



**Version 1.1, current as of 20 May 2021**

## **GENERAL TERMS AND CONDITIONS**

These General Terms and Conditions (collectively as the “**Agreement**”) are made and entered into by and between **RIB**, and the customer (“**Customer**”) as of the actual subscription or using date of the Application (the “**Effective Date**”). Capitalized terms not otherwise defined must have the meanings ascribed in the Agreement. Unless a separate cloud service agreement exists, this Agreement govern all access to the Application and the provided services. In the event of a conflict between the provisions of a service agreement (including the Hosting SLA or the Professional Service Agreement) and the Agreement, the provisions of the Agreement shall prevail unless the service agreement expressly states otherwise. In the event of a conflict between the provisions of the Standard Contractual Clauses in the Data Processing Agreement and the Agreement, the Standard Contractual Clauses shall prevail.

When Customer purchases a new subscription to an Application or renews it, the then-current Agreement will apply and will not change during Customer’s subscription for that Application. Earlier versions can be found on <https://www.mtwocloud.com/legal-terms-all-versions>. When RIB introduces features, supplements or related software that are new (i.e., that were not previously included with the subscription), RIB may provide additional terms or make updates to the Agreement that apply to Customer’s access to those new features, supplements or related software.

[TO CUSTOMER: PLEASE READ THIS AGREEMENT CAREFULLY, BECAUSE BY SUBSCRIBING, OR USING THE APPLICATION, CUSTOMER IS AGREEING TO BE BOUND BY THE AGREEMENT. IF CUSTOMER DOES NOT AGREE TO ALL PROVISIONS OF THIS AGREEMENT OR DOES NOT WISH TO BE BOUND BY THIS AGREEMENT, DO NOT SUBSCRIBE TO, AND DO NOT ACCESS THE APPLICATION.]

### **1. Certain Definitions.**

“**Affiliate**” means, as to a party, any other entity that directly or indirectly controls, is under common control with, or is controlled by, such party; as used in this definition, “control” and its derivatives mean possession, directly or indirectly, of (i) the majority of the shares or of the share capital of an entity, or (ii) power to direct the management or policies of an entity.

“**Application**” means the software application known as “MTWO” to be provided to customer by RIB or through a RIB Service Partner on a software-as-a-service (SaaS) basis, together with any associated database structures and queries, user interfaces, system interfaces, tools, and the like, and any and all revisions, modifications, and updates thereof delivered or made available to Customer by RIB or through an RIB Service Partner pursuant to this Agreement.

“**Confidential Information**” means any information of any type in any form that (i) is disclosed to or observed or obtained by one party from the other party (or from a person the recipient knows or reasonably should assume has an obligation of confidence to the other party) in the course of, or by virtue of, this Agreement and (ii) either is designated as confidential or proprietary in writing at the time of such disclosure or within a reasonable time thereafter (or, if disclosure is made orally or by observation, is designated as confidential or proprietary orally by the person disclosing or allowing observation of the information) or is of a nature that the recipient knew or reasonably should have known, under the circumstances, would be regarded by the owner of the information as confidential or proprietary. Without limiting any other provisions of this Agreement, and whether or not otherwise meeting the criteria described herein, the Application, Customer Data, and content of this Agreement (other than the fact of its existence and the identities of the parties hereto) shall be deemed conclusively to be Confidential Information. For purposes of this Agreement, however, the term “Confidential Information” specifically shall not include any portion of the foregoing that (i) was in the recipient’s possession or knowledge at the time of disclosure and that was not acquired directly or indirectly from the other party, (ii) was disclosed to the recipient by a third party not having an obligation of confidence of the information to any person or body of which the recipient knew or which, under the circumstances, the recipient reasonably should have assumed to exist, or (iii) is or, other than by the act or omission of the recipient, becomes a part of the public domain not under seal by a court of competent jurisdiction. A selection or combination of information will not meet any of the foregoing exceptions solely because some or all of its individual component parts are so excepted and will meet such exception(s) only if the selection or combination itself is so excepted. In the event of any ambiguity as to whether information is Confidential Information, the foregoing shall be interpreted strictly and there shall be a rebuttable presumption that such information is Confidential Information.

“**Customer Data**” means all data entered into the Application (i) by Customer Users or (ii) by or on behalf of Customer pursuant to a conversion of data from another system or system interface with another system, in each case as such data is maintained in the Application from time to time, but excluding RIB Data.

“**Customer Property**” means all Customer Data and any other property delivered to RIB by Customer or at Customer’s direction to facilitate RIB’s provision of Services under this Agreement that is specifically identified as such in the applicable section.

“**Customer User**” means an employee or individual independent contractor of Customer or of an Affiliate of Customer duly authorized by Customer to access the Application pursuant to RIB’s then-current procedure for such authorization; provided, however, that any such independent



contractor must have executed a written confidentiality agreement in accordance with Section 8(b) and shall access the Application solely in furtherance of Customer's or such Affiliate's internal business purposes.

**"Data Processing Agreement"** means the RIB Application data processing agreement published at: [https://cdac2381-58a3-4c6f-83c2-fc549e171b4d.filesusr.com/ugd/567fd9\\_0515cc8a5a4b44b18fd1b626ea60fc21.pdf](https://cdac2381-58a3-4c6f-83c2-fc549e171b4d.filesusr.com/ugd/567fd9_0515cc8a5a4b44b18fd1b626ea60fc21.pdf).

**"Documentation"** means all documentation (whether printed or in an electronic format) supplied or made available to Customer by RIB or a RIB Service Partner for use with or in support of the Application, including without limitation any and all revisions, modifications, and updates thereof as may be supplied or made available by RIB or a RIB Service Partner to Customer during the term of this Agreement and all copies thereof made by or on behalf of Customer.

