|  |  |
| --- | --- |
| Tech-Contracts-Academy-Logo_TM_Color_FINAL  <https://TechContracts.com/> | **THE TECH CONTRACTS HANDBOOK**  **Cloud Computing Agreements, Software Licenses, and Other IT Contracts for Lawyers and Businesspeople**  Second Edition  **by David W. Tollen**  (ABA Publishing - Intellectual Property Law Section of the American Bar Association; 2015) |

***Form Contract***

**Customer’s ITMA (Information Technology Master Agreement)**

***Licensed Software, SaaS, Professional Services, or any Combo of the Three; Customer’s Form Contract; Customer-Friendly; Accommodates Multiple Projects/Licenses/SoW’s; Ink Signature***

IMPORTANT NOTICE: This form is complicated, so we recommend use by experienced contracts professionals. It has multiple moving pieces, so review thoroughly. This serves as a single form for all of a customer’s licensed software, SaaS, and IT professional services deals. Part I applies to all products/services, Part II only to licensed software and SaaS, and Part III only to professional services. You designate the product(s) or service(s) being bought in each Addendum, and you can have one or many.

*You may use the form contract below subject to the “Terms of Use” posted at* [*http://techcontracts.com/privacy/*](http://techcontracts.com/privacy/)*. In addition to the Terms of Use, PLEASE READ THE FOLLOWING DISCLAIMER BEFORE USING THE FORM CONTRACT:*

***NEITHER THE AUTHOR NOR THE PUBLISHER REPRESENTS THAT THE FORM CONTRACT BELOW WILL MEET YOUR SPECIFIC GOALS, PROTECT YOUR SPECIFIC INTERESTS, OR WITHSTAND CHALLENGES TO ITS LEGAL OR FACTUAL SUFFICIENCY. The form contract below is general in nature and may not be sufficient for a specific contractual, technological, or legal problem or dispute. THE FORM IS NOT PROVIDED WITH ANY GUARANTY, WARRANTY, OR REPRESENTATION AS TO QUALITY OR SUITABILITY FOR ANY PARTICULAR PURPOSE. Publication of the form does not constitute the practice of law and is not legal counsel or advice. Neither the author nor the publisher of* The Tech Contracts Handbook*, nor anyone affiliated with the book’s Website, is rendering a legal or other professional service. The form should not be relied upon as a substitute for consultation with an attorney.***

*Note that this document uses Microsoft Word multi-level bullets/numbering for section numbers and cross-referencing features for section references. Please delete all text above the following dotted line, as well as the line itself and the page-break following it, before using this form.*

------------------------------------

**I****NFORMATION TECHNOLOGY MASTER AGREEMENT**

This INFORMATION TECHNOLOGY MASTER AGREEMENT (this “Agreement”) is made as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Effective Date”) by and between \_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_, (“Customer”) and \_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_ (“Vendor”). This Agreement consists of Parts I through III below, Attachment A, and any Addendum (as defined below) executed by the parties, including any attachments to such Addendums.

The parties have agreed that Vendor will provide Customer with certain technology products and/or services and that Customer will pay Vendor certain fees. Therefore, in consideration of the covenants, agreements and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as set forth in the pages that follow.

IN WITNESS THEREOF, the parties have executed this Agreement as of the Effective Date.

VENDOR CUSTOMER

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Part I  
GENERAL TERMS & CONDITIONS

In Articles 1 through 13 below: references to Licensed Software, SaaS, and Software/SaaS Addendums will be inapplicable unless and until the parties execute a Software/SaaS Addendum; and references to Professional Services, Deliverables, and Statement of Work Addendums will be inapplicable unless and until the parties execute a Statement of Work Addendum.

