

# Rimini Street Terms Of Service

The Parties agree as follows:

## 1. Structure

These Terms of Service set out the general legal terms and conditions that govern the Agreement. The commercial terms for the Services provided to Client under the Agreement are set out in the Order while service descriptions (including scope, assumptions and Client dependencies) are set out in applicable Service Schedules. Capitalized terms used but not defined in these Terms of Service have the meanings given in the Order and Service Schedule(s). Notwithstanding anything to the contrary: (a) the TOS that apply in respect of an Order are the version of the TOS available at [www.riministreet.com/legal](http://www.riministreet.com/legal) current as at the Order Effective Date (**Applicable TOS**); and (b) the Applicable TOS will continue to apply in respect of applicable Orders notwithstanding that Rimini Street subsequently publishes updated versions of the TOS at [www.riministreet.com/legal](http://www.riministreet.com/legal).

## 2. Services

Rimini Street shall provide Client with the Services listed in the Order, as further described in applicable Service Schedule(s) incorporated by reference into such Order. These Terms of Service shall govern all Services set out in the Order during the relevant Support Period(s).

## 3. Termination

A Party may terminate the Agreement in respect of affected Services for cause if (a) the other Party has breached any material term or condition of the Agreement and (b) such breach is not cured within thirty (30) days after written notice of breach to the breaching Party. If Client exercises a valid termination for cause pursuant to this section, Client shall be entitled to a pro-rated refund for any prepaid Services not received after the effective date of the termination, calculated using a daily proration and measured from the effective date of the termination through the end of the prepaid period.

## 4. Confidentiality

**A. Confidential Information.** During the course of the Parties' relationship, a Party may have access to the other Party's Confidential Information. The term "**Confidential Information**" shall mean any information, technical data, or know-how, including, without limitation, information which relates to products, services, customers, personnel, markets, research, intellectual property, inventions, processes, designs, marketing, future business strategies, trade secrets, finances, and other nonpublic information of the disclosing Party, including the details of the Agreement.

**B. Non-Confidential Information.** Confidential Information does not include information that the receiving Party can establish by legally sufficient evidence: (i) was in the possession of, or rightfully known by, the receiving Party without a confidentiality obligation prior to its disclosure by the disclosing Party; (ii) is, or becomes, generally known to the public without breach of the Agreement; (iii) is obtained by the receiving Party in good faith from a third party without any communicated confidentiality obligation; (iv) is independently developed by the receiving Party without use of the disclosing Party's Confidential Information; or (v) is authorized in writing by the disclosing Party to be released from the confidentiality obligations of these Terms of Service.

**C. Non-Disclosure.** The receiving Party shall use the disclosing Party's Confidential Information only for purposes of exercising its rights and fulfilling its obligations under the Agreement and shall not disclose it to any person or entity other than its or its affiliates' employees, directors, contractors, consultants, service providers, counsel or agents who have a reasonable need to know such information and who are bound by at least equivalent obligations of confidentiality and non-disclosure as those under these Terms of Service (such recipients being "**Authorized Recipients**"). The receiving Party is responsible for the compliance of its Authorized Recipients with the confidentiality and non-disclosure obligations of these Terms of Service. The receiving Party will use the same standard of care to protect the disclosing Party's Confidential Information as it uses to protect its own similar confidential and proprietary information, but no less than reasonable care.

Notwithstanding the non-disclosure requirements of this section, Client authorizes Rimini Street to refer to Client as a customer and use Client's name and logo in such references. Each Party agrees that damages may not be adequate to protect the other Party in the event of an actual or threatened breach of the confidentiality and nondisclosure obligations of these Terms of Service, and that either Party may take equitable action, including seeking injunctive relief, to enforce such obligations. The confidentiality and non-disclosure obligations under these Terms of Service shall survive expiration or termination of the last effective Support Period for Services issued under the Order by two (2) years.

**D. Legal Disclosure.** If it becomes necessary for the receiving Party to disclose any Confidential Information to enforce the Agreement or comply with a judicial or administrative proceeding (or equivalent process), the receiving Party shall, to the extent legally permitted, provide the disclosing Party with prompt written notice so the disclosing Party may, at the disclosing Party's expense, seek a protective order or other appropriate remedy to protect such information. If such protective order or other remedy is not obtained, the receiving Party will not be in breach of the Agreement by furnishing such Confidential Information as required.

