# Responsiv General Terms and Conditions

*for the provision by Responsiv Solutions Limited of all* Responsiv Software, including embedded and stand-alone third-party software, including Responsiv *Unity, and Responsiv Digital products.*

Part number **RL000G7 v1.0**

August 2023 Edition

*This document supersedes all versions and editions published prior to August 2023 of the Responsiv General Terms and Conditions*

responsiv

simple · effective · distinctive

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These general terms and conditions apply to all Agreements, for any product or service Responsiv offers, and should be read with signed Agreement and such other Terms and Conditions referenced In the Agreement, together which will make the full extent of the contractual agreement by the parties.

If there is a conflict between the terms of any of the documents that comprise this Agreement, the documents will prevail in the following order: (i) Offer (ii) the Product Entitlement, (iii) the specific service or product terms and conditions, (Iv) these General Terms and Conditions or the (v) AUP; provided, however, that for Partner Solutions, as between Customer and the Cloud Partner, the Partner Terms will prevail over any of the terms of any of the documents that comprise this Agreement. Prevailing terms will be construed as narrowly as possible to resolve the conflict while preserving as much of the non-conflicting terms as possible, including preserving non-conflicting provisions within the same paragraph, section, or sub-section.

## 1 DEFINITIONS

These Definitions apply across all Responsiv Terms and Conditions, Agreements or Transaction documents, except where a document has a specific definition that Is different, in which case such specific definition will apply for that document only.

**Acceptable Use Policy or AUP** means the policy on use of any Service or Solution Including that outlined Clause 15 of TC-RL0002O (Aug2023) Terms and Conditions for use of Responsiv Cloud as defined later in this section.

**Activation Instructions** means any instructions, user IDs, software license keys or passwords that Responsiv or the applicable Cloud Partner provides you to enable you to activate or access a specific Solution.

**Agreement or This Agreement** means the combination of a Transaction Document (TD), these General and other referred to Terms and conditions, including but not limited to Agreement (Scope Of Work), Term Agreement, Software Agreement, Product Entitlement, Offer, Acceptable Use Policy (AUP) or License. It is in essence a statement agreed between the parties setting out the Products and Services to be provided by Us to You.

**Conditions** means the terms and conditions set out in this document as well as all other terms and conditions, as published on the Responsiv website.

**Confidential Information** means information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of either party, trade secrets including, without limitation, technical data and know-how relating to the business of either party or any of their suppliers, customers, agents, distributors, shareholders, management or business contacts, including in particular (by way of illustration only and without limitation) business plans, details of suppliers, customers, pricing schemes, pricing, terms of business, strategic intentions, company marketing plans, sales forecasts, financial details, regulatory results, employee details, invention details, intellectual property, product plans, activation Instructions, audit and security reports and designs and including (but not limited to) information created, developed, received or obtained in connection with a Contract, whether or not such information (if in anything other than oral form) is marked confidential.

**Consent** means any freely given, specific, informed, and unambiguous indication of his or her wishes by which the data subject, either by a statement or by a clear affirmative action**,** signifies a Contract authorising personal data relating to them being processed.

**Contract** means the contract between Us and You consisting of an Agreement and these Conditions, and any other document(s) (if any) incorporated by reference and/or notified in writing by Us to You.

**Customer Content** means any information or data provided by you or your End Users in connection with your or your End Users' use of the Solution, License, Product or Service, including any text, software, music, sound, photographs, graphics, video, messages, files, attachments, or other materials transmitted to us or stored or used on the Solution.

**Defined Outcome Agreement** means Any Agreement drafted with a specific goal or outcome as defined in the Agreement, and that is not based on a time and material or project milestone deliverable bases.

**Dependencies** means including but not limited to interaction with or dependency on third party code and scripts, rebuilds of file systems, operating system patches and upgrades, patch levels, the need for host or network recovery, the availability of light, power, air conditioning and utilities, the availability of hardware and peripherals in good workable condition.

**Deliverables** means any specific good or service outcome that is to be produced by Us through the provision of the Services.

**End User** means each individual or entity that Customer has authorized to access and use a Solution, including any individual or entity that purchases a Customer Solution.

**Entitlement** means the Product Entitlement, A transaction document that outlines the details of the usage or service rights under an Agreement between Responsiv and a Customer.

**Intellectual Property or Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**License** means any license to use or procure specified software as outlined in an Agreement or an Entitlement.