1. **DEFINITIONS.** The following terms will have the meanings set forth in this Article 1 when used in this Agreement.
   1. “Acceptance” is defined in Section 3.1 (*Acceptance*) below.
   2. “Addendum” means an addendum addressing acquisition of a specific set of products or services, on the form attached hereto as Exhibit A, executed by authorized representatives of each party. An Addendum may be (a) a Software/SaaS Addendum, (b) a Statement of Work Addendum, or (c) both. References to Addendums include any attachments to those Addendums, except where this Agreement specifically addresses attachments separately.
   3. “Confidential Information” is defined in Section 5 (*Confidentiality*) below.
   4. “Data Breach” means unauthorized disclosure or exposure of Project Data.
   5. “Deliverable” means software, report, or other deliverable created pursuant to a Statement of Work Addendum.
   6. “Licensed Software” means software that a Software/SaaS Addendum calls on Vendor to provide for Customer’s reproduction and other use. For the avoidance of doubt, Licensed Software does not include SaaS, though Licensed Software that interfaces with SaaS.
   7. “Project Data” means all information processed or stored on computers or other electronic media by Customer or on Customer’s behalf, or provided to Vendor for such processing or storage, as well as any information derived from such information. Project Data includes, without limitation: (a) information on paper or other non-electronic media provided to Vendor for computer processing or storage, or information formerly on electronic media; (b) information provided to Vendor by Customer’s customers or other users or by other third parties; and (c) personally identifiable information from such customers, users, or other third parties, including from Customer’s employees.
   8. “Professional Services” means professional services that a Statement of Work Addendum calls on Vendor to provide. For the avoidance of doubt, Professional Services do not include SaaS.
   9. “SaaS” means a software-as-a-service that a Software/SaaS Addendum calls on Vendor to host (directly or indirectly) for Customer’s use. For the avoidance of doubt, SaaS does not include Professional Services or Licensed Software.
   10. “Software/SaaS Addendum” refers to an Addendum with the following checked in Item I thereof: “Software/SaaS – software, software-as-a-service, or both.”
   11. “Specifications” refers to such technical and functional specifications for Licensed Software, SaaS, and/or Deliverables as are included or referenced in an Addendum.
   12. “Statement of Work Addendum” or “Statement of Work” refers to an Addendum with the following in Item I thereof: “Statement of Work – professional services.”
2. **ADDENDUMS & PAYMENTS.** Each Addendum is incorporated into and forms a part of this Agreement. No change in the scope of work, fee arrangements, or other provisions of an Addendum will be effective unless and until each party accepts such change through a written change order. In the event of a conflict with an Addendum, the provisions of Parts I, II, and/or III of this Agreement will govern. In the event of a conflict with an attachment to an Addendum, the main body of such Addendum will govern. No Addendum will be construed to amend this main body of this Agreement.
   1. Products & Services. Vendor shall provide to Customer such Licensed Software, SaaS, Deliverables, Professional Services, and other products and services as are set forth in each Addendum.
   2. Compensation. Customer shall pay Vendor such fees as are set forth in each Addendum. Unless the Addendum specifically provides otherwise, invoices will be due and payable 45 days from receipt by Customer. Customer will not be required to pay any fees not specifically listed in this Agreement, including without limitation compensation for employee overtime charges.

## Responsibility for Taxes. Vendor is responsible for paying all federal, state, and local income or business taxes, including estimated taxes and any other taxes, charges, fees, additions to tax, interest, and penalties that may be assessed, imposed, or incurred as a result of the fees paid pursuant to this Agreement.

1. **ACCEPTANCE & REJECTION**.
   1. Acceptance. “Acceptance” occurs upon (a) written notice of acceptance of Licensed Software, SaaS, or Deliverables from Customer or (b) 45 days after Vendor has completed and notified Customer in writing of (as applicable) full installation, implementation, and customization, including completion of related Professional Services, if Customer has not first given written notice of rejection. No Licensed Software, SaaS, or Deliverable will be deemed accepted until Acceptance. An Addendum may revise the definition of Acceptance with respect to the Licensed Software, SaaS, or Deliverables provided pursuant to such Addendum.
   2. Rejection. Except as set forth in the applicable Addendum: (a) Customer shall not reject Licensed Software, SaaS, or Deliverables for any reason other than failure to comply with applicable Specifications; and (b) if Customer rejects Licensed Software, SaaS, or a Deliverable, Vendor shall promptly repair it so that it meets its Specifications and redeliver it to Customer.
2. **INDEPENDENT CONTRACTOR.**

## Independent Contractor Status; No Benefits. Customer and Vendor acknowledge and agree that Vendor will serve as an independent contractor and that no Vendor employee or contractor will be an employee of Customer. Vendor will be responsible for all employment rights and benefits of Vendor employees, including without limitation: (a) federal, state, and local income and employment taxes and social security contributions; (b) workers’ compensation, health benefits, vacation pay, holiday pay, profit sharing, retirement, pension, disability benefits, and other health and welfare benefits, plans, or programs; and (c) insurance.

## No Agency. Vendor will not have any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of Customer, or to bind Customer in any manner, and shall not make any contrary representation. Without limiting the generality of the foregoing, Vendor will have no right or authority to accept service of legal process on behalf of Customer.

