



RSD Standard Terms and Conditions

These RSD Standard Terms and Conditions govern transactions by which Customer subscribes, for a fixed-term, to Services to be performed by RSD ("RSD"). Order(s) and RSD Standard Terms and Conditions are hereinafter collectively referred to as the "Agreement". Each transaction is separate and independent from other transactions.

If there is a conflict among the terms of these RSD Standard Terms and Conditions and Order(s), those of an Order shall prevail over those of these RSD Standard Terms and Conditions.

1. Definitions.

"Authorized User" means either a Named User or a Concurrent User.

"Named User" means a unique and identified person who is given access to the Software. An entitlement for a Named User is unique to that Named User and may not be shared, nor may it be reassigned other than for the permanent transfer of the Named User entitlement to another person.

"Concurrent User" means a person who is accessing the Software at any particular point in time. The maximum number of Concurrent Users simultaneously accessing the Software is specified in the relevant Order.

"Confidential Information" means the Products and any non-public information of RSD or Customer disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.

"Customer Equipment" means the equipment detailed in the applicable Order and may include details the brand, host name, model and number of servers, and the number, type and speed of each server or cluster of servers on which any component of the Software is to be installed.

"Documentation" means, in digital, printed or other form, technical, user and reference manuals, notes, instructions and summaries, technical release notes and any other supporting documentation, which will be written in English, related to the Software. The Documentation describes functional aspects of the Software and the user instructions for the Services.

"Order" means an ordering document, executed by Customer and RSD setting forth the Services to be provided by RSD and the corresponding Services fees.

"Products" shall mean the Software, Documentation and work product resulting from any supplemental professional services.

"Software" means the RSD's software or programs listed in the relevant Order, including all updates, revisions, bug-fixes and upgrades.

"Services" means a fixed-term license to use the Software within the perimeter stated in the relevant Order, and maintenance services for the Software.

"Third party" means any party that is not either of the parties, its Affiliates, employees, shareholders, directors, officers, contractors, customers, or Authorized Users.

2. License and Restrictions

a) **License Grant.** Subject to payment of the Service Fees set forth in the applicable Order and compliance with the terms of this Agreement, RSD hereby grants Customer a limited, non-transferable and non-exclusive right to use the Software, during the Service Term and within the perimeter stated in the relevant Order. In the event that RSD supplies Customer with computer programs purchased or licensed by RSD from other sources, Customer agrees that Customer shall be bound by and shall comply with the provisions of any license or restrictions which may accompany such programs or which may be described in an Order attached to this Agreement. RSD will provide Customer with one (1) copy of the Documentation relating to the Software in electronic form. Customer may create copies of the Documentation for Customer's internal use only. Customer acknowledges that any copies of the Documentation are Confidential Information and are subject to Section 6 of this Agreement.

b) **Customer Restrictions.** Customer may only use the Software for its own internal business purposes and within the perimeter stated in the relevant Order. Customer shall not: (i) use or deploy the Software in violation of applicable laws or this Agreement; (ii) resell the Products; (iii) create any derivative works based upon the Products; (iv) reverse engineer, reverse assemble, decompile or otherwise attempt to derive source code from the Software or any part thereof (except to the extent that such restriction is not permitted under applicable law); (v) make the Products available to any unauthorized parties, including without limitation, competitors of RSD; or (vi) release the results of benchmark tests or other comparisons of the Products with other software, services, or materials. Customer will be responsible for Authorized Users' compliance with the Agreement. Neither the Products nor any of the rights, duties or obligations of Customer under this Agreement may be rented, leased, distributed, assigned, outsourced, subcontracted, sub-licensed, used in a service bureau environment or otherwise be transferred by Customer without the prior written consent of RSD. Customer must obtain RSD's prior written consent before discontinuing the use of any Software on the Customer Equipment and beginning use of the same Software on another server (or CPUs within the server) whether as part of a hardware upgrade, or due to any other reason (such as a change in location or outsourcing to a third-party service provider), which transfer may be subject to the payment of additional transfer and/or upgrade fees. RSD reserves the right to withhold software license keys if RSD cannot verify that Customer is using the Software in an authorized manner.

c) **License Keys.** RSD uses a unique license key to activate the Software on a specific instance of hardware for the duration of the Service Term. That license key is then verified against the hardware's node identification information before the software's functionality can be enabled.