**"Functional Specifications"** means the descriptions of features and functions of the Application as expressly set forth in Quote.

**"Hosting Services"** means the provision, administration, and maintenance of servers and related equipment, the provision of bandwidth at the hosting facility, and the operation of the Application for access by Customer Users to be provided by the relevant hosting service provider.

**"Hosting SLAs"** means the service level agreements for the Hosting Services published at: [https://567fd935-f62b-4801-8b06-facca1b1a4d0.usfiles.com/ugd/567fd9\\_bdb8be52250045ae9d8c17e67246f797.pdf](https://567fd935-f62b-4801-8b06-facca1b1a4d0.usfiles.com/ugd/567fd9_bdb8be52250045ae9d8c17e67246f797.pdf).

**"Information Security Requirements"** means the provisions regarding information security set forth in the Data Processing Agreement.

**"Infringement Claim"** means a claim by a third-party other than an Affiliate of Customer, made during the Term, that access to the Licensed Materials in accordance with the terms of this Agreement infringes a patent practiced by such party or a copyright held by such party.

**"Licensed Materials"** means the Application and the Documentation.

**"Losses"** means all losses, liabilities, damages, awards, settlements, claims, suits, proceedings, costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, expert witness fees, settlement, judgment, interest, and penalties).

**"Malfunction"** means a material failure of the Application, when operated in accordance with the Documentation, to provide the functionality described in the Functional Specifications or to perform in conformance with any standards and specifications expressly stated therein.

**"Privacy Statement"** means the RIB Application privacy policy published at: <https://www.mtwocloud.com/privacy>.

**"Problem Report"** means report delivered to RIB by Customer in accordance with RIB's then-current support procedures describing in reasonable detail a suspected Malfunction.

**"Professional Service Agreement"** means the provision regarding to the performance of Services (excluding Hosting Services) provided by RIB and it is published at: [https://cdac2381-58a3-4c6f-83c2-fc549e171b4d.filesusr.com/ugd/567fd9\\_9027d667800e462bae5ce4951c7e673d.pdf](https://cdac2381-58a3-4c6f-83c2-fc549e171b4d.filesusr.com/ugd/567fd9_9027d667800e462bae5ce4951c7e673d.pdf).

**"Quote"** means the agreement that include the commercial terms and conditions regarding to the subscription fee, implementation fee and other applicable fees for accessing to the Application, and to be provided by RIB or RIB Service Partner.

**"RIB Data"** means all anonymized statistical information regarding Customer Users' access of the Application.

**"RIB Service Partner"** means any MTWO reseller authorized by RIB that provides Services to the Customer under a separate agreement to be entered into between the Customer and the RIB Service Partner.

**"Services"** means the services other than the Application and the provision thereof to Customer performed or to be performed by RIB or a RIB Service Partner.

**"System Administrator"** means the individual identified as such in the Quote or such substitute designated by Customer from time to time in accordance with RIB's then-current procedures.

**"Term"** has the meaning ascribed in Section 1.

The word "including" means "including without limitation" unless otherwise expressly provided in a given instance.

1. **Term.** This Agreement will commence upon the Effective Date and, unless sooner terminated as provided herein, will expire upon the expiration of the time period set forth as the "Subscription Term" in the Quote between Customer and RIB or a RIB Service Partner (the "Term").

## 2. **License to Customer.**

(a) **License Grant.** Subject to terms and conditions of this Agreement, RIB grants to Customer a non-exclusive, non-transferable (except as otherwise provided herein) license during the Term as follows:

(i) for Customer Users to access the Application for Customer's internal business purposes subject to the limitations, restrictions, and metrics (if any) set forth in the applicable section;

(ii) for Customer Users to access the Application in furtherance of system implementation, maintenance, and technical support; and

(iii) for Customer Users to copy and use the Documentation in furtherance of the use by such persons of the Application pursuant to the license granted in this Agreement.



(b) Reassignment. Customer may reassign the license to other Customer Users. Provided however, such reassignment shall not be conducted within 90 days of the last assignment, unless such reassignment is to cover a user's absence or the unavailability of a device that is out of service. Reassignment of a license for any other purpose must be permanent. When Customer reassigns a license from one device or user to another, Customer must block access and remove any related software from the former device or from the former user's device.

(c) Limited Devices. The number of devices on which each Customer User may use is limited to 4 devices.

**3. Maintenance and Enhancements**. Subject to terms and conditions of this Agreement and the Quote and provided Customer is not in material breach of its obligations hereunder, RIB shall provide the following during the Term:

(a) Maintenance. In response to a Problem Report, RIB (directly or through an RIB Service Partner) must use commercially reasonable efforts to correct a reported Malfunction or to provide a reasonable workaround sufficient to alleviate any substantial adverse effect of the problem on the utility of the Application, provided that Customer assists RIB or RIB Service Partner in its efforts by making available, as reasonably requested by RIB or RIB Service Partner, information, documentation, access to personnel, and testing. In the event a Malfunction exists due to an error in the Functional Specifications, RIB (directly or through an RIB Service Partner) may correct such Malfunction by providing corrected Functional Specifications; provided, however, that no such revision shall eliminate or materially diminish any feature or operational functionality of the Application previously described therein.

(b) Enhancements. From time to time at its discretion, RIB may (directly or through a RIB Service Partner) implement releases of the Application that contain changes, updates, patches, fixes, enhancements to functionality, and/or additional functionality. RIB Service Partner in its sole discretion will generally support the most recent and the immediately previous release family, and RIB will determine whether to include in the Application, as part of the maintenance hereunder, features or functionality not originally specified for the Application, and RIB or RIB Service Partner shall have no obligation to disclose or offer to Customer any such features or functionality.

