

## PROFESSIONAL SERVICE AGREEMENT

This Professional Service Agreement for the Application (the “PSA”) is made and entered into by and between **RIB**, and the **Customer** as of the ordering and performance of the Professional Services to the Customer. The PSA is the supplemental agreement to the General Terms and Conditions for Application and apply solely to Professional Services (if any) and not to any other RIB product or service.

### 1. DEFINITIONS AND INTERPRETATIONS.

- 1.1. In this PSA unless the context otherwise requires the following terms shall have the following meanings, Capitalized terms used but not defined in this PSA will have the meanings provided in the General Terms and Conditions:

“**Business Day**” means a day (not being a Saturday or a Sunday) when clearing banks are open for business in the city where RIB is incorporated.

“**Change Order**” means an order to change or add to one or more of the items which form part of the Professional Services pursuant to Section 5.

“**Effective Date**” means the date defined in the Quote.

“**Deliverable**” means any product, software, programming tool, interface, design, drawing, report, document, specification, or other material to be developed created or provided by RIB during the course of or arising out of the performance of the Professional Services.

“**PSA Term**” means the period from the Effective Date as defined in the Quote.

“**Intellectual Property Rights**” means any patents, trademarks, rights in semi-conductor ship topographies, design rights, registered designs, applications for any of the foregoing, copyright, database rights, know-how and other similar rights or obligations whether registrable or not in any country.

“**Price**” means the price of the relevant Deliverables and Professional Services as specified in the Quote.

“**Professional Services**” means the services set out in Quote and exclude Hosting Services.

“**Software License**” means any written software license entered into between the parties.

“**Warranty Period**” means whichever is the lesser of the period if any referred to in Quote and the period referred to in Section 9.4.

- 1.2. Words in the singular shall include the plural and vice versa.
- 1.3. The headings in this PSA are for convenience only and shall not affect the construction of this PSA.
- 1.4. Any undertaking by RIB to do or not to do any act or thing shall be deemed to include an undertaking to procure or not to permit or suffer the doing of that act or thing.

### 2. SCOPE.

- 2.1. This PSA contains the provisions which shall apply to the ordering and performance of the Professional Services to the Customer. RIB shall supply the Professional Services to the Customer pursuant to Quote issued in accordance with this PSA.

2.2 Unless otherwise stated herein, in the event of any conflict between the provisions of this PSA and the terms of General Terms and Conditions the provision of the General Terms and Conditions shall prevail.

### 3. PERFORMANCE

- 3.1. RIB shall provide to the Customer the Professional Services in the manner and at the service levels described in Quote.
- 3.2. RIB shall provide sufficient numbers of suitably skilled, experienced, and competent persons to perform the Professional Services.
- 3.3. RIB shall maintain all reports, records and other documents relating to the performance of the Professional Services received or generated by it which shall be kept separate from documents not related to the Professional Services. RIB shall allow the Customer access to such documents related to the Professional Services at all reasonable times and upon reasonable notice and shall provide the Customer with copies of such documents and other information related to the Professional Services as reasonably requested by the Customer.

### 4. [Intentionally Left Blank]

### 5. CHANGE ORDER

- 5.1. Either party may at any time before completion of the Professional Services request a Change Order. Such request shall state full particulars of the proposed change.
- 5.2. No Change Order shall be commenced unless and until the parties have agreed in writing on the amendment and a costing and basis of payment for the work comprised in the Change Order.

5.3. If the parties fail to agree to a Change Order within a reasonable time of a request being made, the parties shall continue with the performance of this PSA save that any timetable in Quote for the performance of the Professional Services shall be amended to take into account any delay caused by the parties' consideration of the Change Order.

**6. DELAYS**

- 6.1. Time shall not be of the essence in relation to the performance of the Professional Services or any part of them.
- 6.2. In the event that RIB is prevented or delayed from performing its obligations under this PSA by any act or omission of the Customer, its personnel and/or subcontractors (save where force majeure applies), the Customer shall grant to RIB an extension of time for performance of the Professional Services to take into account the delay provided that such extension shall not exceed the period of the delay. RIB shall be entitled to charge the Customer for any reasonable costs incurred directly as a result of and associated with the delay, provided that RIB has first notified the Customer in writing, as soon as it become aware of a delay, of the likelihood of costs being incurred by RIB as a direct result of such delay by the Customer and the level of such costs, and has first used all reasonable endeavors to mitigate such costs.

**7. PAYMENT**

- 7.1. The Customer shall pay to RIB the fees for the Professional Services in accordance with the Quote.
- 7.2. Where the fees payable to RIB are calculated according to hourly charge-out rates, RIB shall keep accurate records of the time spent by its employees or contractors in providing the Professional Services and shall allow the Customer to inspect such records at all reasonable times on written request.
- 7.3. The Customer shall pay all invoices within thirty (30) days of receipt unless otherwise stated in the Quote.
- 7.4. All sums payable under this PSA unless otherwise stated are exclusive of any duties or taxes and any duties or taxes payable in respect of such sums shall be payable in addition to such sums.
- 7.5. If any sum payable to the Licensor under this Agreement is in arrears for more than 30 days after the due date, the Licensor reserves the right without prejudice to any other right or remedy to:
- 7.5.1. charge interest on such overdue sum on a day to day at the rate of three percent (3 %) above the HIBOR (Hong Kong Inter Bank Lending Rate) applicable per annum; and/or
- 7.5.2. suspend the provision of the Maintenance Services on 15 days' prior written notice.