1. **CONFIDENTIALITY.**
   1. Confidential Information. “Confidential Information” refers to the following items one party to this Agreement (“Discloser”) discloses to the other (“Recipient”): (a) any document Discloser marks “confidential”; (b) any information Discloser orally designates as “confidential” at the time of disclosure, provided Discloser confirms such designation in writing within 15 business days; (c) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whether or not marked “confidential.” Customer’s Confidential Information also includes (d) any other nonpublic, sensitive information Vendor/Recipient should reasonably consider a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in Recipient’s possession at the time of disclosure; (ii) is independently developed by Recipient without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Recipient’s improper action or inaction; or (iv) is approved for release in writing by Discloser. Recipient is on notice that the Confidential Information may include Discloser’s valuable trade secrets. Notwithstanding the foregoing, no Deliverable will be considered Confidential Information unless the applicable Statement of Work Addendum so provides.
   2. Nondisclosure*.* Recipient shall not use Confidential Information for any purpose other than to facilitate the provision of products and services to Customer pursuant to this Agreement. Recipient: (a) shall not disclose Confidential Information to any employee or contractor of Recipient unless such person needs access for such purpose and, in the case of Vendor’s employees and contractors, is subject to a nondisclosure agreement with Recipient/Vendor with terms no less restrictive than those of this Agreement; and (b) shall not disclose Confidential Information to any other third party without Discloser’s prior written consent. Without limiting the generality of the foregoing, Recipient shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Recipient shall promptly notify Discloser of any misuse or misappropriation of Confidential Information that comes to Recipient’s attention. Notwithstanding the foregoing, Recipient may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Recipient shall give Discloser prompt notice of any such legal or governmental demand and reasonably cooperate with Discloser in any effort to seek a protective order or otherwise to contest such required disclosure, at Discloser’s expense.
   3. Termination & Return. The obligations of Section 5.2 above (*Nondisclosure*) will terminate 4 years after disclosure of the Confidential Information in question; provided that such obligations related to Confidential Information constituting Discloser’s trade secrets will continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, Recipient shall return all copies of Confidential Information to Discloser or certify, in writing, the destruction thereof.
   4. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto, unless this Agreement specifically provides to the contrary. Discloser will retain all right, title, and interest in and to all Confidential Information.
   5. Exception & Immunity. Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), Recipient is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:
      1. *Immunity*. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that- (A) is made- (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
      2. *Use of Trade Secret Information in Anti-Retaliation Lawsuit*. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.
2. **DATA MANAGEMENT & SECURITY.** The provisions of this Article 6 apply only if Vendor receives access to Project Data. Vendor recognizes and agrees that Project Data may contain personally identifiable information or other private information, even if the presence of such information is not labeled or disclosed. An Addendum may waive or modify the obligations of this Article 6 with respect to the subject matter of such Addendum.
   1. Data Management.
      1. *Access, Use, & Legal Compulsion*. Unless it receives Customer’s prior written consent, Vendor: (i) shall not access, process, or otherwise use Project Data other than as necessary to perform as required in this Agreement; (ii) shall not give any of its employees access to Project Data except to the extent that such individual needs access to facilitate the provision of products and services to Customer pursuant to this Agreement and is subject to a reasonable written agreement with Vendor protecting such data, with terms reasonably consistent with those of this Section 6.1 (*Data Management*) and of Section 6.2 (*Data Security*) below; and (iii) shall not give any third party access to Project Data, including without limitation Vendor’s other customers, except subcontractors subject to Subsection 6.1(d) below. Notwithstanding the foregoing, Vendor may disclose Project Data as required by applicable law or by proper legal or governmental authority. Vendor shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer’s expense.
      2. *Customer’s Rights*. Customer possesses and retains all right, title, and interest in and to Project Data, and Vendor’s use and possession thereof is solely on Customer’s behalf. Customer may access and copy any Project Data in Vendor’s possession at any time, and Vendor shall reasonably facilitate such access and copying promptly after Customer’s request. The parties recognize and agree that Vendor is a bailee for hire with respect to Project Data.
      3. *Handling, Retention, & Deletion*. In its handling of Project Data, Vendor shall observe \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, including without limitation provisions regarding retention and deletion of Project Data. Customer may revise either such policy by providing new written versions to Vendor; provided Vendor is not required to accept any such revision without reasonable additional compensation if it materially increases Vendor’s obligations. Except as permitted in such policy, Vendor shall not erase Project Data, or any copy thereof, without Customer’s prior written consent and shall follow any written instructions from Customer regarding retention and erasure of Project Data. Unless prohibited by applicable law, Vendor shall purge all systems under its control of all Project Data at such time as Customer may request. Promptly after erasure, Vendor shall certify such erasure to Customer in writing. In purging or erasing Project Data as required by this Agreement, Vendor shall leave no data recoverable on its computers or other media, to the maximum extent commercially feasible. Finally, Vendor shall not transfer Project Data outside \_\_\_\_\_\_\_\_\_ (the “Approved Region”) without Customer’s prior written consent. Vendor’s obligations set forth in this Subsection (without limitation) apply likewise to Vendor’s successors, including without limitation any trustee in bankruptcy.
      4. *Subcontractors*. Vendor shall not permit any subcontractor to access Project Data except to the extent that such subcontractor needs access to facilitate the provision of products and services to Customer pursuant to this Agreement and is subject to a written contract with Vendor protecting the data, with terms reasonably consistent with those of this Section 6.1 (*Data Management*) and of Section 6.2 (*Data Security*), specifically including without limitation terms consistent with those of Subsection 6.1(a)(ii) above as applied to subcontractor employees. Vendor shall exercise reasonable efforts to ensure that each subcontractor complies with all of the terms of this Agreement related to Project Data. As between Vendor and Customer, Vendor shall pay any fees or costs related to each subcontractor’s compliance with such terms, including without limitation terms in Section 6.2 (*Data Security*) below governing audits and inspections.
