



BuildSmart Subscription License Agreement

Terms and conditions

RECITALS

- (a) Whereas the Licensor has developed application software for use by the Client; and
- (b) Whereas the Distributor will distribute, implement and support the application;
- (b) Whereas the Client wishes to use the application software;

NOW THEREFORE the Licensor and or the Distributor and the Client hereby agree to the following:

1 Definitions

Unless the contrary is clearly indicated, the following words and/or phrases used in this Agreement shall have the following meaning:

- 1.1 **"Affiliated Company/Companies"** shall mean any company which is a subsidiary of the Licensor or Distributor, a holding company of the Licensor or the Distributor or a subsidiary of any holding company of the Licensor or the Distributor (where the terms "subsidiary" and "holding company" shall have the meaning ascribed to them in Section 1 of the Companies Act, 2008 (Act No. 71 of 2008)) provided that they shall also include any foreign entity which had it been registered in terms of the aforesaid Act would fall within the ambit of such term OR means any company which controls, is controlled by or is under common control with the Licensor or Distributor. In regard to this definition the term "Control" shall include control through any voting pool or other arrangement, the right to the exercise of voting rights, directly or indirectly, resulting in effective control of any company and/or control of its management, and/or the right to appoint the majority of the members of the board of directors of any company;
- 1.2 **"Agreement"** shall mean this written document together with the signed Record of agreement referring to this and all written appendices, annexures, exhibits or amendments attached to it from time to time;
- 1.3 **"Anti-Corruption Laws"** shall mean any applicable foreign or domestic anti-bribery and anticorruption laws and regulations, including but not limited to the Foreign Corrupt Practices Act, 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq. (United States of America); Bribery Act, 2010, as amended, c.23, § 1 (United Kingdom); and the Prevention and Combating of Corrupt Activities Act, 2004, as amended (Republic of South Africa), as well as any laws intended to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;
- 1.4 **"Commencement Date"** shall mean the date set out in the Record of Agreement
- 1.5 **"Combined Software"** shall mean both RIB BuildSmart and the Operating System Software on which it operates which is provided by the client or the nominated service provider.
- 1.6 **"Confidential Information"** shall mean:
 - 1.6.1 Any information of whatever nature, which has been or may be obtained by either of the Parties from the other, whether in writing or in electronic form or pursuant to discussions between the Parties, or which can be obtained by examination,

- testing, visual inspection or analysis, including, without limitation, scientific, business or financial data, know-how, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, sample reports, models, Client lists, price lists, studies, findings, computer software, inventions or ideas;
- 1.6.2 Analyses, concepts, compilations, studies and other material prepared by or in possession or control of the recipient which contain or otherwise reflect or are generated from any such information as is specified in this definition;
- 1.6.3 Any dispute between the Parties resulting from this Agreement;
- 1.7 **“Currency”** shall mean the currency stipulated in the Record of Agreement;
- 1.8 **“Data”** shall mean any data, including personal information as defined in the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), Personal Data and/or any equivalent legislation of the jurisdiction(s) where the obligations in terms of this Agreement are being provided and/or performed, supplied to the Licensor or Distributor by the Client or processed on behalf of the Client by the Licensor or Distributor;
- 1.9 **“Data Breach”** shall mean any breach of security leading to unauthorised or unlawful destruction, loss, alteration, or disclosure of Data;
- 1.10 **“Data Protection Laws”** shall mean all applicable law relating to data protection, privacy and security when processing Data under the Agreement. This includes without limitation applicable international, regional, federal or national data protection, privacy, export or data security directives (e.g. directives of the European Union), laws, statutes, regulations, rulings, decisions and other binding restrictions of, or by, any judicial or administrative body, whether domestic, foreign or international, including the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013);
- 1.11 **“Designated Site”** shall mean the site identified in Record of agreement where the Software is physically located, which site may either be the Client’s premises and/or hosted by a third-party;
- 1.12 **“Distributor”** shall mean the authorised distributor of the RIB BuildSmart System by the Licensor as identified in the Record of Agreement and shall perform all the duties of the Distributor and shall provide the following services;
- 1.12.1 Telephonic support in accordance with the provisions set out hereinafter;
- 1.12.2 On-site support at the Location in the event that telephone support or online support does not resolve a Combined Software problem;
- 1.12.3 Online support in circumstances in which the Support Distributor determines that such support is appropriate. The Client undertakes, at its sole cost and expense, to procure the installation and commissioning of a suitable internet connection at the Location to enable the personnel of the Distributor to provide such on-line support to the Client;
- 1.12.4 After-hours support in accordance with the provisions set out hereinafter; where the Distributor is marked as not applicable or left blank in the Record of Agreement then all reference to the distributor shall refer to the Licensor.
- 1.13 **“Enhancements”** shall mean changes to BuildSmart resulting in the addition of a feature or capability not present in BuildSmart prior to the introduction of the changes as well as any changes to BuildSmart designed to permit the use of RIB Buildsmart on hardware and/or in conjunction with Operating System Software other than that for which BuildSmart was initially designed;