**Product Entitlement** means (i) a statement of work, Product Description, Product Entitlement or other agreement that references this Agreement or Cloud Partner Terms or (ii) a specification sheet or online description referenced in an Order Form.

**Responsiv, us, we or our** means Responsiv Solutions Ltd of 9 The Courtyard, Eastern Road, Bracknell, Berkshire, RG12 2XB; Company number 09592407, on behalf of itself and its suppliers and licensors.

**Services** means all services performed by us, a Cloud Partner, or any other Responsiv partner or a combination thereof as described in one or more Product Entitlements.

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**Software** means any software, library, utility, tool or other computer or program code, in object (binary) or source-code form, as well as the related documentation, provided by us in connection with a Solution or License. Software includes software locally installed on your systems and software accessed through the Internet or by other remote means including websites, portals, and cloud-based solutions to utilize a Solution in accordance with this Agreement.

**Solution** means the combination of the Services performed and Software provided by us or our Cloud or other Partner to you, pursuant to a Product Entitlement. Solutions include any Partner Solutions. Your purchase of the Solution is solely for your internal business use and may not be resold.

**Term Agreement** means a statement agreed between the parties setting out the Services to be provided by Us to You that in total define Our responsibilities to You for delivery of Assistance services over the term.

**Third-Party Products** means any non-Responsiv, or non-Cloud Partner software or services provided, made available or otherwise used in connection with the Solution, including any Customer Solution or any other Customer or third-party provided software, hardware, or services.

**Trade Secret** means any Responsiv or Cloud Partner information not commonly known or available to the public, which (i) derives economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

**Transaction Document** means any document that needs a signature from both or either party and Includes but Is not limited to, the Offer, Scope Of Work (SOW), Product Entitlement, Purchase Order from Customer, Term Agreement, Software Agreement, Acceptable Use Policy (AU) or License that Indicates the commercial, parties rights and transaction terms and conditions the parties agree to be bound by.

**You, Your or Customer** means the end-user entity that you represent, and which may be further identified in the applicable Product Entitlement, Order Form, End User Acknowledgment Form or License and includes any of your affiliates that expressly agree to, or are otherwise legally bound by, this Agreement. This would Include any reference to Licensee (the organization that receives a license to use) or client.

**VAT** means valued added tax chargeable under English law for the time being and any similar additional tax.

Specific References to documents mean the following in any Responsiv document and the current version will always be the version published to the Responsiv website (www.resposniv.co.uk/legal/):

**General Terms and Conditions**, means this document referenced as TC-RL000G7 Responsiv General Terms and Conditions as revised from time to time.

**Responsiv Software Product License** means the document entitled Responsive Software Product License and referenced as TC-RL000CQ Responsiv Software Product License as revised from time to time.

**Terms and Conditions for use of Responsiv Cloud**, means the document referenced as TC-RL0002O as amended from time to time.

**Terms and Conditions for Responsiv Consulting and Support Services**, means the document referenced as TC-RL0004Q Terms and Conditions for Responsiv Consulting Services as amended from time to time.

**Data Processing Addendum or DPA** means the document referenced as TC-RL000CQ Responsiv Data Processing Addendum (DPA) as amended from time to time. **Transaction Document** means the document that outlines the details of the agreement between Customer and Responsiv, and that Is signed by the parties, and Includes (I) the offer, (II) the Product Entitlement and (III) the product description.

## 2 FEES, COSTS AND PAYMENT

2.1 Responsiv may vary any Fee (including, without limitation, annual Support and Subscription Fees) from time to time.

2.2 Time for payment shall be of the essence and no payment shall be deemed to have been received by Responsiv until we have received cleared funds.

2.3 The Customer shall make all payments due under the Confirmation without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise (other than deduction or withholding of tax as required by law).

2.4 If any authority imposes on the Program, Product or Service, a duty, tax, levy, or fee, then the Customer agrees to pay that amount, as specified in an invoice, or supply exemption documentation. Customer is responsible for any personal property taxes for the Program from the date that Customer obtains it. If any authority imposes a customs duty, tax, levy, or fee for the import into or the export, transfer, access, or use of the Program outside the country in which the original Customer was granted the license, then Customer agrees that it is responsible for, and will pay, any amount imposed.

2.5 If you purchased a Product Entitlement (Solution) through a reseller, the terms, and conditions of sale (including pricing) for the purchase will be as agreed between you and the reseller. This clause applies to direct sales only.

