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## END USER LICENSE AGREEMENT

Riftsoft  
Confidential

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**AGREEMENT** between:

**Maintenance Consulting Professionals, Inc. (SUPPLIER); and CUSTOMER (End User) Collectively, "The Parties."**

RECITALS:

- A. SUPPLIER owns or is otherwise lawfully entitled to license computer software "RIFTPRINT, RIFTCREATE, RIFTCONNECT and RIFTSTORE.", collectively known as the **RIFTSOFT software**. As such, SUPPLIER is the rightful owner of the RIFTSOFT software and all related intellectual property.
- B. The End User wishes to obtain a limited right to use the RIFTSOFT software for itself and its Affiliates pursuant to the terms and conditions of this Agreement.

**NOW THEREFORE, in consideration of the recitals, covenants and consideration set forth herein, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:**

### 1. DEFINITIONS

In this Agreement, unless the context otherwise requires:

**Affiliate** means any person, partnership, limited liability company, joint venture, corporation, or other form of enterprise, which controls, is controlled by, or is under common control with a Party - in each case, irrespective of whether the control is direct or indirect (including through other Affiliates) and whether it is because of control of shares, votes at general meetings of shareholders, votes at meetings of directors or the appointment or removal of directors or otherwise.

**Agreement** means this agreement, (including the schedules associated with it), as it may later be amended or supplemented by the Parties in writing.

**Business Day** means a day other than Saturday, Sunday or a public holiday at the appropriate Site(s) at which the service has been rendered.

**Designated System** means the computer system of the End User and its Affiliates described in the agreed terms.

**Documentation** means all operating instructions, technical data and users' guides related to the RIFTSOFT software and which is made available to the End User by SUPPLIER as replaced, modified or updated from time to time.

**Event of Force Majeure** means the occurrence of an event or circumstance beyond the reasonable control of the party affected by it, and which, in any event, it could not have overcome or prevented by reasonable precautions or the exercise of reasonable diligence, and includes (so long as it meets the aforementioned definition) a war (declared or undeclared), insurrection, civil commotion, military action, or an act of sabotage or vandalism; a strike, lockout or industrial action; an act of a government or a government authority (including the application of an import or export law or policy); an act of God and a storm, tempest, fire, flood, earthquake or other natural calamity.



**Intellectual Property** means trademarks, service marks, trade names, copyrights, mask works, source codes, designs, inventions, patents, patent rights, trade secrets, know how, and proprietary information. Intellectual Property includes, without limitation, registrations of, and applications to register, copyrights, trademarks and service marks, and further includes patent applications.

**License Fee** means the fee listed in the agreed terms.

**Maximum Concurrent Users** means the maximum number of Users connected at any point in time as stated in the agreed terms.

**Riftsoft Software** means the computer software currently marketed by SUPPLIER and Licensed to end users, as Modified or Updated from time to time. The RIFTSOFT software is a registered trademark of Maintenance Consulting Professionals Inc.

**Modification** means a change, improvement or enhancement to the RIFTSOFT software made by SUPPLIER at the request of the End User.

**Place of Arbitration** means the place described in the agreed terms.

**Release** means the specific version of the software. Significant functional enhancements or fundamental source code redesign will result in a new release of the software.

**Site(s)** means the physical location where the Designated System is licensed to be used, and is more fully described in the agreed terms.

**Source Code** means the human readable form of the RIFTSOFT software code excluding the source code of any third party product.

**Support Service** means Riftsoft software correction services and assistance provided to the End User and its Affiliates by SUPPLIER pursuant to a separate SERVICE LEVEL AGREEMENT, attached hereto as SCHEDULE 2.

**Term** means the period, commencing on the date of this Agreement, stated in the agreed terms.

**Update** means correction or revision of the RIFTSOFT software release which SUPPLIER makes generally available to its end users as part of Support Services at no additional charge.

**User** means a connection which exists at any point in time to the environment in which the software operates.

## 2. LICENSE SCOPE

### 2.1 License

SUPPLIER grants to End User and its Affiliates, and End User accepts from SUPPLIER, a nonexclusive, non-transferable license to use of the RIFTSOFT software solely: (a) during the Term; and (b) on the Designated System; and (c) at the Site(s); and (d) for the internal business purposes of End User's and its Affiliates' business and not for redistribution, remarketing, operation for a third party or in respect of a third party's data or any other use; and (e) for no more than the Maximum Concurrent Users; and at no other site other than the Sites included in this Agreement and (f) in accordance with the Documentation. The provisions of this clause shall not exclude use of the Licenses by the End User's Affiliates.

SUPPLIER shall be entitled, either on the initial delivery of the RIFTSOFT software or at any other time, to install, or require the End User to install additional software items designed to prevent unauthorized copying and use of the software, to prevent access to the RIFTSOFT software by more than the authorized number of Users and number of Sites, and to prevent access to or use of modules other than specified under this Agreement. End User agrees not to attempt to disable or circumvent any such protective mechanisms.

