

HOSTING SERVICES ADDENDUM

This Hosting Services Addendum ("Addendum") between RecTrac, LLC d/b/a Vermont Systems ("VS," "us," "we," or "our") and **City of Merced (CA)** ("Customer," "you," or "your") is intended to revise the Services Agreement, inclusive of all relevant attachments, schedules, exhibits and/or Addenda (collectively, "Agreement") previously or simultaneously executed between the Parties by adding to the Agreement the terms and conditions listed below. Terms not defined herein shall have the meanings provided in Section 1 of the VS [Terms of Service](#).

- 1. TERM.** The term of this Addendum will commence on the date executed by the Customer and will run coterminous with the Agreement.
- 2. HOSTING SERVICES.** Customer is adding VS's **S tandard** Hosting Services to the suite of products and services that it is receiving from VS, as reflected in the updated Order Schedule.
- 3. HOSTING OBLIGATIONS.** Hosting of Customer Data on VS-controlled servers and systems does not come standard with all Agreements; Customers must specifically contract for hosting services and pay all associated Hosting Fees. **IF A CUSTOMER DOES NOT SELECT VS'S HOSTING SERVICES, AND INSTEAD CHOOSES TO HOST CUSTOMER DATA ON ITS OWN SYSTEMS AND SERVICES, THEN WE MAKE NO WARRANTIES AND DISCLAIM ALL LIABILITY ASSOCIATED WITH SUCH CUSTOMER DATA OR CUSTOMER'S OWN HOSTING ACTIVITIES, INCLUDING (BUT NOT LIMITED TO) INCIDENTS RESULTING IN DATA BREACH, MISAPPROPRIATION OF CUSTOMER DATA, VIOLATIONS OF PRIVACY RIGHTS, AND/OR ANY OTHER SITUATION RESULTING IN DAMAGES OR MONETARY LOSS ARISING OUT OF OR RELATING TO THE HOSTING OR STORAGE OF CUSTOMER DATA.** If Customer chooses us for hosting services, and we actually store Customer Data on a VS-controlled system or service, then, in addition to those terms and conditions described in our Privacy Policy, and provided Customer remains current in its payment of Hosting Fees and otherwise compliant with the Agreement, then we make the following limited representations and warranties with respect to our hosting services: we will, at all times during the Term of the Agreement: (a) maintain a comprehensive data security program which includes reasonable and appropriate technical, organizational and security measures against the destruction, loss, unauthorized access or alteration of Customer Data (including Patron Data, as applicable) which measures will be no less rigorous than the accepted security standards for similarly situated companies in the industry; and (b) provide our hosting services in a good and workmanlike manner; and (c) offer hosting services which, to the best of our knowledge, comply with applicable local, state or federal laws. The limited representations and warranties described herein shall be subject to any other limitations of liability described by the Agreement.
- 4. CUSTOMER DATA GENERALLY.** You represent and warrant that you own or have appropriate rights to all of your Customer Data. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or rights to use of all Customer Data (including Patron Data, as applicable). Except as specifically provided for in the Agreement, we shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any of your Customer Data.
- 5. PAYMENT TERMS.** You agree to pay us all Fees permitted by the Agreement. Fees for specific Services are described in the Order Schedule and may choose to set up billing from one of the following Annual Maintenance dates: **JANUARY 1, MAY 1, JULY 1, OR OCTOBER 1. *THIS DATE MUST CORRESPOND WITH THE SAME DATE PICKED IN THE VS SERVICE AGREEMENT.** All Fees are based on Services provided, not on your actual usage.

Except as permitted by the Agreement, all Fees paid are non-refundable. Payment is due within 30 days from the date you receive our invoice (the "Due Date"). If you do not pay our invoice by the Due Date, then we may charge you a **late fee** up to 5% of the total invoice. All payments are due in U.S. dollars. Unpaid balances owed to us will accrue interest at the rate of 1.5% per month. Please report any errors that you see on an invoice immediately. If you do not dispute a charge within 30 days after receiving it, you will be considered to have accepted the charge. After the **FIRST 12 MONTHS** of the Initial Term, all Fees shall be subject to a cost of living and technology ("COLT") enhancement increase of the greater of five percent (5%) or the aggregate change in the CPI (Consumer Price Index). VS reserves the right to apply the COLT enhancement to any Fees at the start of each Renewal Term, in its sole and absolute discretion.

