

## 1. COMPOSITION OF AGREEMENT

- 1.1 **Defined Terms.** Capitalized terms used but not defined in the General Terms will have the meaning given or as specified in Section 17.
- 1.2 **Scope.** Except as expressly provided otherwise in an Order Form, these rb Asset Solutions General Service Terms (the “**General Terms**”) govern access to, use of, and receipt of Services and are incorporated by reference into Your Order Form or Statement of Work.
- 1.3 **General.** To access and use the Services, You must create an Account with Us and complete a prescribed Order Form or Statement of Work for the requested Services. You may commence using the Services once We have accepted Your Order Form or Statement of Work and mutually agreed to a start date.

## 2. SOFTWARE SERVICES

- 2.1 **Access and account setup.** So long as You pay the fees and comply with all other terms and conditions of this Agreement, You may, and may permit those members of Your Affiliated Network included in Your Order Form to, access and use the Software Services specified in the applicable Order Form for Your own business purposes on a non-exclusive basis for the Service Term. You will provide accurate, current and complete information when creating Your Account and activating Registered User permissions and keep all Registered User login credentials confidential.
- 2.2 **Registered User security.** You are responsible for designating the Registered User rights and permissions for each of Your Registered Users. You are responsible for implementing, maintaining and following internal security and privacy controls and policies relating to access and use of the Software Services by Registered Users, including controls and policies relating to permitted access to and use of the Software Services, protection of login credentials, and Processing of Customer Data by Registered Users. You will notify Us immediately upon discovering any suspected unauthorized access to, misuse of, or breach of security in relation to the Software Services or Registered Users’ accounts and will cooperate with Us to investigate and remediate the situation, including providing necessary information and taking all reasonable action requested by Us.
- 2.3 **Pre-release and beta releases.** You understand that any right to use or test pre-release or beta Software Services or features within (together “**Beta Versions**”) We provide You may be revoked at any time and for any reason at Our sole discretion, without any liability to You. You understand Beta Versions are provided “as-is” and are under development, may be inoperable or incomplete and likely contain bugs and errors. We make no promises Beta Versions will become generally available. All information regarding the characteristics, features or performance of any Beta Versions constitutes Our Confidential Information. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES, OBLIGATIONS OR LIABILITIES WITH RESPECT TO BETA VERSIONS.

## 3. OUR RESPONSIBILITIES

- 3.1 **Hosting services.** We will host Software Services for You. The method and means of providing the Software Services and Data Insights will be under Our exclusive control, management and supervision, including the third-party provider of Our hosting

platform, Our computing platform configuration, system requirements and software updates.

- 3.2 **Support and availability.** We will use commercially reasonable efforts to provide the support and make the Software Services available as described in Your Order Form.
- 3.3 **Security.** Without limiting Your obligations in Section 2.3, We will maintain and follow reasonable and appropriate administrative, physical and technical safeguards designed to protect the security, confidentiality and integrity of the Software Services and Customer Data. We will only Process Customer Data in accordance with this Agreement. If We become aware of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Customer Data transmitted, stored or otherwise Processed by the Software Services, We will notify You without undue delay. We may provide partial information related to the incident at first and will update You as more information becomes available. We will take those steps We deem necessary and reasonable to remediate the cause or other circumstances that led to the incident. We will provide assistance reasonably requested by You with respect to Your investigation and response to such an incident.
- 3.4 **Personal Data.** We and You will comply with all applicable Data Protection Laws and Regulations with respect to the Personal Data Processed in connection with this Agreement. Personal Data of Registered Users is Processed by Us in accordance with the RBAS Privacy Statement. To the extent Customer Data includes Personal Data, We agree to only Process such Personal Data on Your behalf and for Your and Our operational purposes to provide, maintain, protect and improve the Services and for no other commercial purpose. We will ensure that access to Personal Data is limited to those of Our Representatives who have a business need for such access and who are bound by policies and procedures requiring them to protect the security of the data and use it in accordance with this Agreement. Upon Your request no more than once per calendar year and with at least thirty (30) days advance notice, We will use commercially reasonable efforts to complete Your privacy or security questionnaires. If We receive a request or complaint from a User regarding their Personal Data, We will forward it to You and will cooperate and assist You to address it. If We have subcontractors that will Process Personal Data, We will ensure there is a written contract no less protective of the Personal Data than this Agreement in place and will remain responsible for the subcontractor’s performance.
- 3.5 **GDPR Data Processing Addendum.** If You are in the EEA, Switzerland, United Kingdom or are otherwise subject to the territorial scope of Regulation (EU) 2016/679 (General Data Protection Regulation) or any successor legislation, You can request that the parties complete Our Data Processing Addendum.

## 4. PROFESSIONAL SERVICES

- 4.1 **Professional Services.** You may request, and We may agree, subject to Our reasonable scheduling and availability, to provide Professional Services to You or Your Affiliated Network from time to time on the terms set out in an Order Form, as may be supplemented in a Statement of Work referencing that Order Form. Any such Professional Services will be provided at Our then-current consulting rates, unless an alternative arrangement is agreed to in writing by the parties and included in an Order Form and/or Statement of Work. Any estimates, timeframes or quotes provided by Us are subject to adjustment based on changes in

scope or the required level of effort, delays in Your making available personnel or performing Your responsibilities, the testing and validation process, and other circumstances outside of Our reasonable control. Deliverables, and all Intellectual Property Rights contained therein, produced by Us will be owned by Us. We grant You a non-exclusive, royalty-free, transferable and sub-licensable (in each case, in accordance with this Agreement) license to use and disclose the deliverables as reasonably necessary for You to exercise Your rights under this Agreement during the Term. To the extent any of the deliverables contain Your Materials or Confidential Information, such material or confidential information will remain Your exclusive property and will be accessed, used and disclosed by Us in accordance with Our rights and obligations under the Agreement.