(c) Supported Use and Environment. RIB or RIB Service Partner's maintenance obligations pursuant to this Agreement are conditioned upon access to and use of the Application by Customer Users in accordance with the Documentation and using browsers and other information technology meeting the criteria set forth in the Documentation, published on RIB's web site, or otherwise provided or made available to Customer by RIB or by RIB Service Partner from time to time. Upon reasonable notice to Customer from time to time, RIB may revise the specifications described in this paragraph or implement new such specifications to address the evolution of such technology; provided, however, that no such revision shall eliminate or materially diminish any feature or operational functionality of the Application previously described therein.

(d) Other Services. For avoidance of doubt, under this agreement, RIB is under no obligation to provide Services as defined herein, e.g. such as hosting services, support services, training services etc., to the Customer. The Customer may or may not enter into a Quote with RIB or a RIB Service Partner regarding to the Services. If Customer purchases Services directly from RIB, the performance of the Services will be subject to the Professional Service Agreement. If Customer purchases Hosting Services directly from RIB, the performance of the Hosting Services will be subject to Hosting SLAs. If Customer purchases Services and/or Hosting Services from RIB Service Partner, the performance of the Services and/or Hosting Services shall be subject to the then-current relevant agreements provided by RIB Service Partner.

**4. Charges; Taxes**.

Charges and applicable Taxes shall be provided in the Quote between Customer and RIB Service Partner.

**5. Customer Responsibilities and Restrictions; Audits**.

(a) Customer Connection to Application. Customer must be responsible for selecting, obtaining, and maintaining any equipment and ancillary services needed to access the Application, in each case meeting any information technology environment criteria described in Section 3(c).

(b) System Administrator. Customer acknowledges and agrees that the System Administrator, utilizing mechanisms provided for that purpose within the Application, will have the sole responsibility for authenticating and provisioning access to the Application for other Customer Users and for disabling access to the Application for Customer Users. Customer must cause the System Administrator to perform such authentication in accordance with generally-accepted information security standards and must cause the System Administrator to disable such access immediately upon the termination of employment or engagement of any Customer User by Customer or its Affiliate or when a Customer User otherwise is no longer eligible to access the Application pursuant to this Agreement. Customer must notify RIB immediately, by telephone and in writing, to disable access to the Application for System Administrator who is so terminated or otherwise is no longer eligible to access the Application pursuant to this Agreement.

(c) Account Passwords and Data Security. Customer must maintain and cause to be maintained the confidentiality of all user IDs and passwords of Customer Users, including implementing and enforcing policies and procedures as reasonable and appropriate thereto, and Customer at all times must maintain (and must cause any Affiliate having Customer Users to maintain) adequate technical, physical, and administrative safeguards, including access controls and system security requirements and devices, to ensure that access to the Application by or through Customer is limited to Customer Users. Customer shall be solely responsible for all use or misuse of the user IDs of Customer Users, and except as otherwise required by applicable law RIB shall have no obligation to monitor for or report any use or attempted use of the user IDs of Customer Users. All such user IDs and passwords are deemed to be Confidential Information of both Customer and RIB. Customer must take reasonable steps to ensure that Customer Users not share user IDs or passwords.



(d) Restrictions. Except as may be expressly authorized in this Agreement, Customer must not do, nor shall it authorize any person to do, any of the following: (i) use or access the Licensed Materials for any purpose or in any manner not specifically authorized by this Agreement; (ii) make any copies or prints, or otherwise reproduce or print, any portion of the Licensed Materials, whether in printed or electronic format; (iii) distribute, republish, download, display, post, or transmit any portion of the Licensed Materials; (iv) create or recreate the source code for, or re-engineer, reverse engineer, decompile, or disassemble any Licensed Materials that is computer software; (v) modify, adapt, translate, or create derivative works from or based upon any part of the Licensed Materials, or combine or merge any part of the Licensed Materials with or into any other software, document, or work; (vi) refer to or otherwise use or access any part of the Licensed Materials as part of any effort to develop a product or service having any functional attributes, visual expressions, or other features or purposes similar to those of Licensed Materials; (vii) remove, erase, or tamper with any copyright, logo, or other proprietary or trademark notice printed or stamped on, affixed to, or encoded or recorded in the Licensed Materials, or use a proxy, reverse proxy, or any other such mechanism that is intended to, or has the effect of, obscuring any of the foregoing or confusing a Customer User as to RIB's rights in the Application, (viii) fail to preserve all copyright and other proprietary notices in any copy of any portion of the Licensed Materials made by or on behalf of Customer; (ix) sell, market, license, sublicense, distribute, rent, loan, or otherwise grant to any third party any right to possess or utilize any portion of the Licensed Materials without the express prior written consent of RIB (which may be withheld by RIB for any reason or conditioned upon execution by such party of a confidentiality and non-use agreement and/or other such other covenants and warranties as RIB in its sole discretion deems desirable); (x) use or access the Licensed Materials to gain or attempt to gain access to any software applications, computer systems, or data not expressly authorized under this Agreement; (xi) knowingly use or access the Application to store, receive, or distribute any information that violates any applicable law; or (xii) attempt to do or assist any party in attempting to do any of the foregoing.

(e) Disclaimer. RIB shall not be liable to Customer for any Loss arising out of or relating to Customer's failure to comply with its obligations set forth in this Section 5.

(f) Audits. RIB and RIB Service Providers (including its independent auditors') have the right to audit the Customer's use and access to confirm compliance with this Agreement. Such audit is subject to reasonable prior notice by RIB or by a RIB Service Provider and shall not unreasonably interfere with the Customer's business activities. The Customer must without prejudice to other rights of RIB address and rectify any non-compliant matters identified by the audit including any breach of this Agreement, by immediately procuring additional licenses or as otherwise directed by RIB.

