

**City of Joshua CONTRACT TERMS
ADDENDUM TO VERTOSOFT, LLC MASTER SERVICES AGREEMENT**

The Joshua City Council Finds, and the Parties Agree, as Follows:

1.1

This **Addendum** is part of an Agreement between City of Joshua, **TEXAS**, a political subdivision of the State of Texas, (hereinafter referred to as “Joshua” or “City” and referred to as ‘**CLIENT**’ in certain documents put forth by **VERTOSOFT, LLC and / or SOMA GLOBAL INC.** **VERTOSOFT, LLC** may be referred to herein as “**VERTOSOFT**”. **SOMA GLOBAL, INC.** may be referred to herein as “**SOMA GLOBAL**” or “**SOMA**”. The term “**COMPANY**” as used herein may refer to **VERTOSOFT, LLC and SOMA GLOBAL, INC., singularly, or both, as may be applicable.** Certain documents put forth by **VERTOSOFT, LLC or SOMA GLOBAL, INC.** may refer to **VERTOSOFT, LLC or SOMA GLOBAL, INC.** as “**WE**” or “**US**”. **City of Joshua, VERTOSOFT, LLC and SOMA GLOBAL, INC.,** singularly or jointly, as may be applicable, may be collectively identified as the “**Parties**” or each individually as a “**Party**”. This Addendum is part of the Agreement with **VERTOSOFT, LLC and SOMA GLOBAL, INC.** and is intended to modify (as set forth in this Addendum) all documents, including the Proposal and any acceptance of the Proposal put forth by **VERTOSOFT, LLC and SOMA GLOBAL, INC.** This Addendum modifies (as set forth in this Addendum) the **VERTOSOFT, LLC MASTER SERVICE AGREEMENT** and the **GOVERNMENT SOLUTIONS DISTRIBUTION AGREEMENT, Agreement Number V 2022-0716,** and any other document (including but not limited to Order Forms and Invoices) proffered to City of Joshua by **VERTOSOFT, LLC or SOMA GLOBAL, INC.** or their agents and other documents defining the Agreement between City of Joshua, **TEXAS** and **VERTOSOFT, LLC and / or SOMA GLOBAL, INC.**

1.2

This Addendum is part of the Agreement with **VERTOSOFT, LLC** and is intended to modify (as set forth in this Addendum) **ALL** documents, including the **VERTOSOFT, LLC MASTER SERVICES AGREEMENT** put forth by **VERTOSOFT, LLC,** including Statement of Work, Scope of Work, or Order forms and documents put forth subsequent to the execution of this Addendum.

1.3

This Agreement and the expenditure of funds hereunder constitute **Other Covid 19 Health Expenses.** The cloud software, services and technology acquired through this Agreement will facilitate and enable agencies county-wide to coordinate actions and

responses and be proactive in preventing future pandemic emergency health events.

1.4

SOMA will perform the services and work and provide products to City as described in ADDENDUM EXHIBIT D STATEMENT OF WORK v03 30 23.

1.5

Any refence to or requirement of a “CONSORTIUM” is hereby deleted.

1.6

The Parties intend and expect the purchase of the products and services contemplated by this Agreement will be made by way of and pursuant to the Contract Number 220105 with The Interlocal Purchasing System (TIPS-USA) purchasing cooperative with City of Joshua as a Member and VERTOSOFT as a Vendor in order to satisfy competitive purchasing requirements.

2.1

This Agreement will be governed by and construed according to the laws of the **State of Texas**. Venue for any action or claim arising out of the Agreement must be in the state district courts in Johnson County, Texas or the federal district courts in Dallas County, Texas. Any provision stating that the City agrees to waive any right to trial by jury is hereby deleted.

2.2

Limitations for the right to bring an action, regardless of form, shall be governed by the laws of the State of Texas, Texas Civil Practice and Remedies Code §16.070, as amended, and any provision to the contrary is hereby deleted.

2.3

Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, any term which provides for such a claim is hereby deleted. City of Joshua will, upon request of a party to the contract, certify the funds available to fulfill the terms of this Agreement.