- 1.14 **“Guarantee”** shall mean that the Licensor warrants to the Client that the Software shall perform in accordance with the Software Documentation;
- 1.15 **“Guarantee Claim”** shall mean a claim that is as a result of the Software not performing in accordance with the Guarantee;
- 1.16 **“Intellectual Property Rights”** shall mean all intellectual rights of any kind whatsoever, including without limitation, patents (patent rights and registrations and applications, renewals and extensions therefor), all present and future copyrights (including, but not limited to, ownership rights in all computer code, concepts, and methods of operation, moral rights and any related documentation, whether or not any of these are registered and including applications for any such right or registration thereof), unregistered design rights, product-specific know-how, trademarks, trade secrets, inventions, trade names and rights in confidential technical information, whether written or not, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these;;
- 1.17 **“License”** shall mean a non-transferable and non-exclusive right granted to the Client for the Use of the Software by the Users. Which rights of use shall include the right of the Client to make sufficient copies of the Software for backup purposes;
- 1.18 **“License Fees”** shall mean any and all fees payable by the Client to the Distributor as set out in the Record of agreement; such as Project management, set up Installation, implementation and subscription. Such fees are due in full based on the agreed initial subscription period.
- 1.19 **“Licensor”** means RIB South Africa (Pty Ltd a private company registered in accordance with the laws of South Africa with Registration number 1982/007709/07, whose registered office is at Southdowns Office Park, Block A, 21 Karee Street, Irene ext.54, Centurion, Gauteng, South Africa a wholly owned subsidiary of RIB Software GMBH (RIB) and shall:
- 1.19.1 be responsible to make available upgrades to RIB BuildSmart;
- 1.19.2 correct critical errors in RIB BuildSmart;
- 1.20 **“Location”** shall mean the sites identified in the Record of Agreement being the physical address of the business premises of the Client;
- 1.21 **“Notice”** shall mean a written document;
- 1.22 **“Parties”** shall mean the Licensor / Distributor and the Client;
- 1.23 **“Payment Date”** shall mean the date set forth in the Record of Agreement;
- 1.24 **“Payment Office”** shall be as defined in the Record of agreement and by Bank Transfer to the bank as defined in the Record of Agreement.;
- 1.25 **“Personal Data”** shall mean personal data as defined in the Data Protection Laws, including any information relating to an identified or identifiable individual (including, but not limited to, name, postal address, email address, telephone number, date of birth, social security number, driver’s license number, other government-issued identification number, financial account number, credit or debit card number, insurance ID or account number, health or medical information, consumer reports, background checks, biometric data, digital signatures, any code or password that could be used to gain access to financial resources, or any other unique identifier) that is Processed by the Licensor or Distributor under the Agreement;
- 1.26 **“Process”** shall mean any operation, or set of operations, performed on Data, by any means, such as by collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction and “Processing” shall have a corresponding meaning;
- 1.27 **“Record of Agreement”** shall mean the signed terms and conditions specifying the products and services to be provided that is entered into between the Client, Licensor and Distributor, or any of their affiliates including any addenda and supplements thereto. By entering into a

signed Record of Agreement, an affiliate agrees to be bound by the terms of the agreement as if it were an original party hereto;

- 1.28 **“RIB BuildSmart”** shall mean the Procurement and Accounts modules as well as any additional modules as may be released by the Licensor in the future;
- 1.29 **“Software”** shall mean RIB BuildSmart software provided by the Licensor.
- 1.30 **“Software Documentation”** shall mean the written document(s) containing detailed instructions pertaining to the use of the Software and setting out the operation of the Software;
- 1.31 **“Standard Hours”** shall mean Monday to Friday: 08h00 to 17h00 excluding statutory holidays, in country as defined in the Record of Agreement
- 1.32 **“Subscription period”** shall mean the period defined in the Record of Agreement and consists of an initial period.
- 1.33 **“System”** shall mean the Client’s complete computer system, incorporating both computer hardware and computer software;
- 1.34 **“Upgrades”** shall mean changes or improvements to BuildSmart which relate to or effect the operating performance of BuildSmart or an aspect of BuildSmart, but which do not change the basic operation or functioning of BuildSmart.
- 1.35 **“Use”** shall mean that the Client is entitled to allow the Software to operate for the benefit of the Client’s Users;
- 1.36 **“User”** shall mean any users of the Software that may be authorised by the Client to Use the Software. Users may include the Client’s employees, Licensor, Distributor, consultants, and agents;

