



Iltaconny, Inc  
 555 Main St, Suite 550  
 San Francisco, CA 94105

**Offer Valid Through:** August 13, 2024

**Prepared By:** Johnny Bobby

Order Start Date: July 13, 2024<sup>1</sup>      Payment Method: Credit card<sup>2</sup>

Order End Date: June 12, 2025      Payment Terms: Net 10<sup>3</sup>

**1. Customer Information**

A.K.V.R LLP  
 1234 State St  
 Suite 6700  
 Minneapolis, MN 55402

Contact: Sally Smiley  
 Email: info@associates.com

**2. SAAS SERVICES AGREEMENT**

2.01 - This SaaS Services Agreement (“Agreement”) is entered into on August 15, 2024 (the “Effective Date”) <sup>4</sup> between Iltaconny, Inc with a place of business at 555 Main St, Suite 550, San Francisco, CA 94105 (“Company”), and the Customer listed in Section 1 (“Customer”).

**Products<sup>5</sup>**

Product Name	Start Date	End Date	Quantity	Discount	Net Price
Multi-Channel Delivery	Jul 13, 2024	Jun 12, 2025	1,500	5%	\$300.00
Software verification	Jul 13, 2024	Jun 12, 2025	1,500	15%	\$1,875.00
Software	Jul 13, 2024	Jun 12, 2025	15,000	5%	\$72,540.00
Premier Support	Jul 13, 2024	Jun 12, 2025	1	5%	\$12,690.98

**Grand Total: \$97,297.48<sup>6</sup>**

<sup>1</sup> Why does this contract only go for 11 months? Is this a typo? And why is the timeframe starting before today’s date?

<sup>2</sup> Payment method: Verify the method of payment is acceptable for the accounting department. Most companies do not want to pay via CC for a cost this high. Also verify if there will be additional fees if a credit card is used.

<sup>3</sup> Payment terms: Accounting departments usually cannot turn around a check in 10 days. It is best to ask accounting or your manager their preference for timing. (e.g. 30, 45, 60 days). Then modify as you see fit.

<sup>4</sup> Effective date - make sure the effective date is a date mutually agreed upon and would account for any implementation.

<sup>5</sup> Verify the following: Should this have a section number?, verify product names are correct, cost is correct, start date/end date is accurate and open to change if implementation does not start in time, verify start/end date is accurate, any discounts are displayed (both original price and new discounted price), check their math of quantity, net price and total price, check for any typos or miscalculations.

<sup>6</sup> Grand total does not match up. Check the math.



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### 3. Billing Terms

3.01 - Customer agrees to pay the Total Fees due in accordance with the Billing Schedule <sup>7</sup>and Payment Terms indicated above. Invoices must be accessed through Iltaconny portal unless Customer requests otherwise, in which case, additional fees will apply.<sup>8</sup> In addition to all other rights of Iltaconny, Iltaconny shall have the right to immediately suspend Customer's access to any products or services for which Customer has failed to timely pay under this Master Agreement. The suspension will remain in effect until past monies are paid in full. Customer's obligations may not be canceled or reduced prior to expiration of the then current Term.<sup>9</sup>

### 4. Renewal

4.01 - To the extent permitted by applicable law, the software will automatically renew<sup>10</sup> for an additional three annual periods <sup>11</sup> unless either party gives the other written notice of non-renewal at least 60 days <sup>12</sup> before the end of the relevant subscription term. Iltaconny shall reserve the right to increase the cost of the services and/or products in this agreement by no more than ten percent <sup>13</sup> on an annual basis upon renewal. Products and services provided under this order form are governed by Iltaconny's Subscription Agreement and the specific terms are available at <https://www.iltaconny.com/termservice>.<sup>14</sup>

### 5. Services<sup>15</sup>

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<sup>7</sup> If a term is Capitalized, it means there should be a definition in the agreement. Verify there is a definition and if not, request it get added in. They probably meant here for "Billing Schedule" to mean "Billing Terms" but these errors make you wonder if they were copying and pasting between agreements or if there are separate definitions.

<sup>8</sup> This is different from most billing procedures. Confirm the cost of additional fees and inquire more about how you gain access to their portal. Especially in regards to security, you may need to take the time to dig deeper if they do not have any SSO / MFA on their portal.

<sup>9</sup> Vendors may have a sentence in a place that does not make sense to you. Would this make more sense in the termination section? How would you add or delete services mid contract? Or add a clause for termination for convenience if you end up not liking the service or have a failed implementation?