## 5. FEES AND PAYMENTS

5.1 **General.** You will pay all fees specified in the applicable Order Form or Statement of Work. You acknowledge: (a) fees for Software Services and Data Insights are subscription-based and are not dependent on actual usage; (b) payment obligations are non-cancellable and fees paid are non-refundable except as otherwise expressly specified herein, and (c) usage limits for a Services cannot be decreased during the Service Term.

5.2 **Invoicing and payments.** Fees are payable in the currency specified in the applicable Order Form or Statement of Work and are exclusive of any sales, use, value added or goods and services taxes, customs duties, withholding taxes or similar levies of any kind, including interest and penalties thereon (collectively, "**Taxes**"). You will make all payments due in such amounts, by such means and at such times as provided in the applicable Order Form, without set-off of any amount owing to You.

5.3 **Taxes.** All Taxes arising with respect to the Services are the sole responsibility of and will be paid by You without withholding or deduction from the amounts owing to Us under this Agreement. If You are required by applicable law to withhold or deduct Taxes from an amount payable to Us, then You will pay to the relevant taxing jurisdiction or authority the full amount required to be withheld or deducted and will pay to Us an additional amount such that, after deduction of all amounts required to be withheld or deducted, the net amount actually received by Us will equal the amount that would have been receivable by Us in the absence of such withholding or deduction. For clarity, We are solely responsible for Taxes assessable against Us based on Our income, property and employees. If We are required to pay Taxes You are responsible for, You will reimburse Us for those amounts and any related costs paid or payable by Us attributable to those Taxes.

5.4 **Late payments.** If any undisputed invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies We may take any of the following actions: (a) condition future subscription renewals and Order Forms on less favourable payment terms; (b) if more than thirty (30) days overdue, suspend access to Services without liability until paid in full; and (c) charge You interest at the lower of: (i) a rate of 18% per annum, or (ii) the maximum amount permitted by law, in each case calculated and accrued monthly, not in advance, starting on the first day after the last specified date for payment on Your invoice until the date payment is made.

## 6. CONFIDENTIAL INFORMATION

6.1 **Definition of Confidential Information.** As used herein, "Confidential Information" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party

("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. However, Confidential Information shall not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party (including its directors, officers, employees, contractors or agents) prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party. Without limiting the foregoing, the financial terms set out in an Order Form are Confidential Information.

6.2 **Protection and permitted disclosure.** The Receiving Party shall protect the Confidential Information of the Disclosing Party with the same degree of care that it uses to protect the confidentiality of its own Confidential Information (but in no event with less than reasonable care) and agrees: (a) not to access or use any Confidential Information of the Disclosing Party other than as necessary for the Receiving Party to exercise its rights or perform its obligations under and in accordance with this Agreement, and (b) except as otherwise authorized by the Disclosing Party in writing, not to disclose or permit access to Confidential Information of the Disclosing Party other than to the Representatives of the Receiving Party who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations; and (iii) are bound by confidentiality obligations at least as protective of the Confidential Information as the terms in this Section 6. Notwithstanding, and without limiting, the foregoing, We may disclose the terms of this Agreement and any applicable Order Form or Statement of Work to a subcontractor or Non-RBAS Application provider to the extent necessary to perform Our obligations to You under this Agreement, under terms of confidentiality at least as protective of the Confidential Information as the terms set forth in this Section 6.

6.3 **Compelled disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by applicable law, court order or legal process to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by applicable law, court order or legal process to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

6.4 **Equitable Relief.** The parties acknowledge and agree that due to the unique nature of each party's Confidential Information, damages alone would not be an adequate remedy for breach of any disclosure or use (or threatened disclosure or use) of a party's Confidential Information, and therefore, without prejudice to any other rights and remedies it may have, either party shall be entitled to seek equitable relief in any competent court or jurisdiction concerning any threatened or actual disclosure or use of that

party's Confidential Information in breach of the terms of this Agreement.

## 7. PROPRIETARY RIGHTS

**7.1 Our Materials and Non-RBAS Application Materials.** All right, title and interest in and to Our Materials and Non-RBAS Application Materials, including all Intellectual Property Rights therein, is and will remain with Us or Our applicable Affiliates or licensors. You acknowledge and agree that You have no right, license or authorization with respect to any of Our Materials or Non-RBAS Application Materials (including any Intellectual Property Rights therein) except as expressly set forth in Section 2.1. We expressly reserve all other rights in and to Our Materials.

