

# Texas Local Government Master Solution Agreement (TXGovMSA)

## Agreement

This Texas Local Government Master Solution Agreement (the “**Agreement**”) is a legal agreement entered into by and between Recon Infosec, Inc. (“**Recon**”) and the local government agency identified on an order form (“**Customer**”) and governs any executed order forms, quotes, or other ordering document (“**Order Form**”) that reference this Agreement. This Agreement is effective on the date Customer executes the Order Form or submits a matching purchase order to Recon (the “**Effective Date**”). This Agreement permits Customer to purchase subscriptions to the Solutions (defined below) identified in the Order Form and sets forth the terms and conditions under which those Solutions will be delivered. The Agreement consists of the terms and conditions set forth below, any attachments or exhibits identified herein and any Order Forms that reference this Agreement. If there is a conflict between the terms below and the Order Form, the documents will control in the following order: the Order Form then this Agreement.

BY EXECUTING AN ORDER FORM, DELIVERING A PURCHASE ORDER OR OTHER CONFIRMATION TO RECON OR THE AUTHORIZED PARTNER DOCUMENTING ACCEPTANCE OF AN ORDER FORM, CUSTOMER (OR ITS AUTHORIZED AGENT, IF APPLICABLE) EXPRESSLY AND EXPLICITLY ACKNOWLEDGES AND AGREES THAT THIS IS A BINDING AGREEMENT AND CUSTOMER HEREBY AGREES TO THE TERMS OF THIS AGREEMENT. AN ORDER FORM IS CONSIDERED ACCEPTED WHEN COUNTERSIGNED BY RECON, WHETHER MANUALLY OR ELECTRONICALLY.

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### 1. Scope.

1.1. **Solutions.** Recon, together with its affiliates, will provide the specific products and services (“**Solutions**”) as specified in the applicable Order Form. A Solution may consist of hardware equipment, which may be virtual or physical appliances (“**Equipment**”), software, including any add-ons offering enhanced features and functionality made generally available to Recon customers from time-to-time (collectively, the “**Software**”), a cloud service offering,

Software support (collectively, “**Services**”), and/or additional professional services as defined below (“**Professional Services**”). The Solutions are provided on a subscription basis for a set term designated on the Order Form (each, a “**Subscription Term**”) for the one-time costs and subscription fees set forth therein (the “**Fees**”). Customer may access and use the Solutions, and any Documentation associated therewith, solely for its own internal business purposes and in accordance with the terms and conditions of this Agreement, such associated Documentation, any scope of use restrictions designated in the applicable Order Form. “**Documentation**” means user manuals, training materials, product descriptions and specifications, and other printed information relating to the Solution, as in effect and generally available from Recon, but expressly excluding marketing and sales collateral and materials.

**1.2. Future Functionality.** Customer agrees that it has not relied on the availability of any future functionality of any other future product or service in executing this Agreement or any Order Form.

- 2. Equipment.** If the Order Form specifies that Customer will receive Equipment, then Customer is responsible for installing the Equipment at the location(s) specified by Recon and for the implementation of appropriate data protection practices related to the protection of any information included on such Equipment while the Equipment is located within Customer’s environment. If Customer attempts to install or use the Equipment at a location other than specified by Recon, the Solutions may fail to function or may function improperly. In the event Customer relocates the Equipment, Customer will promptly notify Recon so that Equipment deployment information can be updated within Customer’s account. If Customer does not return the Equipment to Recon, Customer will be liable to Recon for the replacement cost of the Equipment. If applicable, Recon will ship Equipment to Customer and will pay the freight costs associated with shipping the Equipment to Customer’s designated locations, F.O.B. Destination, Inside Delivery. Customer is responsible for all additional costs and expenses associated with shipping the Equipment to its designated locations and for the return of the Equipment to Recon upon termination of the Subscription Term.
- 3. Professional Services.** Certain Recon Solutions may require Professional Services, such as onboarding, or may be stand-alone offerings, and any such Professional Services shall be specified on an applicable Order Form.
- 4. Software and Services.** Subject to and conditioned upon Customer’s compliance with the terms of this Agreement, Recon grants to Customer a limited, non-transferable, non-sublicensable, non-exclusive license during the Subscription Term to install the object code form of the Software, but only in connection with Customer’s use of the Solutions and otherwise in accordance with the Documentation and this Agreement. Customer acknowledges that any changes made by the Customer to the Customer’s infrastructure or configuration of the Solutions after initial deployment which was not requested or directed by Recon may cause the Solutions to cease working or function improperly and that Recon will have no responsibility for the impact of any such Customer changes.