<sup>10</sup> Know your company's policy on auto renewal of agreements. If you do agree to an automatic renewal, verify internally who is tracking this date for opt out notice.

<sup>11</sup> Watch how long your vendor wants to renew. It is standard to renew for the same term as previous. Trying to renew for triple the original term should not be accepted. Consider the economic impact to your business for the length of the renewal. Does the time match your needs, your processes or your budget?

<sup>12</sup> Calendar calendar calendar. Not just 60 days before the end of the renewal, but think about how long it takes you to do your due diligence on usage, determine if your company wants to renew, research a new software and transition to that new software, and the time needed to provide the notice. Calendar when you want to start the conversations and set up multiple reminders so when the opt out notice is due, you understand your decision.

<sup>13</sup> 10% is very high. The way this is written, if you allow for an auto renewal, you are agreeing for the next three years a 10% increase. Ask for 4-5% or CPI.

<sup>14</sup> Review additional links and have your General Counsel (GC) read them. Sometimes, these links contradict what is in the agreement or have a clause that will make the TOS supersede the agreement if there is a discrepancy. Verify if any clauses in the additional links will negate current negotiations and changes.

<sup>15</sup> Check the wording and verify if your vendor is limiting you to a number of licenses in your term. Also what is your ability to add/remove licenses mid-term?



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5.01 - Iltaconny grants Customer a non-exclusive, non-transferable, world-wide right to access and use the Services for the term of this Agreement solely for Customer's own internal business purposes and subject to the terms and conditions of this Agreement.

5.02 - Customer shall not: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise make the Services or Content available to any third party, (ii) modify or make derivative works based upon the Services or Content, or use the Services for commercial time-sharing, rental, or service bureau use, (iii) commercially exploit the Services or Content in any way, or (iv) reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code of the Services.

5.03 - Customer acknowledges and agrees that: (i) as between Customer and Iltaconny, Iltaconny owns all rights, titles, and interests, including all related intellectual property rights, in and to the Services and Content and Customer acknowledges and agrees that it does not acquire any rights, express or implied, therein, except as specifically set forth in this Agreement; and (ii) any configuration or deployment of the Services shall not affect or diminish Iltaconny's rights, titles, and interests in and to the Services. This Agreement is not a sale and does not convey any rights of ownership in or related to the Services or Content by Iltaconny to Customer.

5.04 - Iltaconny shall use the data, information or material provided or submitted by Customer during Customer's use of the Services ("Customer Data") for any purpose they deem appropriate and as necessary to monitor and improve the Services<sup>16</sup>. As between Customer and Iltaconny, all data submitted by Customer to the Services becomes the property of Iltaconny.<sup>17</sup> Iltaconny will not: (a) disclose Customer Data except as compelled by law or as expressly permitted in writing, or (b) access Customer Data except to provide the Services as described herein or prevent or address service or technical problems, or at Customer request in connection with support matters. Customer shall have sole responsibility and liability for the accuracy, quality, integrity, legality, reliability, and copyright of all Customer Data. Iltaconny may use, reproduce and disclose Customer Data that is not anonymized, de-identified, or is otherwise reasonably associated with Customer for improvement of the Services.<sup>18</sup> This right to use Customer Data will survive termination of this Agreement.<sup>19</sup>

5.05 - Upon termination of the Agreement, Iltaconny will retain Customer's Data for thirty (30) calendar days, unless Customer requests earlier deletion, and provide Customer with an

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<sup>16</sup> A clause like this could violate most privacy policies as you may not have consent to allow this broad usage. You will want to ensure that the agreement is clear on what data your vendor is allowed to use and how. Consider changing this to limit their ability to use your data in a manner agreeable with your company policy. Verify also if the data will be tied to you or if your vendor will anonymize the data.

<sup>17</sup> Your data should never become the property of the vendor. This is your data.

<sup>18</sup> If Vendors use data to improve their software, ensure that it is not your customer data and it is only anonymized data, or you could be in violation of privacy laws or your privacy policy. If your vendor uses data to improve their software, ensure that it is only anonymized data. Don't allow vendors an open book to use your data.

<sup>19</sup> Consider adding the word "Anonymized" data or strike this line completely. Don't give the vendor too much power over your data.