## **2.2 Development & Test systems**

Despite the limitations in clause 2.1, the End User may request that SUPPLIER install a development and a test system of the RIFTSOFT software on a suitable system available to the End User and its Affiliates. The development system will be used by the End User and its Affiliates and SUPPLIER for the sole purpose of testing new updates prior to release to the Users. The test system will be used for the purpose of user training and final user validation of Updates. The development and test systems are not to be used in a production mode to supplement the software.

## **2.3 Support Services**

The End User's and its Affiliates entitlement (if any) to receive updates of the RIFTSOFT software and relevant new updates and revisions of the Documentation and Service Level Agreements for support shall be dealt with in the separate SERVICE LEVEL AGREEMENT.

## **2.4 SUPPLIER maintains ownership**

The End User acknowledges that nothing in this Agreement gives it any right, title or interest in all or any portion of the software, except for the limited license granted in Clause 2.1 hereto. The End User agrees that SUPPLIER maintains exclusive ownership of and to the software, in all forms and all copies of it, including any and all copyrights, patents, trade secrets, trademarks and other proprietary and confidential information rights of any kind anywhere in the world. The End User shall not translate, reverse engineer or decompile any part of Riftsoft software or otherwise attempt to learn any trade secret of SUPPLIER.

This Agreement gives SUPPLIER no ownership of any data provided by the End User or its Affiliates for the operation of the RIFTSOFT software or which is generated from the End User's or its Affiliates' data during the operation of the RIFTSOFT software or for any enhancements to the RIFTSOFT software which are developed by the End User or its Affiliates.

## **2.5 Documentation**

SUPPLIER shall provide to the End User the documentation described in the agreed terms (and the number of copies of each as specified in that Item or, if no number of copies is specified, one (1) copy). The End User shall keep the Documentation at the Sites and use it only for the purposes of this Agreement. The End User shall affect all updates and revisions of Documentation notified by SUPPLIER to the End User, unless such update and/or revision will not benefit the application of the Documentation with End User's system.

## **2.6 Copying software and documentation**

The End User shall not otherwise copy the software, in whole or in part, without the prior written consent of SUPPLIER. The End User may make additional copies of the Documentation without having to obtain SUPPLIER's prior written consent. However, all such copies may be used solely for the End User's and its Affiliates internal training and support purposes and be subject to all of the confidentiality and other restrictions set out in this Agreement. SUPPLIER shall have no responsibility or liability with respect of a copy of the RIFTSOFT software or a copy of any Documentation. The original and any copies of software shall always remain the sole property of SUPPLIER, subject only to the End User's and its Affiliates' rights in clauses 2.1 and 2.2. The End User shall maintain records identifying the location and identity of any copies of the RIFTSOFT software or Documentation. SUPPLIER may inspect those records during regular business hours on 30 days' advance written notice to End User.

## **2.7 SUPPLIER Software and Updates thereto.**

All title and Intellectual Property rights of whatever nature in or to any SUPPLIER Software, any Updates and any derivative or subsidiary works are and shall remain the property of SUPPLIER.

Pursuant to this Agreement, SUPPLIER grants to End User and its Affiliates a non-exclusive license to use the SUPPLIER Software in accordance with the terms and conditions herein. For the purposes of this clause, computer software interfaces created by the End User, its Affiliates or their contractors and not SUPPLIER (Interfaces) which interface between any part of the RIFTSOFT software and other computer software owned by or licensed to the End User or its Affiliates (by a licensor other than SUPPLIER) shall not be treated as Modifications or derivative works owned exclusively by SUPPLIER, provided that such Interfaces do not include any portion of the RIFTSOFT software or any Modifications or derivative works of the RIFTSOFT software.

### 2.8 End User to observe notices

The End User shall not alter or remove any copyright, trade secret or other proprietary rights notices which may appear on or with the RIFTSOFT software, and the End User agrees to reproduce such notices on any copies of the RIFTSOFT software made by the End User.

### 2.9 Internet Connectivity

End User recognizes that some Riftsoft software requires an internet connection for usage, updates and licensing verification. All information passed between the End User, its Affiliates and the SUPPLIER servers shall be relevant to the function of the module, non-intrusive and contextually sensitive. For functionality and application update services to operate appropriately, some Riftsoft software must have access via secure internet protocols to SUPPLIER operated servers.

## 3. DELIVERY

### 3.1 Delivery

SUPPLIER shall deliver the RIFTSOFT software to the End User and its Affiliates electronically, ready for configuration to commence. The Project Agreement (if applicable) will reflect the agreement by the Parties on their respective obligations (if any) in respect of installing, integrating, configuring, customizing or testing the RIFTSOFT software or systems or user training.