**7.2 Your Materials.** All Your Materials are and will be, as between Us and You, Your property. Subject to the license granted under this Section, We acquire no right, title or interest from You or Your licensors in or to any of Your Materials. You are responsible for the accuracy, integrity, legality, reliability, and appropriateness of all Your Materials. You grant Us, Our Affiliates and contractors a non-exclusive, worldwide, royalty-free, transferable and sub-licensable license to copy, display, distribute, transmit, adapt, communicate, use and otherwise Process Your Materials as permitted by this Agreement for the purposes of providing, maintaining, improving and securing the Services and responding to technical support requests in each case for the duration of the Term (or longer, if necessary to comply with Section 12.4). For clarity, by inputting into the Software Services any of Your Materials that the Software Services display publicly to Users, You agree: (i) to allow Users to view Your Materials uploaded; and (ii) to allow Us to display Your Materials publicly through the Software Services and to transfer such materials for use within associated systems to provide any requested disposition or other equipment related services, in each case under the license granted under this Section 7.2.

**7.3 Your feedback.** You also grant Us and Our Affiliates a worldwide, transferable, sublicensable, irrevocable and perpetual license to use, incorporate into, adapt, improve, and modify the Services, without any obligation to compensate You or Your Affiliated Network in any way, any suggestions, enhancement requests, recommendations or other feedback provided by You and Your Affiliated Network, and their respective agents relating to the Services.

**7.4 Statistical Data.** We prepare and use Statistical Data in accordance with applicable law for the purposes of billing, account administration and Our other business purposes. We will own all Statistical Data and may freely use such Statistical Data during and after the Term. We will not publicly disclose any Statistical Data if it would reveal Your identity or that of a member of Your Affiliated Network, or the identity of any Users. The use of Statistical Data is at Our own risk.

**7.5 Non-RBAS Applications.** To use Non-RBAS Applications, You may be required to obtain access to such Non-RBAS Applications from their respective providers subject to their own terms and conditions. If the provider ceases to make the Non-RBAS Application available for interoperation with or use as a part of the Software Services or does so only on terms We deem to be unreasonable (e.g. cancels service, uses old integration methods or inadequate security protocols), We may modify, suspend or cease providing such interoperability with Software Services features. You will not be entitled to any pro-rated refund, credit, or other compensation. In such case, if such alteration, suspension or cessation is not acceptable to You, then Your sole and exclusive

remedy is to terminate Your subscription for the Software Services, subject to Sections 12.3 to 12.5. UNDER NO CIRCUMSTANCES WILL WE BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXTRAORDINARY, EXEMPLARY OR OTHER DAMAGES WHATSOEVER THAT RESULT FROM USAGE OF ANY NON-RBAS APPLICATIONS OR YOUR CONTRACTUAL RELATIONSHIP WITH ANY PROVIDER OF A NON-RBAS APPLICATION.

**7.6 Mobile Applications.** We may make available mobile applications to You for use by Registered Users as part of the Software Services. We grant You a non-transferable, non-sublicensable, limited, revocable (upon termination of this Agreement) license for Registered Users to install and use these related mobile applications solely as part of Your authorized use of the Software Services for the Service Term. The mobile applications are licensed and not sold. By installing these mobile apps, You and Registered Users consent to the installation of the mobile application and any future updates. You and Your Registered Users may withdraw consent at any time by uninstalling the mobile application.

**7.7 Acceptable use.** You and Your use of the Services (including use by Your Users) must comply with the Acceptable Use Policy. You are responsible for all activities of Your Users under Your Account regardless of whether those activities were authorized by You unless such activities were caused by Our breach of this Agreement. Any use of the Services in violation of the Acceptable Use Policy by Your Users may result in suspension of access to the Services. We will use reasonable efforts to provide advance notice of suspensions when practicable and an opportunity to remedy the violation or threat prior to any such suspension, but if We determine that there is a danger to the operation of the Services or other users, We may suspend access immediately without notice. We have no liability to You for any suspension described in this Section.

## 8. WARRANTIES AND DISCLAIMERS

**8.1 Mutual warranties.** Each party represents and warrants that it has the legal power and authority to enter this Agreement.

**8.2 Your warranties.** You represent and warrant that (a) We are entitled to rely on all transactions initiated by Your Registered Users in the Software Services including the designation of equipment for sale through available disposition and listing channels using the workflow management functionality; and (b) You have obtained, and will maintain, all necessary authorizations, rights and consents to allow Us to Process Customer Data (and Personal Data to the extent it is included in Customer Data) in accordance with this Agreement until all such Customer Data has been destroyed or returned to You by Us in accordance with this Agreement.

**8.3 Our warranties.** We warrant that: (a) Software Services will operate and perform in material conformity with the applicable Documentation; and (b) Professional Services will be performed in a professional and workmanlike manner in line with industry standards for similar services. You agree that You are not relying on the promise of the availability of any future functionality in entering into this Agreement. We will use commercially reasonable efforts, at no charge to You, to correct any reported and repeatable non-conformities. If We determine corrections to be impracticable, either party may terminate the applicable Order Form. If You terminate an Order Form pursuant to this Section 8.3, You will receive a refund of subscription fees for the calendar month in which termination occurs and of any prepaid fees for the

terminated Services for the terminated portion of the Term. This warranty does not apply: (i) unless You make a claim within thirty (30) days of the date on which You first notice the non-conformity, (ii) if the non-conformity was caused by misuse, unauthorized modifications or combinations, or Non-RBAS Applications. Our sole liability, and Your sole and exclusive remedy, for any breach of Our warranties are set forth in this Section 8.3.