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opportunity to securely download a copy of Customer Data in its original format upon written request to Iltaconny.<sup>20</sup>

## 6. Termination

6.01 - Iltaconny may terminate this Agreement if the Customer is in Default or breaches the agreement. “Default” shall mean when the Customer:<sup>21</sup> (i) materially breaches this Agreement and fails to cure such breach within 30 days of receiving written notice of the breach, or (ii) enters any arrangement with its creditors or becomes subject to external administration or ceases to be able to pay its debts as and when they become due or ceases to carry on business. If Customer is in Default of this Agreement, Iltaconny may suspend performance of any or all Services contracted for under this Agreement or pursue any additional or alternative remedies available at law or in equity without waiver of or prejudice to the other rights described in this section. If Customer is in Default, it does not relieve them of their ability to pay all services owed to the end of the term.<sup>22</sup>

## 7. Service Interruption Management

7.01 - Iltaconny is responsible for managing service interruptions that are within Iltaconny’s contract. Customer will notify Iltaconny of a service interruption. Iltaconny will use commercially reasonable efforts to resolve the service interruption within the target turnaround time indicated, at Iltaconny’s discretion, and provide reasonable status reports regarding service interruption resolution.<sup>23</sup>

## 8. Representations and Warranty<sup>24</sup>

8.01 - Iltaconny represents and warrants that (i) the Services will perform substantially in accordance with the specifications set forth in the standard documentation and (ii) that the Services and Content as provided by Iltaconny under this Agreement do not infringe, misappropriate or otherwise violate the intellectual property rights of a third party. ILTACONNY DOES NOT REPRESENT OR WARRANT THAT THE ILTACONNY SERVICE WILL MEET ANY CUSTOMER REQUIREMENTS OR EXPECTATIONS AND THAT ALL ERRORS OR

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<sup>20</sup> Should this section be moved to termination? Also, it is best to request a deletion of your data within 30 days of termination AND proof of destruction.

<sup>21</sup> You want to make this a mutual termination. This is one-sided. You want to clearly define how both customer and vendor can be in default or breaches the agreement.

<sup>22</sup> Review the consequences that you agree to in the event you breach the contract. This example obligates you to pay the full cost to the end of the term, meaning you would owe for three years should you be in default. This is not uncommon in software vendor agreements because software costs are often paid up front, and if there is not a termination for convenience already in the contract, your bad actions should not create that additional benefit.

<sup>23</sup> This is broad and basically doesn't say anything. For an SLA, you want defined downtime and uptime. You also want to understand what your vendor would consider their fault and your fault. Request a copy of the SLA agreement or add in defined language for what is acceptable for downtime/uptime and any credits expected for downtime more than the defined timeframe or percentage.

<sup>24</sup> Please ensure your GC reads this section and helps to make this not only mutual but guarantees what your vendor will/will not warrant for their services.



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DEFECTS WILL BE CORRECTED. THE SERVICES, CONTENT, AND ASSOCIATED DOCUMENTATION IS PROVIDED TO CUSTOMER STRICTLY ON AN “AS IS” BASIS. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED ABOVE, ILTACONNY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.<sup>25</sup>

## **8. Limitation of Damages<sup>26</sup>**

8.01 - IN NO EVENT SHALL ILTACONNY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY EITHER PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Iltaconny shall not be responsible to Customer, to any recipient of a communication from the Services, or to any other person for any charges or claims that arise from Customer’s or an individual person’s receipt of or response to a notification message in the course of Customer’s use of the services. The aggregate liability of Customer for all direct or indirect loss in contract, tort or otherwise arising out of or about the contract shall be limited to the total annual fees paid for the Services.<sup>27</sup>

## **9. Indemnification**

9.01 – Customer (the “Indemnifying Party”) will indemnify, defend and hold Iltaconny (the “Indemnified Party”) and its Affiliates and its and their shareholders, officers, directors, agents, employees, successors and assigns (each Indemnified Party together with such persons and entities, collectively “Indemnitees”) against any losses, liabilities, damages, expenses, fines, penalties and other liabilities (including, without limitation, reasonable attorneys’ fees) related thereto (collectively the “Losses”) to the extent they arise from third party claims arising from or related to a Security Event to the extent caused by the Indemnified Party’s breach of its data security obligations under this Agreement or its other willful acts or omissions.<sup>28</sup>

## **10. Data Privacy Agreement**

10.01 - The data privacy agreement (the “**Data Privacy Agreement**”) describes specific terms in respect of the processing of Personal Data (as defined hereafter) by Iltaconny in connection with

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<sup>25</sup> This is relieving the vendor of any fault. If you purchase the product "as-is", you need to understand up front all the bugs and errors in the system. Before agreeing to an “as-is” purchase you should do your due diligence as you do not want to be on the hook for services that do not perform for you or for services that were oversold to you by the sales representative.