      5. *Applicable Law*. Vendor shall comply with all applicable laws and regulations governing the handling of Project Data and shall not engage in any activity related to Project Data that would place Customer in violation of any applicable law or regulation.
   2. Data Security. In addition to the requirements below of this Section 6.2, Vendor shall exercise commercially reasonable efforts to prevent unauthorized exposure or disclosure of Project Data and shall observe any data security procedures set forth in the applicable Addendum.
      1. *DataSec Program*. Vendor shall maintain, implement, and comply with a written data security program (the “DataSec Program”) that requires commercially reasonable policies and procedures to ensure compliance with this Section 6.2 and with Section 6.1 above (*Data Management*). The DataSec Program’s policies and procedures will contain administrative, technical, and physical safeguards, including without limitation: (i) guidelines on the proper disposal of Project Data after it is no longer needed to carry out the purposes of the Agreement; (ii) access controls on electronic systems used to maintain, access, or transmit Project Data; (iii) access restrictions at physical locations containing Project Data; (iv) encryption of electronic Project Data; (v) dual control procedures; (vi) testing and monitoring of electronic systems; and (vii) procedures to detect actual and attempted attacks on or intrusions into the systems containing or accessing Project Data. Vendor shall review the DataSec Program and all other Project Data security precautions regularly, but no less than annually, and update and maintain them to comply with applicable laws, regulations, technology changes, and best practices.
      2. *Employee Background Checks*. Vendor shall not allow any of its employees or subcontractor personnel to access Project Data except to the extent that such individual has received a clean report with regard to each of the following: (i) verifications of education and work history; (ii) a 7-year all residence criminal offender record information check; and (iii) a 7-year federal criminal offender record information check. (A clean report refers to a report with no discrepancies in education or work history and no criminal investigations or convictions related to felonies or to crimes involving identity theft or other misuse of sensitive information.) However, the requirements of the preceding sentence will not apply to the extent forbidden by applicable law.
      3. *Audits & Testing*.
         1. Vendor shall retain a certified public accounting firm to perform an annual audit of the Services’ data protection features and to provide a SOC 2 Type II report, pursuant to the standards of the American Institute of Certified Public Accountants (the “AICPA”). The most current report will be due to Customer within \_\_\_ business days of the Effective Date and thereafter annually within 15 business days of Vendor’s receipt from the audit firm. If the AICPA revises its relevant reporting standards, Vendor shall provide the report that then most closely resembles a SOC 2 Type II report. In addition, Vendor shall annually conduct its own internal security audit and address security gaps in compliance with its security policies and procedures, including without limitation the DataSec Program.
         2. If requested by Customer, Vendor shall, on a quarterly basis: (A) permit security reviews (e.g., intrusion detection, firewalls, routers) by Customer on systems storing or processing Project Data and on Vendor policies and procedures relating to the foregoing; and (B) permit unannounced inspection of any or all security processes and procedures during the term of this Agreement, including without limitation penetration tests, provided vendor is not required to permit any review or inspection that may compromise the security of Vendor’s other customers or of their data.
         3. Any report or other result generated through the tests or audits required by this Subsection 6.2(c) will be Vendor’s Confidential Information. If any audit or test referenced above uncovers deficiencies or identifies suggested changes in Vendor’s performance of the Services, Vendor shall exercise reasonable efforts promptly to address such identified deficiencies and suggested changes, including without limitation by revising the DataSec Program.
      4. *Data Breaches*. Vendor shall implement and maintain a program for managing actual or suspected Data Breaches. In the event of a Data Breach, or in the event that Vendor suspects a Data Breach, Vendor shall (i) promptly notify Customer by telephone or in person and (ii) cooperate with Customer and law enforcement agencies, where applicable, to investigate and resolve the Data Breach, including without limitation by providing reasonable assistance to Customer in notifying injured third parties. In addition, Vendor shall provide 1 year of credit monitoring service to any affected individual, unless the Data Breach resulted from Customer’s act or omission. Vendor shall give Customer prompt access to such records related to a Data Breach as Customer may reasonably request; provided such records will be Vendor’s Confidential Information, and Vendor will not be required to provide Customer with records belonging to, or compromising the security of, its other customers. The provisions of this Subsection 6.2(d) do not limit Customer’s other rights or remedies, if any, resulting from a Data Breach.
3. **RIGHT TO AUDIT.** Customer may: (A) audit during normal business hours Vendor’s records pertaining to the performance of this Agreement, regardless of the manner or form in which Vendor maintains such records, provided such audit will not unduly interfere with Vendor’s business operations; (B) employ a third party consultant or auditor to assist in such audit; (C) exercise this audit right until one year after termination of this Agreement; and (D) without penalty, withhold any payment for Vendor’s services until Vendor honors any request by Customer to audit Vendor’s records. Vendor may designate any records referenced in the preceding sentence as its Confidential Information and may require that the third party auditor or consultant described in the preceding sentence execute a nondisclosure agreement with terms consistent with those of Article 5 above (*Confidentiality*).
4. **VENDOR’S WARRANTIES.**
   1. Right to Contract & Disclose. Vendor represents and warrants that it has and will have full power and authority to enter into and fully to perform this Agreement, including all Addendums, and that no agreement or understanding with any other person or other entity exists or will exist that would interfere with Vendor’s obligations under this Agreement. Vendor further represents and warrants that Vendor’s disclosure of information to Customer in connection with this Agreement will not contravene any obligations of Vendor to a third party.
   2. Preexisting Confidential Information. Vendor represents and warrants that it has, before the Effective Date, maintained confidential and secret any Confidential Information as required by Article 5 above and protected any Project Data as required by Article 6 above.
