

# MEMORANDUM

TO: Robert Chen, CEO, TechSolutions Consulting

FROM: Emily Parker, Senior Associate

Morrison & Associates Legal Group

DATE: January 20, 2026

RE: Review of Proposed Software Licensing Agreement with ABC Corporation

## ISSUE PRESENTED

Whether the proposed Master Software License Agreement ("Agreement") with ABC Corporation contains terms that adequately protect TechSolutions Consulting's intellectual property rights and limit potential liability exposure.

## BRIEF ANSWER

While the Agreement contains several favorable provisions, there are three material issues that require revision before execution: (1) the limitation of liability clause is insufficiently protective; (2) intellectual property ownership provisions are ambiguous regarding derivative works; and (3) the termination provisions do not adequately address wind-down obligations.

## FACTS

TechSolutions Consulting, Inc. ("TechSolutions") has developed a proprietary software platform for enterprise data analytics ("Platform"). ABC Corporation ("ABC") has expressed interest in licensing the Platform for its internal business operations under a five-year agreement with an initial license fee of \$500,000 and annual maintenance fees of \$150,000.

ABC's legal counsel provided a draft Master Software License Agreement on January 10, 2026. The proposed Agreement includes provisions for:

- Exclusive license to use the Platform within ABC's organization
- Customization services to be provided by TechSolutions
- Service level agreements (SLAs) guaranteeing 99.5% uptime
- Automatic renewal provisions
- Standard indemnification clauses

## ANALYSIS

### I. Limitation of Liability Provisions (Section 9)

The current limitation of liability clause caps TechSolutions' liability at "the amount of fees paid in the twelve months preceding the claim." This presents significant risk given the SLA

requirements.

**Issue:** If TechSolutions fails to meet the 99.5% uptime requirement, ABC could claim substantial damages based on business interruption. The current cap of approximately \$150,000 (annual maintenance fee) may be insufficient to cover such claims, but also may not adequately protect TechSolutions from catastrophic liability.

**Recommendation:** Revise Section 9.2 to:

- a) Exclude liability for consequential and indirect damages
- b) Cap total liability at the greater of \$500,000 or the total fees paid under the Agreement
- c) Carve out unlimited liability only for breach of confidentiality, intellectual property infringement, and gross negligence

## II. Intellectual Property Rights (Section 4)

Section 4.3 states that "any modifications, enhancements, or derivative works created under this Agreement shall be jointly owned by the parties." This language is problematic.

**Issue:** Joint ownership creates significant complications:

- Either party could license the modifications to third parties without the other's consent
- Both parties must agree on any licensing terms, creating potential deadlock
- Accounting for profits becomes complex
- The provision could inadvertently grant ABC rights to TechSolutions' core technology improvements

**Recommendation:** Revise Section 4 to clarify that:

- a) All modifications to the core Platform remain TechSolutions' sole property
- b) Custom features developed specifically for ABC's use case may be owned by ABC, but TechSolutions retains the right to incorporate the underlying concepts into the Platform
- c) Include a "feedback license" where ABC grants TechSolutions rights to use any suggestions or feedback

## III. Termination and Wind-Down (Section 11)

The termination provisions lack specific requirements for wind-down procedures, data return, and transition assistance.

**Issue:** Upon termination, ambiguity exists regarding:

- Timeline for ABC to cease using the Platform
- TechSolutions' obligation to provide transition support
- Return or destruction of ABC's data stored in the Platform
- Whether ABC may retain copies for regulatory compliance purposes

**Recommendation:** Add Section 11.6 addressing:

- a) 90-day wind-down period during which ABC may continue limited use
- b) TechSolutions' obligation to provide reasonable transition assistance (at ABC's expense)
- c) Data export and deletion procedures

d) Survival of confidentiality obligations

#### IV. Additional Recommendations

While not material issues, the following revisions would strengthen the Agreement:

1. Insurance Requirements (New Section 13): Require TechSolutions to maintain appropriate insurance coverage including:

- Professional liability insurance (\$2 million minimum)
- Cyber liability insurance (\$5 million minimum)
- General commercial liability insurance

2. Audit Rights (Section 7.4): Clarify that ABC's audit rights are limited to once per year and must be conducted during business hours with reasonable advance notice.

3. Force Majeure (Section 14): Expand to explicitly include cyberattacks and cloud service provider outages.

## CONCLUSION

The proposed Agreement requires material revisions to adequately protect TechSolutions' interests. I recommend that we not execute the Agreement in its current form. Instead, we should provide ABC with a marked-up version addressing the issues identified in this memo.

I estimate that negotiating these revisions will require 12-15 hours of legal work at our standard rate of \$450 per hour. However, the cost of entering into this Agreement without these protections could be substantially higher if disputes arise during the five-year term.

Please contact me if you would like to discuss these recommendations or if you need any clarification regarding the issues identified.

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