<sup>26</sup> Please have your GC read and modify to make this mutual. Also ask your GC if this is enough or should you be covered more?

<sup>27</sup> Did you notice there are two section 8s? Ask them to modify and correct.

<sup>28</sup> This is one-sided. Talk with your GC about how to make this mutual and confirm if your GC is okay with what your vendor will indemnify.



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the provision of Software Service under this Agreement as may be provided to the Customer by Iltaconny in connection with this Agreement, the terms of which are accessible by [www.iltaconny.com/dataprivacyagreement](http://www.iltaconny.com/dataprivacyagreement).<sup>29</sup> In the event of a conflict between this Agreement and any provision of this Data Privacy Agreement, the latter shall govern.<sup>30</sup>

## **11. Confidentiality<sup>31</sup>**

11.01 – Under no circumstances may either Party disclose any pricing or business terms related specifically to this Agreement, or any negotiations thereof, to any Third Party (including, but not limited to, competitors, industry analysts, press or media).<sup>32</sup>

11.02 - Neither Party will use any Confidential Information of the disclosing Party except as expressly permitted in this Agreement or as expressly authorized in writing by the disclosing Party. Each Party will use the same degree of care to protect the disclosing Party's Confidential Information as it uses to protect its own Confidential Information of like nature, but in no circumstances less than reasonable care. Neither Party is allowed to disclose the other Party's Confidential Information to any person or entity other than the receiving Party's officers, employees, consultants and legal advisors who have a need to know such Confidential Information and who are bound by similar confidentiality obligations as those set out in this Agreement. Each individual or entity receiving Confidential Information pursuant to this subsection must have entered into a written confidentiality agreement the sole objectives of which are to further the intent of this article 10<sup>33</sup>. The Customer will not disclose, orally or in writing, any benchmark tests of the Licensed Software to any Third Party.<sup>34</sup> Each Party agrees to notify the other Party of any unauthorized use or disclosure of Confidential Information and to provide reasonable assistance to such other Party, and its licensors, in the investigation and prosecution of such unauthorized use or disclosure.<sup>35</sup>

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<sup>29</sup> Why isn't the link underlined? It feels as if your eyes will skim over it and not see this link to another website. Make sure to click into the website and have your GC, your security team and yourself read what you are agreeing to. This is especially important to understand how the vendor will collect and store your data, where your data is stored, what happens if the vendor has a security breach, etc. This is not to be bypassed but reviewed in detail.

<sup>30</sup> Understand the order of precedence of documents. If a document held online will supersede the MSA, it could negate what is written in the MSA as the online link can be modified.

<sup>31</sup> Make sure your GC and any additional security team involved with the data reads and understands the confidentiality.

<sup>32</sup> This is pretty standard in an agreement but please be aware of this clause. If your vendor finds out you violated this, you could be considered in breach of contract and potentially fined. Or your vendor could cancel your service and you would still need to pay. These disciplinary actions would need to be defined greater in the agreement but it is always good to be aware and make your team aware this clause exists.

<sup>33</sup> This is article 11. Did your vendor make a mistake with their numbering?

<sup>34</sup> This is their way of guaranteeing that if you are in a POC with them and a second POC with another vendor, you cannot release information to the other vendor which could potentially benefit your negotiations. Similar if another vendor asks your current provider or current costs. This is information you do not have to share and in some instances, you are not allowed to share.

<sup>35</sup> This is pretty vague at the end, most parties will want to have the ability to seek injunctive relief in the event of a breach of confidentiality. What are the consequences should either party violate the confidentiality of the other party? Talk with your GC about how to make this not so broad and any remedies for violation.





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## 12. Third Party Service Providers

12.01 - The Customer acknowledges and expressly agrees that Iltaconny may use third party providers for the provision of the Services.<sup>36</sup>

12.02 - Any such third party provider that provides services for Iltaconny will be permitted to Process Personal Data to deliver the services Iltaconny has entrusted them with.<sup>37</sup> Iltaconny shall, prior to the entrusting of services to such third party provider, carry out any reasonable due diligence on such third party provider to assess whether it is capable of providing the level of protection for the Personal Data as is required by this Agreement, and provide evidence of such due diligence to the Customer where requested by the Customer or a regulator.