5. **Reservation of Rights and Ownership.** Recon owns or has the right to license the Solutions and any associated Documentation (“**Recon Technology**”). Customer acknowledges and agrees that: (a) the Recon Technology is protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws; (b) Recon retains all right, title and interest (including, without limitation, all patent, copyright, trade secret and other intellectual property rights) in and to the Recon Technology, excluding any rights, title, and interest in any Third Party Products (as defined in Section 12.3 below) which shall be retained by its third party licensor(s), any other deliverables, any and all related and underlying technology and any derivative works or modifications of any of the foregoing, including, without limitation, any Feedback (as defined below); (c) there are no implied licenses and any rights not expressly granted to Customer hereunder are reserved by Recon; (d) the Solution, excluding Professional Services, is licensed on a subscription basis, not sold, and Customer acquires no ownership or other interest (other than the license rights expressly stated herein) in or to the Recon Technology; and (e) the Solution is offered as an on - line, hosted solution, and Customer has no right to obtain a copy of the Software. Feedback includes suggestions, comments or other feedback (“**Feedback**”) provided to Recon by Customer with respect to the Solutions.

6. **Restrictions, Responsibilities, and Prohibited Use.**

6.1. **Restrictions.** Customer agrees not to, directly or indirectly: (i) modify, translate, copy or create derivative works based on the Recon Technology; (ii) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non- public APIs to the Solutions, except to the extent expressly permitted by applicable law (and then only upon advance notice to Recon); (iii) interfere with or disrupt the integrity or performance of the Solutions or the data contained therein or block or disrupt any use or enjoyment of the Solutions by any third party; (iv) attempt to gain unauthorized access to the Solution or their related systems or networks; or (v) remove or obscure any proprietary or other notice contained in the Recon Technology. If Recon, in its reasonable discretion, determines that Customer’s use of or access to the Solutions imposes an actual or imminent threat to the security or stability of Recon’s infrastructure or that Customer is abusing its use of the Solutions in contravention with the terms of this Agreement, Recon may, in addition to any other right herein, temporarily suspend Customer’s access to the Solutions until such activity is rectified. If commercially practicable, Recon shall provide Customer with notice prior to any such suspension and shall work with Customer in good faith to reinstate the Solutions promptly.

6.2. **Recon Responsibilities.** Recon shall provide the Solutions in accordance with the terms of this Agreement. The Solutions provided under this Agreement shall include any updates, upgrades, bug fixes, version upgrades or any similar changes that are made generally available to Recon’s customers free of charge from time to time during the Subscription Term.

**6.3. Customer Responsibilities.** Customer must identify the administrative users for its account ("**Administrators**"). Each Administrator will receive an administrator ID and password and will need to register with Recon. Customer is responsible for notifying Recon about changes to Administrators, including but not limited to termination, change of authority, and the addition of Administrators. Customer acknowledges and agrees that Administrators will be able to view all Solutions Data and other traffic and activities that occur on Customer's network and that Customer is responsible for all activities that occur under Administrator accounts. Administrator IDs are granted to individual, named persons and cannot be shared or used by more than one Administrator but may be reassigned from time to time to new Administrators.

**6.4. Prohibited Use.** Customer represents and warrants that Customer is not a Prohibited Person nor owned or controlled by a Prohibited Person. "**Prohibited Persons**" shall mean a person or entity appearing on the lists published by the U.S. Department of Commerce, the U.S. Department of State, the U.S. Department of Treasury or any other list that may be published by the U.S. Government, as amended from time to time, that is prohibited from acquiring ownership or control of items under this Agreement, or with which Recon is prohibited from doing business.

**6.5. Export/Import Compliance.** Customer agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing: (i) Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country, (ii) Customer will not (and will not permit any of its users to) access or use the Solutions in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer will not submit to Recon, directly or through the Solutions, any information that is controlled under the U.S. International Traffic in Arms Regulations.