## 4. PAYMENT PROVISIONS

### 4.1 Payment of License Fees

License Fees are payable upon delivery of the software as follows:

**License Term:** in accordance with the agreed terms.

**Sites:** in accordance with the agreed terms.

**Users:** in accordance with the agreed terms.

**Fee:** in accordance with the agreed terms.

**Payment Terms:** End User shall pay amounts due hereunder to SUPPLIER on receipt of invoice from SUPPLIER or its agent in accordance with agreed terms.

### 4.2 Payment of Annual Maintenance and Support Fees

Payment of Annual Maintenance entitles the End User and its Affiliates to support services and ongoing updates as the software is enhanced and updated. Annual Maintenance and Support Fees are payable annually in advance as follows:

**Term:** 12 months

**Fee:** in accordance with agreed terms.

If End User elects to no longer pay annual maintenance and support fees, then they are still entitled to use the software on their current version and will not be eligible for updates and help desk support services.

### 4.3 License Fees exclusive of Taxes

End User shall be responsible for all applicable sales taxes or other taxes levied or assessed in connection with and directly related to the products and services to be provided by SUPPLIER under the terms of this Agreement, provided however, that SUPPLIER shall in all cases reflect any such applicable sales taxes on the invoice or other billing documents provided to End User. Nothing herein shall preclude End User from claiming whatever tax exemptions are applicable to the purchase of the products or services arising from this Agreement. In the event that End User does not claim exemption from such taxes, and SUPPLIER fails to collect such taxes, SUPPLIER agrees to bear the burden of any tax, interest and penalties assessed.

SUPPLIER shall be responsible for all sales, use, and other taxes, which may accrue on all materials, equipment, or supplies used in the performance of services under this Agreement by End User and its Affiliates as the ultimate consumer/user. If requested, SUPPLIER shall furnish to End User satisfactory evidence that all such taxes have been paid.

## 5. WARRANTY AND DISCLAIMER

### 5.1 General warranties

SUPPLIER warrants to the End User and its Affiliates that (a) for a period equal to the duration of the End User's and its Affiliates' use of the RIFTSOFT software, when correctly used, the RIFTSOFT software shall



perform in substantial conformity with any specifications or performance criteria published in any Documentation provided by SUPPLIER to the End User or its Affiliates with the RIFTSOFT software; and (b) it has full power and authority to grant the license under Clause 2 hereto.

As of the effective date of this Agreement and to the best of SUPPLIER's knowledge, SUPPLIER hereby represents, warrants and covenants that the RIFTSOFT software and its use, sale, disclosure, execution, reproduction, modification, adaptation, distribution, performance, or display, to the extent expressly permitted under this Agreement, does not infringe or misappropriate any patent, copyright, trade secret, or other intellectual property right of any third party.

### **5.2 Limitation on warranties**

The End User and its Affiliates shall have no rights with respect to the warranties in clause 5.1 and the warranties shall be deemed not to apply unless: (a) the End User and its Affiliates are using the RIFTSOFT software in a proper manner and in compliance with all Documentation and this Agreement; and (b) no modifications or alterations to the RIFTSOFT software have been made other than with SUPPLIER's prior written fully informed consent or by a person authorized in writing by SUPPLIER to provide Support Services which include the making of such modifications and alterations.

### **5.3 SUPPLIER to remedy**

If the RIFTSOFT software fails to meet the warranties set out in clause 5.1 and the End User and its Affiliates wish to receive the remedy provided in clause 5.4, then the End User or its Affiliates shall promptly notify SUPPLIER of the performance failure and all associated details that would reasonably assist SUPPLIER in its attempt to remedy the problem. If requested, the End User and its Affiliates will cooperate, at Supplier's expense, with SUPPLIER in re-creating the conditions that existed at the time the performance failure occurred.

### **5.4 Sole remedy**

THE END USER'S AND ITS AFFILIATES EXCLUSIVE REMEDY FOR ANY BREACH OF THE WARRANTIES IN CLAUSE 5.1 IS THAT SUPPLIER WILL, AT ITS OPTION, EITHER REPLACE THE RIFTSOFT SOFTWARE (IF REPLACEMENT WILL BRING THE RIFTSOFT SOFTWARE INTO CONFORMITY WITH THE WARRANTY) OR USE COMMERCIALY REASONABLE EFFORTS TO PROMPTLY BRING THE RIFTSOFT SOFTWARE INTO CONFORMITY WITH THE WARRANTY.