12.03 - Iltaconny shall make available to the Customer the current list of third party providers for the Services. Such third party providers list shall include the identities of those third party providers and their country of location.<sup>38</sup>

12.04 - If the Customer objects to the use of a third party provider that will be processing the Customer's Personal Data, then the Customer shall notify Iltaconny in writing within twenty-one (21) calendar days after receipt of Iltaconny's written request to that effect. In such a case, Iltaconny will use reasonable efforts to change the affected Services or to recommend a commercially reasonable change to the Customer's use of the affected Services to avoid the Processing of Personal Data by the third party provider concerned. If Iltaconny is unable to make available or propose such change within sixty (60) calendar days, the Customer may terminate the Services. To that end, the Customer shall provide written notice of termination that includes the reasonable motivation for non-approval.

## 13. Advertising

13.01 - The Customer hereby authorizes Iltaconny to make public reference to the Customer as a customer of Iltaconny and to use the Customer's name and logo, which remain trademarks of the Customer, on its website and any other publishing. Iltaconny also has the right to publish the collaboration with the customer on social media after the agreement is signed and prior to

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<sup>36</sup> Find out who these third parties are and what access to your data your vendor may have. Do your due diligence to understand how your vendor vets their subcontractors and subprocessors (what type of security process does the third party undergo, where data would be stored/accessed from, etc). Coordinate with your GC to ensure that the Data Protection Agreement covers any of these third parties who will be accessing your data. If a DPA does not exist, talk with your GC about adding appropriate verbiage to the agreement.

<sup>37</sup> Is there a limit to the data the third party is granted? Could this broad language also be open to interpretation that the third party could use the data beyond providing services?

<sup>38</sup> Depending on the amount and type of data you are sharing with the vendor, you may need to look further into the third parties, including doing a security assessment on the third party or requesting any SOC 2 or ISO paperwork. Also, you will need to verify if your data can/should be allowed in another country. This could potentially violate OCGs which may state their data can not be stored or accessed from outside the United States. It is also good to confirm in other contracts you can receive a list of any third party your vendor will utilize.



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go-live. Other public references to the Customer may be made without the Customer's prior consent.<sup>39</sup>

## **14. Insurance<sup>40</sup>**

14.01 - Iltaconny shall procure and maintain the following insurance coverage with insurers authorized to do business in the jurisdictions that are the subject of this Agreement and having A.M. Best ratings of not less than A- VIII. Such insurance coverages are minimum requirements procured at Iltaconny's expense and shall be maintained for the duration of the Subscription Term and for at least three (3) years thereafter: (i) Commercial General Liability Insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate covering bodily injury, property damage including premises, personal liability, contractual, independent contractor, products liability, products/completed operations and advertising injury and (ii) Cyber risk insurance including network risk and cyber liability coverage (including coverage for unauthorized access, failure of security, breach of privacy perils, as well as notification costs and regulatory defense) with a liability limit of not less than \$500,000 for each claim or wrongful act, written on a claims-made basis<sup>41</sup>. The limits required in this section may be met by any combination of primary and excess policies. Customer shall be added as an additional insured, including to any excess liability policies used to satisfy the requirements above. Iltaconny shall deliver to Customer a certificate of insurance evidencing valid coverage in effect as specified above upon Customer's reasonable request from time to time<sup>42</sup>. Iltaconny shall provide thirty (30) days' prior written notice to Customer before the cancellation or material change of insurance required above. Iltaconny shall from time to time evaluate the adequacy of its insurance coverage and consider in good faith, accounting for all relevant factors, including cost, whether a higher level of coverage is in the interest of Iltaconny and its customers.

## **15. Notices**

15.01 - Each Party must use Iltaconny's web portal to submit all notices.<sup>43</sup> In addition to submitting via the portal, each Party must deliver all notices or other communications in writing

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<sup>39</sup>This example is of a broad grant of rights to use trademarks. You should speak with your marketing team to see if this is something they are comfortable with. Oftentimes, marketing teams will want to have approval rights over any uses, but it is also important to consider what happens if you are no longer happy with the software, do you have wording in the clause that would allow you to revoke the marketing rights?