**7. Fees, Payment, Taxes, and Audit.** Pricing for the Solutions will be specified on an Order Form. All fees are payable in U.S. Dollars and are non-cancelable and non-refundable. Delinquent amounts shall bear interest as provided for in the Texas Prompt Payment Act (Tex. Gov't Code Ch. 2251). If Customer fails to make any payments due under this Agreement or an applicable Order Form, Recon shall notify Customer of such nonpayment. If a payment that is due remains unpaid for ten (10) days after Recon provides Customer with notice of such nonpayment, Recon may cease providing the Solutions without any liability to Recon. The amounts payable to Recon are exclusive of any sales, use, excise, value added, import, or other applicable taxes, tariffs or duties ("**Taxes**"). Customer is solely responsible for payment of all Taxes except for any taxes based solely on Recon's net income. If Customer is required to pay any Taxes, Customer shall pay such Taxes with no reduction or offset in the amounts payable to Recon hereunder and Customer will pay and bear such additional amount as shall be necessary such that Recon receives the full amount of the payment required as if no such reduction or offset were required. If Recon has the legal obligation to pay or collect Taxes for which Customer is responsible, Customer authorizes Recon to charge

Customer for such amount. If Customer believes that Recon has billed Customer incorrectly, Customer must contact Recon no later than thirty (30) days after the closing date on the first billing statement in which the error or problem appeared in order to receive an adjustment or credit. Inquiries should be directed to Recon's accounting department.

8. **Compliance with Laws.** Each party represents and warrants that, during the term of this Agreement, it will comply with all foreign, federal, state and local statutes, laws, orders, rules, regulations and requirements, including those of any governmental (including any regulatory or quasi-regulatory) agency applicable to such party as it pertains to its obligations herein.
9. **Confidentiality.** Either party (as a "**Discloser**") may disclose confidential and proprietary information, orally or in writing ("**Confidential Information**") to the other party (as a "**Recipient**"). All such information shall be marked with a restrictive legend of the Discloser or, if orally or visually disclosed to Recipient by Discloser, or disclosed in writing without an appropriate letter, proprietary stamp or legend, information that would be apparent to a reasonable person that such information is of a confidential or proprietary nature shall constitute Confidential Information. Notwithstanding the foregoing, contract terms relating to Solutions Data shall be set forth in Section 10. Notwithstanding the marking requirements of this Section, Customer acknowledges that the following constitutes Confidential Information of Recon: any pricing, trade secrets, know-how, inventions (whether or not patentable), techniques, ideas, or processes related to the Recon Technology; the design and architecture of the Recon Technology; the computer code, internal documentation, and design and functional specifications of the Recon Technology; and any intellectual property and know-how included in the problem reports, analysis, and performance information related to the Recon Technology. Each party agrees to hold the other party's Confidential Information in strict confidence, not to disclose such Confidential Information to third parties not authorized by the Discloser to receive such Confidential Information, and not to use such Confidential Information for any purpose except as expressly permitted hereunder. Each party agrees to take commercially reasonable steps to protect the other party's Confidential Information and to ensure that such Confidential Information is not disclosed, distributed or used in violation of the provisions of this Agreement. The Recipient may disclose Confidential Information only: (a) with the Discloser's prior written consent; or (b) to those employees, officers, directors, agents, consultants, and advisors with a clear and well-defined "need to know" purpose who are informed of and bound by the obligations of this Agreement. Notwithstanding the foregoing, the Recipient may disclose Confidential Information to the extent required by law; however, the Recipient will give, to the extent legally permissible and reasonably practical, the Discloser prompt notice to allow the Discloser a reasonable opportunity to obtain a protective order and such Confidential Information disclosed to the extent required by law shall otherwise remain confidential and subject to the protections and obligations of this Agreement. To the extent legally required, Recon may report any violations of law pertaining to any Customer Confidential Information and/or Customer's use of the Solutions. The Discloser agrees that the foregoing obligations shall not apply with respect to any information that the Recipient can document is: (i) rightfully in its possession or known to it prior to receipt from the Discloser without an obligation of confidentiality; (ii) or has

become public knowledge through no fault of the Recipient; (iii) rightfully obtained by the Recipient from a third party without breach of any confidentiality obligation; or (iv) independently developed by employees of the Recipient who had no access to Discloser's Confidential Information. Upon expiration or termination of this Agreement for any reason, and except as otherwise provided in Section 16 below, each party shall promptly destroy all copies of the other party's Confidential Information and copies, notes or other derivative material relating to the Confidential Information. Recon expressly acknowledges that Customer is a public entity subject to Chapter 552 of the Texas Government Code and records retention obligations identified in the Texas Administrative Code.