2 Grant and nature of license

- 2.1 The Distributor herewith grants Licenses, the number of which are set forth in the Record of Agreement, to the Client on the terms and conditions set out in this Agreement, including the timely payment of the applicable License Fees.
- 2.2 The Licenses granted to the Client authorizes the Client to Use the Software at the in accordance with the Subscription period and/or until the Agreement is terminated.
- 2.3 The number of licenses cannot be reduced during the initial license period, however additional licenses can be procured at the rate applicable to the first year of the subscription period and subject to adjustment thereafter.
- 2.3 The Licenses granted to the Client authorizes the Client to allow concurrent usage of a license, where each login to a RIB BuildSmart, at point of entry i.e. Accounts procurement etc. by a User will use one License.
- 2.4 The Client shall not make the Software available to anyone other than its Users and shall not have the right to sub-license or transfer the Software in any way, either in whole or in part, to any third party.
- 2.5 The Client shall not copy nor permit any party to copy the Software, except to make sufficient copies solely for backup or archival purposes.
- 2.6 The Client shall not modify, de-compile, disassemble or otherwise reverse engineer the Software, or attempt to do any of these; provided that this stipulation shall not be applicable where de-compilation is permitted by law.
- 2.7 The Client shall allow the Licensor and/or Distributor, upon reasonable notice, access to the Designated Site and its premises to audit the Client’s compliance with the Agreement.
- 2.8 If the Software is being hosted, the Client shall ensure that the relevant third party hosting the Software is made aware, and it shall obtain from such third party its express consent to allow

the Licensor and/or Distributor remote access to the Server and/or the database where the Software is located for the purposes of audit and/or Software support.

- 2.9 If the computer(s) at the Designated Site are inoperative due to malfunction, any right granted under the Agreement for such Designated Site shall be temporarily extended to authorize the Client to Use the Software at any other site until the Designated Site is returned to operation.
- 2.10 The Client may by way of written notice request the Licensor or Distributor to change the Designated Site, which authorization will not be unreasonably withheld.

3 Commencement and duration

- 3.1 This Agreement shall commence on the Commencement Date.
- 3.2 The Agreement will continue in force in accordance with the Subscription Period as defined in the Record of agreement, calculated from the Commencement Date and thereafter automatically renewed for further periods of 1 (one) year, unless terminated earlier in accordance with the provisions of the Agreement.

4 Payment

- 4.1 In consideration of the License being granted, the Client shall pay the Distributor any License Fees, on the Payment Date(s), in the Currency, at the Payment Office as defined in the Record of Agreement
- 4.2 The License Fees, as well as any other funds due by either of the Parties to the other, shall exclude any taxes and/or levies due as a result of a requirement by any governmental organization (which shall include but not be limited to any value added tax, importation tax, withholding tax and general sales tax) and all these taxes and/or levies, shall be paid by the Client.
- 4.3 The Distributor must receive the full invoice value, The Client's transfer costs and bank charges are for the clients account.
- 4.4 The rates quoted in the proposal and agreed in the signed Record of Agreement are applicable to the use of RIB BuildSmart license by the Client only. Persons or Companies associated with the Client wishing to use the RIB BuildSmart system must enter into separate RIB BuildSmart license agreement with the Distributor and may be subject to different rates.
- 4.5 License fees will be reviewed by the Licensor and the Distributor annually. The Distributor will provide written notices of any changes to the fees in advance of the effective date which will be the 1st March.

5 Support

- 5.1 The Distributor, shall, with effect from the Commencement Date, render the Support Services.
- 5.2 The Client shall ensure that a suitably qualified employee is present at the Location during the Client's Standard Hours to fulfil the routine functions of the BuildSmart administrator (including basic reporting) and such other functions as may be agreed in writing between the Parties from time to time.
- 5.3 Unless otherwise agreed by the Parties in writing, the Distributor shall not provide any services not being Support Services, including, without limitation, any of the following services:
 - 5.3.1 Support of any software other than the Combined Software, accessories, attachments, machines, peripheral equipment, systems or other devices not supplied by the Licensor or Distributor;

- 5.3.2 Rectification or the recovery of lost or corrupted data arising from any reason other than the Licensor or Distributor's own negligence;
 - 5.3.3 Support rendered more difficult because of any changes, alterations, additions, modifications, or variations, not performed by the Licensor or Distributor, to the Combined Software, or any other software;
 - 5.3.4 Attendance to faults caused by using the Combined Software outside design or other specifications or outside the provisions laid down in any documentation or manual supplied with the Combined Software;
 - 5.3.5 Diagnosis and/or rectification of problems not directly associated with the Combined Software;
 - 5.3.6 Repairs or replacements necessitated by accidental damage, operator errors, abnormal operating conditions, the connection of unauthorized peripheral equipment, improper use, misuse, neglect or abuse of the Combined Software, assistance on hardware usage or service calls necessitated by causes external to the Combined Software such as failures in the hardware on which the Combined Software is operational.
- 5.4 The Client will inform the Distributor of any faults or problems in or in respect of the Combined Software as soon as possible after any such fault or problem is discovered in accordance with the provisions of the Agreement and will provide the Licensor and/or Distributor's personnel with reasonable access to all equipment associated with the System on which the Combined Software is operating, upon arrival of the personnel of the Licensor and/or Distributor at the Location.