8.4 **Disclaimer.** EXCEPT AS EXPRESSLY SET OUT IN THE AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE MAKE NO WARRANTIES, REPRESENTATIONS OR CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING OR RELATING TO THE SERVICES, DATA INSIGHTS, ANY NON-RBAS APPLICATIONS, OUR MATERIALS OR NON-RBAS APPLICATION MATERIALS. WE SPECIFICALLY DISCLAIM, AND YOU WAIVE, ALL IMPLIED WARRANTIES, REPRESENTATIONS AND CONDITIONS, INCLUDING THOSE IN RELATION TO MERCHANTABILITY, MERCHANTABILITY QUALITY, DURABILITY, UNINTERRUPTED OR ERROR-FREE OPERATION OR AVAILABILITY, ACCURACY, SECURITY, LOSS OR CORRUPTION OF DATA, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF WE HAVE BEEN INFORMED OF SUCH PURPOSE) AND ANY OTHER WARRANTIES OR REPRESENTATIONS ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE, WITH RESPECT TO THE SERVICES, DATA INSIGHTS, ANY NON-RBAS APPLICATIONS, OUR MATERIALS OR NON-RBAS APPLICATION MATERIALS. YOU ASSUME SOLE RESPONSIBILITY FOR: (A) DETERMINING THAT THE SERVICES, DATA INSIGHTS, AND ANY NON-RBAS APPLICATIONS MEET YOUR REQUIREMENTS (INCLUDING THOSE OF YOUR AFFILIATED NETWORK), AND (B) THE DESIRED RESULTS OBTAINED FROM THE SERVICES, DATA INSIGHTS, AND ANY NON-RBAS APPLICATIONS AND THE USE OF OUR MATERIALS AND NON-RBAS APPLICATION MATERIALS. NON-RBAS APPLICATIONS AND DATA INSIGHTS ARE PROVIDED ON AN "AS-IS" BASIS, EXCLUSIVE OF ANY WARRANTY WHATSOEVER. THIS SECTION WILL SURVIVE ANY EXPIRATION OR TERMINATION OF THIS AGREEMENT.

## 9. INDEMNIFICATION

9.1 **Indemnification of You by Us.** We will defend You or Your Affiliated Network who receive the applicable Software Services, at Our expense, against any claims, demands, suits or proceedings ("Claims") made or brought against You by a third party alleging that the use of the Software Service as contemplated hereunder infringes any third party's patent, copyright or trademark or misappropriates such third party's trade secrets enforceable in any jurisdiction that is a signatory to the Berne Convention, or arising directly from Our use of Statistical Data. Further, We will indemnify You or Your Affiliated Network against any damages and costs (including reasonable attorneys' fees) finally awarded against You or Your Affiliated Network by a court of competent jurisdiction or agreed to in a written settlement agreement approved by Us, in connection with such Claims; provided that, upon receiving notice of a Claim, You will: (a) give Us prompt written notice of the Claim; (b) give Us sole control of the defense and settlement of the Claim (provided that We may not settle or defend any Claim unless it unconditionally releases You or Your Affiliated Network of all liability); and (c) provide to Us, at Our cost, all reasonable assistance in the defense or settlement of such Claim. Our indemnification obligation shall be offset or reduced to the extent Our ability to defend or settle a claim is prejudiced by Your or Your Affiliated Network's failure to comply with the preceding sentence. We will have no indemnification or defense obligation for allegations arising from: (i) the combination of the Software

Services with any of products, services, hardware, data or business processes not provided by Us, but solely to the extent the alleged infringement is caused by such combination; or (ii) from Data Insights, a Non-RBAS Application, Non-RBAS Application Materials, or Your unauthorized use of the Software Services. If Software Services are held or likely to be held infringing, We shall have the option, at Our expense to (A) replace or modify the Software Services as appropriate, (B) obtain a license for You or Your Affiliated Network to continue using the Software Services, (C) replace the Software Services with a functionally equivalent service; or (D) terminate the applicable Order Form and refund any prepaid, unused fees applicable to the remaining portion of the applicable Service Term following the effective date of termination.

9.2 **Indemnification of Us by You.** You will defend and indemnify Us and Our Affiliates, and each of their employees, officers, directors, and agents from and against any and all Claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees and court costs) arising out of or resulting from: (a) Your, Your Affiliate Network's or Your/their respective Users' use or misuse of the Services or failure to protect login credentials; (b) the input and Processing of Your Materials (subject to Our respective rights and obligations under this Agreement and any Data Processing Addendum); (c) any breach of Your representations and warranties hereunder or Your breach of applicable laws; (d) or any Claims by any Users, their legal representatives or other third parties; provided that, upon receiving notice of any such Claim, We will: (i) give You prompt written notice of the Claim; (ii) give You sole control of the defense and settlement of the Claim (provided that You may not settle or defend any Claim unless it unconditionally releases Us and Our Affiliates of all liability); and (iii) provide to You, at Your cost, all reasonable assistance in the defense or settlement of such Claim. Your indemnification obligation shall be offset or reduced to the extent Your ability to defend or settle a Claim is prejudiced by Us or Our Affiliates' failure to comply with the preceding sentence.

