service provider or communications network failures, denial of service attacks or similar attacks, or any force majeure events outlined in this Agreement. The Provider will monitor performance indicators on the systems and network infrastructure to gauge the overall performance of its hosting services and will take reasonable steps to address systems and network infrastructure as required to maintain satisfactory performance of the Software. Provider further reserves the right to monitor and reasonably restrict the Client's ability to use the Services if the Client is using excessive computing resources, which are impacting the performance of the Services for other subscribers. Provider agrees to notify Client in cases where it restricts such use and uses good faith efforts to determine an appropriate alternative or workaround solution.

V. Maintenance and Support.

Provider shall maintain the Software and Services and provide all patches and fixes to the Software and Services at no additional cost. Provided, however, said maintenance shall not include any major releases of new versions of the Software, other functionality, or custom programming, which Provider, at its discretion, may provide at an

additional cost as otherwise agreed between the parties.

VI. Refunds.

- a. Given the nature of digital content, the Provider does not offer a refund or credit on a subscription unless:
 - i. There is a breach of Accessibility/Performance or Maintenance and Support of this Agreement.
 - ii. There is a specific requirement under applicable consumer protection laws.
- b. The Provider does not accept responsibility to provide a 100% refund, or equivalent credit, for the following reasons:
 - i. You have changed your mind after the 5th day of purchase.
 - ii. You bought the item by mistake
 - iii. You lack the expertise and training to use the subscription items properly.
 - iv. You ask for goodwill (e.g., I might retake the class sometime in the future)
- c. To request a 100% refund, send an email within **five business days of purchase** to WinORS@nkd-group.com. Please use the same email you used to purchase the subscription. In the body of the email, include a verification/statement that you are no longer registered in the class for which you subscribed to use the Services.

VII. Term.

The Term of this Agreement shall commence on the Effective Date and shall continue until terminated as provided herein and as described in III(b). Upon termination of this Agreement for any reason, all rights and subscriptions granted to Client shall immediately terminate, and the Client shall cease using the Services. There is no partial refund if the Client terminates the Agreement before the end of the subscription period.

VIII. Default.

Client shall be in default of this Agreement if Client fails to make any payment when due and fails to cure said default within five (5) days after receipt of written notice thereof from Provider. In addition to the monetary breach described in the previous sentence, either party will be in default of this Agreement if the party is in material breach of this Agreement and fails to cure such breach within fifteen (15) days

after receipt of written notice thereof from the non-breaching party. If a party is in default, the non-breaching party may terminate this Agreement or seek any other remedies available at law or in equity, except as otherwise provided in this Agreement. In the event Client breaches or attempts to breach any of the provisions of this Agreement, Provider shall have the right, in addition to such other remedies that may be available, to injunctive relief enjoining such breach or attempt to breach.

IX. Confidentiality.

- a. In addition to, and in no way limiting the requirements relating to the Provider IP as outlined in II of this Agreement, Client shall use its reasonable efforts (but in no case less than the efforts used to protect its proprietary information of a similar nature) to protect all proprietary, confidential, and non-public information pertaining to or in any way connected to the Software, the Services, the Provider's financial, professional and other business affairs, and this Agreement (the "Confidential Information").
- b. The Client shall not disclose or publicize the Confidential Information without the Provider's prior written consent.
- c. Client shall use their reasonable efforts (but in no case less than the efforts used to protect its proprietary information of a similar nature) not to disclose and not to use the Confidential Information for their benefit or the benefit of any other person, third-party, firm or corporation in a manner inconsistent with the purpose of this Agreement.
- d. The terms of confidentiality and non-disclosure contained herein shall expire five (5) years from the date of the termination of this Agreement.
- e. The restrictions on disclosure shall not apply to information which was: (i) generally available to the public at the time of disclosure, or later available to the public other than through the fault of the Client; (ii) already known to the Client before disclosure pursuant to this Agreement; (iii) obtained at any time lawfully from a third party under the circumstances permitting its use or disclosure to others; or (iv) required by law or court order to be disclosed.