3. Maintenance Services.

a) **Maintenance Services.** Subject to the payment of the relevant Service Fees, RSD will provide Maintenance Services for the Software upon Effective Date. RSD will provide telephone and email support services to assist Customer in resolving problems encountered by Customer. Support services shall be provided in accordance with the service levels set forth in the applicable Support Level Agreement then in effect. Customer agrees to promptly provide RSD with sufficient documentation and assistance with respect to any reported errors, and to reasonably cooperate with RSD, in order for RSD to comply with its support obligations hereunder. In order to enable RSD the ability to provide adequate support of the Software,

Customer agrees to maintain the Customer Equipment of the Software in accordance with RSD's hardware and operating system requirements. In no event shall RSD be responsible or liable for any errors, bugs or other problems contained in or originating from (i) hardware or software not provided by RSD; (ii) any unsupported version of the Software; (iii) any unauthorized modifications of the Software or failure to install a published update. Any assistance provided by RSD to reverse such modifications, correct such failures or perform other associated services shall be performed by RSD in its sole discretion, at its then present hourly rates, and without liability to Customer or any third party of any kind or nature whatsoever.

b) **Updates.** RSD reserves the right to separately market major enhancements or major added product functionality, which may require the payment of additional fees.

4. Fees and Payments.

Customer will be invoiced for Services fees according to the applicable Order. Customer shall pay all undisputed invoices within thirty (30) days from the date of invoice except where an Order expressly prescribes other payment dates. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. All amounts in this Agreement shall be deemed to be exclusive of any applicable taxes. Customer shall remit the amount invoiced net of all and any taxes or any other deductions so that the amount received by RSD is equal to the amount invoiced. All remittances shall be made in the currency shown on the invoice by bank transfer to the account designated. RSD shall not be responsible to Customer, or any third party, for any fines, penalties, or principal amounts relating to taxes under this Agreement.

5. Term and Termination.

a) **Term.** Unless otherwise agreed in the Order, the Services shall be performed from the date stated in the Order and shall continue for an initial period of thirty-six (36) months.

b) **Termination for cause.** Either party may immediately terminate this Agreement if the other party materially breaches the Agreement, and, where capable of remedy, such breach has not been materially cured within thirty (30) days of the breaching party's receipt of written notice describing the breach in reasonable detail.

c) **Bankruptcy Events.** A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.

d) **Effect of Termination.** Immediately following termination of this Agreement, Customer shall have destroyed or returned to RSD the Software and any copies thereof which are in its possession or control, together with a certificate by an officer or principal of Customer certifying that all such copies have been returned or destroyed, including all copies of the Software stored on Customer's hardware and backup media.

6. Confidential Information.

Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement. If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.

7. Intellectual Property.

As between the parties, RSD will and does retain all proprietary and intellectual property rights, title and interest (including, without limitation, all intellectual property rights) in and to the Products.

8. Indemnification.

RSD agrees to indemnify, defend, and hold harmless Customer from and against any and all Third Party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by Customer which directly relate to or directly arise out of the violation or infringement of any third-party intellectual property rights by Customer's authorized use of the Products. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of: (i) unauthorized use and/or alteration of the Products by Customer and/or its users, (ii) use of other than the then-current release of the Software; (iii) use of the Software not in accordance with the Documentation; (iv) use of the Software in combination with systems not supplied by RSD

To obtain indemnification, Customer shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.

Should the Software or any part thereof become, or in RSD's reasonable opinion be likely to become, the subject of a claim for infringement of a third party intellectual property right, then RSD may, at its sole option and expense: (i) procure for Customer the right to use and access the infringing or potentially infringing item(s) of the Software free of any liability for infringement; or (ii) replace or modify the infringing or potentially infringing item(s) of the Software with a non-infringing substitute otherwise materially complying with the functionality of the replaced system.