9.3 **Sole liability.** This Section 9 states the indemnified party's exclusive remedy against the indemnifying party for any third party claim described in Section 9.1 or 9.2.

## 10. LIMITATIONS OF LIABILITIES AND REMEDIES

10.1 **Indirect loss.** IN NO EVENT WILL WE BE LIABLE UNDER CONTRACT (INCLUDING FUNDAMENTAL BREACH), TORT (INCLUDING NEGLIGENCE) OR OTHERWISE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, AGGRAVATED, PUNITIVE OR SPECIAL LOSSES OR DAMAGES UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, INCLUDING FOR ANY LOSSES OR DAMAGES RESULTING FROM LOSS OF BUSINESS, LOSS OF PROFITS OR REVENUE, LOSS OR IMPAIRMENT OF USE, LOSS OF OR DAMAGE TO DATA, OR DAMAGES FOR OTHER LOST INCOME, HOWEVER CAUSED, WHETHER FORESEEABLE OR NOT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.2 **Liability cap.** IN NO EVENT WILL OUR AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER EXCEED THE TOTAL AMOUNT PAID BY YOU FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THIS SECTION AND SECTION 10.1 WILL APPLY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION, DEMAND OR CLAIM, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

**10.3 Relationship.** You acknowledge and agree You are responsible for all acts, omissions and liabilities, including payment obligations, resulting from the use of the Services by Your Affiliated Network under an Order Form or Statement of Work that You submit to Us. When Your Affiliated Network receives any Services: (a) such Affiliated Network member will have no independent cause of action against Us but may be joined, with You, as a party in the case of a lawsuit or other proceeding; and (b) in the event of a claim against Us for losses, damages or other remedies under this Agreement, including injunctive relief, in respect of such Affiliated Network member, only You will be entitled to bring such a claim against Us.

## **11. AUDIT RIGHT**

**11.1 Our audit rights.** On request by Us, You will provide to Us a certification of Your compliance with any usage limits specified in this Agreement and any information We reasonably require to verify Your compliance. If usage limits are not being complied with, then We may require You to either, at Our election (a) adjust Your usage to comply; or (b) acquire the appropriate number or type of subscriptions at Our current listed rate so as to be in compliance with the specified usage limits.

## **12. TERMINATION**

**12.1 Termination for Cause.** Either party may terminate this Agreement and all Order Forms in accordance with Section 13.3 or if the other party: (a) fails to cure any material breach of the Agreement or an Order Form within thirty (30) after notice; or (b) becomes insolvent, becomes subject to proceedings concerning its bankruptcy, receivership, insolvency or the like, or if a receiver is appointed for all or substantially all of its assets (each, an “**Insolvency Event**”) and that Insolvency Event prevents the affected party from performing its material obligations under this Agreement.

**12.2 Termination for Convenience.** You may choose to stop using Services and terminate this Agreement at an time for any reason upon ninety (90) days’ written notice to Us, but upon any such termination: (a) You will not be entitled to a refund of any pre-paid fees; and (b) if You have not already paid all applicable fees for the then-current Term, then as a measure of liquidated damages, any such fees that are outstanding will become due and payable within thirty (30) days of the effective date of termination.

**12.3 Effect of termination or expiry.** Upon any expiration or termination of this Agreement or an Order Form, Registered Users must cease using the Software Services and uninstall all copies of the mobile applications made available as part of the Software Services. Subject to Section 12.4 with respect to Customer Data, each party must, as regarding all of the other party’s Confidential Information, upon the other party’s written request: (a) cause its return to the other party; or (b) at such other party’s option, destroy it, and have the first party’s officer or director certify to the other party that such Confidential Information has been destroyed; provided that the foregoing will not apply to require either party to return or destroy any copies of Confidential Information stored electronically pursuant to automated back-up procedures or where such Confidential Information is required by a party to enforce their rights under this Agreement. Such electronic copies will continue to be subject to the provisions of Section 9. If You terminate this Agreement for cause under Section 12.1, We will return to You any pre-paid fees covering the remainder of the then-current Term after the effective date of termination. If We terminate this Agreement for cause under Section 12.1, You will pay any unpaid

fees covering the remainder of the then-current Term after the effective date of termination. No termination or expiration of this Agreement for any reason will relieve either party from any obligation or liability that accrued under this Agreement to the date thereof, or from the performance of its obligations under this Agreement to the date thereof. Except where an exclusive remedy may be specified in this Agreement, the exercise by either party of any remedy, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law or otherwise.

**12.4 Return of Customer Data.** Within 60 days of the expiration or termination of this Agreement (whether for cause or otherwise), provided there are no undisputed fees outstanding, then on request by You: (a) where technically feasible, We will use commercially reasonable efforts to help ensure an orderly and minimally disruptive transition of the Software Services to You or Your nominee; and (b) We will return a complete copy of the Customer Data in Our possession in a format mutually agreed to by the parties. After such 60-day period, We will have no obligation to maintain or provide any Customer Data to You or Your nominee and We may thereafter delete or destroy all copies of Customer Data in Our systems or otherwise in Our possession. You agree that prior to providing any such services, We may require You to enter into a written agreement for transition services and You will pay to Us Our then-current hourly rates to be determined by Us on a cost-recovery basis.