<sup>40</sup> Overall, having an insurance policy covering more than general liability is not new. Making sure you agree to their limits is key. Especially as it involves data breach and how much your vendor will cover.

<sup>41</sup> Work with your leadership and insurance company to verify 1. if this is an acceptable amount of coverage 2. what is an acceptable amount depending on the data exposed. You will need to discuss what data is being stored, how critical is this data, and think of the worst case scenarios should the data be accessed. A database hacked only containing names and emails would be worth less than say a database containing client confidential information. There may not be a standardized answer for all contracts but the goal is to start talking now with leadership and your provider for industry standards and practices.

<sup>42</sup> Make sure to request this document from your vendor. Also, track the expiration date and request an updated copy when the previous one expires.

<sup>43</sup> Please confirm with the vendor how notices are meant to be delivered. If through a portal, who has access to this portal, what if that person leaves, what if the portal is down?





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to the other Party at the address listed on the first page of this Agreement by courier, by certified or registered mail (postage prepaid and return receipt requested), or by a nationally-recognized express mail service. Notice will be effective upon receipt or refusal of delivery. If delivered by certified or registered mail, any such notice will be considered to have been given five (5) calendar days after it was mailed, as evidenced by the postmark. If delivered by courier or express mail service, any such notice shall be considered to have been given on the delivery date reflected by the courier or express mail service receipt. Each Party may change its address for receipt of notice by giving notice of such change to the other Party.<sup>44</sup>

## **16. Force Majeure**

16.01 - Except for the payment of the Fee by the Customer, if the performance of this Agreement by either Party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action, labor disputes, act of God, power failures, cyber crime, unauthorized access to Iltaconny's information technology systems by Third Parties, or any other causes beyond the control of such Party, that Party will be excused from such to the extent that it is prevented, hindered or delayed by such causes<sup>45</sup>.

## **17. Assignment**

17.01 - The Provider reserves the right to assign or transfer its rights and obligations under this Agreement to any third party, affiliate, or successor entity without the Client's prior consent.<sup>46</sup>

17.02 - Either Party may terminate this Agreement by written notice to the other Party, effective as of the date of delivery of such notice, if the other Party becomes the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding or otherwise liquidates or ceases to do business.

17.03 - Upon termination of this Agreement for whatever reason (i) the Customer shall promptly pay Iltaconny all Fees and other amounts earned by or due to Iltaconny pursuant to this Agreement, up to and including the date of the term, (ii) all user rights granted to the Customer pursuant to this Agreement shall automatically terminate.<sup>47</sup>

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<sup>44</sup> Confirm in writing how you can change where notices can go, how they are acknowledged, and does this include reporting bugs/fixes needed?

<sup>45</sup> Standard clause but if tied to the SLA, can you terminate the agreement if the service is offline for a certain amount of time or repeatedly each month? Make sure your GC reads this and approves the language.

<sup>46</sup> Similar to your student loans, your consent is not required for them to transfer the agreement. Consider also what type of notice your vendor should give you if your vendor assigns or transfers to another party. Also consider the implications, what if this new vendor is someone you are in conflict with? What will happen? Work with your GC to figure out the best wording to help protect your side. Make sure to cover all areas with your GC and this section.

<sup>47</sup> Something also to consider, what happens if you merge with another firm? Would you have the right to cancel the agreement or pay for the services only up to the termination date? Think of a three year agreement and your



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## 18. Alterations, Additions and Upgrades

18.01 - Iltaconny will use reasonable efforts to remain up to date with current requirements and accepted industry practices.<sup>48 49</sup>

## 19. Governing Law

19.01 - This Agreement shall be construed in accordance with, and all disputes shall be governed by, the laws of the Commonwealth of Pennsylvania, without giving effect to the conflicts of laws rules thereof. The state and federal courts (including the appellate courts) for the Commonwealth of Pennsylvania shall have exclusive jurisdiction and venue for the adjudication of any disputes relating to this Agreement, and the parties hereby consent to the jurisdiction and venue of such courts.<sup>50</sup>

## 20. Waiver of Jury Trial

**20.01 - EACH PARTY HEREUNDER ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR ANY DOCUMENT ARISING HEREUNDER OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES. ACCORDINGLY, EACH PARTY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, INCLUDING BUT NOT LIMITED TO ANY CLAIM, COUNTERCLAIM, CROSS-CLAIM, THIRD PARTY CLAIM, DISPUTE, DEMAND, SUIT OR PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY**

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firm mergers with another firm in year one. This other firm has a similar product and because the firm is bigger, they want to continue to use their platform. Will you continue to pay another two years on "shelfware" or will you be allowed to terminate without penalty? Work with your GC for appropriate wording that would allow termination due to merger and prevent you from paying till the end of the contract.