3.1

The Parties agree that under the Constitution and laws of the State of Texas, City of Joshua cannot enter into an agreement whereby City of Joshua agrees to indemnify or hold harmless any other party; therefore, all references of any kind to City of Joshua indemnifying and holding harmless any individuals or entities for any reason whatsoever are hereby deleted.

3.2

Article XI, Section 7(a) of the Texas constitution provides in relevant part:

... But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent

(2%) as a sinking fund, except as provided by Subsection (b) ...

This provision is interpreted with respect to contractual obligations of Texas county and city government entities to prohibit such government entities from entering into an indemnity agreement and to nullify such agreement provisions.

4.1

The Parties agree and understand that City is a political subdivision of the State of Texas, and therefore has certain governmental immunity, sovereign immunity and limitations on liability, and that City's general liability and vehicle insurance coverage is with the Texas Municipal League Intergovernmental Risk Pool and said "insurance coverage" is limited to the statutory maximum limits of the Texas Tort Claims Act; therefore, any provisions to the contrary are hereby deleted. The Parties agree and understand that the City does not waive any of its common law, statutory or constitutional defenses to which it may be entitled.

4.2

The Parties agree and understand that City will not agree to waive any rights and remedies available to City under the Uniform Commercial Code ("UCC"); therefore, any provision to the contrary is hereby deleted.

4.3

The Parties agree and understand that City will not agree to be responsible for any sales tax, use tax, or any other taxes, fees, fines, or penalties that may be imposed, levied, or assessed by any federal, state, or local government or agency which relates to the Agreement, the equipment, or its use; therefore, any provision to the contrary is hereby deleted.

4.4

The Parties agree and understand that City will provide statutory workers compensation for its employees; however, City does not agree to include a waiver of subrogation, and therefore any provisions to the contrary are hereby deleted.

5.1

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment by a governmental entity under a contract is overdue on the 31st day after the later of:

- a. the date the governmental entity receives the goods under the contract.
- b. the date the performance of the service under the contract is completed; or
- c. the date the governmental entity receives an invoice for the goods or service.

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding

fiscal year that does not fall on a Saturday or Sunday. Interest on an overdue payment stops accruing on the date the governmental entity or vendor mailed or electronically transmits the payment. Therefore, all provisions to the contrary are hereby deleted.

6.1

No officer, member or employee of City, and no member of its governing body and no other public officials of the governing body of the locality or localities in which the project is situated or being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this Agreement which affects his/her personal interest, have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

6.2

To the extent, if any, that any provision in this Agreement is in conflict with Texas Government Code §552.001 *et seq.*, as amended (the "Public Information Act"), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that the City of Joshua, its officers, and employees may request advice, decisions, and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act. In the event of a request for documents or materials pursuant to the Texas Public Information Act (Texas Government Code Chapter 552) or similar law pertaining to documents or information City reasonably believes that COMPANY might lawfully seek to claim as confidential, then City will forward the request to COMPANY. It shall be the obligation of COMPANY to prepare and submit to the Texas Attorney General's Office any claim and supporting brief or materials necessary to assert a claim that the documents or materials may be withheld pursuant to Texas Government Code Chapter 552 or other applicable law. City will cooperate with City in making such a submission to the Texas Attorney General's Office. **COMPANY acknowledges and understands that contracts, agreements, payment, and revenue of a political subdivision of the State of Texas are public information and are not confidential.**

6.3

Services and products provided under the Agreement shall be provided in accordance with all applicable state and federal laws.

6.4

Under the Constitution and laws of the State of Texas, public property is exempt from forced sales and liens may not attach thereto.

6.5

It is understood and agreed that City of Joshua will not be subject to arbitration; therefore, any paragraph or provision requiring arbitration is hereby deleted.

6.6

City of Joshua shall be responsible for the acts or failure to act of its employees, agents, or servants, provided; however, its responsibility shall be subject to the terms, provisions and limitations of the Constitution and laws of the State of Texas, particularly the Texas Tort Claims Act.