## **6. Ownership**

(a) Customer Property. As between RIB and Customer, Customer has and retains exclusive ownership of all Customer Property and all intellectual property and proprietary rights therein. RIB acknowledges that the foregoing constitute valuable assets and may constitute trade secrets of Customer or its licensors.

(b) Licensed Materials. As between RIB and Customer, RIB has and retains exclusive ownership of the Licensed Materials and all intellectual property and proprietary rights therein. Customer acknowledges that the foregoing constitute valuable assets and may constitute trade secrets of RIB or its licensors.

(c) Suggestions, Joint Efforts, and Statistical Information. To the avoidance of doubt, Customer has no obligation to provide its suggestion to RIB; however, if Customer suggests, or provides its findings, inventions, improvements, discoveries, or ideas or know-how in any form (collectively the "Suggestions") to RIB, then RIB, at its sole option, has the right to post and use it. For such Suggestions, Customer warrants that 1) they will not be subject to a license requiring RIB to license anything to third parties; and 2) they are owned or otherwise controlled by Customer and not subject to any third-party rights (including any personality or publicity rights). Customer (and anyone providing Suggestions through Customer) hereby irrevocably and perpetually grants to RIB and its Affiliates a worldwide, non-exclusive, fully paid-up, royalty-free, transferable, sub-licensable right and license to make, use, reproduce, prepare derivative works based upon, distribute, publicly perform, publicly display, transmit, and otherwise commercialize the Suggestions (including by combining or interfacing products, services or technologies that depend on or incorporate Suggestions with other products, services or technologies of RIB or others), without attribution in any way and for any purpose. Any further development conducted by RIB solely or jointly with Customer based on the Suggestions will be and remain the sole property of RIB and may be used, sold, licensed, or otherwise provided by RIB to third parties, or published or otherwise publicly disclosed, in RIB's sole discretion without notice, attribution, payment of royalties, or liability to Customer. Customer acknowledges and agrees that RIB has and retains exclusive and valid ownership of all RIB Data. Customer hereby assigns to RIB any and all right, title, and interest in and to any statistical information. Unless otherwise expressly agreed in writing, Customer shall not obtain any right, title, or interest (other than the license expressly set forth herein) in or to anything created or developed by RIB in connection with or incident to this Agreement.

**7. License to Use Customer Property**. Customer grants to RIB a non-exclusive, transferrable, worldwide, royalty-free license to use and disclose Customer Property as follows

(i) during the Term, to provide, monitor, correct, and improve the Application and to perform services related thereto, including without limitation, to the extent permitted by applicable law, (A) de-identifying Customer Data such that there is no reasonable basis to believe that the information can be used, alone or in combination with other reasonably available information, to identify any individual or to identify Customer as the source of such data; and (B) aggregating Customer Data with other data; and



(ii) in perpetuity to use, reproduce, prepare derivative works of, and distribute such de-identified data for any lawful purpose and to grant sublicenses for the foregoing.

Customer represents and warrants that it owns or has the legal right and authority, and will continue to own or maintain the legal right and authority, to grant to RIB during the Term the license set forth herein. Customer must indemnify, defend, and hold harmless RIB, its Affiliates, and their respective directors, officers, employees, and agents from and against any Loss arising from or related to a claim of a third party with respect to a breach of the foregoing representations and warranties of Customer.

## **8. Confidentiality.**

(a) Security of Confidential Information. Each party possessing Confidential Information of the other party will maintain all such Confidential Information under secure conditions, using reasonable security measures and in any event not less than the same security procedures used by such party for the protection of its own Confidential Information of a similar kind.

(b) Non-Disclosure Obligation. Except as otherwise may be permitted by this Agreement, neither party shall disclose any Confidential Information of the other party to any third party without the express prior written consent of the other party; provided, however, that either party may disclose appropriate portions of Confidential Information of the other party to those of its employees, contractors, agents, and professional advisors having a substantial need to know the specific information in question in connection with such party's exercise of rights or performance of obligations under this Agreement provided that all such persons (i) have been instructed that such Confidential Information is subject to the obligation of confidence set forth by this Agreement and (ii) are bound either by contract, employment policies, or fiduciary or professional ethical obligation to maintain such information in confidence.

(c) Compelled Disclosure. If either party is ordered by a court, administrative agency, or other governmental body of competent jurisdiction to disclose Confidential Information, or if it is served with or otherwise becomes aware of a motion or similar request that such an order be issued, then such party will not be liable to the other party for disclosure of Confidential Information required by such order if such party complies with the following requirements: (i) if an already-issued order calls for immediate disclosure, then such party immediately must move for or otherwise request a stay of such order to permit the other party to respond as set forth in this paragraph; (ii) such party immediately must notify the other party of the motion or order by the most expeditious possible means; (iii) such party must not oppose a motion or similar request by the other party for an order protecting the confidentiality of the Confidential Information, including not opposing a motion for leave to intervene by the other party; and (iv) such party must exercise reasonable efforts to obtain appropriate assurance that confidential treatment will be accorded the Confidential Information so disclosed.

(d) Non-Use Obligation. Except as expressly authorized in this Agreement, during the term of this Agreement and forever thereafter (or for such shorter period as may be imposed by applicable law), neither party shall use any Confidential Information of the other party, except at the request of and for the benefit of such other party, without the express prior written consent of the other party.

(e) Copying of Confidential Information. Except as otherwise may be permitted by this Agreement, neither party shall copy or otherwise reproduce any part of any Confidential Information of the other party, nor attempt to do so, without the prior written consent of the other party. Any embodiments of Confidential Information of a party that may be generated by the other party, either pursuant to or in violation of this Agreement, will be deemed to be solely the property of the first party and fully subject to the obligations of confidence set forth herein.