### **5.5 Sole warranty**

THE LIMITED WARRANTIES SET OUT IN THIS CLAUSE 5 ARE THE SOLE WARRANTIES MADE BY SUPPLIER WITH RESPECT TO THE RIFTSOFT SOFTWARE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE LIMITED WARRANTIES IN CLAUSES 5.1 ARE IN LIEU OF ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED (INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), ALL SUCH WARRANTIES BEING HEREBY EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW. THE END USER ASSUMES ALL RISKS ASSOCIATED WITH OPERATING THE RIFTSOFT SOFTWARE AND SUPPLIER, EXCEPT AS PROVIDED HEREIN, DOES NOT WARRANT THAT THE RIFTSOFT SOFTWARE WILL BE ERROR FREE OR WILL MEET THE END USER'S SPECIFIC NEEDS. EXCEPT TO THE EXTENT DESCRIBED IN CLAUSE 5.1, SUPPLIER DOES NOT WARRANT THE ACCURACY OF ANY DATA OR INFORMATION GENERATED AS A RESULT OF THE END USER'S USE OF THE RIFTSOFT SOFTWARE.

## **6. COPYRIGHT INFRINGEMENT**

### **6.1 Indemnity for infringement**

Except as otherwise set out in clause 6.2, SUPPLIER shall defend and indemnify the End User and the End User's Affiliates from any suit, cause of action, judgment, liability, reasonable cost, reasonable expense (including reasonable legal fees) or other actual or alleged claim of any kind arising because a the RIFTSOFT software infringes the copyright of a third party existing in the country in which the Sites are located, but only if the End User or its Affiliate provides: (a) SUPPLIER with written notice of any claim of infringement or otherwise; and (b) allows SUPPLIER exclusively to defend, compromise, settle or appeal any such suit, cause of action, claim, judgment, liability, cost and expense; and (c) provides SUPPLIER with all available information, assistance and co-operation, at SUPPLIER's expense, to enable SUPPLIER to defend, compromise, settle or appeal any such suit, cause of action, claim, judgment, liability, cost and expense. Supplier will not, without prior written consent of End User and its Affiliate, settle, compromise or consent to the entry of any judgment in or otherwise seek to terminate any pending or threatened claim in respect of which indemnification may be sought hereunder unless such

settlement, compromise, consent or termination includes an unconditional release of End User and its Affiliates from all liabilities arising out of such claim.

Clause 6.1 does not prohibit the End User's and its Affiliate's participation with SUPPLIER in the defense or appeal of any such suit, cause of action, claim, judgment, liability, cost and expense should the End User and its Affiliate choose to participate (at its own expense, such expense not being indemnified by SUPPLIER) and with attorneys of the End User's and its Affiliate's own choice, provided that SUPPLIER shall have sole control and authority with respect to any such defense, compromise, settlement or appeal.

#### **6.2 Limitation on indemnity**

SUPPLIER shall have no obligation under clause 6.1 if the alleged infringement or violation: (a) is solely caused by End User's or its Affiliate's use of the RIFTSOFT software other than as set out in this Agreement or in the Documentation; and (b) is attributable to any modification of or alteration to the RIFTSOFT software (or any part of it) performed by the End User or by anyone other than SUPPLIER or its subcontractors, agents or assignees not authorized by Supplier in writing or any combination of a the RIFTSOFT software with any other software not supplied by SUPPLIER not authorized by Supplier in writing; and (c) is attributable to SUPPLIER's compliance with the End User's designs, specifications or instructions; or (d) would have been avoided by the End User or its Affiliate implementing an Update of a the RIFTSOFT software made available SUPPLIER to the End User or its Affiliate prior to the alleged infringement or violation.

#### **6.3 Options for SUPPLIER**

If the End User's or its Affiliate's right to continue to use a the RIFTSOFT software pursuant to this Agreement is restricted, SUPPLIER may, in its sole discretion, do any of the following, for SUPPLIER's account: (a) procure for the End User and its Affiliates the right to continue to use the RIFTSOFT software; or (b) modify the RIFTSOFT software to render it non-infringing but substantially functionally equivalent to the RIFTSOFT software prior to such modification; or (c) replace the RIFTSOFT software with non-infringing software which is substantially functionally equivalent to The RIFTSOFT software.

#### **6.4 SUPPLIER's entire obligations**

This clause 6 states SUPPLIER's entire obligation to the End User and its Affiliates with respect of any part of the RIFTSOFT software infringing any intellectual property rights.

### **7. BUSINESS INFORMATION**

#### **7.1 End User's duty of confidentiality**

**The End User acknowledges that The RIFTSOFT software represents and embodies certain confidential, valuable and proprietary information and trade secrets. Accordingly, the End User shall not disclose or make available the RIFTSOFT software or the Documentation to anyone other than: (a) its and its Affiliates employees, agents and contractors who are under duties of confidentiality and who need to have access to the RIFTSOFT software in the normal course of their employment or services with the End User or its Affiliates; or (b) other third parties who are required to have access to the RIFTSOFT software and who have each executed and delivered to SUPPLIER, in advance of any such disclosure, a confidentiality and non-disclosure agreement in a form acceptable to SUPPLIER.**

The End User shall implement procedures to prevent other persons from obtaining access to or use of the RIFTSOFT software without the End User's knowledge and SUPPLIER's prior express written permission. The End User shall not use the confidential information of SUPPLIER for its own benefit or for the benefit of any third party except as expressly permitted in this Agreement.

