

THE TECH CONTRACTS HANDBOOK

Software Licenses and Technology Services Agreements for Lawyers and Businesspeople

by David W. Tollen

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Contract Clause

Data Management and Security

You may use the contract clause below, subject to the "Terms of Use" found at <http://www.techcontractshandbook.com/html/disclaimer.html>. In addition to the Terms of Use, PLEASE READ THE FOLLOWING DISCLAIMER BEFORE USING THE CLAUSE:

The contract clause below is general in nature and may not be sufficient for a specific contractual, technological, or legal problem or dispute. THE CLAUSE IS NOT PROVIDED WITH ANY GUARANTY, WARRANTY, OR REPRESENTATION AS TO QUALITY OR SUITABILITY FOR ANY PARTICULAR PURPOSE. Publication of the clause does not constitute the practice of law and is not legal counsel or advice. Neither the author nor the publisher of The Tech Contracts Handbook, nor anyone affiliated with the book's Website, is rendering a legal or other professional service. The clause should not be relied upon as a substitute for consultation with an experienced attorney.

- (a) *Access, Use, & Legal Compulsion.* Unless it receives Recipient's prior written consent, Provider: (i) will not access or use data in electronic form collected through the Services from Recipient's customers or other third parties, or collected or accessible directly from Recipient, (collectively, "Project Data") other than as necessary to facilitate the Services; and (ii) will not give any third party access to Project Data. Notwithstanding the foregoing, Provider may disclose Project Data as required by applicable law or by proper legal or governmental authority. Provider will give Recipient prompt notice of any such legal or governmental demand and reasonably cooperate with Recipient in any effort to seek a protective order or otherwise to contest such required disclosure, at Recipient's expense.
- (b) *Recipient's Rights.* Recipient possesses and retains all right, title, and interest in and

to Project Data, and Provider's use and possession thereof is solely as Recipient's agent. Recipient may access and copy any Project Data in Provider's possession at any time, through the media of communication described on the data access rules attached to this Agreement as Attachment __. Provider will facilitate such access and copying promptly after Recipient's request.

- (c) *Retention & Deletion.* Provider will retain any Project Data in its possession until Erased (as defined below) pursuant to this Subsection __ (c). Provider will Erase: (i) all copies of Project Data _____ after collection thereof; (ii) any or all copies of Project Data promptly after Recipient's written request; and (iii) all copies of Project Data no sooner than __ business days after termination of this Agreement and no later than __ business days after such termination. Notwithstanding the foregoing, Recipient may at any time instruct Provider to retain and not to Erase or otherwise delete Project Data, provided Recipient may not require retention of Project Data for more than __ business days after termination of this Agreement. Promptly after Erasure pursuant to this Subsection __ (c), Provider will certify such Erasure in writing to Recipient. ("Erase" and "Erasure" refer to the destruction of data so that no copy of the data remains or can be accessed or restored in any way.)
- (d) *Technical & Physical Security.* In its handling of Project Data, Provider will observe the Technical and Physical Security Requirements attached to this Agreement as Attachment __.
- (e) *Individuals' Access.* Provider will not allow any of its employees to access Project Data, except to the extent that an employee needs access in order to facilitate the Services and executes a written agreement with Provider agreeing to comply with Provider's obligations set forth in this Section __. Provider will perform a background check on any individual it gives access to Project Data. Such background check will include, without limitation, a review of the individual's criminal history, if any. Provider will not grant access to Project Data if the background check or other information in Provider's possession would lead a reasonable person to suspect that the individual has committed identity theft or otherwise misused third party data or that the individual presents a threat to the security of Project Data.
- (f) *Compliance with Law & Policy.* Provider will comply with all applicable federal and state laws and regulations governing the handling of Project Data.
- (g) *Testing & Audits.* Recipient may test Provider's Project Data management systems _____ times per _____, including without limitation via unannounced penetration tests, and Provider will cooperate with such tests as Recipient reasonably requests. No less than once per calendar year, Provider will retain a certified public accounting firm (i) to perform a SAS-70 audit that includes Provider's Project Data management systems and (ii) to produce a SAS-70 Type II report. Provider will provide such report to Recipient promptly after receipt thereof, and such report will be considered Confidential Information disclosed by Provider pursuant to Section __ (*Nondisclosure*) of this Agreement.
- (h) *Leaks.* Provider will promptly notify Recipient of any actual or potential exposure or misappropriation of Project Data (any "Leak") that comes to Provider's attention. Provider will cooperate with Recipient and with law enforcement authorities in

investigating any such Leak, at Provider's expense. Provider will likewise cooperate with Recipient and with law enforcement agencies in any effort to notify injured or potentially injured parties, and such cooperation will be at Provider's expense, except to the extent that the Leak was caused by Recipient. The remedies and obligations set forth in this Subsection __ (h) are in addition to any others Recipient may have.

- (i) *Injunction.* Provider agrees that violation of the provisions of this Section __ might cause Recipient irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, Recipient will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.