6 Procedure for requesting Support Services

The Client will, whenever it requires support, follow the procedure set out below:

- 6.1 The Client will appoint a representative or representatives who is/are authorized to request Support Services. The Client may replace its authorized representative or representatives from time to time by Notice to the Distributor.
- 6.2 The Distributor shall not be required to provide Support Services unless requested to do so by the aforementioned representative of the Client.
- 6.3 The Client's authorized representative will log requests directly on the Licensor's Support Log System at www.buildsmart.co.za/support.
- 6.4 The Client shall provide, at its own cost, such material and information as may be required by the Distributor to render the Support Services, which material shall include but not be limited to digital media, reference manuals and the like.
- 6.5 The Distributor's personnel will endeavour to resolve the problem. Should the Distributor's personnel not be able to resolve the problem, the Distributor shall give the Client an estimate of how long a problem may take to resolve; the Distributor shall keep the Client informed of the progress of problem resolution by means of the Distributor's, then current standard progress report schedule, or via the Licensor's Support Log System.
- 6.6 Should the support request take the form of a request for an amendment or amendments to the System, the procedure is as follows:
 - 6.6.1 The Client's representative must apply for such amendment in writing to Licensor's Office. The request is evaluated with respect to its effect on the system, and if found acceptable will be taken up in Licensor's Distribution System Development Log for release with a future version of the Software.

7 After-hours support

The Client shall only be entitled to Support Service outside of the Distributors Standard Hours, in the event where there is a complete failure of the Combined Software. Under such circumstances the Client shall not be required to log the request directly on Licensors Support Log System, but the Client's authorized representative shall be entitled to request Support Services telephonically.

8 Meetings

- 8.1 The authorized representatives of the Parties will attend periodic meetings at such intervals as such representatives may agree from time to time. The meetings will take place online or at the Location at such times as the representatives may agree.
- 8.2 The Distributor shall not be entitled to payment from the Client for time spent attending the aforementioned meetings.

9 Limitation of liability

- 9.1 The liability of the Licensor and Distributor for faulty execution of the Software as well as all damages suffered by the Client, whether direct or indirect, as a result of the malfunctioning of such Software, will be limited to the Licensor rectifying the malfunction, within a reasonable time and free of charge, provided that the Licensor and Distributor is notified immediately of the damage or faulty execution of the Software.
- 9.2 This liability is completely excluded if the Client attempts to correct or allows third parties to correct or attempt to correct the Software without the prior written approval of the licensor.
- 9.3 Any other liability on the part of the Licensor and/or Distributor arising from any cause whatsoever is specifically excluded. Without limiting the generality of the foregoing, the Licensor and/or Distributor shall not be liable for any delay, failure, breakdown, damage or injury caused by:
 - 9.3.1 Software, programs and support services supplied by or obtained by the Client without the consent or knowledge of the Licensor or Distributor; or
 - 9.3.2 Software or programs modified by the Client, or any third party not authorised to do so in terms of the Agreement; or
 - 9.3.3 The actions or requirements of any telecommunications authority or a supplier of telecommunications services or software.
- 9.4 In no event shall the Licensors and/or Distributor be liable to the Client for loss of profits or for incidental, special or consequential damages arising out of or in connection with the Software or the delivery, installation, servicing, performance or use of it in combination with other computer software.

10 Guarantees

- 10.1 The Licensor gives a Guarantee for a period of 90 days calculated from the Commencement Date to the Client, provided that the Licensor and Distributor has been informed by way of a Notice of a Guarantee Claim, within ten (10) calendar days after the Software has failed to perform in accordance with the Guarantee.
- 10.2 In the event of a Guarantee Claim, the licensor shall not have any liability for that Guarantee Claim, if that Guarantee Claim is as a result of:

- 10.2.1 Unauthorised modification(s) to the Software by the Client or any third party;
 - 10.2.2 Damage to the Software by the Client;
 - 10.2.3 Neglect of the system on which the Software operates or of the operating procedure prescribed by the licensor or Distributor;
 - 10.2.4 Failure of electrical power;
 - 10.2.5 Use of the Software which is other than the use of the Software as set out in the Software Documentation;
 - 10.2.6 A combination of computer hardware and/or software applications functioning in conjunction with the Software, where such computer hardware or software application has not been approved, by way of a Notice to the Client by the Licensor as being compatible with the Software.
- 10.3 The Licensors and/or Distributors only liability in respect of a Guarantee Claim shall be to:
- 10.3.1 Replace the Software with another version of the same Software;
 - 10.3.2 Refund the Client with the License Fee received by it from the Client only if the software has been in use for a period of less than 12 months.
- 10.4 In the event where the Licensor has supplied other computer software to the Client as a result of a Guarantee Claim, then the Licensor shall again give a Guarantee for that computer software, and the terms and conditions regulating a Guarantee in this Agreement shall be applicable to that computer software.