(f) Proprietary Legends. Without the other party's prior written consent, neither party shall remove, obscure, or deface on or from any embodiment of any Confidential Information any proprietary legend relating to the other party's rights.

(g) Reports of Misappropriation. Each party must report to the other party without unreasonable delay any act or attempt by any person of which such party has knowledge or reasonably suspects (i) to use or disclose, or copy Confidential Information without authorization from the other party or (ii) to reverse assemble, reverse compile, or otherwise reverse engineer any part of the Confidential Information.

(h) Post-Termination Procedures. Except with respect to Customer Data as provided in [Section 12\(c\)](#) or as otherwise expressly provided in this Agreement, promptly upon the expiration or any termination of this Agreement or other expiration or termination of a party's right to possess and/or use Confidential Information, each party must turn over to the other party (or destroy and certify the same in writing, if agreed in writing by the other party) any embodiments of any Confidential Information of the other party.

**9. Security, Privacy, and data protection.** RIB shall comply with the Information Security Requirements and shall use reasonable efforts to cause any subcontractor or agent having access to or maintaining any Customer Data to do so. Additional privacy and security details are in the Data Processing Agreement and Privacy Statement. The commitments made in the Data Processing Agreement and Privacy Statement only apply to the Application and Hosting Services directly purchased from RIB and not from a RIB Service Partner. If Customer uses Application or Hosting Services that are hosted by a RIB Service Partner, that use will be subject to RIB Service Partner's privacy practices, which may differ from RIB's. As and to the extent required by law, Customer shall notify the individual users of the Application that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by RIB Service Partner or as required by law, and Customer shall obtain the users' consent to the same.



## **10. Representations and Warranties; Disclaimers.**

(a) Maintenance and Enhancements. RIB warrants that it will perform the Maintenance and Enhancements in a workmanlike manner using duly qualified and experienced personnel. Customer's sole remedy and RIB's sole liability and obligation for breach of the foregoing warranty will be for RIB, at its election, either to re-perform the Maintenance and Enhancements or to refund any fees paid to RIB with respect thereto.

(b) Consumer Law. If any legislation states that there is a guarantee in relation to any Maintenance or Enhancements supplied by RIB in connection with this Agreement, then RIB's liability for such failure is limited (at the RIB's election) to RIB supplying the Maintenance or Enhancements again or paying the cost of having the Maintenance and Enhancements supplied again.

(c) Representation And Warranty Disclaimers. Subject always to clause 10(b), the express warranties and express representations of RIB set forth in this agreement are in lieu of, and RIB disclaims, any and all other warranties, conditions, or representations (express or implied, oral or written), with respect to the Licensed Materials or the services hereunder any part of the foregoing, including any and all implied warranties or conditions of title, non-infringement, merchantability, or fitness or suitability for any purpose (whether or not RIB knows, has reason to know, has been advised, or otherwise is in fact aware of any such purpose), whether alleged to arise by law, by reason of custom or usage in the trade, by course of dealing, or otherwise. RIB expressly disclaims any warranty or representation to any person other than customer.

(d) Other Disclaimers. Customer will be exclusively responsible as between the parties for, and RIB makes no representation or warranty with respect to, determining whether the Licensed Materials will achieve the results desired by Customer, ensuring the accuracy of any Customer Data, and selecting, procuring, installing, operating, and maintaining the technical infrastructure for Customer's access to the Licensed Materials (other than with respect to the Hosting Services). RIB shall not be liable for, and will have no obligations with respect to, any aspect of the Licensed Materials that is modified by any person other than RIB or its contractors, access to the Licensed Materials other than in accordance with the most current operating instructions provided by RIB, Malfunctions or other effects of problems, defects, or failures of software or hardware not provided by RIB or of acts or omissions of Customer or any third party. Customer acknowledges that the operation of the Licensed Materials will not be error free in all circumstances and that all defects in the Licensed Materials may not be corrected.

## **11. Intellectual Property Indemnification.**

(a) Indemnity. RIB shall indemnify Customer and its directors, officers, employees, and agents against any final judgment entered in respect of an Infringement Claim by a court of competent jurisdiction and against any settlements arising out of such a claim. RIB's obligations specified in this paragraph will be conditioned on Customer's notifying RIB promptly in writing of the Infringement Claim or threat thereof (whether or not litigation or other proceeding has been filed or served) and giving RIB full and exclusive authority for, and information for and reasonable assistance with, the defense and, subject to Customer's approval (which must not be withheld or delayed unreasonably), settlement of such claim and any subsequent appeal.

(b) RIB's Mitigation. If an Infringement Claim has occurred or in RIB's reasonable opinion is likely to occur, Customer agrees to permit RIB, at RIB's option and expense, to (i) procure for Customer the right to continue using the Licensed Materials, (ii) replace or modify the same so that they become non-infringing but provide Customer substantially similar or better capabilities, or (iii) if RIB reasonably determines that both of the foregoing are technically impracticable or commercially infeasible, immediately terminate both parties' respective rights and obligations under this Agreement with respect to the infringing Licensed Materials, in which case Customer must return to RIB all copies of such Licensed Materials in its possession or control and RIB shall refund to Customer the applicable subscription fees paid by Customer for the then-current Term prorated for the portion of the term through the date of such termination.