#### **7.2 Source Code**

The trade secrets of SUPPLIER include the Source Code of the RIFTSOFT software.

#### **7.3 Confidential information**

End User and Supplier acknowledge that either party may disclose both commercial and technical proprietary, trade secret or confidential information of the disclosing Party and its Affiliates ("Confidential Information") to the other party prior to, during and/or subsequent to the engagement of Suppliers services under this Agreement. End User and Supplier agree that each has an obligation not to disclose to third parties such confidential information. The terms and condition of this document, all

pricing and proposal information supplied by Supplier, and Supplier's investigative methodologies and protocols are considered confidential by Supplier. Confidential Information shall not include information which is (a) generally available to the public, (b) lawfully in a party's possession prior to the date of disclosure by the other party, or (c) received from a third party who has no obligation of non-disclosure and is lawfully in possession of the information or required to be disclosed pursuant to any regulations of government agencies. The foregoing notwithstanding, to the extent Supplier or End User is required by law or pursuant to any enquiry or litigation by any governmental, official or regulatory body to disclose or report to third parties information developed or discovered by Supplier in the course of performing Services hereunder, each party shall be free to do so without hindrance or restraint regarding the confidentiality of such specific information.

#### **7.4 Outsourcing**

Without limiting any other provision of this Agreement, the End User shall not, without SUPPLIER's prior consent in writing, allow another person to access or use a the RIFTSOFT software, including use for or on behalf of the End User as part of an outsourcing, facilities management or bureau role.

### **8. LIMITATION OF LIABILITY**

To the maximum extent permitted by law, in no event will SUPPLIER or its agents be liable for any damages arising from the use of or inability to use the RIFTSOFT software that is not the fault of SUPPLIER, including, without limitation, damages to Users' systems and/or software and/or data, computer failure or malfunction, computer virus transmission, performance delays or communication failures, or security breaches.

#### **8.1 Limit on total damages recoverable**

IN NO EVENT WILL SUPPLIER'S LIABILITY TO THE END USER EXCEED THE LICENSE FEES PAYABLE BY THE END USER UNDER THIS AGREEMENT OR THE AMOUNT RECOVERABLE THROUGH SUPPLIER'S INSURANCE CARRIERS, WHICHEVER IS GREATER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, PRODUCTS LIABILITY OR RESTITUTION OR UNDER STATUTE OR OTHERWISE.

THE LIMITATION OF LIABILITY SET OUT IN THIS CLAUSE 8.2 SHALL NOT APPLY TO ANY PERSONAL INJURIES OR PROPERTY DAMAGE OCCURRING AS A RESULT OF THE ACTIONS OF SUPPLIER, ITS EMPLOYEES OR AGENTS WHILE ON THE PREMISES OF END USER AND ITS AFFILIATES AND SHALL NOT APPLY TO THE OBLIGATIONS OF SUPPLIER SET OUT IN CLAUSE 6.1 (WHICH SHALL BE INSTEAD SUBJECT TO THE PROVISIONS OF CLAUSE 6).

#### **8.2 Limitation on type of damages recoverable**

NEITHER END USER, ITS AFFILIATES NOR SUPPLIER NOR THEIR RESPECTIVE LICENSORS, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS WILL BE LIABLE TO THE OTHER PARTY, OR ANY OTHER PERSON FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF: (a) THIS AGREEMENT OR THE BREACH OF THIS AGREEMENT BY A PARTY; OR (b) THE END USER'S POSSESSION OR USE OF OR INABILITY TO USE A THE RIFTSOFT SOFTWARE (INCLUDING ANY USE OF SOURCE CODE) THAT IS NOT THE FAULT OF SUPPLIER INCLUDING DAMAGES OR COSTS INCURRED AS A RESULT OF LOSS OF TIME, LOSS OF SAVINGS, LOSS OF PROPERTY, LOSS OF DATA OR LOSS OF PROFITS.

THIS APPLIES REGARDLESS OF WHETHER A PARTY HAS BEEN APPRISED OR NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OR CLAIMS OCCURRING OR WHETHER SUCH CLAIMS OR DAMAGES ARE BASED, OR REMEDIES ARE SOUGHT, IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, PRODUCTS LIABILITY OR RESTITUTION OR UNDER STATUTE OR OTHERWISE.

### **9. FORCE MAJEURE**

#### **9.1 Excuse from performance of obligations**

If any party is prevented, hindered or delayed from performing any of its obligations under this Agreement by an Event of Force Majeure, then as long as that situation continues, that party shall be excused from performance of such obligation to the extent it is so prevented, hindered or delayed, and the time for performance of such obligation shall be extended accordingly.