## 5. Effective Performance of Services

Rimini Street shall perform the Services in a timely manner in accordance with each applicable Service Schedule using qualified personnel. Client shall provide a primary point of contact for each Service Schedule who shall be Client's authorized representative to work with Rimini Street regarding the Services. Client shall provide qualified personnel capable of: (i) making necessary and timely decisions on behalf of Client; (ii) implementing Rimini Street's advice and recommendations; (iii) facilitating the testing of any deliverables provided by Rimini Street or the original software vendor; and (iv) and customizing, installing, and configuring deliverables provided by Rimini Street or the original software vendor. Client shall provide all information reasonably required for Rimini Street to perform the Services and shall ensure that such information is accurate in all material respects. Upon execution of the Order, Client shall timely provide Rimini Street with remote access for performance of the Services, without requiring Rimini Street to comply with additional contractual or policy requirements not already contained in the Agreement. Client agrees that Rimini Street's ability to perform the Services is materially dependent on Client's timely performance of its own obligations as described herein. Except as otherwise specified in a Service Schedule, the Parties agree that all Services will be rendered in the English language only. Client shall provide access to Client's location(s) as reasonably requested by Rimini Street for effective performance of Services, as well as reasonable equipment, office support, and a suitable environment for Rimini Street representatives to conduct work and meet with Client personnel as necessary. If Client requests that any Services be performed at a location other than Rimini Street's own locations, Rimini Street will seek pre-approval from Client before incurring any reasonable travel and living expenses, for which Client agrees to reimburse Rimini Street within twenty (20) days after Rimini Street provides Client with reasonable and appropriate expense documentation.

## 6. Work Product

Any expression of Rimini Street's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, and other technical information, together with any programs, enhancements, source, and object code that are not derivative works of Client or Client's licensor(s), shall be deemed Rimini Street work product ("**Rimini Street Work Product**"). Rimini Street Work Product shall not include any intellectual property owned by Client or a third party unless Rimini Street or Client has procured proper permission for the inclusion of such third party intellectual property. Subject to the foregoing, as between Rimini Street and the Client, all intellectual property rights related to Rimini Street, Rimini Street Work Product, or the Services, in whole or in part, are and shall remain the exclusive property of Rimini Street.

Rimini Street hereby grants to Client a perpetual, worldwide, irrevocable (except for cause due to breach or license misuse), royalty-free, and nonexclusive license to use the Rimini Street Work Product that is incorporated into the Services, in accordance with the terms of the Agreement, for Client's internal business purposes. Client is not licensed to sell, sublicense, distribute, rent, lease, transfer, share, or assign the Rimini Street Work Product to any other person, entity, affiliate, beneficiary, or contractor, regardless of their relationship to Client, except as expressly permitted by the Agreement. To the extent Client acquires any rights in the Rimini Street Work Product by operation of law despite the terms of the Agreement, Client hereby assigns those rights to Rimini Street and agrees to take such further actions as Rimini Street may reasonably request to give effect to this section.

## **7. Use by Client's Agents and Affiliates**

Client may permit its Authorized Recipients to access or use the Rimini Street Work Product for the sole purpose of supporting Client's own use as permitted under these Terms of Service, provided that Client shall be liable to Rimini Street for any access or use of the Rimini Street Work Product by Client's Authorized Recipients that violates these Terms of Service. In addition, the Rimini Street Work Product licensed to Client, and the Services provided to Client, under the Agreement may be used by, and for the benefit of, Client's Affiliates (as defined below) to the same extent Client is allowed to use and benefit from such Services, provided that: (i) each such Affiliate has the right to use the Covered Products for each Service pursuant to Client's original vendor license agreement(s) for such Covered Products; (ii) such Affiliates' use of, or benefit from, the Rimini Street Work Product and Services shall be subject to all applicable terms, conditions and limitations of the Agreement; (iii) Client shall be responsible for such Affiliates' compliance with the terms, conditions and limitations of the Agreement, and shall indemnify, defend and hold harmless Rimini Street for any and all claims, damages, liability and expenses, including attorneys' fees and costs, sought by any such Affiliate that exceeds Rimini Street's agreed upon liability or obligations under these Terms of Service; and (iv) such Affiliates' use of the Rimini Street Work Product and Services is restricted solely to use with Client's Covered Products of each applicable Service. "Affiliates" means any corporate entity that, directly or indirectly, controls or is controlled by, or is under common control with, Client.