**12.5 Survival.** Notwithstanding termination or expiration of this Agreement for any reason, the provisions of Sections 1, 2, 3.3-3.5, 5, 6, 7, 8.4, 9-12, and 14-17 will survive termination or expiration of this Agreement, together with any other provisions of this Agreement which, expressly or by their nature, survive termination or expiry.

## **13. FORCE MAJEURE**

**13.1 Force Majeure Events.** Neither party will be liable for any delay or failure to perform its obligations hereunder resulting from any cause beyond its reasonable control (a “**Force Majeure Event**”), including but not limited to fires, explosions, earthquakes, floods, quarantines, epidemics, governmental actions, strikes, work stoppages or slow-downs or other industrial disputes, accidents, riots or civil disturbances, acts of civil or military authorities, interruption of electricity, Internet, or means of telecommunication, Non-RBAS Applications, and delays by carriers, suppliers or materials shortages, but excluding a lack of sufficient funds.

**13.2 Effect of Force Majeure Event.** A party that is prevented from performing its obligations under this Agreement by a Force Majeure Event (the “**Affected Party**”) is not liable to the other party for any failure or delay in the performance of such obligations under this Agreement. Any time periods for the performance of such obligations are automatically extended for the duration of the Force Majeure Event, provided that the Affected Party promptly notifies the other party in writing upon the occurrence of the Force Majeure Event and make all reasonable efforts to prevent, control or limit the effect of the Force Majeure Event so as to resume compliance with the Affected Party’s obligations under this Agreement as soon as possible. Notwithstanding the foregoing, each party acknowledges and agrees that the foregoing does not operate so as to excuse it from prompt payment of any and all sums due by it to the other in accordance with this Agreement.

13.3 **Termination for extended Force Majeure Event.** If the Force Majeure Event persists for 90 days or more, either party may terminate this Agreement on fifteen (15) days' written notice to the other party and the applicable provisions of Section 12 will apply.

#### 14. DISPUTE RESOLUTION

14.1 **Notification and escalation of dispute.** Should a dispute arise between the parties in relation to this Agreement, the aggrieved party must provide written notification of the problem to the other. Both parties shall then use all reasonable endeavors to resolve the dispute within fourteen (14) calendar days. Should the problem remain unresolved then both parties will escalate the dispute to senior management and will use all reasonable endeavors to resolve the dispute within a further twenty-one (21) calendar days.

14.2 **Legal fees.** The prevailing party in any dispute resolution procedure to enforce this Agreement will be entitled to recover its reasonable legal fees and other expenses incurred in bringing such proceeding.

#### 15. INTERPRETATION

15.1 **Headings.** The headings of Sections and subsections in this Agreement are for convenience of reference only and will not affect the construction of this Agreement. Whenever the singular or neuter is used in this Agreement, it will be construed to include the plural or body corporate where the context requires. The words "include" or "including" will not be construed as words of limitation.

15.2 **References to parties.** In this Agreement, a reference to a "party" or "parties" is a reference to You or Us or both, as the context requires and, unless the context requires otherwise, does not include a reference to any Affiliates.

15.3 **Severability.** Each provision of this Agreement is severable. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, then the illegality, invalidity or unenforceability of that provision will not affect the legality, validity or enforceability of the remaining provisions of this Agreement or the legality, validity or enforceability of that provision in any other jurisdiction.

15.4 **Entire agreement.** This Agreement and all documents contemplated by or delivered thereunder or in connection therewith, constitute the entire agreement between the parties with respect to the subject matter hereof and thereof and supersede all prior letters of intent, agreements, negotiations, discussions, undertakings, representations, warranties and understandings, whether written or oral, express or implied, statutory or otherwise. For clarity this Agreement is in addition to any other separate related agreement between You and Us for disposition or other equipment related services.

15.5 **Governing law.** The governing law of this Agreement and venue for disputes will be determined as follows:

- a) If You are domiciled in the United States of America, Washington state and controlling federal law, in the courts of King County. Our address for notice is 4000 Pine Lake Road, Lincoln, NE USA 68516 attn: Strategic Accounts, facsimile +1.402.421.1738, with a copy to: Legal Affairs at legal@ritchiebros.com.
- b) If You are domiciled in Canada, British Columbia and controlling Canadian federal law, in the courts of Vancouver. Our address for notice is 9500 Glenlyon Parkway, Burnaby, BC

V5J 0C6 attn: Strategic Accounts, facsimile +1.778.331.5501, with a copy to: Legal Affairs at legal@ritchiebros.com.

- c) If You are domiciled in any other country, the Netherlands, in the courts of Amsterdam. Our address for notice is Concordiastraat 20,4811 NB Breda, the Netherlands, attn: Strategic Accounts, facsimile +31.765.242.650, with a copy to: Legal Affairs at legal@ritchiebros.com.

The parties agree that this Agreement will be construed and governed by the laws of the jurisdiction determined above, without regard to its conflict of laws rules. The parties hereby irrevocably submit to the exclusive authority of the relevant courts noted above for all disputes related hereto. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (where enacted) will not apply to this Agreement.

#### 16. GENERAL

16.1 **Export Restrictions.** The Services may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party or sanctions list. You will not permit any User to access or use any Services in a U.S.-embargoed country or region (currently Cuba, Iran, North Korea, Sudan, Syria or Crimea) or in violation of any U.S. export law or regulation and that of any other jurisdiction applicable to Your business operations.