### **9.2 Notification**

A party affected by an Event of Force Majeure shall notify the other party of its occurrence and its effect or likely effect within 5 (five) business days, and shall use all reasonable efforts to minimize the effect of the Event of Force Majeure and to bring it to an end.

### **9.3 Industrial action**

No party shall be obliged to settle any strike or other industrial action, dispute or disturbance of any kind, except on terms wholly satisfactory to it.

## **10. NOTICES**

### **10.1 Means of giving notice**

Any notice or other communication in connection with this Agreement must be in writing. Notices will be deemed delivered (i) when delivered in person; (ii) when sent by email or facsimile with delivery confirmed, provided that delivery is confirmed during Party's regular business hours or, if delivered after Party's regular business hours, on the next regular business day; (iii) when receipt is acknowledged if sent by email, provided that receipt is acknowledged during Party's regular business hours or, if delivered after Party's regular business hours, on the next regular business day; or (iv) upon verified receipt if sent by a recognized commercial express courier with written verification of receipt or certified mail return receipt requested. All notices will be sent to the receiving Party at the addresses in the agreed terms, or to such other address, email or facsimile number as may from time to time be notified in writing by one party to the other for the purposes of this clause.

## **11. DISPUTE RESOLUTION**

If a dispute arises out of or in relation to this Agreement (Dispute) a party may not commence any court or arbitration proceedings relating to the dispute unless it has first complied with this clause.

**11.1** A party claiming that a Dispute has arisen must give written notice (Notice) to the other party specifying the nature of the Dispute and the likely quantum of the amount in dispute (if any).

**11.2** The parties will use good faith efforts to resolve amicably the Dispute. If the Dispute has not been resolved within 14 days of service of the Notice, then the parties shall refer the Dispute to the appropriate senior officer of each party who shall meet promptly and use good faith efforts to resolve the Dispute.

**11.3** If the Dispute has not been resolved within 21 days of service of the Notice, unless the parties agree in writing to settle the Dispute by way of arbitration, the Dispute shall be settled in a court having jurisdiction.

**11.4** An arbitration elected under the previous clause, if any, shall be conducted under the arbitration rules of the International Chamber of Commerce (ICC). The arbitrator(s) shall be skilled in the legal and business aspects of the software industry. The arbitration shall take place at the Place of Arbitration and the language of the arbitration shall be English. Each party shall bear its own costs of the arbitration. There shall be no right of appeal from the decision of the Arbitrator(s), and such decision shall be enforceable by the decree or order of any court having jurisdiction over the parties.

**11.5** Pending the settlement of a dispute, the parties shall continue to perform all their obligations under this Agreement without prejudice.

**11.6** Nothing in this clause shall prevent or delay a party seeking urgent injunctive or interlocutory relief in a court having jurisdiction.

## **12. GENERAL PROVISIONS**

### **12.1 Further Assurances.**

Each of the Parties shall use its reasonable and diligent efforts to fulfil its obligations under this Agreement and to execute such further documents, instruments and agreements and perform such further actions as may be reasonably required or desirable to carry out the provisions and the transactions contemplated by this Agreement.

### **12.2 Export Administration.**



Each of the parties agrees to comply fully with all relevant export laws and regulations of the United States ("Export Laws"). Notwithstanding the foregoing, each party warrants that it will not attempt to export any portion of the Software or any product generated from the Software without prior permission.

**12.3 Relationship of the Parties.**

SUPPLIER shall perform Services hereunder only as an independent contractor. Under no circumstances shall SUPPLIER be construed to be an employee, agent, representative or joint venture of End User. SUPPLIER shall assume full responsibility for all supervision, direction, control, and payment of SUPPLIER's Personnel. SUPPLIER will have no authority contractually to bind or obligate End User or to incur any debt or obligation on behalf of End User.

**12.4 Governing Law and Jurisdiction.**

This Agreement and the transactions contemplated by this Agreement are governed by the law in force in the State of Utah, U.S.A, without giving effect to the choice of law rules thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the state and federal courts in the State of Utah.

**12.5 Notices.**

All consents, notices, requests, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed given when delivered personally against receipt, on the next business day when sent by overnight courier, and on the fifth business day after being mailed by certified mail, return receipt requested, to each party at the following address (or to such other address as that party may have specified by notice given to the other pursuant to this provision):

**12.6 Assignment.**

Subject to the following qualifications, this Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of each party and its respective successors and assigns. Neither Party shall be entitled to assign, delegate or otherwise transfer this Agreement, nor any of the rights set forth in this Agreement, to any Affiliate or any other person or entity without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any such assignment shall be subject to the Assignee's acceptance of all of the terms and conditions of this Agreement.

**12.7 Severability.**

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held by a court of competent jurisdiction to be invalid, such provision shall be deemed restated to reflect the original intentions of the parties as nearly as possible, and, if capable of being performed, the remaining provisions of this Agreement shall be enforced as if this Agreement had been entered into without the invalid provision.