   3. Intellectual Property. Vendor represents and warrants that neither the Professional Services nor any Licensed Software, SaaS, or Deliverable will infringe a patent, copyright, trade secret, or other intellectual property right of any third party, and that it has and will maintain the full power and authority to grant the intellectual property rights set forth in this Agreement without the further consent of any third party, including without limitation Vendor’s employees and contractors. In case the use of any portion of a Deliverable, Licensed Software, or SaaS is enjoined, Vendor shall, at its own expense: (a) procure for Customer the right to continue use of the Deliverable, Licensed Software, or SaaS; (b) replace the Deliverable, Licensed Software, or SaaS with a non-infringing version of comparable functionality; or if Customer consents in writing, (c) issue a full refund of fees paid pursuant to such Addendum. The preceding sentence does not limit any Customer right to recover fees paid pursuant to other Addendums where products or services provided thereunder are compromised or of reduced value as a result of the breach of warranty.
   4. No Viruses. Vendor represents and warrants that the Deliverables, Licensed Software, SaaS, and any other software used or provided by Vendor, as well as any media used to distribute or support them, will contain no viruses or other computer instructions or technological means intended to disrupt, damage, or interfere with the use of computers or related systems.
   5. Disclaimer. EXCEPT AS SPECIFICALLY SET FORTH IN THIS ARTICLE 8, IN ARTICLES 17 AND 21, OR IN AN ADDENDUM, VENDOR OFFERS NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
5. **INDEMNITY.** Vendor shall indemnify, defend, and hold harmless Customer (including its officers, directors, parents, subsidiaries, agents, insurers, successors, assigns, and stockholders) harmless against any claim, suit, or proceeding arising out of, related to, or alleging any of the following (the “Indemnified Claims”): (A) infringement of any patent, copyright, trade secret, or other intellectual property right by any Deliverable, Licensed Software, or SaaS or by the Professional Services; (B) a Data Breach; or (C) the injury to or death of any individual, or any loss or damage to real or tangible personal property, caused by Vendor or any of its agents, employees, or contractors during or related to performance pursuant to this Agreement. Vendor’s obligations set forth in the preceding sentence include, without limitation, retention and payment of attorneys and settlement at Vendor’s expense, payment of judgments, or both. Notwithstanding the foregoing, to the extent that a claim, suit, or proceeding arises out of Customer’s breach of this Agreement, it does not constitute an Indemnified Claim. Customer will have the right to approve the terms of any settlement or compromise of an Indemnified Claim that restricts its rights granted under this Agreement or subjects it to any ongoing obligations. Customer has no obligation to indemnify, defend, or hold harmless Vendor, including without limitation for any claim arising out of or related to Vendor’s compliance with specifications provided by Customer.
6. **LIMITATION OF LIABILITY.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY OF THE FOLLOWING, ARISING OUT OF OR RELATED TO THIS AGREEMENT: (A) ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES; OR (B) ANY AMOUNT IN EXCESS OF 2 TIMES THE AGGREGATE FEES PAYABLE (BOTH PAID AND DUE) TO VENDOR PURSUANT TO THIS AGREEMENT AS OF THE DATE OF THE INCIDENT GIVING RISE TO THE LIABILITY, OR IF SUCH INCIDENT OCCURS LESS THAN 1 YEAR AFTER THE EFFECTIVE DATE, 2 TIMES THE ESTIMATED FEES PAYABLE TO VENDOR DURING THE FIRST YEAR OF THIS AGREEMENT. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS ARTICLE 10 APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF THE PARTY TO BE CHARGED WAS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF SUCH DAMAGES WERE FORESEEABLE. LIABILITIES LIMITED BY THIS ARTICLE 10 INCLUDE, WITHOUT LIMITATION, LIABILITY FOR NEGLIGENCE. Notwithstanding the foregoing, the Provisions of this Article 10 do not apply to: (1) obligations or liabilities set forth in Article 5 (*Confidential Information*) or 9 (*Indemnity*) of this Agreement; (2) any obligation of either party to pay or reimburse fees or to reimburse expenses, to the extent that this Agreement specifically calls for such payment or reimbursement; or (3) claims for attorney’s fees and other litigation costs either party becomes entitled to recover as a prevailing party in any action.
7. **INSURANCE.** During the term of this Agreement and for one year thereafter, Vendor shall maintain in full force and effect: (A) commercial general liability insurance covering personal injury and property damage, including without limitation contractual liability, with limits of at least $\_\_\_\_\_\_\_ per occurrence and $\_\_\_\_\_\_\_ in the aggregate; and (B) cyber liability insurance covering \_\_\_\_\_\_\_\_\_\_\_\_, with a limit of at least $\_\_\_\_\_\_\_ per occurrence. 
   1. Policies. Vendor shall maintain all such insurance with carriers rated \_\_ or better by \_\_\_\_\_\_\_\_\_\_\_\_\_. The insurance policies required pursuant to this Article 11 will stipulate that they are primary insurance and that no insurance policy or self-insurance program of Customer will be called upon to contribute.
   2. Certificates. Before provision of products or services, and from time to time thereafter upon renewal of any such policy of insurance, Vendor shall provide Customer with certificates of insurance evidencing the above coverages and naming Customer as certificate holder entitled to 30 days’ written notice following any cancellation, reduction, or change in coverage.
8. **TERM & TERMINATION.** The term of this Agreement will continue until terminated as set forth in this Article 12.
   1. Breach. Either party may terminate this Agreement, and Customer may terminate an Addendum, for the other party’s material breach by written notice specifying in detail the nature of the breach, effective in 30 days unless the other party first cures such breach, or effective immediately if the breach is not subject to cure.
   2. Insolvency. Either party may terminate this Agreement for cause by written notice, without opportunity to cure, in the event that: (a) the other party fails to function as a going concern; (b) a receiver, trustee, or other custodian for the other party or its assets is appointed, applied for, or consented to; (c) the other party becomes insolvent or unable to pay its debts as they mature in the ordinary course; (d) the other party makes an assignment for the benefit of creditors; (e) the other party is liquidated or dissolved; or (f) any proceedings are commenced by or against the other party under any bankruptcy, insolvency, or debtor’s relief law and not dismissed within 60 days.
   3. Convenience. Except to the extent that an Addendum provides to the contrary, Customer may terminate an Addendum or this Agreement for any reason or no reason on 90 days’ written notice.
   4. Survival & Data Return. The following provisions of this Agreement will survive any expiration or termination of this Agreement: Articles and Sections 5, 6.1, 6.2 (to the extent, if any, that Vendor retains Project Data), 7, 9, 10, 11, 20.2, 22, and 24, as well as any provision that must survive to fulfill its essential purpose. Furthermore, a grant of property or intellectual property rights to Customer that by its terms continues for longer than the duration of this Agreement will survive expiration or termination of this Agreement, except termination for Customer’s breach of its obligations to pay for such property or rights. Promptly after termination or expiration of an Addendum or of this Agreement, Vendor shall return to Customer all Project Data and all other Customer data in such format as Customer may reasonably require and permanently erase all copies thereof; provided the terms of an Addendum may alter the requirements of this sentence.
9. **MISCELLANEOUS.**