16.2 **Independent contractor.** By mutual agreement, the parties are independent contractors at arm's length from, and not in any other capacity or relationship with, each other. Neither party has, nor shall hold itself out as having, any right, power or authority to create any contract or obligation, either expressed or implied, on behalf of, in the name of, or binding upon the other party unless with the other party's express written consent. Except as expressly stated in this Agreement, each party is solely responsible for all costs incurred by it and by any of its personnel, employees and agents in connection with the performance of its obligations under this Agreement.

16.3 **Notices.** Any notice permitted or required under this Agreement must be in writing. Any such notice will be deemed delivered: (a) on the day of delivery in person; (b) one day after deposit with an overnight courier, fully prepaid; (c) on the date sent by facsimile transmission; or (d) on the date sent by e-mail, if confirmed by first-class mail, properly posted, or by facsimile transmission; to, in Our case to the address specified in Section 15.5 above, and, in Your case, to the address set forth on the applicable Order Form, or at such other reasonable address or fax number at which personal delivery may be effected of which a party may from time to time advise.

16.4 **Publicity.** You agree that We will have the right to use Your name and logo, and that of Your Affiliates in connection with the Software Services for display on computer screens and on reports generated or accessed by Users via the Software Services. We will seek Your prior written consent for any promotional uses of Your name and logo and that of Your Affiliates.

16.5 **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (which consent shall not be unreasonably withheld), except that a party may assign to (a) an Affiliate, provided that such Affiliate has sufficient resources to perform the assignor's obligations under this Agreement, or (b) in connection with a merger, acquisition,

corporate reorganization, or sale of all or substantially all of a party's assets provided the assignee has agreed to be bound by all of the terms of this Agreement. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this Section 16.5 shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**16.6 Subcontracting by Us.** We may subcontract portions of Our obligations under this Agreement to Our Affiliates or third parties, provided that that all such subcontractors abide by the provisions of this Agreement, and any breach of a provision of this Agreement by such subcontractor will be deemed a breach by Us and Our responsibility.

**16.7 Changes.** We may change or discontinue any of the Services or a part of the Services from time to time. We will use commercially reasonable efforts to provide You with at least sixty (60) days' notice before the availability of a Service is discontinued and will not be replaced with substantially similar or improved features and functions ("**Adverse Change**"). You may terminate the Agreement within fifteen (15) days of being notified of an Adverse Change or the date on which the Adverse Change took effect, whichever is earlier, and receive a refund any prepaid, unused fees applicable to the remaining portion of the applicable Service Term. This is Your sole remedy for an Adverse Change.

**16.8 Amendment.** We may amend this Agreement at any time by providing You written notice or by posting the modified terms on Our website provided that if the amendment materially changes Your rights or obligations, the amendment will not take effect until the next renewal of Your Service Term and will automatically apply as of the renewal date unless You elect not to renew as set out in the applicable Order Form.

**16.9 Waiver.** No indulgence or forbearance by either party will constitute a waiver unless the waiver is expressed in writing and signed by the party granting the waiver, in which case the waiver will be effective only in the specific instance and for the specific purpose for which it is given.

**16.10 Third party beneficiaries.** There are no third-party beneficiaries under this Agreement, other than Our Affiliates, and each of the parties' and Our Affiliates' employees, officers, directors, and agents, their respective administrators and permitted successors and assigns. For avoidance of doubt, Your Affiliated Network will not be third-party beneficiaries under or by reason of this Agreement.

**16.11 Federal Government end use provisions.** If the Software Services are provided for end use by an agency, department or other entity of the United States Government, then they are provided solely as follows: the Software Services, including related software and technology, are "Commercial Items" as that term is defined in FAR 2.101. As such, government technical data and software rights related to the Software Services include only those rights customarily provided to the commercial marketplace as specified in this Agreement. This customary commercial license is provided in accordance with FAR § 12.211 (Technical Data) and FAR § 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227- 7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under this Agreement, it must negotiate with Us to determine if there are acceptable terms for

granting those rights, and a mutually acceptable written addendum to this Agreement specifically granting those.

## 17. DEFINITIONS

"**Acceptable Use Policy**" means the policy available at [www.rbaction.com/legal-policies/seller-terms-and-conditions](http://www.rbaction.com/legal-policies/seller-terms-and-conditions).

"**Account**" means Your account in Our cloud environment configured to enable Registered Users to access and use the Software Services.

"**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control" for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**Affiliated Network**" means, as included on an Order Form, Your Affiliates and, where You have an independent dealer, store or franchisee network for the sale of Your branded equipment or operating in association with Your brand, the third-party members of that network that You designate as authorized to access and use any Software Service We provide to You under the Order Form or that You instruct Us to give access and use privileges to.

"**Agreement**" means all Order Forms, Statements of Work, these General Terms and any other terms or document attached to or incorporated by reference into any of the preceding documents, each as amended from time to time in accordance with this Agreement.

"**Customer Data**" means all text, images, video and other data submitted by or for You, or by or for Your Affiliated Network, for Processing by the Software Services and reports generated by You or Your Affiliated Network through the Software Services. "Customer Data" does not include Our Materials or Non-RBAS Application Materials. Examples of "Customer Data" could include Your or a member of Your Affiliated Network's equipment inventory, photos, condition descriptions, internal pricing, availability and status, inventory management system generated reports on managed equipment, and webshop buyer leads.