7.1

If the Agreement provides for the continuation of this Agreement from year to year, then continuation is subject to current funds available for the Agreement, the allocation of funds to meet the terms of this Agreement, and subject to the approval of the City of Joshua City Council. However, this Agreement need not be specifically identified in the annual budget or budget process. Utilization of the equipment or services provided by **COMPANY** pursuant to the terms of this Agreement by City will constitute the City's action and intent to continue this Agreement barring a specific written notice to the contrary. **Notwithstanding the foregoing, in no event shall this Agreement continue for a period exceeding 84 months from the date of execution of this Addendum without additional specific consideration and approval by the City Council of City of Joshua, TEXAS.**

7.2

At any time following the expiration of 2 YEARS from the execution of the contract, City may terminate the contract and cancel payment obligations at City's discretion, without charges for unutilized term, or penalty of any kind payable by City, by giving COMPANY 90 days written notice of such termination. City does not waive any provision existing at law providing for the termination of the Agreement.

7.3

At the termination of this Agreement, to the extent VERTOSOFT or SOMA possesses or controls access to City of Joshua data, VERTOSOFT or SOMA (depending on which entity has actual control and access to the data) must copy the data to a storage medium in common use at the time or as agreed to by the Information Technology Department of City of Joshua and deliver such medium and data to City of Joshua INFORMATION TECHNOLOGY DEPARTMENT. VERTOSOFT and SOMA recognize such data as data of the State of Texas or a political subdivision thereof and must be maintained according to the laws of the State of Texas governing the retention and storage of such data. Destruction of such data contrary to law and contrary to the rules promulgated by the Texas State Library and Archives Commission may be subject to criminal prosecution and civil liability.

7.4

The parties hereto understand that records are being assimilated and maintained for purposes of law enforcement including criminal investigation and prosecution and the records may contain materials of a sexually explicit or graphically violent nature and must be maintained for law enforcement purposes.

7.5

No provision or determination by VERTOSOFT or SOMA may limit or prohibit sharing of data by government entities or agencies acting in their official capacities or in performance of their government duties.

7.6

VERTOSOFT's or SOMA's Reservation of Rights set out in Section 6.1 of the Master Services Agreement and elsewhere DOES NOT include the right to withhold data or records of City of Joshua or "CLIENT" from City of Joshua or "CLIENT".

7.8.1

Other entities for whom the City of Joshua is providing funding in support of the acquisition of VERTOSOFT or SOMA services or technology are **NOT** part of this Agreement and **NOT parties** to this Agreement between VERTOSOFT and SOMA and City of Joshua.

7.8.2

ADDENDUM EXHIBIT B – City of Joshua ANTICIPATED FUNDING ALLOCATION is attached hereto and incorporated herein to show intention of funding allocation by City of Joshua. Obligation and disbursement of such funds by City of Joshua is dependent on each independent political subdivision contracting with VERTOSOFT and SOMA.

7.8.3

JOHNSON COUNTY anticipates paying the **onboarding fees** and the **Year 1 Annual subscription and support fees** for each of the non-Johnson County political subdivisions to such political subdivision for payment to VERTOSOFT following such subdivisions execution of an Agreement with VERTOSOFT and SOMA and execution of an MOU and Sub-recipient Agreement with City of Joshua.

7.8.4

JOHNSON COUNTY anticipates providing funding, as described in the attached **ADDENDUM EXHIBIT B – JOHNSON COUNTY ANTICIPATED FUNDING ALLOCATION**, to the listed political subdivisions and public safety agencies (by way of their respective political subdivisions) contingent upon the named political subdivisions and public safety agencies (by way of their respective political subdivisions) entering agreements similar to this Agreement with VERTOSOFT and SOMA along with an MOU and Sub-recipient Agreement with City of Joshua .

7.8.5

JOHNSON COUNTY will pay to VERTOSOFT the **onboarding** and the **subscription and support fees** for the Johnson County Sheriff's Office; Johnson County Constables Offices

1,2,3, and 4; the Johnson County Attorney's Office; the Johnson County District Attorney's Office (these Offices are part of the political subdivision JOHNSON COUNTY, TEXAS) and the STOP-Special Crimes Unit

7.8.6

Entities that are not part of the political subdivision City of Joshua, TEXAS, are responsible for any additional onboarding and subscription and support fees in excess of those described or enumerated in this Addendum or attached Exhibits.