2.6 We will charge amounts for Solutions as set forth in the applicable Product Entitlement or Offer.

2.6.1 Charges will start on the Activation Date or any other specific date in these documents.

2.6.2 Quoted prices will remain in effect only until the expiration date of the quote. All orders are subject to our acceptance. The number of systems, units (mailboxes, recipients, minutes, etc.) and End Users for which you have purchased entitlement is indicated on the Offer.

2.6.3 Usage more than these numbers or for a period longer than the Term will result in Overage costs. The additional costs per billing period will be determined in accordance with the Overage charges defined in the original Offer or Product Entitlement.

2.6.4 If no Overage charge is defined in the Offer or Product Entitlement, then the default Overage charge will apply and is defined as 130% of the current list price for the Product without the benefit of any discounts or credits.

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2.6.5 Responsiv does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement, Offer, or Product Entitlement. If Customer wishes to increase its Authorized Use, Customer must notify Responsiv in advance and pay any applicable charges.

2.7 We may, without prejudice to any other rights We may have, set off any liability of You to Us against any liability of Us to You whether under the attached or any other Agreement.

2.8 Invoices are due and payable within 15 days from the invoice date.

2.9 Responsiv reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998, as amended from time to time. Late payment fees are recalculated every 30 days based on your current outstanding balance, which may include any previously accrued and unpaid late payment fees.

2.10 Customer will pay all reasonable legal fees associated with collection of overdue amounts.

## 3 TERMINATION

3.1 The Agreement (including a Licence, Support Agreement, Service Agreement or any other Agreement contents) may be terminated Immediately on notice without liability If:

3.1.1 You fail to pay any amount due under the Agreement on the due date for payment.

3.1.2 You are overdue on your payment obligations for 30 days or more.

3.1.3 You commit a material breach of any other term of the Agreement which breach is irremediable or (if such breach is remediable) You fail to remedy that breach within a period of fourteen (14) days after being notified in writing to do so.

3.1.4 You repeatedly breach any of these Condition or any other term of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with You having the intention or ability to give effect to the terms of the Agreement.

3.1.5 You suspend, or threaten to suspend, payment of Your debts or are unable to pay Your debts as they fall due, or You admit inability to pay Your debts or are deemed unable to pay Your debts or suffer and Insolvency Event, within the meaning of section 123 of the Insolvency Act 1986.

3.1.6 you declare bankruptcy, are adjudicated bankrupt or a receiver or trustee is appointed for you or substantially all of your assets or

3.1.7 You cease or intend to cease the whole or a substantive part of your business activities; This includes furloughing staff, or otherwise delaying activity that impacts our ability to deliver the services.

3.1.8 You undergo a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010).

3.1.9 you violate the Acceptable Use Policy (AUP) or the Cloud Partner's AUP.

3.1.10 a change in our relationship with a third-party Software or technology provider or Cloud Partner has had a material adverse effect on our ability to provide the Solution.

3.1.11 you purchased through a reseller and as applicable: the agreement between you and such reseller expires or is terminated, the agreement between Responsiv and such reseller expires or is terminated, or your reseller is overdue on its payment obligations to Responsiv.

3.2 Without prejudice to any other rights or remedies to which You may be entitled, You may terminate the Agreement on 30 days' notice without liability to Us if:

3.2.1 We commit a material breach of any other term of these Conditions which breach is irremediable or (if such breach is remediable) We fail to remedy that breach within a period of fourteen (14) days after being notified in writing to do so; or

3.2.2 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with Our winding up other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or our solvent reconstruction.

3.3 Any provision of these Conditions that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

3.4 Termination of the Agreement shall not affect any rights, remedies, obligations, or liabilities of either party that have accrued up to the date of termination, including the right to claim damages in respect of a breach of the Agreement existing at or before the date of termination.

3.5 If you purchased multiple Solutions (Agreements), termination of an individual Solution (Agreement) will not terminate any other Agreement unless the circumstances giving rise to termination generally affect all purchased Solutions.

3.6 Upon expiration of the Term for all Solutions purchased pursuant to this Agreement, either party may terminate this Agreement by providing 30 days written notice. Upon termination of this Agreement, all rights and obligations under this Agreement will automatically terminate except for rights of action accruing prior to termination, payment obligations and any obligations that expressly or by implication are intended to survive termination or there is an Auto Renew (Clause 15 - Term and Renewal).

3.7 Our obligation to provide the Services will terminate as set out in the Agreement, and the Contract will automatically terminate on completion of the Agreement.