11 Intellectual Property Rights

- 11.1 The Client acknowledges that any and all of the Intellectual Property Rights used or embodied in or in connection with the Software are and will remain the sole property of the Licensor.
- 11.2 The Client shall not question or dispute the ownership of such rights at any time during the continuation in force of the Agreement or thereafter.
- 11.3 The Licensor warrants that, to the best of its knowledge, the Software does not infringe upon or violate any Intellectual Property Rights of any third party.

12 Breach and Termination

- 12.1 Neither party may terminate the agreement during the initial subscription period unless for cause as defined in this agreement.
- 12.2 On completion of the initial subscription period, the Client's License Administrator may terminate a RIB BuildSmart License or all RIB BuildSmart Licenses upon submitting one calendar month written notice before the end of the relevant Subscription Period.
- 12.3 Should the Client allow payment of the Subscription Fee to fall into arrears by more than 30 days, the Distributor will contact the Client and request payment. Should the Client still fail to bring the account up to date, The Distributor may:
 - 12.3.1 Suspend the license:
 - 12.3.2 Suspend the provision of support until the payments are brought up to date; and
 - 12.3.3 Terminate this Agreement and claim all Fees which are due and payable.

- 12.4 A Party may terminate this Agreement for cause (i) upon 30 days written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.
- 12.5 On termination of this Agreement for whatever reason, the RIB BuildSmart Licenses will be cancelled and access to the system will no longer be available to the Client.

13 Interpretation

- 13.1 The clause headings in this Agreement have been inserted for convenience only and will not be taken into consideration in the interpretation of this Agreement.
- 13.2 Any reference in this Agreement to the singular includes the plural and vice versa.
- 13.3 Any reference in this Agreement to natural persons includes legal persons and references to any gender include references to the other genders and vice versa

14 Validity

If any provision of this Agreement is found or held to be invalid or unenforceable, the validity and enforceability of all the other provisions of this Agreement will not be affected thereby.

15 Confidentiality

- 15.1 The Parties shall hold in confidence all Confidential Information received from each other and not divulge the Confidential Information to any person, including any of its employees, save for employees directly involved with the execution of this Agreement.
- 15.2 The Parties shall prevent disclosure of the Confidential Information, except as may be required by law.
- 15.3 Within six (6) months after the termination of this Agreement, for whatever reason, the recipient of Confidential Information shall return same or at the discretion of the original owner thereof, destroy such Confidential Information, and shall not retain copies, samples, or excerpts thereof.
- 15.4 It is recorded that the following information will, for the purpose of this Agreement, not be considered to be Confidential Information:
- 15.4.1 Information known to either of the Parties prior to the date that it was received from the other party; or
 - 15.4.2 Information known to the public or generally available to the public prior to the date that it was disclosed by either of the Parties to the other; or
 - 15.4.3 Information which becomes known to the public or becomes generally available to the public subsequent to the date that it was disclosed by either of the Parties to the other, through no act or failure to act on the part of the recipient of such Information; or
 - 15.4.4 Information which either of the Parties, in writing, authorizes the other to disclose.

16 Relationship

This Agreement does not constitute either of the Parties an agent or legal representative of the other for any purposes whatsoever and neither of the Parties shall be entitled to act on behalf of, or to represent the other unless duly authorised thereto in writing.

17 Dispute resolution

- 17.1 If the Parties are unable to resolve any dispute resulting from this Agreement by means of joint cooperation or discussion between the individuals directly involved with the execution of this Agreement, within one week after a dispute arises or such extended time period as the Parties may in writing allow, then such a dispute shall be submitted to the most senior executives of the Parties who shall endeavour to resolve this dispute, within five (5) calendar days after it having been referred to them.
- 17.2 Should the dispute not be resolved in the aforesaid manner, then it shall be resolved by way of arbitration in accordance with the provisions contained in this Agreement.