7.8.7

ADDENDUM EXHIBIT C – PRICE BREAKDOWN BY AGENCY YEARS 2-5 is attached hereto and incorporated herein to show costs to be paid by JOHNSON COUNTY for the Johnson County Sheriff's Office, Johnson County Constable Offices 1, 2, 3, and 4, the Johnson County District Attorney's Office, the Johnson County Attorney's Office, and the STOP Special Crime Unit.

7.8.8

JOHNSON COUNTY will not pay or be liable for the subsequent licenses and support services for years 2-5 or subsequently for political subdivisions or public service agencies other than the Johnson County Sheriff's Office; Johnson County Constables Offices 1,2,3, and 4; the Johnson County Attorney's Office; and, the Johnson County District Attorney's Office (These Offices are part of the political subdivision JOHNSON COUNTY, TEXAS) and the STOP Special Crime Unit. The above political subdivisions of Johnson County obligation of payment for subsequent licenses and support services including required interfaces are not due and shall not become due until 60 days after successful "Go-Live" as defined by the Statement of Work has been achieved for all products and services and has been confirmed in writing by the Johnson County Sheriff and the Director of the Johnson County Information Technology Department and submitted to the Johnson County Commissioners Court. Such confirmation shall not be unreasonably withheld. Such confirmation shall be submitted to the Johnson County Commissioners Court with, or prior to, request to the Commissioners Court to approve "Year 2" payment for software and subscription services. Successive annual payments for services and subscription fees shall be due and payable on the anniversary of the date the Year 2 payment is made by JOHNSON COUNTY.

8.1

All provisions of the agreement are modified such that in no event would City of Joshua have less than 120 days from notice of termination of the Agreement to secure any data or records in a useable and readable format. City of Joshua's securing of such data or records is intended to be done and will be allowed to be accomplished in a common and economically efficient method extant at the time of extracting, copying, and securing such data and records.

8.2

COMPANY certifies that pursuant to Section 231.006 of the Texas Family Code that the individual or business entity named in this contract is not ineligible to receive the specified payment(s) and acknowledges that this contract may be terminated, and payment may be withheld if this certification is inaccurate. COMPANY states that it is not ineligible to receive State or Federal funds due to child support arrearages

8.3

COMPANY verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. The term “boycott Israel” is as defined by Texas Government Code Section 808.001, effective September 1, 2017. COMPANY further verifies that it is not engaged in business with Iran, Sudan, or any foreign terrorist organization. The term “foreign terrorist organization” means an organization designated as foreign terrorist organization by the United States Secretary of State as authorized by 8 U.S.C. Section 1189.

8.4

COMPANY verifies that it complies with Texas Government Code Chapter 2274 and further verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

8.5

COMPANY verifies that it complies with Texas Government Code Chapter 2274 and further verifies that it:

- (1) does not boycott energy companies; and
- (2) will not boycott energy companies during the term of the contract.

In this provision:

- (1) “Boycott energy company” has the meaning assigned by Section 809.001.
- (2) “Company” has the meaning assigned by Section 809.001, except that the term does not include sole proprietorship.
- (3) “Governmental entity” has the meaning assigned by Section 2251.001.

8.6

SOMA Global, Inc. certifies by signature of its authorized representative on this document that it does and will so long as this Agreement is in effect comply fully with Section 889 of the National Defense Authorization Act for Fiscal Year 2019 (NDAA FY19) and Section 5949 of the National Defense Authorization Act for Fiscal Year 2023 (NDAA FY23) and with any additional existing and future “China Tech Prohibitions” promulgated or enacted by the United States Government.

SOMA Global, Inc. certifies by signature of its authorized representative on this document that it complies with the China Tech Prohibitions and any products used during the professional services will also comply with the “China Tech Prohibitions”.

Further, SOMA Global, Inc certifies by signature of its authorized representative on this document that it will not use any products or equipment on this project that does not comply with the “China Tech Prohibitions”.

8.7

VERTOSOFT, LLC certifies by signature of its authorized representative on this document that it does and will so long as this Agreement is in effect comply fully with Section 889 of the National Defense Authorization Act for Fiscal Year 2019 (NDAA FY19) and Section 5949 of the National Defense Authorization Act for Fiscal Year 2023 (NDAA FY23) and with any additional existing and future “China Tech Prohibitions” promulgated or enacted by the United States Government.