## 10. Solutions Data.

**10.1. Solutions Data.** "Solutions Data" means, depending on the Solution deployed, the operational system log data and any other information which Customer may elect to submit to Recon through the Solutions, including, but not limited to operational values, event logs, and network data such as flow, HTTPS, TLS, DNS metadata, cursory inventory data, operating systems and versions, users and groups from Active Directory, system level inventory, event data, and network vulnerability data. As between the parties, Customer shall retain all right, title and interest (including any and all intellectual property rights) in and to the Solutions Data (excluding any Recon Technology used with the Solutions Data). Customer hereby grants Recon, during the term of the Agreement, a non-exclusive, worldwide, royalty-free right to collect, use, copy, store, transmit, modify and create derivative works of the Solutions Data solely to the extent necessary to provide the Solutions to Customer. If Recon is compelled by law to disclose Solutions Data or its summary reports related thereto, it shall provide prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Customer's cost, if Customer wishes to contest the disclosure. Customer hereby authorizes Recon to aggregate Solutions Data with other data so that results are non-personally identifiable with respect to Customer and collect anonymous technical logs and data regarding Customer's use of the Solutions ("**Aggregate/Anonymous Data**"). Notwithstanding anything to the contrary herein, such Aggregate/Anonymous Data will be deemed Recon Technology, which Recon may use for any business purpose during or after the term of this Agreement, including without limitation to develop and improve the Solutions and to create and distribute reports and other materials. Customer understands, and hereby consents, that Solutions Data may be accessed by Recon.

**10.2. Personal Information.** Confidential Information and Solution Data may include information that identifies, relates to, describes, is reasonably capable of being associated with or linked to a particular individual, whether directly or indirectly ("**Personal Information**"). Customer is responsible for the lawfulness of any such Personal Information and the receipt, use, and processing of it under the Agreement. Customer represents and warrants that, where it provides Personal Information to Recon or requests Recon collect or process such information, it (1) has complied with any applicable laws relating to the collection or provision of such information, (2) possesses any consents, authorizations, rights and authority required to transfer or permit Recon to collect, receive, or access any Personal

Information for the Solutions, and (3) to the extent required by applicable law, informed the individuals of the possibility of Recon processing their Personal Information on Customer's behalf and in accordance with its instructions.

**10.3. California Consumer Privacy Act.** The parties acknowledge and agree that Recon is a service provider for the purposes of the California Consumer Privacy Act ("**CCPA**") and may receive personal information (as defined by the CCPA) from Customer pursuant to this Agreement for a business purpose. Recon shall not sell any such personal information. Recon shall not retain, use or disclose any personal information provided by Customer pursuant to this Agreement except as necessary for the specific purpose of performing the Solutions for Customer pursuant to this Agreement or as permitted by the CCPA. The terms "personal information," "service provider," "sale," and "sell" are as defined in Section 1798.140 of the CCPA. Recon certifies that it understands the restrictions of this Section. It is Customer's sole responsibility to notify Recon of any requests from consumers (as defined in the CCPA) seeking to exercise rights afforded in the CCPA with regard to personal information received or processed in connection with the Solutions. Recon agrees to provide reasonable cooperation to Customer in connection with such requests.

## **11. Indemnity.**

**11.1. Recon's Indemnity. RECON AGREES TO DEFEND, INDEMNIFY AND HOLD CUSTOMER, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY RECON'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY RECON, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF CUSTOMER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF RECON AND CUSTOMER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CUSTOMER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND CUSTOMER'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO RECON'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

**11.2. Procedures.** Recon's indemnification obligations are conditioned on the Customer: (a) providing Recon with prompt written notice of any claim, provided that the failure to provide such notice shall not limit the indemnifying party's obligation to indemnify; and (b) providing reasonable information and assistance to Recon in the defense or settlement of the claim at the Recon's expense. Notwithstanding the foregoing, Recon (i) may not make an admission of fault on behalf of the Customer without written consent, (ii) any settlement requiring Customer to admit liability requires prior written consent, not to be unreasonably withheld or delayed, and (iii) Customer may join in the defense with its own counsel at its own expense.

**11.3. Options.** If Customer's use of the Solutions has become, or in Recon's opinion is likely to become, the subject of any claim of infringement, Recon may at its option and expense: (a) procure for Customer the right to continue using and receiving the Solutions as set forth hereunder; (b) replace or modify the Solutions to make them non-infringing; (c) substitute an equivalent for the Solutions; or (d) if Recon, in its sole discretion, determines that options (a)-(c) are not reasonably practicable, terminate this Agreement and refund any pre-paid unused Fees as of the effective date of termination.