- 6. BREACH FOR NON-PAYMENT OF FEES.** Payment not made within 30 days of the Due Date will result in an automatic breach of the Agreement and start the clock on a 20-day period in which to cure. If payment is still not received by the 51st day after the scheduled Due Date, we reserve the right to suspend Services until all outstanding Fees are paid. Continued non-payment of Fees more than 60 days after the Due Date will result in a default under the Agreement. In the event of default, all payments otherwise due to us under the Agreement will be accelerated and will be considered due and payable by you immediately, as of the date of default. We shall have no obligation to release any of your Customer Data until all outstanding Fees are paid in full.
- 7. PROHIBITED USE.** You shall not use our Services in violation of the law, whether local, state or federal (including but not limited to the CAN-SPAM Act, the Telephone Consumer Protection Act, the Do-Not-Call Implementation Act, the Americans with Disabilities Act, or any consumer protection statute); to intentionally bypass a security mechanism in the System(s); to reverse-engineer the System(s), or any component thereof, regardless of the reason why; in a way that adversely impacts the availability, reliability or stability of the System(s), or any component thereof; to intentionally transmit material using the System(s) which contains viruses, Trojan horses, worms or some other harmful computer program; to send unsolicited advertising, marketing or promotional materials, whether by email or text, without the recipient's legally-valid consent; to commit fraud; to transmit material that infringes on the intellectual property right of others; to transmit material that is harassing, discriminatory, defamatory, vulgar, pornographic, or harmful to others; or in violation of this Agreement. Violation of this Prohibited Use policy may result in immediate suspension or discontinuation of Services, or legal action which could result in civil damages or criminal punishment.
- 8. OWNERSHIP RIGHTS.** (a) We reserve all title and interest to our Intellectual Property Rights. We alone own our Intellectual Property Rights, in addition to any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by you or any other party relating to our Services. In addition, we retain all rights, title and interest in and to our Software and any splash page designs that we may create and/or maintain on your behalf and license to you. The Vermont Systems™, VS™, PayTrac™ and VS Payments™ names and logos are registered trademarks of RecTrac, LLC, and no right or license is granted to use them without our express written permission. (b) With the exception of Patron Data (which remains the property of individual Patrons), you reserve all rights, title and interest to your Customer Data. You own all rights, title and interest to Customer trademarks, service marks and other intellectual property. We reserve the right to withhold, remove and/or discard your Customer Data without notice for any breach, including without limitation, your non-payment of Fees.
- 9. LIMITED WARRANTIES.** We represent and warrant that (a) we own the appropriate rights to license and/or sublicense our Services (including the Software); (b) the Services (including the Software) will conform with any then-available published specifications; (c) to the best of our knowledge, our Software is free of any viruses, Trojan horses, malware, spyware, ransomware or other harmful code; and (d) that there have been no violations of copyrights or patent rights in connection with the Services (including the Software) offered. We do not warrant that the Services (including the Software) will be entirely free from defect or error. EXCEPT AS SPECIFICALLY STATED HEREIN, THE

SERVICES (INCLUDING THE SOFTWARE) ARE BEING PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND. EACH PARTY HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED. No advice or information, whether written or oral, obtained from us, or any member of our Team, will create any warranty not expressly made. If you are a California resident, you waive California Civil Code § 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected is settlement with the debtor."