## Non-Exclusive Agreement**.** Customer acknowledges that Vendor may engage in other business activities during the term of this Agreement and may be employed or retained by others. Vendor acknowledges that Customer enters into similar agreements with parties other than Vendor for products and services the same as or similar to those Vendor provides. Customer from time to time may employ other parties, including without limitation Vendor’s competitors, to assist with projects set forth in this Agreement or similar projects.

## No Publicity. Vendor shall not: (a) use Customer’s name or trademarks (including the names or trademarks of Customer’s subsidiaries, affiliates, divisions, or products) in any form of publicity; or (b) release to the public any information relating to the products or services provided to Customer under this Agreement, or to otherwise disclose or advertise that Vendor has entered into this Agreement, except with Customer’s prior written approval.

* 1. Injunction. Each party agrees that breach of Article 5 above (*Confidentiality*), or Vendor’s breach of Article 6 above (*Data Management & Security*), would cause the non-breaching party irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, the injured party will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.
  2. Bankruptcy Rights. The rights and licenses granted to Customer in Articles 14 (*License, Subscription, & Software/Saas Addendums*) and 20 (*Deliverables*) of this Agreement (the “License Provisions”) are licenses to “intellectual property” rights, as defined in Section 365(n) of the United States Bankruptcy Code (11 U.S.C. Sections 101, et seq.). If Vendor is subject to any proceeding under the United States Bankruptcy Code, and Vendor as debtor in possession or its trustee in bankruptcy rejects this Agreement, Customer may, pursuant to 11 U.S.C. Section 365(n)(1) and (2), retain any and all rights granted to it under the License Provisions to the maximum extent permitted by law. This Section 13.4 will not be construed to limit or restrict any right or remedy not set forth in this Agreement, including without limitation the right to retain any license or authority this Agreement grants pursuant to any provision other than the License Provisions.
  3. Return of Property. Upon Customer’s request or upon termination of an Addendum, Vendor shall return to Customer all Customer property placed in Vendor’s possession or control pursuant to such Addendum.
  4. Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
  5. Notices. Notices pursuant to this Agreement will be sent to the addresses below and will be deemed received upon the earlier of (a) actual receipt or (b) delivery in person, by fax with written confirmation of receipt, or by certified mail return receipt requested.

Notices to Customer shall be addressed to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_

Notices to Vendor shall be addressed to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_

Either party may revise its address for notices by notice given pursuant to this Section 13.7.

* 1. Interpretation. This Agreement will be construed as a whole according to the fair meaning of its language and, regardless of who is responsible for its original drafting, will not be construed for or against either party.
  2. Severability. If a court of competent jurisdiction rules that a provision of this Agreement is unenforceable, such provision will be deemed modified to the extent necessary to make it enforceable, and the remaining provisions of this Agreement will continue in full force and affect.
  3. Governing Law. This Agreement and all claims arising out of or related to this Agreement will be governed solely by the internal laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties’ rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of \_\_\_\_\_\_\_\_\_\_ [city or county], \_\_\_\_\_\_\_\_\_ [state]. This Section 13.10 governs all claims arising out of or related to this Agreement, including without limitation tort claims.
  4. Assignment. Vendor shall not assign this Agreement or any of its rights or obligations hereunder without Customer’s prior written consent. Subject to the preceding sentence, this Agreement will inure to the benefit of the parties’ successors and assigns.
  5. Entire Agreement; Modification. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.

Part II  
LICENSED SOFTWARE/SAAS TERMS & CONDITIONS

Articles 14 through 17 below apply only if the parties execute a Software/SaaS Addendum.