## **12. Warranty and Warranty Disclaimer.**

**12.1. Solutions Warranty.** RECON WARRANTS THAT DURING THE SUBSCRIPTION TERM THE SOLUTIONS SHALL SUBSTANTIALLY PERFORM AS DESCRIBED IN THE DOCUMENTATION. IN THE EVENT OF ANY BREACH OF THIS SECTION 12.1, RECON SHALL, AS ITS SOLE LIABILITY AND CUSTOMER'S SOLE REMEDY, REPAIR OR REPLACE THE SOLUTIONS THAT ARE SUBJECT TO THE WARRANTY CLAIM AT NO COST TO CUSTOMER OR IF RECON IS UNABLE TO REPAIR OR REPLACE, THEN RECON WILL REFUND ANY PRE-PAID FEES FOR THE SOLUTIONS, OR PARTS THEREOF, SUBJECT TO THE WARRANTY CLAIM.

**12.2. Disclaimer.** EXCEPT FOR THE WARRANTY DESCRIBED IN THIS SECTION, THE SOLUTIONS ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES OF TITLE. CUSTOMER ACKNOWLEDGES THAT THE SOLUTIONS ARE PROVIDED "AS IS" AND FURTHER ACKNOWLEDGE THAT RECON DOES NOT WARRANT: (A) THE OPERATION OF THE SOLUTIONS WILL BE UNINTERRUPTED, OR ERROR FREE; (B) THE SOLUTIONS ARE NOT VULNERABLE TO FRAUD OR UNAUTHORIZED USE; (C) THE FEATURES OR FUNCTIONALITIES OF THE SOLUTIONS WILL BE AVAILABLE AT ANY TIME IN THE FUTURE; AND (D) THE SOLUTIONS WILL IDENTIFY OR DETECT EVERY VULNERABILITY OR SECURITY ISSUE. CUSTOMER IS RESPONSIBLE AND RECON SHALL HAVE NO RESPONSIBILITY FOR DETERMINING THAT THE USE OF THE SOLUTIONS COMPLIES WITH APPLICABLE LAWS IN THE JURISDICTION(S) IN WHICH CUSTOMER MAY DEPLOY AND USE THE SOLUTIONS.

**12.3. Open Source Warranty.** The Software includes certain Open Source Software. Open Source Software is governed solely by the applicable open source licensing terms, if any, and is provided “AS IS”, and Recon hereby disclaims all copyright interest in such Open Source Software. Recon provides no warranty specifically related to any Open Source Software or any applicable Open Source Software licensing terms. Any fees paid by Customer to Recon are for Recon’s proprietary Software only, and not for any Open Source Software components of the Software. Any license associated with an Open Source Software component applies only to that component and not to Recon’s proprietary Software or any other third-party licensed software. The foregoing language is not intended to limit Recon’s warranty obligation for the Solutions set forth in Section 12.1. “Open Source Software” means software with its source code made available pursuant to a license by which, at a minimum, the copyright holder provides anyone the rights to study, change, and/or distribute the software to anyone and for any purpose.

**12.4. Customer Warranties.** Customer represents and warrants that it shall: (i) obtain any licenses and/or consents necessary for Recon to perform its obligations under this Agreement; (ii) be responsible for ensuring the security and confidentiality of all Administrator IDs and passwords; (iii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Solutions; (iv) notify Recon promptly of any unauthorized use of the Solutions or any breach, or attempted breach, of security of the Solutions; (v) not use the Solutions in a manner that would violate applicable laws or regulations; (vi) not use the Solutions and transfer any Solutions Data to Recon for any fraudulent purposes; and (vii) implement safeguards within Customer’s environment to protect the Solutions, including specifically, the Equipment, from the introduction, whether intentional or unintentional, of (1) any virus or other code, program, or sub-program that damages or interferes with the operation of the Equipment or halts, disables, or interferes with the operation of the Solutions; or (2) any device, method, or token whose knowing or intended purpose is to permit any person to circumvent the normal security of the Solutions.