## **8. Indemnity**

Rimini Street shall indemnify, defend or, at its sole option, settle, and hold Client harmless against any third party claims that the Rimini Street Work Product or Services delivered to Client pursuant to the Agreement infringe any third party intellectual property rights, except to the extent: (i) the alleged infringement is based on information, software or other material (other than the Covered Products for the relevant Service) not furnished by Rimini Street, or is the result of a modification made by anyone other than Rimini Street; (ii) such claim would have been avoided but for the combination or use of the Rimini Street Work Product, the Services, or any portion thereof, with other products, processes or materials (other than the Covered Products for the relevant Service) where the alleged infringement relates to such combination; (iii) Client uses the Rimini Street Work Product or Services in a manner that is inconsistent with, or contrary to, the Agreement or any applicable license agreement between Client and a third party; or (iv) Client continues any allegedly infringing activity after being provided with modifications that would have avoided such alleged infringement. In the event of a claim, Client shall provide Rimini Street with prompt written notice, as well as information, reasonable assistance, and the sole authority to defend or settle such claim. In addition to providing any indemnification owed to Client, Rimini Street may, in its reasonable judgment, and at its option and expense, obtain for Client the right to continue using the Rimini Street Work Product or Services, replace or modify the Rimini Street Work Product or Services to render such Rimini Street Work Product or Services non-infringing, or terminate the right to use the Rimini Street Work Product in question and make all reasonable efforts to provide Client with a non-infringing replacement with equivalent functionality at no additional cost to Client. Client shall have the right, at its option, to participate in the settlement or defense of the claim, with its own counsel and at its own expense, but Rimini Street will have the exclusive authority and control of the settlement or defense. Rimini Street shall not enter into any settlement that imposes any legal liability or financial obligation on Client without Client's prior written consent. THIS SECTION STATES THE ENTIRE LIABILITY AND EXCLUSIVE OBLIGATIONS OF RIMINI STREET WITH RESPECT TO ANY ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF OR IN CONNECTION WITH THE RIMINI STREET WORK PRODUCT OR THE SERVICES.

## **9. Limited Warranty**

Each Party warrants that it has full legal authority to enter into the Agreement and perform all its obligations, and that no third party rights or permissions are required in order for it to do so. Client warrants that it is the valid license holder for the Covered Products to which Rimini Street's Services relate. Rimini Street warrants that the Services will be performed consistent with generally accepted industry standards. Client must provide written notice to Rimini Street within thirty (30) days of the completion of the Services alleged to have been performed inconsistent with this warranty. Client's sole remedy and Rimini Street's sole obligation in the event of a breach of this warranty is, at Rimini Street's option, to re-perform the Services or refund the amounts paid by Client for the Services that were not as warranted. EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, THE PARTIES DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR USE, AND NON-INFRINGEMENT.

## 10. Limitation of Liability

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, HOWEVER ARISING OR ALLEGED, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF, RELATING TO OR IN ANY WAY CONNECTED WITH THE RELATIONSHIP OF THE PARTIES, THE AGREEMENT, ITS NEGOTIATION OR TERMINATION, OR THE PROVISION OR NONPROVISION OF SERVICES PURSUANT TO ANY SERVICE SCHEDULE (WHETHER IN CONTRACT OR TORT) SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES RECEIVED BY RIMINI STREET FROM CLIENT IN RESPECT OF THE APPLICABLE SERVICE FOR THE SUPPORT PERIOD YEAR IN WHICH THE ALLEGED LIABILITY AROSE. THE PARTIES EXPRESSLY AGREE TO THIS ALLOCATION OF LIABILITY.

## 11. Payment for Services

Client shall make payments to Rimini Street in accordance with the payment schedule set forth in the Order, together with any applicable sales, use, value-added tax (VAT), or any other taxes applicable to the Services, however designated, other than those based on Rimini Street's net income ("**Payments**"). Fees listed in the Order are exclusive of any value-added tax (VAT) or other applicable taxes or duties. All past-due amounts not subject to a good faith dispute shall bear interest at the lesser of one and one-half percent (1.5%) per month or the highest interest rate allowable under applicable law. Except as otherwise expressly provided, Payments made by Client are non-refundable and shall be made without set-off or counterclaim. If any invoiced Payments are more than fifteen (15) days past due (beyond the due date already provided under the payment schedule of the Order), Rimini Street, in its sole discretion and not in lieu of any other remedy, may cease providing Services until such time as Rimini Street has received payment from Client for all invoiced and past-due Payments. If Rimini Street determines that any applicable tax or duty should be included in the invoice and Client requests that such tax or duty not be included, Client shall provide a tax exemption letter or its functional equivalent in a form reasonably acceptable to Rimini Street prior to invoicing or, if such letter is not provided prior to invoicing, pay such tax or duty and seek a refund from the relevant taxing authority on Client's own behalf at a later date.