1. **LICENSE, SUBSCRIPTION, & SOFTWARE/SAAS ADDENDUMS.** Customer’s license to Licensed Software and its rights to SaaS are set forth in the applicable Software/SaaS Addendum. If the Software/SaaS Addendum does not list such license or rights, Vendor hereby grants Customer: (a) a license to reproduce, modify, and otherwise use the Licensed Software, under Vendor’s copyrights and other intellectual property rights; and (b) a subscription to access and use the SaaS. The license and subscription in the preceding sentence grant rights no less than is consistent with the goals and requirements of the Software/SaaS Addendum.
2. **SERVICE LEVELS & MAINTENANCE.**
   1. Licensed Software Maintenance. Except to the extent that a Software/SaaS Addendum provides to the contrary:
      1. *Maintenance*. During the term of this Agreement, Vendor shall maintain the Licensed Software and SaaS so that they perform in material compliance with their Specifications.
      2. *Updates & Upgrades*. During the term of this Agreement, Vendor shall provide Customer with copies of all new versions, updates, and upgrades of the Licensed Software (collectively, “Upgrades”), without additional charge, promptly after commercial release. Upon delivery to Customer, Upgrades will become part of the Licensed Software and will be subject to the license and other terms of this Agreement applicable to such Licensed Software.
   2. SaaS SLA. Except to the extent that a Software/SaaS Addendum provides to the contrary:
      1. *SLA*. During the term of this Agreement, Vendor shall maintain the SaaS so that it performs according to its Specifications during 99.999% of each calendar month.
      2. *Updated SaaS*: Vendor shall ensure that SaaS receives all updates and upgrades Vendor provides to its customers generally.
3. **TIMING OF MAINTENANCE FEES & SAAS SUBSCRIPTIONS**. Notwithstanding any provision of an Addendum to the contrary: (A) no fees for maintenance of Licensed Software or SaaS, including without limitation for Upgrades (as defined in Subsection 15.1(b) above), will accrue before Go-Live (as defined below); and (B) no period before Go-Live will be counted against the time covered by any maintenance period. Unless the applicable Software/SaaS Addendum provides to the contrary, no fees for use of SaaS will accrue before Go-Live, and no period before Go-Live will be counted against the time covered by any SaaS subscription fees. This Article 16 limits the potential periods of maintenance and of SaaS subscriptions and will not be construed to extend or otherwise define such periods. “Go-Live” refers to the earlier of Acceptance of the Licensed Software or SaaS or Customer’s first use of the Licensed Software or SaaS in production, other than a beta use or test.
4. **FUNCTIONALITY & RELATED WARRANTIES.** Except to the extent that a Software/SaaS Addendum provides to the contrary:
   1. Licensed Software Warranties. Vendor represents and warrants that the Licensed Software will materially conform to its Specifications for 1 year following Acceptance. In the event of breach of the warranty in this Subsection 17.1 (and without limiting any other right or remedy of Customer), Vendor shall promptly repair the Licensed Software or replace it with software of substantially similar functionality, or if the foregoing fails after reasonable efforts and Customer so requests, refund all fees paid pursuant to this Agreement for such Licensed Software. The preceding sentence: (a) does not limit any Customer right to recover fees paid pursuant to other Addendums where products or services provided thereunder are compromised or of reduced value as a result of the breach of warranty; and (b) does not limit any maintenance commitments set forth in Subsection 15.1(a) above or in a Software/SaaS Addendum.
   2. SaaS Warranties. Vendor warrants that the SaaS will materially conform to its Specifications The preceding sentence: (a) does not limit any Customer right to recover fees paid pursuant to other Addendums where products or services provided thereunder are compromised or of reduced value as a result of the breach of warranty; and (b) does not limit any service level commitments set forth in Subsection 15.2(a) above or in a Software/SaaS Addendum.
   3. Supporting Services. Vendor represents and warrants that it will provide any service that supports Licensed Software or SaaS, including without limitation maintenance services, in a professional and workmanlike manner.

Part III  
PROFESSIONAL SERVICES TERMS & CONDITIONS

Articles 18 through 24 below apply only if the parties execute a Statement of Work Addendum.