(c) Exceptions. The foregoing notwithstanding, RIB shall have no liability for, and Customer will indemnify RIB, its Affiliates, and their respective directors, officers, employees, and agents, against any claim arising from (i) the combination, operation, or use or or access to any Licensed Materials with equipment, devices, or software not supplied by RIB if such claim would not be valid but for such combination, operation, or use, (ii) modification of any Licensed Materials other than by or on behalf of RIB, (iii) RIB's compliance with Customer's written designs, specifications, or instructions, or (iv) Customer's use of or access to the Licensed Materials after RIB has informed Customer of modifications or changes in the Licensed Materials required to avoid such claims if such claim would have been avoided by implementation of RIB's recommended modifications and RIB has offered to pay Customer's out-of-pocket costs of implementing any such modifications.

(d) EXCLUSIVE REMEDY. THE FOREGOING STATES THE ENTIRE OBLIGATION OF RIB, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO THIRD-PARTY CLAIMS REGARDING INFRINGEMENT OF INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS AND MISAPPROPRIATION OF TRADE SECRETS OR CONFIDENTIAL INFORMATION.

## **12. Breach; Termination; Disposition of Data.**

(a) Notice of Breach; Cure Period. In the event of a breach of a provision of this Agreement, the notice and cure procedures set forth in this paragraph shall apply. The non-breaching party must give the breaching party notice describing the breach and stating the time, as provided herein, within which the breach must be cured. If a provision of this Agreement sets forth a cure period for the breach in question, then that provision shall take precedence over any cure period set forth in this paragraph. No cure period shall be required, except as may be provided otherwise in this Agreement, if this Agreement sets forth specific deadline dates for the obligation allegedly breached. If the breach is of an obligation to pay money, the breaching party shall have five business days to cure the breach after written notice thereof by the non-breaching party. If the breach is a material breach of an obligation relating to the other party's Confidential Information, including Customer's use of or access to or disclosure of the Application other than in compliance with the license granted in this Agreement, then the non-breaching party, in its sole



discretion, may specify in the notice of breach that no cure period will be permitted. If the breach is other than a breach of the kind described above in this paragraph, then the cure period will be 30 days after the notice of the breach by the non-breaching party.

(b) **Termination.** If a breach of any provision of this Agreement has not been cured at the end of the applicable cure period, if any (or upon such breach if no cure period is permitted), then the non-breaching party thereupon may terminate this Agreement by notice to the other party. Termination of this Agreement by RIB for breach by Customer shall terminate all licenses granted to Customer herein. This Agreement and the licenses granted to Customer herein shall terminate automatically, to the extent permitted by applicable law in the jurisdiction or jurisdictions in question, if Customer makes an assignment for the benefit of its creditors, files a petition for bankruptcy, receivership, reorganization, or other like proceeding under any present or future debtor relief law (or is the subject of an involuntary such petition or filing that is not dismissed within 60 days after the effective filing date thereof), or admits of a general inability to pay its debts as they become due. Any termination of this Agreement shall be in addition to, and not in lieu of, any other rights or remedies available at law or in equity.

(c) **Disposition of Customer Data.** Upon Customer's written request within 30 days following the expiration or any termination of this Agreement, RIB promptly shall deliver to Customer a copy of the Customer Data in a mutually-agreed electronic format. RIB shall bill Customer at its then-standard hourly rate (or, if none, a reasonable rate) for such work and Customer must pay such invoice promptly prior to receipt of the Customer Data. Customer's failure to so request a copy of the Customer Data within such time shall be deemed a request by Customer for RIB to destroy the Customer Data. Promptly after RIB's delivery of such copy of the Customer Data, or upon such a deemed request, RIB shall destroy the Customer Data; provided, however, that to the extent RIB is required by applicable law or legal process to retain any portion of the Customer Data, or to the extent that destruction of any Customer Data is infeasible, RIB shall retain such Customer Data as though it were Confidential Information for such time as is required by such law or process or until destruction is no longer infeasible, after which RIB promptly shall destroy the Customer Data.

### **13. Risk Allocation.**

(a) **EXCLUSION OF INDIRECT DAMAGES.** EXCEPT WITH RESPECT TO CUSTOMER'S ACCESS TO OR DISCLOSURE OF THE APPLICATION OTHER THAN IN COMPLIANCE WITH THE LICENSE GRANTED IN THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE OTHER PARTY'S RIGHTS) FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING LOST PROFITS, LOSS OF OR DAMAGE TO DATA, LOSS OF BUSINESS, OR OTHER ECONOMIC DAMAGE), WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, SHOULD HAVE ANTICIPATED, OR IN FACT KNEW OF THE POSSIBILITY THEREOF. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS BY ANYONE. THE PROVISIONS OF THIS PARAGRAPH ARE INDEPENDENT OF, SEVERABLE FROM, AND TO BE ENFORCED INDEPENDENTLY OF ANY OTHER ENFORCEABLE OR UNENFORCEABLE PROVISION OF THIS AGREEMENT.

(b) **MAXIMUM AGGREGATE LIABILITY.** EXCEPT WITH RESPECT TO CUSTOMER'S ACCESS TO OR DISCLOSURE OF THE APPLICATION OTHER THAN IN COMPLIANCE WITH THE LICENSE GRANTED IN THIS AGREEMENT, IN NO EVENT SHALL A PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY OR THROUGH SUCH PARTY), WITH RESPECT TO ANY CLAIM ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE LICENSE OR SUBSCRIPTION FEES PAID UNDER THIS AGREEMENT DURING THE 180-DAY PERIOD IMMEDIATELY PRECEDING THE ACT GIVING RISE TO SUCH CLAIM. THE PROVISIONS OF THIS PARAGRAPH ARE INDEPENDENT OF, SEVERABLE FROM, AND TO BE ENFORCED INDEPENDENTLY OF ANY OTHER ENFORCEABLE OR UNENFORCEABLE PROVISION OF THIS AGREEMENT.