"**Data Insights**" means used equipment information and related market trends and price indices derived from operation of Our and Our Affiliates' disposition and listing channels and Our proprietary algorithms, or obtained by Us from publicly available sources or third-party content providers, and made accessible to You through the Software Services or as otherwise specified in the Agreement, if part of Your subscription.

"**Data Protection Laws and Regulations**" means all laws and regulations, including those of the European Union, the European Economic Area and their member states, Switzerland, the United Kingdom, Canada, and the United States and its states, applicable to the Processing of Personal Data under the Agreement.

"**Documentation**" means the usage guides, videos and manuals for Software Services made available by Us to You or Your Affiliated Network.

"**Intellectual Property Rights**" means any and all intellectual property rights, including, patents, copyrights, moral rights, trade secrets, trademarks, service marks, inventions, design rights and any other proprietary rights provided under applicable law in respect of intellectual property.

"**Non-RBAS Application**" means a web-based, mobile, offline or other application tool, process or functionality that is supplied by a third-party other than Our Affiliates and is accessible through the Software Services,

including, but not limited to, any third-party web pages or sites linked or otherwise accessible through the Software Service.

**“Non-RBAS Application Materials”** means, with respect to a Non-RBAS Application, all: (a) software including any object code and source code; (b) documentation; and (c) intellectual property and other materials owned or developed by or licensed to Us or any of Our Affiliates for use with a Non-RBAS Application and (d) all derivative works and modifications of the foregoing.

**“Order Form”** means an ordering document in a form acceptable to Us in Our sole discretion that is signed by You and Us specifying the Services to be provided under this Agreement.

**“Our Materials”** means all: (a) Software Services including any object code and source code of the foregoing; (b) Data Insights; (c) Documentation; (d) Statistical Data; (e) the design and formatting of equipment inspection reports produced by Us or Our Affiliates, (f) intellectual property and other materials owned or developed by or licensed to Us or any of Our Affiliates, except Your Materials licensed to Us pursuant to Section 7.2; and (g) all derivative works and modifications of the foregoing.

**“Personal Data”** means information relating to an identified or identifiable natural or legal person that is protected as personal data or personally identifiable information under applicable Data Protection Laws and Regulations.

**“Process”** means any operation or set of operations, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

**“Professional Services”** means any or all of the following services provided by Us to You or Your Affiliated Network: general consultancy; implementation consultancy; installation services; project management services; technical assistance; data migration; data enhancement, design; development of software; scheduled training; customized training courses; production of documents or related materials; or any other time-based activity. For clarity, “Professional Services” exclude any equipment related services, disposition services or otherwise.

**“RBAS Privacy Statement”** means the privacy statement applicable to the Services, as updated from time to time, and currently available at <https://www.rbassetsolutions.com/PrivacyStatement>.

**“Representatives”** means, with respect to a party, that party, its Affiliates, and their respective employees, officers, directors, consultants, professional advisors, agents and independent contractors. Your Representatives also include the foregoing categories of persons with respect to Your Affiliated Network. Our Representatives also include the foregoing categories of persons with respect to Our subcontractors.

**“Registered Users”** means Your or Your Affiliated Network’s respective employees, consultants, contractors and agents who will interact with the Software Services directly or indirectly on Your behalf, who are authorized by You to access and use the Software Services, and, where required, to whom a unique user ID and password has been supplied.

**“Services”** means the Software Services, Professional Services, and any other services specified in an Order Form.

**“Service Term”** has the meaning specified in an Order Form.

**“Software Services”** means (i) the cloud-based SaaS inventory management system (IMS) (available at [www.rbassetsolutions.com](http://www.rbassetsolutions.com) or other domains designated by Us), (ii) IMS-related application

programming interfaces (APIs), (iii) IMS-related mobile applications and (iv) Our managed branded webshops. For clarity, “Software Services” does not include Non-RBAS Applications, or Our products or services offered under other terms and conditions, such as, Our or Our Affiliates’ equipment disposition or listing services available through the workflow management functionality of IMS.

**“Statement of Work”** or **“SOW”** means a statement of work for Professional Services.

**“Statistical Data”** means usage data and statistics, security and access permissions, and other aggregated or deidentified data derived from the provision of the Software Services, including the number of records in the Software Services, the number and types of leads, equipment, transactions, configurations and reports Processed in the Software Services.

**“Term”** means the term of this Agreement, commencing as of the date of the last signature on Your Order Form and continuing as long as an Order Form or an SOW remain in effect, unless terminated pursuant to the provisions of this Agreement.

**“Users”** means Registered Users and those third-party end users who interact with the Software Services that are accessible publicly, including those end user buyer leads who submit an offer to buy equipment through Your branded webshop.

**“We”, “Our”** or **“Us”** means the Ritchie Bros. entity set out in an Order Form.

**“You”** or **“Your”** means the customer entity set out in an Order Form.

**“Your Materials”** means: (a) Customer Data; and (b) all intellectual property (including trade names, trademarks, and service marks) owned by or licensed to You or any of Your Affiliated Networks, or developed independently of this Agreement by You or any of Your Affiliated Networks or on Your or their behalf.