18 Arbitration

- 18.1 Any dispute arising from or in connection with this Agreement will be finally resolved in accordance with the rules of the Arbitration in accordance with the process defined in the Record of Agreement
- 18.2. The arbitration will be held in the region as stated in the Record of Agreement.
- 18.3. Nothing contained in this clause will preclude either Party from obtaining intermediate relief on an urgent or other basis from a court of competent jurisdiction, pending the decision of the arbitrator.
- 18.4. The existence of a dispute will not afford either Party the right to terminate or reduce the extent of any of its activities in respect of this Agreement, which are not materially affected by the dispute.

19 Domicilium

- 19.1 The Parties choose their physical addresses set out in the Record of Agreement at which documents in legal proceedings in connection with this Agreement may be served (i.e. their *domicilia citandi et executandi*):
- 19.2 Either of the Parties may change its *domicilium citandi et executandi* to another address within the same country, by way of a notice to the other party to this Agreement, provided that such a notice is received by the addressee, at least 7 (seven) calendar days prior to such a change taking effect.

20 Notices

- 20.1. Any written notice in connection with this Agreement may be addressed to a Party's address set out in the Record of Agreement.
- 20.2. The notice will be deemed to have been duly given:
- 20.2.1 seven (7) days after posting, if posted by registered post to the Party's address in terms of this sub-clause;
 - 20.2.2 on delivery, if delivered to the Party's physical address in terms of either this sub-clause or the next sub-clause dealing with service of legal documents;
 - 20.2.3 on despatch, if sent to the Party's e-mail and confirmed by registered letter posted no later than the next Business Day; unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.

20.3 A Party may change its address for this purpose by notice in writing to the other Party.

21 Force majeure

21.1 Neither of the Parties shall be liable for a failure to perform any of its obligations insofar as it proves:

21.1.1 That the failure was due to an impediment beyond its control, e.g. an act of God;

21.1.2 That it could not reasonably be expected to have taken the impediment and its effects upon the Party's ability to perform into account at the time of the conclusion of this Agreement; and

21.1.3 That it could not reasonably have avoided or overcome the impediment or at least its effects;

21.2 An impediment, as aforesaid, may result from events such as the following, this enumeration not being exhaustive;

21.2.1 War, whether declared or not, civil war, civil violence, riots and revolutions, acts of sabotage;

21.2.2 Natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning, pandemics;

21.2.3 Explosions, fires, destruction of machines, factories and any kind of installations;

21.2.4 Boycotts, strikes and lock-outs of all kinds, go-slows, occupation of factories and premises and work stoppages;

21.2.5 Acts of authority, whether lawful or unlawful, apart from acts from which the party seeking relief has assumed the risk by virtue of any other provisions of this Agreement.

21.3 For the purposes of this clause "impediment" does not include lack of authorizations, licenses, permits or approvals necessary for the performance of this Agreement and to be issued by the appropriate public authority.

21.5 Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date upon which the party seeking relief gives notice of the impediment relied upon and shall terminate upon the date upon which such impediment ceases to exist; provided that if such impediment continues for a period of more than sixty (60) days either of the Parties shall be entitled to terminate this Agreement.

22 Data Protection

22.1 Location of Client Data. Notwithstanding any other provision in this Agreement, the Client agrees that, for the Licensor and/or Distributor to provide the Services, the Client's Data may be:

22.1.1 held on a variety of systems, networks and facilities worldwide including systems and databases used by the Licensors or Distributors help desks, service desks and/or network management centres used for providing the Service/s and/or used for billing, sales, technical, commercial and/or procurement purposes;

22.1.2 located, hosted, managed, accessed or transferred worldwide; and

22.1.3 provided or transferred by the Licensor or Distributor to any Affiliated Company, Licensor, Distributor, or supplier worldwide to the extent necessary to allow that

Affiliated Company, Licensor, Distributor or supplier to perform its obligations in respect of the Service/s.