3.8 If We are actively working on a problem at the time of termination of obligations and You do not wish to extend Assistance for a further period, then We will at our sole discretion accept payment for a standard services engagement to complete the work, and if such agreement is not reached would stop all work on such problem in due course.

## 4 DATA AND DATABASES

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4.1 Regardless of Responsiv requesting i) remote access to Customer's system or ii) to send system or other Information to Responsiv to help with basic troubleshooting by the Customer, Responsiv is not obligated to provide such assistance unless Responsiv and Customer enter a separate written agreement under which Responsiv agrees to provide to Licensee that type of support, unless specifically covered in our warranty obligations under a license granted or in specific Agreement for Support.

4.2 Responsiv uses information about errors and problems to improve its products and services and assist with its provision of related support offerings. Customer remains responsible for (i) any data and the content of any database Customer makes available to Responsiv, (ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally identifiable data), and (iii) backup and recovery of any database and any stored data.

4.3 In the event that our staff require remote access to Your systems, including production systems, to develop code, test, design, and recover Your operation or investigate incidents, We will ensure that staff are properly vetted and professionally trained to perform that task. We will not be held responsible for any loss or subsequent realisation of risk that arises from these activities.

4.4 Customer will not send or provide Responsiv access to any personally identifiable information not specifically needed for execution of the Agreement, whether in data or any other form, and will be responsible for reasonable costs and other amounts that Responsiv may incur relating to any such information mistakenly provided to Responsiv or the loss or disclosure of such information by Responsiv, including those arising out of any third-party claims.

## 5 INTELLECTUAL PROPERTY AND COPYRIGHT

5.1 For the purposes of The Agreement of use of a license, solution or service, Intellectual Property Rights are defined as patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

5.2 You may not use any such information provided by Responsiv or obtained by You to create any software whose expression is substantially like that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

5.3 For software licenses: The Licensee acknowledges that all Intellectual Property Rights in the Software and any modifications or improvements (whether made at the request of the Licensee or not) belong and shall belong to Responsiv or the relevant third-party owners (as the case may be), and the Customer shall have no rights in or to the Software other than the right to use it in accordance with the terms of this licence.

5.4 For use of any cloud or other solution provided by Responsiv: Except for information created or otherwise owned by you or licensed by you from third-parties, including all information provided by you to us through the Solution or for use in connection with the Solution, all right, title, and interest in the Intellectual Property embodied in the Solution, including the know-how and methods by which the Solution is provided and the processes that make up the Solution, will belong solely and exclusively to us or our licensors or our Cloud Partners, and you will have no rights in any of the above, except as expressly granted in this Agreement. Any Intellectual Property developed by us during the performance of the Solution will belong solely and exclusively to us and/or our licensors or Cloud Partners.

5.5 You acknowledge and agree that all Intellectual Property Rights and all other rights in the Deliverables shall be owned by Us or licensed from Our Suppliers. Unless otherwise stated in the Agreement, We hereby license all such rights to You free of charge and on a non-exclusive, worldwide basis to such extent as is necessary within Your business to enable You to make reasonable use of the Deliverables and the Services as is envisaged by the parties and defined in The Agreement. If We terminate the Contract, this license will automatically terminate.

5.6 We acknowledge that all Intellectual Property Rights in Your pre-existing materials, data, system infrastructure is owned by You, and You hereby grant to Us a limited licence to use, execute, reproduce, modify, and enhance all such materials as are reasonably necessary to deliver the solution or service as defined in the Agreement. You acknowledge that we may re-use retained knowledge gained through the provision of the Services elsewhere within Our business in a way that does not reproduce any of Your proprietary or Confidential Information.

5.7 This Clause 5 (Intellectual Property and Copyright) shall survive termination of the Contract, however arising.

## 6 CONFIDENTIALITY AND PUBLICITY

6.1 Confidential Information is information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of either party, trade secrets including, without limitation, technical data and know-how relating to the business of either party or any of their suppliers, customers, agents, distributors, shareholders, management or business contacts, including in particular (by way of illustration only and without limitation) business plans, details of suppliers, customers, pricing schemes, pricing, terms of business, strategic intentions, company marketing plans, sales forecasts, financial details, regulatory results, employee details, invention details, intellectual property, product plans and designs and including (but not limited to) information created, developed, received or obtained in connection with The Agreement, whether or not such information (if in anything other than oral form) is marked confidential.