(c) **Intentional Risk Allocation.** Each party acknowledges that the provisions of this Agreement were negotiated, as a material part of the agreement memorialized herein, to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions involved with this Agreement. The warranty disclaimers and limitations in this Agreement are intended, and have as their essential purpose, to limit the circumstances of liability. The remedy limitations and the limitations of liability are separately intended, and have as their essential purpose, to limit the forms of relief available to the parties.

**14. Marketing.** RIB must not display or use Customer's logos, trademarks, service marks, or other indicia of origin without Customer's prior written consent (which may be given in email) in its sole discretion, and any such consent may be revoked at any time upon reasonable advanced written notice from Customer to RIB; provided, however, that RIB may identify Customer as an RIB customer and display Customer's logos in its marketing materials and advertisements, on its web site, and in presentations. RIB shall not acquire any intellectual property rights in any such logos, trademarks, service marks, or other indicia of origin.

### **15. Other Provisions.**

(a) **Notice.** Except as otherwise expressly provided herein, notices regarding to Application shall be given under this Agreement in writing in the English language, signed by the party giving the same, and shall be given personally (in which case such notices shall be deemed given when so delivered), by certified or registered Mail as specified below (in which case such notices shall be deemed given on the third business day after deposit):



Customer Principal Place of Business	Notices
European Economic Area, Switzerland, UK	Vaihinger Straße 151, 70567 Stuttgart
North America, South America	Attn: Chief Financial Officer, RIB, 5100 Poplar Avenue, Suite 3400, Memphis, TN 38137-3400, with copy to Steve F. Wood, Esq., Baker Donelson, 211 Commerce Street, Nashville, Tennessee 37201
Worldwide except above countries or regions	12/F, ICBC Tower, Citibank Plaza, 3 Garden Road, Central HK

Customer is responsible for ensuring that the email address for the System Administrator is accurate and current. Any email notice that we send to that email address will be effective when sent, whether or not you actually receive the email. Either party may change its address for purposes of notice by written notice thereof to the other party.

(b) Nature of Relationship; Subcontractors. RIB shall provide all Maintenance and Enhancements hereunder as an independent contractor to Customer. Subject to the provisions of this Agreement regarding confidentiality, RIB may perform its obligations hereunder through its employees and through subcontractors. Nothing contained herein shall be deemed to create any agency, partnership, joint venture, or other relationship between the parties or any of their affiliates, and neither party shall have the right, power, or authority under this Agreement to create any duty or obligation on behalf of the other party.

(c) Force Majeure. Neither party shall be liable for any failure to perform its obligations under this Agreement if such failure arises, directly or indirectly, out of causes reasonably beyond the direct control of such party and not due to such party's own fault or negligence or that of its contractors or representatives or other persons acting on its behalf, and which cannot be overcome by the exercise of due diligence and which could not have been prevented through commercially reasonable measures, including acts of God, acts of terrorists or criminals, acts of domestic or foreign governments, change in any law or regulation, fires, floods, explosions, epidemics, disruptions in communications, power, or other utilities, strikes or other labor problems, riots, or unavailability of supplies.

(d) Governing Law; Venue. Depending on the Customer's principal place of business, this agreement is entered between Customer as RIB entity listed as below. The governing law for this Agreement, including any rights, obligations and claims of the parties, will be as specified below. Any dispute, claim or controversy arising out of or relating to this Agreement, including the breach, performance, termination, enforcement, interpretation or validity of this Agreement (and whether under contract, tort, including and strict liability, competition law or otherwise), and including the determination of the scope or applicability of the dispute resolution provisions of this Agreement, will be finally determined under the law, in the location and by the dispute resolution process specified below:

Customer principal place of business	"RIB" means the following RIB entity	Governing law	Exclusive jurisdiction
European Economic Area, Switzerland, UK	RIB Software SE	The laws of Germany	Ordinary courts of Stuttgart, Germany
North America, South America	RIB Management Computer Controls, Inc., a Tennessee corporation	The laws of the state of Delaware, US (other than its conflicts of law provisions)	The federal or state courts sitting in Delaware
Worldwide except above countries or regions	RIB Limited, a Hong Kong corporation	The laws of Hong Kong (other than its conflicts of law provisions)	Courts of Hong Kong

(e) Injunctive Relief. Each party acknowledges that any violation of its covenants in this Agreement relating to the other party's Confidential Information and intellectual property would result in damage to such party that is largely intangible but nonetheless real and that is incapable of complete remedy by an award of damages. Accordingly, any such violation shall give such party the right to a court-ordered injunction or other appropriate order to enforce specifically those covenants without bond and without prejudice to any other rights or remedies to which such party may be entitled as a result of a breach of this Agreement.

(f) Legal Fees. If litigation or other action is commenced by a party to enforce this Agreement or between the parties concerning any dispute arising out of or relating to this Agreement, the prevailing party will be entitled, in addition to any other award that may be made, to recover all court costs and other official costs and all reasonable expenses associated with the litigation or other action, including reasonable fees and expenses of counsel.

(g) Assignment. A party may transfer or assign some or all of its rights and/or delegate some or all of its obligations under this Agreement only with the express prior written consent of the other party, which may be granted or withheld in such party's sole discretion; provided, however, that a party may assign all of its rights hereunder indivisibly to any wholly-owned subsidiary of such party or to such party's parent entity or to any wholly-owned subsidiary of such parent entity, or in any merger or similar transaction, or to a purchaser of substantially all of such party's assets, upon notice to the other party so long as (i) such party does not know and reasonably should not assume that such assignee is a competitor of the other party and (ii) such assignee assumes in writing all of such party's obligations under this Agreement. Any purported transfer or assignment by a party of any right under this Agreement otherwise than in accordance with the provisions of this paragraph shall be null and void and a breach of this Agreement.