<sup>48</sup> This is a very broad statement. What happens if the vendor updates/upgrades the system and it breaks or decreases your ability to use the platform? Who is supporting internally any upgrade or patching to the system? Is there a difference if the system is in the cloud or on-prem? What remedy is there in the agreement for you to either be allowed to cancel or receive credits if the system no longer functions as it did when purchased? In addition, what happens if your vendor adds extra features and at renewal this Vendor forces you to buy the upgraded software and not continue updating the lower tier of software. With the birth of AI, vendors are doing just that. Try and spell out in your agreement more defined terms related to the functionality of the services and what to do if your vendor decreases/increases or are forced into upgrades.

<sup>49</sup> As an additional thought: What happens if any upgrade, alteration, or addition impacts the vendor to lose an ISO or SOC2 certification? This can also happen due to a reassignment or other similar situation. If it is necessary for the vendor to maintain a certain security status, work with your GC and Information Security team for appropriate wording that would state their current certificates and remedies should they lose one during the term of the agreement.

<sup>50</sup> Are you okay with the location of the governing law? Ask your GC what states/countries are approved. Propose to vendor the change in state and county if you do not agree with the stated location.



Iltaconny, Inc

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**Offer Valid Through:** August 13, 2024

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**SOW AND EACH PARTY AGREES THAT ALL SUCH PROCEEDINGS SHALL BE TRIED BEFORE A JUDGE AND NOT A JURY.<sup>51</sup>**

## **21. Severability**

21.01 - If any provision or provisions of this Agreement shall be held to be illegal, invalid or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. No consent to or waiver of any default hereunder shall be effective unless in writing and no such consent to or waiver of any default shall be construed as a consent to or waiver of any default in the future or of any other default hereunder.<sup>52</sup>

## **22. Entire Agreement**

22.01 - This Agreement, together with any applicable Documentation, comprises the entire agreement between the Customer and Iltaconny and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the Parties regarding the subject matter contained herein. No amendment to or modification of this Agreement will be binding unless in writing and signed by an authorized representative of each Party.<sup>53</sup>

## **23. Special Terms<sup>54</sup>**

23.01 - Customer is prohibited from sharing any data or forwarding any newsletters sent to them from Iltaconny. Any violation of this clause will allow Iltaconny to terminate per section 6.01.<sup>55</sup>

23.02 - Iltaconny will not provide a certificate of proof for the software.<sup>56</sup>

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<sup>51</sup> Are you okay with waiving all rights to a jury trial? Depending on the cost of the service and the amount of confidential information your vendor is exposed to, your GC may not want to waive this. Talk with your GC and management about modifying the language.

<sup>52</sup> Standard language. Key is making sure if one clause is illegal, invalid or unenforceable, that it won't cancel the whole agreement. While there might be situations that could work in your favor, the goal is to ensure this is a mutually beneficial agreement for both parties.

<sup>53</sup> Please note, if you and your sales rep agreed to something in an email, on a call, in RFP documents, etc, it will not be considered valid unless you add them to this agreement.

<sup>54</sup> Fully read the whole contract and that includes sections that may seem benign like "special terms" or "miscellaneous" sections. Sometimes things are added here because these clauses are a deviation from other parts of the agreement. Make sure these terms do not contradict another part of the agreement. Look out for something extra, something hidden, something unclear, something unbalanced, or something unreasonable.

<sup>55</sup> Why would this be located in this section and not part of data privacy or termination. This is very strict. Inquire how your vendor would verify violation of this clause.

<sup>56</sup> This feels out of place and unclear. Ask for further details of what your vendor means and the intention of this clause.



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23.03 - Customer's invoices will be sent quarterly for the first year. Any additional renewal, all invoices will be sent annually and payment to be received 10 days from date of invoice.<sup>57</sup>

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<sup>57</sup> Request to move this up with billing terms. Also, if you are requesting above to lengthen the time for payment, make sure this area also is corrected. Sometimes having similar wording in two areas is another way to trap you: if you catch one area but not the other, it could mean the vendor decides which clause will supersede.