## 12. Amendments

All amendments to the Agreement must be in writing and executed by authorized representatives of each Party. No purchase order or other ordering document that purports to modify or supplement the terms of the Agreement shall be of any legal effect, and all such proposed modifications or supplements are objected to and deemed material. In the event of a conflict in terms between any contract document and one or more of its amendments, the order of precedence shall be from the most recently properly executed amendment backward to the original contract document.

## 13. Notice

All notices shall be in writing and sent by United States mail with return receipt, registered mail, overnight mail, or well-known courier service, delivered to the addresses indicated below (or such other address as either Party may provide in writing to the other Party at least ten (10) business days prior to the date of any notice provided hereunder), unless otherwise expressly provided in the Agreement. Notices shall be deemed to have been provided as required by this Section on the date of delivery as shown on the receipt evidencing delivery of the notice.

For Rimini Street:

Rimini Street, Inc.  
Attn: Legal Department  
7251 West Lake Mead Boulevard  
Suite 300  
Las Vegas, Nevada 89128

For Client:

Address details as per the Order  
Attn: Legal Department

## **14. Force Majeure**

Each Party's failure to perform in a timely manner shall be excused to the extent caused by conditions beyond the reasonable control of the affected Party and which could not have been avoided by reasonable diligence. Such conditions may include but are not limited to natural disaster, fire, accidents, actions or decrees of governmental bodies, Internet or other communication line failure not the fault of the affected Party, strikes, acts of God, wars (declared and undeclared), acts of terrorism, riots, embargoes, and civil insurrection, but shall not include a lack of funds or insufficiency of resources caused by lack of funds. The Party affected shall immediately give notice to the other Party of such delay and shall resume timely performance as soon as such condition is terminated. If the period of force majeure exceeds thirty (30) days from the receipt of notice, the non-affected Party may terminate the Agreement in respect of the affected Services without being in breach of the Agreement, and Client shall be entitled to a pro-rated refund for any prepaid Services not received after the effective date of the termination, calculated using a daily proration and measured from the effective date of the termination through the end of the prepaid period.

## **15. Independent Contractor Status**

Rimini Street performs its obligations pursuant to the Agreement as an independent contractor, not as an employee of Client. Nothing in the Agreement is intended to create or be construed as the existence of a partnership, joint venture, or general agency relationship between the Parties.

## **16. Legal Interpretation**

No provision of the Agreement shall be construed against either Party by virtue of the fact of having drafted such provision. . If any provision of the Agreement is held to be invalid, illegal or unenforceable, its invalidity shall not affect the remainder of the Agreement, and to the maximum extent possible, such provision shall be interpreted to give effect to the original intent of the Parties while meeting the minimum requirements for validity, legality, and enforceability. The failure by a Party to exercise any right hereunder shall not operate as a waiver of such Party's right to exercise such right or any other right in the future. Except as otherwise specifically stated herein, remedies shall be cumulative and there shall be no obligation to exercise a particular remedy.

## **17. General**

The Agreement shall be governed by the laws of the State of Nevada, United States of America, without regard to the choice of law principles of any jurisdiction. Exclusive jurisdiction and venue shall be in Las Vegas, Nevada, United States of America, and each Party waives any objection to the adjudication of disputes in that forum. Except an action for breach of Rimini Street's proprietary rights in the Rimini Street Work Product, no action, regardless of form, arising out of the Agreement may be brought by either Party more than one year after the cause of action accrued. The Agreement constitutes the entire agreement between the Parties, and replaces and supersedes any prior verbal or written understandings, proposals, quotations, communications, or representations between the Parties relating to the subject matter of the Agreement. Except as otherwise expressly provided, nothing in the Agreement creates any rights, obligations, or benefits directly or indirectly to any non-Party. Neither Party shall assign or transfer the Agreement, nor its interest, rights or responsibilities under the Agreement, except with written consent of the other Party, provided that any assignment by operation of law in the context of the sale of substantially all of a party's stock or assets shall not constitute an assignment for purposes of this prohibition. The Order may be signed in counterparts, which together shall be deemed one instrument, and may be signed and delivered electronically.