(h) Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties and their successors and assigns permitted by this Agreement.

(i) No Third Party Beneficiaries. Except as otherwise expressly set forth herein, nothing in this Agreement is intended to confer, nor must anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever. If the governing law is laws of England and Wales, any terms of this Agreement shall be enforced under the Contracts (Rights of Third Parties) Act 1999.

(j) Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. No prior or contemporaneous representations, inducements, promises, or agreements, oral or otherwise, between the parties with reference thereto will be of any force or effect. Each party represents and warrants that, in entering into and performing its obligations under this Agreement, it does not and will not rely on any promise, inducement, or representation allegedly made by or on behalf of the other party with respect to the subject matter hereof, nor on any course of dealing or custom and usage in the trade, except as such promise, inducement, or representation may be expressly set forth herein.

(k) Survival. The covenants herein concerning Confidential Information, indemnification, post-termination procedures, and any other provision that, by its nature, is intended to survive this Agreement shall survive any termination or expiration of this Agreement.

(l) U.S. export jurisdiction. Application is subject to U.S. export jurisdiction. Customer must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other government related to Application, services, and technologies.

(m) Amendment and Waiver. Except as otherwise expressly provided herein, no modification or amendment to this Agreement will be valid or binding unless in writing and duly executed by the party or parties to be bound thereby. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under this Agreement.

(n) Severability. If any provision of this Agreement is ruled wholly or partly invalid or unenforceable by a court or other body of competent jurisdiction, then (i) the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable will be unaffected; (ii) the effect of the ruling will be limited to the jurisdiction of the court or other body making the ruling; (iii) the provision held wholly or partly invalid or unenforceable shall be deemed amended, and the court or other body is authorized to reform the provision, to the minimum extent necessary to render them valid and enforceable in conformity with the parties' intent as manifested herein; and (iv) if the ruling or the controlling principle of law or equity leading to the ruling subsequently is overruled, modified, or amended by legislative, judicial, or administrative action, then the provision in question as originally set forth in this Agreement shall be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity.

(o) Headings. The headings of the sections used in this Agreement are included for convenience only and are not to be used in construing or interpreting this Agreement.

(p) Counterparts. This Agreement may be executed in separate counterparts, each of which so executed and delivered shall constitute an original, but all such counterparts constitute one and the same instrument. Manually-executed counterparts or counterparts executed by means of an electronic signature may be delivered in faxed or scanned electronic form or by means of such electronic signature service provider, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. In making proof of this Agreement, it shall not be necessary to produce or account for more than one counterpart hereof so signed by each of the parties.

#### 16. Country-Specific Provision:

Depends on the Customer's principle place of business, the country-specific provision set forth below for the corresponding governing law and jurisdiction may apply:

- (a) Under governing law of Hong Kong law. NOTHING IN THE AGREEMENT PURPORTS TO RESTRICT OR EXCLUDE DEATH OR BODILY INJURY ARISING FROM EITHER PARTY'S NEGLIGENCE OR WILLFUL MISCONDUCT.
- (b) Under governing law of German law.
  - (i) IN ALL CASES OF CONTRACTUAL AND NON-CONTRACTUAL LIABILITY, RIB SHALL PAY DAMAGES OR COMPENSATION FOR FRUITLESS EXPENSES ONLY TO THE EXTENT DETERMINED AS FOLLOWS: (A) IN THE EVENT OF INTENT, RIB SHALL BE LIABLE IN FULL, IN THE EVENT OF GROSS NEGLIGENCE AND IN THE EVENT OF ABSENCE OF A QUALITY (*BESCHAFFENHEIT*) FOR WHICH RIB HAS ASSUMED A GUARANTEE (*GARANTIE*), ONLY TO THE EXTENT OF THE FORESEEABLE DAMAGE THAT WAS INTENDED TO BE PREVENTED BY THE BREACHED OBLIGATION OR THE GUARANTEE; (B) IN OTHER CASES: ONLY IN THE EVENT OF A BREACH OF A MATERIAL OBLIGATION AND UP TO THE LIMITS OF LIABILITY SET OUT IN THE FOLLOWING SECTION 16(b)(ii). A BREACH OF A MATERIAL OBLIGATION WITHIN THE MEANING OF THIS SECTION 16(b)(i) SHALL BE DEEMED TO BE A BREACH OF AN OBLIGATION THE FULFILMENT OF WHICH MAKES THE PROPER PERFORMANCE OF THE

- AGREEMENT POSSIBLE IN THE FIRST PLACE, OR THE BREACH OF WHICH JEOPARDISES THE ACHIEVEMENT OF THE PURPOSE OF THE AGREEMENT AND ON THE FULFILMENT OF WHICH THE CLIENT MAY REGULARLY RELY.
- (ii) IN CASES OF SECTION 16(b)(i), RIB'S LIABILITY SHALL BE LIMITED TO EUR 100,000.00 PER CASE OF DAMAGE AND IN TOTAL PER CONTRACTUAL YEAR TO AN AMOUNT OF EUR 300,000.00.
  - (iii) RIB'S RIGHT TO RAISE THE OBJECTION OF CONTRIBUTORY RESPONSIBILITY (*MITVERSCHULDEN*) REMAINS UNAFFECTED. THE LIMITATIONS OF LIABILITY PURSUANT TO SECTIONS 16(b)(i) AND 16(b)(ii) SHALL NOT APPLY TO LIABILITY FOR PERSONAL INJURY AND DEATH AND TO LIABILITY UNDER THE GERMAN PRODUCT LIABILITY ACT (*PRODUKTHAFTUNGSGESETZ*).
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