**13. Limitation of Liability.** EXCLUDING RECON’S PERSONAL INJURY AND INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS AS SET FORTH IN THIS AGREEMENT, FOR ANY CAUSE RELATED TO OR ARISING OUT OF THIS AGREEMENT, WHETHER IN AN ACTION BASED ON A CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER LEGAL THEORY, HOWEVER ARISING, RECON WILL IN NO EVENT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR: (A) DAMAGES BASED ON USE OR ACCESS, INTERRUPTION, DELAY OR INABILITY TO USE THE SOLUTIONS, LOST REVENUES OR PROFITS, LOSS OF SOLUTIONS, BUSINESS OR GOODWILL, LOSS OR CORRUPTION OF DATA, LOSS RESULTING FROM SYSTEM FAILURE, MALFUNCTION OR SHUTDOWN, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION, BREACHES BY AN AUTHORIZED PARTNER, OR BREACHES IN CUSTOMER’S SYSTEM SECURITY; OR (B) ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL

DAMAGES; OR (C) ANY AMOUNTS THAT EXCEED THE TOTAL FEES PAID OR PAYABLE BY CUSTOMER FOR THE SOLUTIONS THAT ARE THE SUBJECT OF THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT WHICH GIVES RISE TO SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY WHETHER OR NOT RECON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. BOTH PARTIES UNDERSTAND AND AGREE THAT THE LIMITATIONS OF LIABILITIES FOR EACH PARTY SET FORTH IN THIS AGREEMENT ARE REASONABLE AND THEY WOULD NOT HAVE ENTERED INTO THE AGREEMENT WITHOUT SUCH LIMITATIONS.

14. **Term and Renewal.** This Agreement shall be in effect for the Subscription Term specified in the Order Form. The payment of any compensation due under this Agreement for any year within the initial Subscription Term or any renewal terms provided for herein is contingent upon the annual appropriation of funds by the Customer's governing body in the annual budget and the Customer's obligations under this Agreement shall not constitute a general obligation of the Customer or indebtedness under the Constitution or laws of the State of Texas. In the event Customer should not, in the current or future fiscal years, appropriate or otherwise receive funds sufficient to purchase or continue related services under this Agreement (including any associated Support Programs), the Customer may terminate this Agreement for lack of appropriations by providing at least fifteen (15) days' written notice. Customer will pay for all undisputed fees and expenses related to services Customer has received as of the date of notice.
15. **Updates.** Recon reserves the right to modify the Solutions, this Agreement, the Terms, and the Documentation in Recon's sole discretion provided that such changes shall not materially decrease the Solutions features and functionalities that Customer has subscribed to during the then-current Subscription Term.
16. **Termination.** Either party may terminate this Agreement for cause if the other party commits a material breach of this Agreement, provided that such terminating party has given the other party ten (10) days advance notice to try and remediate the breach. Upon termination, Customer agrees to cease all use of the Solutions and Recon Technology, installed or otherwise, and destroy all copies of any Recon Technology that are in its possession or under its control and promptly remove and return all Equipment to Recon. Except as otherwise required by law, Recon will remove, delete, or otherwise destroy all copies of Solutions Data and Confidential Information in its possession upon the earlier of (i) the return of the Equipment to Recon or (ii) one hundred-twenty (120) days following termination. Sections 7 (only as to amounts due and owing) and 9 through 14, 16, and 17 will survive the non-renewal or termination of this Agreement.
17. **Miscellaneous.**
  - 17.1. Except as otherwise provided herein, all notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) on the next business day after the date sent, if sent for overnight delivery by a generally recognized

international courier (e.g., FedEx, DHL, etc.) (receipt requested); or (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient. Such communications must be sent to the respective parties at the addresses set forth on the signature page hereof (or at such other address for a party as shall be specified in a notice given in accordance with this Section 17). This Section does not affect Customer's non-waivable rights. Recon's address for notification purposes shall be: 11824 Jollyville Road, Suite 404, Austin, Texas 78759. Customer's address for notification purposes shall be as set forth on the Order Form. Either party may update its notice address upon written notice to the other party.

17.2. Notwithstanding any other terms to the contrary contained herein, Customer grants Recon the right to use Customer's name or logo in customer lists, marketing materials, and verbal discussions with prospective customers to communicate that Customer uses the Solutions.

17.3. The parties to this Agreement are independent contractors. Neither party has the authority to bind the other party without the express written authorization of the other party. Nothing herein may be construed to create an employer-employee, franchisor-franchisee, agency, partnership, or joint venture relationship between the parties. Recon shall be primarily liable for the obligations of any subcontractors used in the delivery of the Solutions.