10. LIMITATIONS OF LIABILITY.

- 10.1 LIMITATIONS OF LIABILITY.** EXCEPT FOR EACH PARTY'S INDEMNITY OBLIGATIONS, OR FOR LIABILITY WHICH, BY LAW, CANNOT BE LIMITED (COLLECTIVELY, "EXCLUDED CLAIMS"), TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT:
- 10.2** IN NO EVENT SHALL WE OR ANY MEMBER OF OUR TEAM BE LIABLE OR RESPONSIBLE TO YOU FOR LOST PROFITS, LOST SALES OR BUSINESS, LOST DATA (WHERE SUCH DATA IS LOST IN THE COURSE OF TRANSMISSION FROM YOUR SYSTEMS OR OVER THE INTERNET THROUGH NO FAULT OF OURS), BUSINESS INTERRUPTION, LOSS OF GOODWILL, COSTS OF COVER OR REPLACEMENT, OR FOR ANY OTHER TYPE OF INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGES, OR FOR ANY OTHER INDIRECT LOSS OR DAMAGES INCURRED BY YOU OR YOUR AFFILIATES IN CONNECTION WITH THIS AGREEMENT REGARDLESS OF WHETHER YOU OR YOUR AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES.
- 10.3** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, OUR TOTAL AGGREGATE LIABILITY TO YOU, ANY AFFILIATE, OR ANY THIRD PARTY ARISING OUT OF THE AGREEMENT OR ANY OF OUR SERVICES (INCLUDING, WITHOUT LIMITATION, PAYMENT SERVICES, HOSTING SERVICES OR PROFESSIONAL SERVICES) SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT OF FEES PAID BY YOU IN THE PREVIOUS THREE (3) FULL MONTHS IMMEDIATELY PRECEDING THE OCCURRENCE GIVING RISE TO SUCH LIABILITY. THE LIABILITY CAP DESCRIBED HEREIN WILL APPLY IN AGGREGATE TO ANY AND ALL CLAIMS BY YOU AND YOUR AFFILIATES AND SHALL NOT BE CUMULATIVE.
- 10.4** YOU ACKNOWLEDGE AND AGREE THAT THE ESSENTIAL PURPOSE OF THIS SECTION IS TO ALLOCATE THE RISKS UNDER THE AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE FEES CHARGED, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF WE WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. THE PARTIES AGREE THAT THE LIABILITY LIMITS SET FORTH HEREIN ARE A MATERIAL BASIS OF THE BARGAIN AND ARE INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THE AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.
- 10.5** TIME LIMITATION. YOU FURTHER AGREE THAT ANY CLAIM WHICH YOU MAY HAVE AGAINST US MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM AROSE, OTHERWISE THE CLAIM SHALL BE PERMANENTLY BARRED.

11. INDEMNIFICATION. You shall indemnify and defend us (including any member of our Team) and hold us harmless against any claim, suit, demand or proceeding ("Claim") that arises from your actions, your use or misuse, of the Services (including, but not limited to, the Software); your breach of the Agreement or these Terms of Service; or your infringement on someone else's rights, including but not limited to, third party intellectual property rights. We reserve the right to handle our own legal defense however we see fit, even if you are indemnifying us, in which case you agree to cooperate with us so we can execute our strategy. Our indemnity rights shall include all costs associated with the Claim or Claims, including attorneys' fees, court costs, dispute resolution costs, and/or fees associated with collection.

- 12. PRIVACY RIGHTS.** You are required to comply with our [Privacy Policy](#), which may be revised from time to time, and which are expressly incorporated into the Agreement.
- 13. ASSIGNMENT.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, we may assign this Agreement in its entirety without your consent, to our affiliates or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of our assets not involving one of your direct competitors. Subject to the foregoing, the Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 14. FORCE MAJEURE.** We shall not be in default under any provision of the Agreement or be liable for any delay, failure of performance or interruption in Services (including the Software) resulting, directly or indirectly, from causes beyond our reasonable control, including but not limited to any of the following: earthquake, lightning or other acts of God; fire or explosion; electrical faults; vandalism; cable cut; water; hurricanes; fire; flooding; severe weather conditions; actions of governmental or military authorities; national emergency; insurrection, riots or war; terrorism or civil disturbance; strikes, lock-outs, work stoppages or other labor difficulties; supplier failure; shortage; or telecommunication or other internet provider failure.
- 15. CONFLICTING PROVISIONS.** Except as expressly revised in this Addendum, the Agreement will remain in full force and effect. If there is any conflict of inconsistencies between this Addendum and the Agreement, this Addendum will control. VS's acceptance may be evidenced by its fulfillment of the Agreement which this Addendum revises. Except as otherwise described in this Section, no modification of this Agreement, including, but not limited to, subsequent terms included within your Purchase Orders, will be binding unless in writing and manually signed by an authorized representative of the parties.
- 16. VS STANDARD HOSTING SERVICE - SLA.** VS Standard Hosting Service Level Agreement (SLA) can be found here: [VS Standard Hosting Service SLA](#) which may be revised from time to time, and which are expressly incorporated into the Agreement.

AGREED TO BY:

City of Merced (CA)

By: D. Scott McBride
Its: City Manager

Date

ACCEPTED BY:

RecTrac, LLC d/b/a Vermont Systems

By: Patrick Hayden
Its: President

Date

APPROVED AS TO FORM:

Craig Cornwell
City Attorney, City of Merced