**12.8 Captions.**

The captions used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and shall not be deemed to limit, characterize or in any way affect any provision of this Agreement, and all provisions of this Agreement shall be enforced and construed as if no caption had been used in this Agreement.

**12.9 Counterparts.**

This Agreement may be executed in one or more counterparts all of which taken together shall constitute one and the same instrument.

**12.10 Approvals and Similar Actions.**

Where agreement, approval, acceptance, consent or similar action by either party is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld unless otherwise expressly provided.

**12.11 Modification; Waiver.**

This Agreement may be modified only by a written instrument duly executed by each party. No delay or omission by either party to exercise any right or power hereunder shall impair such right or power or be construed to be a waiver thereof. A waiver by either party of any of the obligations to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other obligation herein contained.

**12.12 No Third-Party Beneficiaries.**

This Agreement is for the benefit of the Parties hereto and is not intended to confer any rights or benefits on any third-party, including any employee of either party, and there are no third-party beneficiaries to this Agreement or any part or specific provision of this Agreement.

**12.13 Entire Agreement.**

This Agreement, including any exhibits, schedules and appendices hereto or thereto each of which is incorporated into and made part of this Agreement, constitute the final, entire and exclusive agreement among the parties with respect to this subject matter and supersede all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

**12.14 Attorneys' Fees.**

The prevailing party in any action or proceeding to enforce any provision of this Agreement will be awarded reasonable attorneys' fees and costs incurred in that action or proceeding.

**12.15 Interpretation**

In the interpretation of this Agreement, unless the context otherwise requires: (a) singular includes plural and vice versa; and (b) any gender includes every gender; and (c) references to a person include a corporation, association, partnership, government authority, or other legal entity; and (d) references to writing include any means of representing or reproducing words (in English), figures, drawings or symbols, in a visible, tangible form; and (e) references to signature and signing include due execution by a corporation or other relevant entity; and (f) references to months mean calendar months; and (g) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all instruments, regulations, orders in council, rules, by laws and ordinances made under those statutes; and (h) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes; and (i) references to clauses and schedules refer to clauses and schedules of this Agreement; and (j) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning; and (k) each paragraph or sub paragraph in a list is to be read independently from the others in the list; and (m) no rule of construction of documents shall apply to the disadvantage of a party, on the basis that the party put forward this document or any relevant part of it; and (l) where the words including, include or for example are used, they shall be read as if followed by the words without limitation.

### **13. Cookies Policy**

Riftsoft is committed to protecting your privacy. We use cookies on this website to enable users to have the best possible experience. We collect analytics information to find out things such as the number of visitors to the various parts of the website and how our website is performing for our customers. We also use cookies to personalise content and services and to provide social media features. This cookies policy tells you more about our use of cookies and the choices you have. The table below provides further details about the cookies which are currently in use on our websites and a description of the purpose of each of these cookies.

#### **What are Cookies?**

Cookies are small files that websites place on your computer, mobile phone, tablet or other device. They remember that you have visited the website before. They make it easier for you to maintain your preferences and they enable certain features of the website to work. This is important to us because we want to make sure our website is as user friendly as possible, ensuring you have a good experience when browsing or working on our websites.

#### **Types of Cookies**

Session cookies: these are stored while you're browsing. They are deleted from your device automatically when you close your browser. Persistent cookies: these are saved on your computer so they don't get deleted when you close your browser. We use persistent cookies when we need to remember who you are from one visit to the next, for example to remember your preferences.

Below are more details of the cookies used on our website.

#### **Strictly Necessary Cookies**

These cookies are necessary for the website to function and cannot be switched off in our systems. They are usually only set in response to actions made by you which amount to a request for services, such as setting your privacy preferences, logging in or filling in forms. You can set your browser to block or alert you about these cookies, but some parts of the site will not then work. These cookies do not store any personally identifiable information.

#### **Performance Cookies**

These cookies allow us to count visits and traffic sources so we can measure and improve the performance of our site. They help us to know which pages are the most and least popular and see how



visitors move around the site. All information these cookies collect is aggregated and therefore anonymous. If you do not allow these cookies we will not know when you have visited our site, and will not be able to monitor its performance.

**Functional Cookies**

These cookies enable the website to provide enhanced functionality and personalisation. They may be set by us or by third party providers whose services we have added to our pages. If you do not allow these cookies then some or all of these services may not function properly.

**How can I manage or remove Cookies?**

By default, only strictly necessary cookies are active. If you want to, you can manage or disable cookies from your browser and delete all cookies that are stored on your device. You can do this as often you want to.

**What happens if I choose to disable Cookies?**

You need to be aware that if you choose to disable cookies from your browser it may prevent you from taking full advantage of the Riftsoft website, and you may not get the best user experience.