1. **PROJECT MANAGERS.** In its performance of Professional Services, Vendor shall report to Customer’s Project Manager (as defined below) or his or her designee. Vendor shall ensure that its Project Manager is available to meet with Customer’s Project Manager or designee at such times as Customer may reasonably request. (Each party’s “Project Manager” is the person so listed in the relevant Statement of Work Addendum or such replacement as the party may designate in writing.)
2. **REIMBURSABLE EXPENSES.** Except to the extent that a Statement of Work Addendum specifically provides to the contrary: (A) Customer shall reimburse Vendor for reasonable out-of-pocket expenses incurred by Vendor employees and contractors involved in provision of the Professional Services, provided Customer specifically authorized each expense or range of expense in advance in writing; (B) Vendor shall invoice Customer monthly for any travel, meal, and other expenses at cost and shall provide Customer with receipts for all expenses more than $\_\_; (C) Customer will not be required to reimburse Vendor for any air travel other than coach (or its cost equivalent class); and (D) Vendor shall provide, at its sole cost and expense, all equipment required for it to provide the Professional Services.
3. **DELIVERABLES.** Except to the extent that a Statement of Work Addendum specifically provides to the contrary:
   1. Deliverables that Become Licensed Software or SaaS*.* If this Agreement includes one or more Software/SaaS Addendums, a Statement of Work Addendum may provide that a Deliverable becomes part of the Licensed Software or the SaaS. In such case, the Deliverable will become part of the Licensed Software or SaaS upon Acceptance, and from that point such Deliverable will be subject to the intellectual property rights, warranties, and other terms related to such Licensed Software or SaaS in the relevant Software/SaaS Addendum and elsewhere in this Agreement.
   2. Other Deliverables; License. If a Deliverable does not become part of the Licensed Software or SaaS pursuant to Section 20.1 above, Vendor hereby grants Customer a nonexclusive, perpetual, irrevocable, fully-paid, royalty-free, worldwide license to reproduce, create derivative works from, publicly display, publicly perform, make, have made, import, and use each Deliverable, with the right to sublicense each and every such right. Vendor also forever waives and agrees never to assert any “moral rights” (no matter how designated) with respect to any Deliverable referenced in the preceding sentence against Customer or its licensees, even after termination of this Agreement.
4. **SERVICE & DELIVERABLES WARRANTIES**. Vendor represents and warrants that: (a) the Professional Services will be provided in a workmanlike manner and with the highest professional standards and practices; (b) each technology Deliverable will perform according to its Specifications for a period of 1 year following Acceptance, or for such other period as is set forth in the relevant Statement of Work Addendum; and (c) Vendor shall comply with all applicable federal, state, and local laws, rules, and regulation in connection with the performance of the Professional Services, including without limitation laws, rules, and regulations governing discrimination in contracting and employment. Without limiting any remedies of Customer, Vendor shall promptly repair or replace any Deliverable involved in a breach of the warranty in Section 21(b) above.
5. **NONSOLICITATION.** During the term of this Agreement and for 1 year after termination, Vendor shall not solicit any of Customer’s employees involved in Professional Services to consider alternate employment. For the avoidance of doubt, the preceding sentence does not forbid a solicitation to the general public. For each employee who quits as a result of breach of this Article 22, the soliciting party Vendor shall pay Customer \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as liquidated damages. The parties agree that the damages set forth in the preceding sentence are liquidated damages and not penalties and that they are reasonable in light of the harm that would be caused by breach, the difficulties of proof of loss, and the inconvenience and infeasibility of otherwise obtaining an adequate remedy.
6. **VENDOR’S PERSONNEL.** Vendor shall assign personnel of such skill levels as is necessary to perform Professional Services. Vendor shall replace any person providing Professional Services as soon as reasonably practicable, not to exceed 10 business days, after Customer indicates dissatisfaction with such person in writing, which Customer may do for any reason that does not violate applicable law, in its sole discretion.
7. **INSURANCE.** During the term of this Agreement and for one year thereafter, Vendor shall maintain in full force and effect: (A) business automobile liability insurance for all vehicles, including those owned or rented by Vendor or its employees, covering personal injury and property damage, with a limit of at least $\_\_\_\_\_\_\_ per occurrence; and (B) worker’s compensation and employer’s liability insurance as required by statute in each jurisdiction in which Vendor provides Professional Services. Vendor shall comply with the requirements listed in Subsections **11.1 and 11.2 above with respect to the coverages listed in this Article 24**.

**Exhibit A**Addendum Form

**ADDENDUM NUMBER \_\_\_\_**

**To Information Technology Master Agreement**

Name of Technology or Project: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This Addendum Number \_\_ (this “Addendum”) is entered into pursuant to the Information Technology Master Agreement with Effective Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by and between \_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Agreement”).

Capitalized terms not defined in this Addendum will have the meanings given in Parts I, II, and III of the Agreement (including use of “Vendor” for \_\_\_\_\_\_\_\_\_\_).

This Addendum is incorporated into the Agreement. In the event of any conflict with this Addendum, Parts I, II, and/or III of this Agreement will govern. The provisions of this Addendum govern only the subject matter hereof and not any other subject matter covered by the Agreement.

This Addendum includes the following attachments: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. [List any attached SLA, maintenance plan, or other document. Delete this sentence/paragraph if none.] In the event of a conflict with an attachment to this Addendum, this main body of this Addendum will govern.

I. *Type of Addendum*. This Addendum is a: [Check one or both of the following, or simply delete the one not chosen.]

\_\_ Software/SaaS Addendum – software, software-as-a-service, or both

\_\_ Statement of Work Addendum – professional services

II. *Vendor’s Products/Services & Specifications*. [Describe the SaaS, Licensed Software, or Professional Services. For Professional Services, list any Deliverables or deadlines. For Licensed Software, SaaS, and Deliverables, list Specifications.]

III. *Fees*.

IV. *Maintenance and/or SLA*. [Insert any maintenance plan for Licensed Software, including updates/upgrades, or an SLA for SaaS. Insert “N/A” if not applicable.]

V. *Project Manager(s)*. The following will serve as the parties’ Project Managers. [Insert “N/A” if not applicable.]

VI. *Additional Provisions*. [Address delivery place and time, training, and any other terms not covered above. Insert “N/A” if not applicable.]

VII. *Term*. [Insert the term of the Addendum, or “perpetual” or “indefinite” as applicable, as well as any provisions related to duration.]

This Addendum is effective as of the latest date of execution set forth below.

VENDOR CUSTOMER

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_