**8. PROJECT CO-ORDINATION**

- 8.1. The parties shall each appoint a representative who shall have authority to take all necessary decisions concerning the performance of this PSA. The parties hereby agree that their representatives shall meet on a quarterly basis from the Effective Date to discuss the progress of the Professional Services.
- 8.2. At each review meeting the parties shall discuss and review, amongst other things and without limitation, the performance of RIB in the provision of the Professional Services and the overall working relationship between the Customer and RIB. Each party shall use reasonable endeavors to resolve in a timely manner any issues that are raised by the other party in relation to this PSA.

**9. WARRANTIES**

- 9.1. RIB represents and warrants to the Customer that the Deliverables:
- 9.1.1. Will be of satisfactory quality and fit for any purpose held out by RIB or made known to RIB in writing by the Customer as part of the provisions of Quote.
- 9.1.2. Will be free from material defects in design, material, workmanship, and performance and will conform to their functional specification for the Warranty Period.
- 9.1.3. Will not contain any computer viruses, Trojan horses or similar destructive, disruptive or nuisance programs but so that such representations and warranties shall not extend to any contamination by the Customer or any third party from the date of delivery to the Customer; and
- 9.2. RIB does not warrant that any software in any Deliverable will operate without error or interruption.
- 9.3. RIB represents and warrants to the Customer that the Professional Services will be performed by appropriately qualified and experienced personnel, with due care and skill and to such standard of quality as it is reasonable for the Customer to expect.
- 9.4. RIB will have no liability or obligation under the warranties given in this Section 9 unless it has received written notice from the Customer of any non-conformance with the Warranty within 90 days from the date of Approval or where Approval is not required, from the date of delivery to the Customer.
- 9.5. RIB will not be liable for any failure of any Deliverable forming part of the Professional Services:
- 9.5.1. To provide any facility or function not described in Quote; or

9.5.2. Attributable to any modification (whether by alteration, deletion, addition or otherwise) to the relevant Deliverable by persons other than RIB.

9.6. If a problem is found upon investigation not to be RIB's responsibility under the provisions of this Section 9, RIB may charge the Customer immediately for all reasonable costs and expenses incurred by RIB in the course of or in connection with such investigation.

9.7. The representations and warranties under this Section 9 shall be subject to the limitations and exclusions of liability contained in this Section and Section 13.

#### **10. INTELLECTUAL PROPERTY RIGHTS**

10.1. The Customer acknowledges and agrees that the Intellectual Property Rights in the Deliverables shall vest in and be the exclusive property of RIB.

10.2. The Customer acknowledges that no license is granted and no transfer, assignment or license of rights shall be deemed to have arisen or implied in any Intellectual Property Rights of RIB save that the Customer is hereby licensed to use the Intellectual Property Rights subsisting in any materials submitted to the Customer as part of the Professional Services. This license does not include the right to grant sub-licenses.

#### **11. TERM AND TERMINATION**

11.1. This PSA shall be deemed to have commenced on the Effective Date and shall continue for the PSA Term.

11.2. Either party may terminate this PSA immediately by written notice if:

11.2.1. the other party is in breach of any provision of this PSA and, if such breach is capable of remedy, fails to remedy such breach within fourteen (14) day of written notice to remedy the same.

11.2.2. a liquidator (other than for the purpose of solvent amalgamation or reconstruction), administrative receiver, administrator or receiver is appointed in respect of the whole or part of the assets and/or undertaking of the other party or the other party enters into an arrangement or composition with its creditors, or if it becomes unable to pay its debts, or other circumstances arise which entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to make a winding up order in relation to the other party.

11.2.3. The other party ceases to carry on business.

11.3. Termination shall be without prejudice to any right or remedy accrued or accruing prior to termination.

#### **12. DELIVERY OF DOCUMENTS ON TERMINATION**

12.1. Each party shall upon the termination of this PSA immediately deliver up to the other all correspondence, documents, specifications, papers, and property belonging to the other.

#### **13. LIMITATION OF LIABILITY**

13.1. PROFESSIONAL SERVICES SHALL BE SUBJECT TO THE LIMITATION OF LIABILITY PROVISION AS SET FORTH IN THE GENERAL TERMS AND CONDITIONS, EXCEPT THAT THE FOLLOWING SHALL REPLACE AND SUPERSEDE THE SECTION WITH RESPECT TO THE LIABILITY CAP AS SET FORTH IN THE GENERAL TERMS AND CONDITIONS: FOR ANY PROFESSIONAL SERVICES PROVIDED UNDER THE PSA, UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM SHALL THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY (OR THEIR RESPECTIVE AFFILIATES OR RIB'S SUBCONTRACTORS) TO THE OTHER OR ANY OTHER PERSON OR ENTITY UNDER OR IN CONNECTION WITH THE PSA, EXCEED THE TOTAL FEES PAID FOR THE APPLICABLE PROFESSIONAL SERVICE UNDER THE RELEVANT QUOTE OR, IN THE CASE OF PROFESSIONAL SERVICES WHICH ARE SUBSCRIPTION BASED OR BILLED ON A MONTHLY OR ANNUAL BASIS, THE FEES PAID IN THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE INCIDENT GIVING RISE TO THE LIABILITY.

#### **14. NON-SOLICITATION OF EMPLOYEES**

14.1. During the PSA Term and for a period of six (6) months thereafter neither party shall directly or indirectly solicit, seek or procure the services of an employee of the other party who was at the time of such action directly involved in the supply of any of the Professional Services without the prior consent of and upon such terms as specified by the other party.

14.2. In the event of any breach of Section 14.1 by either party, the party in breach shall promptly pay to the other party as liquidated damages a sum equal to fifty per cent (50%) of the annual remuneration payable as at the date immediately prior to the breach by the party not in breach to the person so hired plus all recruitment agency costs incurred in appointing a replacement for such person.