This Indemnification section states RSD's entire obligation and the Customer's exclusive remedy regarding any third party intellectual property claims.



9. Warranties.

Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. RSD WARRANTS THAT THE SOFTWARE WILL PERFORM SUBSTANTIALLY IN MATERIAL ACCORDANCE WITH THE AGREEMENT AND APPLICABLE DOCUMENTATION PROVIDED BY RSD. TO THE EXTENT PERMITTED BY APPLICABLE LAW, RSD DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT (EXCEPT FOR THE INFRINGEMENT INDEMNIFICATION PROVIDED HEREUNDER) AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

10. Liability

EXCEPT FOR (i) RSD'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8; (ii) BREACH BY CUSTOMER OF IS OBLIGATIONS UNDER SECTION 2; (iii) A PARTY'S WILLFUL MISCONDUCT; OR (iv) ANY LIMITATION OF LIABILITY PROHIBITED BY MANDATORY LAW, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL FEES PAID OR PAYABLE BY CUSTOMER TO RSD HEREUNDER FOR THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CUSTOMER AND RSD ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.

NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, PROVIDING REPLACEMENT SOFTWARE (EXCEPT AS SET FORTH IN SECTION "INFRINGEMENT CURES"), OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Miscellaneous Provisions.

a) Governing Law/Court. This Agreement will be governed and construed in accordance with the laws of the State of New York and the federal laws of the United States of America, without regard to conflict of law principles. The parties further agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of New York, and each of RSD and Company hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.

b) Publicity. Neither party shall issue any press release using the name of the other party as a customer or provider without the other party's consent.

c) Assignment and Subcontracting. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.

d) Independent Contractors. Customer and RSD are acting hereunder as independent contractors. Neither Party shall be considered or deemed to be an agent, employee, joint venture or partner of the other Party. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control and compensation.

e) Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.

f) Notices. All written communications to a party required hereunder must be in writing and mailed by registered or certified mail, return receipt requested (to be effective four days after the postal date) to its address for notices as indicated on the front page of this Agreement, as may be amended from time to time as set out in this Agreement.

g) Amendment and Waiver. No amendment or waiver of this Agreement shall be binding unless executed in writing by both Parties hereto.

h) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. Orders and the schedules and exhibits hereto constitute a part hereof as though set forth in full herein. Purchase orders submitted by Customer are for Customer's internal administrative purposes only, and the terms and conditions contained in those purchase orders will have no force and effect. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.

i) Audit. RSD and its agents, auditors (internal and external), regulators and other representatives as RSD may designate (collectively, "Auditors") shall have the right to inspect, examine and audit at any time the systems, records, data, practices and procedures of Customer that are related to the Services (collectively, "Audits") for the purpose of verifying Customer's compliance with the terms of this Agreement. Customer will cooperate fully with RSD and its Auditors in conducting Audits and provide such assistance as they reasonably require to carry out the Audits. If any Audit determines that Customer has not complied with the perimeter of the license, RSD will invoice customer accordingly to correct the inaccuracy. Audits will be conducted at RSD's expense; provided, however, if any Audit reveals any non-compliance, Customer shall reimburse RSD for the reasonable cost of such audit. Customer agrees to complete and return any compliance questionnaire regarding the RSD product Customer procures under the Agreement.

j) Severability. If any provision of this Agreement is adjudged by a court to be invalid, void or unenforceable, the Parties agree that the remaining provisions of this Agreement shall not be affected thereby, that the provision in question may be replaced by the lawful provision that most nearly embodies the original intention of the Parties, and that this Agreement shall in any event otherwise remain valid and enforceable.

k) No Third-Party Beneficiaries. The representations, warranties and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns, and shall not be construed as conferring any rights on any other persons.

l) Suggestions. RSD shall have a royalty-free, worldwide, perpetual license to use or incorporate into the Products any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Customer or its users relating to the operation of the Products.

m) Survival. Any terms which by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assigns.