17.4. This Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Customer shall not be entitled to assign, subcontract, delegate or otherwise transfer any of its rights and/or duties arising out of this Agreement and/or parts thereof to third parties, voluntarily or involuntarily, including by change of control, operation of law or any other manner, without Recon's express prior written consent. Any purported assignment, subcontract, delegation or other transfer in violation of the foregoing shall be null and void. No such assignment, subcontract, delegation or other transfer shall relieve the assigning party of any of its obligations hereunder.

17.5. This Agreement shall be governed by the laws of the State of Texas without regard to the conflicts of law provisions thereof.

17.6. Exclusive venue for any dispute arising out of this Agreement is in Travis County, Texas.

17.7. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

17.8. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable. The parties agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purpose of such void or unenforceable provision. Recon does not accept, expressly or impliedly, and rejects and deems deleted any additional or different terms or conditions that Customer presents, including, but not limited to, any terms or conditions contained Customer's purchase order, or other such document, or established by trade usage or prior course of dealing.

17.9. This Agreement (including the exhibits hereto, if any) constitutes the parties' entire agreement by and between the parties with respect to the subject matter hereof and supersedes any prior or contemporaneous agreement or understanding by and among the parties with respect to such subject matter. Except as otherwise provided herein, this Agreement may be amended, modified or supplemented only by an agreement in writing signed by each party.

17.10. The parties have participated mutually in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted mutually by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

17.11. Governmental Immunity. Unless otherwise required under the law, the Parties agree that Customer has not waived its governmental immunity by entering into and performing their obligations under this Agreement.

17.12. Arbitration. In the event of a dispute which may arise under this Agreement, Customer does not agree to arbitration.

17.13. Texas Local Government. The parties hereby acknowledge and agree that Customer is entering this Agreement pursuant to its governmental function and that nothing contained in this Agreement shall be construed as constituting a waiver of the Customer's governmental immunity from suit or liability, which is expressly reserved to the extent allowed by law. Notwithstanding anything to the contrary herein, the parties hereby acknowledge and agree that to the extent this Agreement is subject to the provisions of Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE, as amended, the Customer's immunity from suit is waived only as set forth in Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE. Further, the parties agree that this Agreement is made subject to all applicable provisions of the Texas Civil Practices and Remedies Code ("CPRC"), including but not limited to all defenses, limitations, and exceptions to the limited waiver of immunity from liability provided in Chapter 101 and Chapter 75.

17.14. Protection of Resident Workers. The Customer actively supports the Immigration and Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). Recon shall establish appropriate procedures and controls so no services under the Contract Documents will be performed by any worker who is not legally eligible to perform such services or employment. Customer reserves the right to audit Recon's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services under the Contract Documents. The audit will be at Customer's expense.

17.15. Immigration Reform and Control Act (8 U.S.C. §1324a). The Customer supports the Immigration Reform and Control Act (IRCA) which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. Recon shall submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that it has not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. Recon shall ensure that its Subcontractors submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that they have not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. Recon and its Subcontractors shall at all times during the term of the contract with Customer comply with the requirements of IRCA and shall notify Customer within fifteen (15) working days of receiving notice of a violation of IRCA. Customer may terminate a contract with Recon if Customer determines that (a) Recon or its Subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years; (b) if Recon fails to ensure that its Subcontractors submit the aforementioned declaration; or (c) Recon or its Subcontractors fail to timely notify Customer of an IRCA violation.

17.16. Disclosure. Pursuant to Chapter 176 of the Texas Local Government Code, a person or agent of a person who contracts or seeks to contract with the Customer must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with Customer. The conflict of interest questionnaire, which is available online at [ethics.state.tx.us](http://ethics.state.tx.us), must be filed with the Customer no later than the seventh business day after the person or agent begins contract discussions or negotiations with the Customer or submits an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the Customer. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code.

Said person should consult with legal counsel if they have questions regarding its compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is contracting or seeking to contract with the Customer to comply with the filing requirements of Chapter 176.

17.17. Texas Government Code Chapter 2252. Pursuant to Texas Government Code Chapter 2252, Subchapter F, Recon affirms, by entering into this Agreement, that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to Iran, Sudan, or a foreign terrorist organization.

## **Change Summary**

Initial Upload of document.

Last Updated: 6/25/2025