- 22.2 Process of Client Data. The Client shall advise the Distributor what Personal Data, if any, is included in the Data provided by the Client ("Client Personal Data"). Therefore:
- 22.2.1 The Licensor and Distributor shall comply with any Data Protection Laws applicable to it in its Processing of Client Personal Data under or by virtue of this Agreement.
 - 22.2.2 The Licensor and Distributor will only Process Client Personal Data to the extent necessary to provide the Services in accordance with this Agreement and will:
 - 18.2.2.1 implement and take appropriate and reasonable technical and organisational measures, in accordance with its security policies as amended from time to time, to protect Client Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access; and
 - 18.2.2.2 transfer Client Personal Data outside of the Client domicile country, including to Affiliated Company, Licensor, Distributors, or suppliers where required to provide the Services.
 - 22.2.3 The Client shall provide sufficient notice and obtain sufficient consent and authorisation, under any applicable laws, from any relevant data subject (as defined in terms of Data Protection Laws) to permit the Processing of any Client Personal Data by the licensor or Distributor, its respective Affiliated Companies, Licensor, Distributors, or suppliers as provided for in this Agreement.
- 22.3 Exemption of liability. The Client agrees that the licensor and/or Distributor, to the extent permitted by law, will not be liable for any complaint, claim or action brought by a data subject (as defined in terms of Data Protection Laws) arising from any action or omission by the Licensor and/or Distributor to the extent that such action or omission:
- 22.3.1 resulted from any failure by the Client to comply with this clause; or
 - 22.3.2 resulted from the Licensor and/or Distributor complying with any instructions of Client or acting on behalf of the Client in accordance with those instructions and the Client shall indemnify, hold harmless and defend the Licensor and/or Distributor from and against any such claims or actions brought against the Licensor or Distributor;
- 22.4 Compliance. The licensor and Distributor shall at all times strictly comply with all applicable Data Protection Laws which may be in force from time to time;
- 22.5 Warranty. The Licensor and Distributor hereby warrants, represents and undertakes that it:
- 22.5.1 shall not, at any time Process Data for any purpose other than with the express prior written consent of the Client, and to the extent necessary to provide the Services;
 - 22.5.2 shall ensure that all its systems and operations which it uses to provide the Services including all systems on which Data is Processed as part of providing the Services, shall at all times be of a minimum standard required by all applicable Data Protection Laws;
- 22.6 Identification of risks. The Licensor or Distributor shall take reasonable steps to identify all reasonably foreseeable internal and external risks posed to Data under the Licensors or

Distributor's possession or control and establish and maintain appropriate safeguards against any risks identified;

- 22.7 Discovery of Data Breach. The licensor or Distributor shall provide the Client with prompt reasonably detailed written notice in case The Licensor or Distributor discovers any Data Breach, or any actual, pending or threatened enforcement proceeding, action, notification of breach, lawsuit against the Licensor or Distributor, relating to Data. To the extent the Data Protection Laws require that an individual or authority be notified of a Data Breach, The Licensor or Distributor shall at the Client's request and subject to the Client's prior approval of the content, form, and timing, provide any notices to such an individual or governmental authority containing the information as mandated by the Data Protection Laws. The Licensor or Distributor shall provide remediation services and other reasonable assistance to individuals impacted by the Data Breach directly or through a third party as required under the Data Protection Laws, or required by governmental authorities, or agreed by the Parties in writing. Upon Client's request, the Licensor or Distributor shall cooperate and provide the Client with information about the nature, circumstances and causes of the event at issue. The Licensor or Distributor will take all necessary actions to prevent further losses and otherwise limit the consequences of the event at issue.
- 22.8 Return of Data. At any time during the term of this Agreement at the Client's written request or upon the termination or expiration of this Agreement for any reason, the Licensor and Distributor shall promptly return to the Client all copies, whether in written, electronic or other form or media, of Client Personal Data in its possession, or securely dispose of all such copies, and certify in writing to the Client that such Client Personal Data has been returned to Client or disposed of securely. The Licensor and Distributor shall comply with all reasonable directions provided by Client with respect to the return or disposal of Client Personal Data.

23 **Antibribery and Corruption**

- 23.1 The Client acknowledges that the Licensor and its Distributors are committed to eliminating all risk of bribery and corruption influence pending, money laundering and tax evasion or the facilitation hereof in its business activities and the client acknowledges the Licensors Trust Charter, a copy of which is available at our parent company Schneider Electric's website: <https://www.se.com/ww/en/about-us/sustainability/responsibility-ethics>.

The Client must immediately notify the Licensor and Distributor of any suspected, or known, breaches of Anti – Corruption Law. The Client may raise this alert through their point of contact or through the Trust Line at:

<https://www.se.com/ww/en/about-us/sustainability/responsibility-ethics/trustline>.

- 23.2 None of the Client's employees, beneficial owners, shareholders, or any other person who is involved in or will benefit from the performance of the Contract or has an interest in the Licensor or Distributor:
- 23.2.1 is a civil servant, public official, or government official;
 - 23.2.2 is an official or employee of the Licensor or Distributor or one of its affiliates; or
 - 23.2.3 has been convicted of, or otherwise been subjected to any administrative sanction or penalty for, any offence involving fraud, bribery, corruption, influence pending, money laundering, or any other criminal offence involving dishonesty as an element. The Client will immediately notify the Licensor and the Distributor if any such individuals are the subject of any investigation into any such offences.

