

Professional Services Addendum

This Professional Services Addendum ("Addendum") is an addendum to the Master Subscription Agreement (the "Agreement") between Inriver and Subscriber (as defined in the Agreement). By executing a SOW (as defined below) that references this Addendum, Subscriber is accepting and agreeing to the terms herein. All capitalized terms used but not defined herein shall have the respective meanings set forth in the Agreement. The Addendum is effective as of the date Subscriber signs a SOW for Professional Services (as defined below) and will remain in effect until terminated as provided in this Addendum.

1 DEFINITIONS

- 1.1 "Deliverable(s)" means a deliverable under a SOW.
- 1.2 "Inriver Personnel" means all employees and subcontractors, if any, engaged by Inriver to perform the Professional Services.
- 1.3 "Professional Services" means any professional services to be provided under this Addendum by Inriver, its Affiliates, or its or their respective subcontractors under a SOW, including the provision of any Deliverables specified in such SOW.
- 1.4 "SOW" means a mutually agreed ordering document (whether in the form of a statement of work, schedule, order form or otherwise) describing Professional Services to be provided hereunder that is entered into between Subscriber and Inriver. An Inriver Affiliate that executes a SOW with Subscriber will be deemed to be Inriver as such term is used in this Addendum and the Agreement. SOWs are deemed incorporated herein by reference.

2 GENERAL

Except as otherwise set forth herein or in the applicable SOW, all of the relevant terms and conditions of the Agreement relating to the provision of Inriver's product information management (PIM) Service shall also apply to the provision of Professional Services and Deliverables under this Addendum.

3 PROFESSIONAL SERVICES

- 3.1 **Scope.** Inriver will provide Professional Services and supply Deliverables to Subscriber pursuant an agreed SOW, which will set forth the scope, deliverables, fees and such other terms, and shall be deemed to incorporate all applicable terms of this Addendum and the Agreement.
- 3.2 **Relationship to Other Services.** The Addendum is limited to Professional Services and does not convey any right to use any other Inriver services. Subscriber agrees that Professional Services are not contingent on the delivery of any future service, functionality or features other than Deliverables.
- 3.3 **Inriver's Obligations.** Inriver is responsible for all Inriver Personnel. As such, Inriver will comply with all applicable laws and regulations. Subscriber will have no power or authority to directly supervise or control Inriver Personnel with respect to the means, manner or method of performance of the Professional Services. Inriver shall ensure that Inriver Personnel are suitably qualified and shall provide reasonably sufficient staff to perform the Professional Services.
- 3.4 **Subscriber's Obligations.** Subscriber shall respond promptly to any Inriver request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Inriver to perform Professional Services in accordance with the requirements of the SOW.
- 3.5 **Acceptance.** Any Deliverables to be provided in connection with the Professional Services will be stated in the SOW. Unless otherwise specified in the applicable SOW, Deliverables will be considered accepted upon Subscriber's written notice thereof, provided that if Subscriber does not notify Inriver of non-acceptance (including specifically identifying any deficiencies) within two (2) business days after delivery of the Deliverables, Subscriber shall be deemed to have accepted such Deliverables.

4 FEES AND PAYMENT TERMS

Subscriber will pay Inriver the fees for the Professional Services specified in each SOW. Unless the SOW provides otherwise, Subscriber will pay Inriver within thirty (30) calendar days from the date of invoice. Except as otherwise set forth herein or in the applicable SOW, all of the payment terms in the Agreement shall apply to the payment of fees for the Professional Services.

5 TERM AND TERMINATION

5.1 **Term.** Each SOW term shall begin on the effective date specified in the applicable SOW and end on the date set forth therein or the date when the Professional Services are completed; provided, however, that except as otherwise set forth in the applicable SOW, (a) all of the terms in the Agreement relating to termination for cause shall apply to the termination of a SOW, and (b) either Party may terminate any SOW for convenience upon sixty (60) days' written notice to the other Party. This Addendum shall terminate at the same time as the Agreement.

5.2 **Effect of Termination.** Unless otherwise set forth in the applicable SOW, upon termination of a SOW (i) if such SOW provides for an hourly or per unit fee, Subscriber will pay Inriver such fee for the work performed up to the date of termination; and (ii) if the SOW provides for a fixed fee, Subscriber will pay Inriver the reasonable value and documented costs as well as accrued hours of the Professional Services rendered by Inriver up to the termination date. Termination of a SOW, for any reason, including without limitation for cause, will not terminate any other SOW.

6 PROPRIETARY RIGHTS AND LICENSES

6.1 **Subscriber Materials.** Subscriber does not grant to Inriver any rights in or to Subscriber's intellectual property except such licenses as are required for Inriver to perform its obligations under this Addendum and the applicable SOW(s).

6.2 **License for Deliverables.** Subscriber recognizes and agrees that Inriver's Professional Services are typically provided to assist and support Subscriber and any third-party service providers in the implementation of Inriver's PIM Service and that any Deliverables under a SOW and/or this Addendum are for use within, or in connection with, the Inriver PIM Service. All right, title and interest in and to the Deliverables, including all Intellectual Property rights, and any and all materials, documentation, software and other technology created or developed in connection with the Professional Services, shall remain with Inriver, or its subcontractors or licensors. Upon payment of fees due under an applicable SOW, Inriver grants Subscriber a worldwide, non-exclusive, non-transferable, limited right to use the Deliverables solely for its internal business purposes associated with its use of Inriver's PIM Service.

7 WARRANTY

7.1 **Professional Services Warranty.** Inriver warrants that the Professional Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. In the event of breach of the aforementioned warranty, Subscriber's sole and exclusive remedy will be, at Inriver's option to: (i) use reasonable efforts to correct a nonconformance; or (ii) terminate the applicable SOW and refund fees attributable to the non-conforming Professional Services. Subscriber acknowledges and agrees that Inriver is not liable for the performance of any third-party hardware, devices, equipment, software, connectivity, data transport, or other products or services provided by a third party ("**Third-Party Products**"). Third-Party Products may impact the performance of the Professional Services, and Inriver shall have no liability related to Third-Party Products.

7.2 **Disclaimer.** All of the warranty disclaimers set forth in the Agreement with respect to Inriver's PIM Service shall also apply to the Professional Services and Deliverables.

8 INDEMNIFICATION

All of the terms in the Agreement relating to indemnification (including Subscriber's indemnification obligations) shall apply. For avoidance of doubt, Inriver's indemnification obligations with respect to infringement shall apply to the Deliverables provided in connection with the Professional Services.

9 LIMITATION OF LIABILITY

The limitation of liability set forth in the Agreement with respect to Inriver's provision of the PIM Service shall also apply to Inriver's provision Professional Services and Deliverables.

10 MISCELLANEOUS

10.1 **Order of Precedence.** In the event of a conflict, the provisions of an authorized SOW will prevail over those of this Addendum or the Agreement. Neither Party's acts or omissions related to Professional Services, to a SOW or to this Addendum, including without limitation breach of a SOW or this Addendum, will give the other Party any rights or remedies not directly related to the SOW in question.

10.2 **Non-Solicitation.** Except where prohibited by law, during the term of this Addendum and for twelve (12) months thereafter, Subscriber will not solicit for employment, nor knowingly employ (either as an employee, contractor or agent), any of Inriver's employees or subcontractors without Inriver's prior written consent.