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## Schedule 1

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### Software Support Service Level Agreement

(Attached to and forming a part of the End User License Agreement)

#### 1. Scope of Services

SUPPLIER will provide the following software support services:

1. Help desk support.
2. Bug fixes to End User of the RIFTSOFT software.
3. Upgrades to the RIFTSOFT software.

#### 2. End User Support.

##### 2.1 First-Line Support.

End User shall provide first-line support to its users. End User shall appoint a Local Administrator and communicate in writing to SUPPLIER the Local Administrator's name and contact information. In order for the System to function, users must be trained and End User-specific data must be input into the system. The Local Administrator shall be responsible for all user training and input of End User related information user ID information and user locations. All questions regarding the functioning of the System shall be directed first to End User's Local Administrator.

##### 2.2 Second-Line Support.

Provided that End User is current (beyond any applicable cure period) in its payment of fees under this Agreement, SUPPLIER shall provide to End User standard business hours support. SUPPLIER support personnel shall be available to the End User's Local Administrator to provide telephone support and assistance via e-mail and other Internet based technology directly to End User's Local Administrator. Second-line support means direct technical support of the System, including, but not limited to, (1) direct response to the Local Administrator's inquiries concerning performance, functionality or operation of the System; (2) a direct response to reported problems for performance deficiencies with the System; (3) a diagnosis of problems for performance deficiencies of the System; and (4) a resolution of the problems for performance deficiencies of the System. SUPPLIER shall also provide standard error correction and maintenance modifications to the System.

All support will be coordinated with the END USER Point of Contact (POC) as defined in the agreed terms:

SUPPLIER Help Desk Email: [help@riftsoft.com](mailto:help@riftsoft.com)

#### 3. Help desk United Kingdom

Help Desk Hours (GMT) 8 hrs / day x 5 days / Week

Phone +44 7826 543 876

E-Mail: [help@riftsoft.com](mailto:help@riftsoft.com)

#### 4. Help desk United States

Help Desk Hours (MDT - GMT -6) 8 hrs / day x 5 days / Week

Phone +1 435 200 4000

E-Mail: [help@riftsoft.com](mailto:help@riftsoft.com)

#### 5. Bug Fixes



1. The END USER POC will report all reported bugs to SUPPLIER.
2. If SUPPLIER receives notification of bugs, SUPPLIER will report those bugs to the POC. SUPPLIER will maintain an active list of all known bugs and make that list available to the POC.
4. SUPPLIER will work with the POC to resolve all bugs in an expedient manner.
5. Code modifications will be made and tested by SUPPLIER on the END USER development environment.
6. SUPPLIER will promote the changes to the user test environment and END USER validate with the RIFTSOFT software users.
7. Upon successful validation of code modifications in the user environment, the END USER will promote the changes to the production environment.

## 6. Upgrades

Upgrades may be of the following types:

1. System – These upgrades are required to maintain the application integrity and/or security. These upgrades may be released during a quarter. END USER agrees to implement these upgrades as they are released.
2. Functional – These changes are created as a result of the RIFTSOFT software user requests, including nonEND USER users.

END USER may choose to implement these changes on a quarterly basis. END USER recognizes that failure to implement these types of changes over an extended period could increase the difficulty of code upgrade at a future date.

All upgrades will be coordinated between the END USER POC and the SUPPLIER POC.

## 7. SUPPLIER responsibilities

1. SUPPLIER will make every effort to respond to any user or POC bug report.
2. SUPPLIER will make every effort to identify the cause of the bug, identify how to fix the bug and if necessary, identify a work-around.
3. For bug fixes deemed high priority by the END USER POC, SUPPLIER will make every effort to correct the bug in development and assist in promoting the fix to production.
4. Bug fixes deemed low priority by the END USER POC will be fixed in the development environment and promoted on a quarterly basis with enhancements.
5. If SUPPLIER becomes aware of an ERP issue that could negatively impact END USER's environment or operation, SUPPLIER will inform END USER of the issue. SUPPLIER will make reasonable efforts to coordinate with END USER's underlying platform on resolution of the issue.

## 8. END USER responsibilities

1. The END USER POC will make every effort to immediately notify SUPPLIER if they become aware of The RIFTSOFT software problems or suspect such problems. The primary mechanism to submit an issue directly to The RIFTSOFT software issue tracking system at The RIFTSOFT software.atlassian.net to receive a The RIFTSOFT software Case Number for the issue. If it is a Severity 1 Issue END USER should also call the SUPPLIER Help Desk on 435 200 4000 to receive positive confirmation that SUPPLIER received the issue and is developing an action plan.
2. END USER will make every reasonable effort to assist SUPPLIER in resolving issues related to communications, security or ERP.
3. The END USER POC will provide SUPPLIER reasonable advance notification of maintenance activities that could affect The RIFTSOFT software performance.
4. The END USER POC will work with SUPPLIER to determine if a bug fix is low priority or high priority. END USER resources will make every reasonable effort to work in a timely manner with SUPPLIER on high priority bug fixes.