- 23.3 Neither Party shall engage in any unlawful trade practices or any other practices that are in violation of the Anti-Corruption Laws in connection with any actions or activities associated with this Agreement or in connection with the relationship between the Parties.
- 23.4 Each Party shall ensure that neither it nor its Affiliated Company, subcontractors and agents: either directly or indirectly, seek, receive, accept, give, offer, agree or promise to give any money, facilitation payment, or other thing of value from or to anyone (including but not limited to government or corporate officials or agents) as an improper inducement or reward for or otherwise on account of favourable action or forbearance from action or the exercise of influence; or fail to establish appropriate safeguards to protect against such prohibited actions.
- 23.5 Each Party shall, upon request from the other Party, provide evidence of the steps being taken to avoid prohibited actions, including the establishment of policies, practices, and/or business controls with respect to these laws.
- 23.6 The offending Party shall indemnify, keep indemnified and hold harmless the other Party and its Affiliated Company, its directors, officers, employees, consultants, and agents from and against all losses, damages, costs (including but not limited to legal costs and disbursements) arising from or incurred by reason of the offending Party's, or any Staff's breach of the Anti-Corruption Laws.
- 23.7 The provisions of this clause as well as any other clauses in relation thereto shall survive the termination of this Agreement for any reason whatsoever.

24 Export Control and Compliance with International Trade Regulations.

The Software provided by the Licensor under this Agreement contain or may contain components and/or technologies from the United States of America ("US"), the European Union ("EU") and/or other nations. The Client acknowledges and agrees that the supply, assignment and/or usage of the products, software, services, information, other deliverables and/or the embedded technologies (hereinafter referred to as "Software") under this Agreement shall fully comply with related applicable US, EU and other national and international export control laws and/or regulations.

Unless applicable export license/s has been obtained from the relevant authority and the Licensor has approved, the Software shall not (i) be exported and/or re-exported to any destination and party (may include but not limited to an individual, group and/or legal entity) restricted by the applicable export control laws and/or regulations; or (ii) be used for those purposes and fields restricted by the applicable export control laws and/or regulations. Client also agrees that the Software will not be used either directly or indirectly in any rocket systems or unmanned air vehicles; nor be used in any nuclear weapons delivery systems; and will not be used in any design, development, production or use for any weapons which may include but not limited to chemical, biological or nuclear weapons.

If any necessary or advisable licenses, authorizations or approvals are not obtained, whether arising from inaction by any relevant government authority or otherwise, or if any such licenses, authorizations or approvals are denied or revoked, or if the applicable export control laws and/or regulations would prohibit The Licensor or Distributor from fulfilling any order, or would in the Licensor or Distributor's judgment otherwise expose The licensor and/or Distributor to a risk of liability under the applicable export control laws and/or regulations if it fulfilled the order, the Licensor and Distributor shall be excused from all obligations under such order and/or this Agreement.

25 Entire agreement and variations

- 25.1 This Agreement constitutes the whole agreement between the Parties and supersedes all prior verbal or written agreements or understandings or representations by or between the Parties regarding the subject matter of this Agreement, and the Parties will not be entitled to rely, in any dispute regarding this Agreement, on any terms, conditions or representations not expressly contained in this Agreement.
- 25.2 No variation of or addition to this Agreement will be of any force or effect unless reduced to writing and signed by or on behalf of the Parties.
- 25.3 Neither party to this Agreement has given any warranty or made any representation to the other party, other than any warranty or representation which may be expressly set out in this agreement.

26 Assignment, cession and delegation

Neither of the Parties shall be entitled to assign, cede, delegate or transfer any rights, obligations, share or interest acquired in terms of this Agreement, in whole or in part, to any other party or person without the prior written consent of the other, which consent shall not unreasonably be withheld or delayed.

27 Relaxation

No indulgence, leniency, or extension of a right, which either of the Parties may have in terms of this agreement, and which either party (“the grantor”) may grant or show to the other party, shall in any way prejudice the grantor, or preclude the grantor from exercising any of the rights that it has derived from this Agreement, or be construed as a waiver by the grantor of that right.

28 Waiver

No waiver on the part of either party to this Agreement of any rights arising from a breach of any provision of this Agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

29 Severability

In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

30 Drafting costs

Each of the Parties shall bear its own cost incurred as a result of the negotiation, drafting and finalization of this Agreement, which shall include but not be limited to all legal fees.

31 Governing law

The law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, depend on where Client is domiciled.

If Client is domiciled in:	Governing Law is:	Courts with exclusive jurisdiction are:
Australia	New South Wales, Australia	Sydney, Australia
India	India	Mumbai, India
New Zealand	New Zealand	Wellington, New Zealand
Portugal	Portugal	Lisbon, Portugal
South Africa	South Africa	Johannesburg, South Africa
United Arab Emirates	United Arab Emirates	Dubai International Financial Center Courts (DIFC)
United Kingdom	England	London, England
A Country in Africa or the Middle East, other than South Africa and the United Arab Emirates	South Africa	Johannesburg, South Africa
A Country in Asia or the Pacific region, other than Australia, India and New Zealand	Hong Kong	Hong Kong
A Country in Europe, North America, South America other than Portugal and the United Kingdom	England	London, England