VERTOSOFT, LLC certifies by signature of its authorized representative on this document that it complies with the China Tech Prohibitions and any products used during the professional services will also comply with the “China Tech Prohibitions”.

Further, VERTOSOFT, LLC certifies by signature of its authorized representative on this document that it will not use any products or equipment on this project that does not comply with the “China Tech Prohibitions”.

8.8

The terms and provisions of the attached **ADDENDUM EXHIBIT A – REQUIRED STATE AND FEDERAL PROVISIONS** shall be incorporated herein and shall take precedence where required to give those terms and provisions effect.

8.9

The terms and provisions of the attached **ADDENDUM EXHIBIT B – City of Joshua ANTICIPATED FUNDING ALLOCATION** shall be incorporated herein and shall take precedence where required to give those terms and provisions effect.

8.10

The terms and provisions of the attached **ADDENDUM EXHIBIT C – PRICE BREAKDOWN BY AGENCY YEARS 2-5** shall be incorporated herein and shall take precedence where required to give those terms and provisions effect.

8.11

The terms and provisions of the attached **ADDENDUM EXHIBIT D – STATEMENT OF WORK** shall be incorporated herein and shall be completed and scoped according to agency requirements including milestone completion and acceptance forms.

8.12

The terms and provisions of the attached **ADDENDUM EXHIBIT E – MILESTONE COMPLETION AND ACCEPTANCE** shall be incorporated herein and shall take precedence where required to give those terms and provisions effect.

8.13

The terms and provisions of the attached **ADDENDUM EXHIBIT F – VERTOSOFT SOMA GLOBAL QUOTE 04-21-2023** shall be incorporated herein.

8.14

VERTOSOFT and SOMA agree that all rights and benefits (except for payment of commissions) granted by **SOMA Global to VERTOSOFT pursuant to the Government Solutions Distribution Agreement No. V 2022-0716 signed by Mike Mattson and Jay Colavita with an effective date of July 1, 2022**, hereafter identified as the “Government Distribution Agreement” shall inure to the benefit of the City of Joshua.

9.1

Notwithstanding any other provisions contained in the contract documents, any amendment to the terms of the contract must be specifically approved by the City Council of the City of Joshua and signed by the mayor.

9.2

Notwithstanding any other provision in this Addendum or the associated documents, to the extent COMPANY is being contracted to provide information technology and services or to maintain and make available information for use by City of Joshua and the public, including documents, data, content and records then said documents, data, content and records are and shall be the exclusive property of City of Joshua , TEXAS or the State of Texas, or a political subdivision thereof.

9.3

The parties will comply with all requirements of CJIS, NCIC, TCIC, TLETS, HIPAA, and Texas Health and Safety Code Chapter 181 Medical Records Privacy.

9.4

All contract obligations on the part of City of Joshua are contingent upon VERTOSOFT and SOMA receiving CJIS and TLETS access for each required agency within Johnson County, Texas from the Texas Department of Public Safety.

10.1

In the event of any conflict between the terms and provisions of this Addendum and the terms and provisions of those contractual provisions tendered to City of Joshua in the Master Services Agreement, this Addendum shall control and amend the contractual provisions of the Agreement and any provision to the contrary is hereby deleted. *THE TERMS OF THIS ADDENDUM SHALL BE FULLY OPERATIVE AND HAVE PRIORITY OVER ALL OTHER DOCUMENTS AND TERMS PUT FORTH BY VERTOSOFT or SOMA AND ANY TERM TO THE CONTRARY IN OTHER DOCUMENTS PUT FORTH BY VERTOSOFT or SOMA IS HEREBY DELETED.*

APPROVED AS TO FORM AND CONTENT:

City of Joshua:

Scott Kimble
As Mayor, City of Joshua

Date:

Attest:

City Secretary, City of Joshua

Date

VERTOSOFT, LLC:

Authorized Representative of
VERTOSOFT, LLC

Date

Printed Name: _____

Title: _____

SOMA GLOBAL, INC:

Authorized Representative of
SOMA GLOBAL, INC

Date

Printed Name: _____

Title: _____