X. Limited Warranty.

Provider warrants that it has the power and authority to grant the subscription for the Services granted to Client hereunder. Except for

the warranty set forth herein, the Services are provided "As-Is." The Provider disclaims all other warranties, express or implied, including without limitation any implied warranties of merchantability or fitness for a particular purpose.

XI. Limitation of Remedy and Liability.

Client represents that it accepts sole and complete responsibility for (a) the selection of the Services to achieve Client's intended results; (b) use of the Services; and (c) the results obtained from Services. The Provider does not warrant that the Client's use of the Services will be uninterrupted or error-free. Client shall not assert any claims against Provider based upon theories of negligence, gross negligence, strict liability, fraud, or misrepresentation, and Client shall defend Provider from any demand or claim, and indemnify and hold Provider harmless from all losses, costs, expenses, or damages, including reasonable attorneys' fees, directly or indirectly resulting from Client's use of the Services.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL PROVIDER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR DAMAGES WHATSOEVER. DAMAGES (INCLUDING, WITHOUT LIMITATION), DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES, WHETHER BASED UPON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

In any event, under no circumstances shall Provider be liable for any loss, costs, expenses, or damages to Client in an amount exceeding the Subscription Fee paid to Provider by Client for the Term.

XII. Miscellaneous.

a. Headings.

The paragraph headings in this Agreement are for convenience only and they form no part of the Agreement and shall not affect the interpretation thereof.

b. Notice and Demands.

Notice, demand, or other communication mandated to be given by this Agreement by either party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally. Unless Provider is otherwise notified in

writing, the Client's address for notice purposes shall be the Client's address provided as part of the Client's billing information.

c. **Governing Law; Forum Selection.**

This Agreement shall be governed exclusively by the laws of the State of Delaware, without regard to its conflicts of law principles. Any action under or concerning this Agreement shall be brought exclusively in the District courts in Delaware. The parties irrevocably agree and consent that said the forum is convenient and has jurisdiction to hear and decide any such action.

d. **Compliance with Laws.**

Client shall use the Services in accordance with all applicable local, state, and federal laws.

e. **Severability.**

If any provision of this Agreement shall be held illegal, void, or unenforceable, the remaining portions shall remain in full force and effect.

f. **No Waiver.**

The delay or failure of either party to exercise any right under this Agreement or to take action against the other party in the event of any breach of this Agreement shall constitute a waiver of such right, or any other right, or of such breach, or any future breaches, under this Agreement.

g. **Assignment.**

Client shall not assign or transfer this Agreement.

h. **No Partnership or Agency.**

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorize either party to act as an agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise bind the other in any way.

i. **Force Majeure.**

Provider will not be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by events or circumstances beyond the Provider's reasonable control, including but not limited to fire, flood, storm, an act of God, war, malicious damage, failure of a utility service or transport or telecommunications network.

j. **Complete Agreement.**

This Agreement constitutes the entire Agreement between the

parties concerning the Services and supersedes all prior or contemporaneous understandings or agreements, whether written or oral. No amendment or modification of this Agreement will be binding unless reduced to a writing signed by duly authorized representatives of the parties, and such copy makes specific reference to this Agreement and its intention as an amendment hereto.

BY CLICKING ON THE BUY NOW ICON OR BY USING THE SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTOOD IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT THIS AGREEMENT SHALL BE SUPERIOR TO, AND SUPERCEDE ANY CONFLICTING OR INCONSISTENT TERMS CONTAINED IN ANY PURCHASE ORDERS, OTHER DOCUMENTS PROVIDED TO THE COMPANY BY YOU, OTHER DOCUMENTS PROVIDED TO YOU BY THE COMPANY, OR AGREEMENTS PREVIOUSLY ENTERED INTO BY THE PARTIES. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT USE THE SOFTWARE AND THE DATA.