6.2 Each party shall, during the term of The Agreement or license, and thereafter, keep confidential all Confidential Information, and shall not use for its own purposes (other than in giving effect to an signed Agreement and/or licence) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates, unless that

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information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this licence, or subsequently comes lawfully into the possession of such party from a third party.

6.3 Each party shall use its reasonable endeavors to prevent the unauthorized disclosure of any such information by using at least the same degree of care as such party employs with respect to its own Confidential Information of a similar nature.

6.4 All materials, equipment and tools, drawings, specifications and data supplied by Us to You shall at all times be and remain Our exclusive property but shall be held by You in safe custody at its own risk and maintained and kept in good condition by You until returned to Us and shall not be disposed of or used other than in accordance with Our written instructions or authorisation.

6.5 Responsiv shall be entitled to make a public announcement concerning this agreement or project and to include the Customer in its Customer list without the prior written consent of the Customer and may use the Project or Service as a reference site in our publicity materials.

## 7 EXPORT

7.1 Customer agrees to comply with all applicable export and import laws and regulations, including E.U and U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.

7.2 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations ("Export Control Laws"), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

7.3 Each party undertakes: a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

## 8 GENERAL TERMS

8.1 In this agreement, clause, Schedule and paragraph headings shall not affect its interpretation; words in the singular include the plural and the opposite applies; a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time; a reference to one gender shall include all others; person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns and the Schedules and Annexes form part of this license.

8.2 Nothing in any Agreement or license is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or entered into any commitments for or on behalf of any other.

8.3 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims)

8.4 These Conditions are binding on, and shall apply for the benefit of, the parties and their respective successors in title and permitted assigns. You may not, without Our prior written approval, assign, charge or otherwise dispose of all or any part of the benefit of the Agreement or sub-agreements, any or all Your obligations under it. We may assign, charge, novate or otherwise dispose of any or all Our rights under the Contract and/or sub-contract any or all its obligations under the Contract to, or novate the Contract in favour of, any third party on notice but without the need for prior consent.

8.5 This Agreement, the schedules, Licenses and the documents annexed as appendices to this agreement or otherwise referred to contain the whole agreement between the parties relating to the subject matter of this agreement and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

8.6 If a provision of the Contract is, becomes or is found to be illegal, invalid or unenforceable (in whole or in part), the legality, validity and enforceability of the remainder of the Contract shall not be affected.

8.7 If any provision or part-provision of the Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

8.8 We are not responsible for determining whether any Third-Party Product used in the performance of the Solution satisfies the local regulatory requirements of the country in which the Third-Party Product is delivered, and we are not obligated to provide any Software or perform any Services where we become aware that the resulting Software or Services do not satisfy local regulatory requirements.

8.9 Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

8.10 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

8.11 Each party confirms it is acting on its own behalf and not for the benefit of any other person or legal entity.

8.12 Unless otherwise required by applicable law without the possibility of contractual waiver or limitation:

8.12.1 neither party will bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than two years after the cause of action arose; and

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8.12.2 upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse.

8.13 Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under the Agreement or License. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to the Agreement or Licence.

8.14 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in the Agreement.

8.15 In entering into this Agreement, neither party is relying on any representation (whether it was made negligently or innocently) not specified in this Agreement, including but not limited to any representation concerning: i) the performance or function of the Program, Service, License other than as expressly warranted in (Warranty and Exclusions); ii) the experiences or recommendations of other parties; or iii) any results or savings that Customer may achieve, provided that nothing in the Contract shall limit or exclude any liability for fraud.

8.16 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

8.17 If the Services are to be delivered by instalments, the Contract shall be treated as a single contract and not severable.

8.18 The failure by us to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit our right to enforce such provision later. All waivers must be in writing to be effective.

8.19 No failure to exercise or delay in exercising any right or remedy under the Contract shall operate as a waiver of that or any other right or remedy.

8.20 No breach of any provision of the Contract shall be waived or discharged except with the express written consent of the parties.

8.21 No variation of any Transaction Document (Offer, Product Entitlement or other signed Agreement) shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

8.22 We reserve the right to amend the Conditions from time to time, without notice to You. Any such variation will not affect an existing signed Agreement unless We specifically notify You of this in writing. If we do not notify you of these changes then they will only become effective once the underlying Product Entitlement or Offer is renewed or extended following the date, we publish the Revisions on our website. You acknowledge that You are solely responsible for checking the Conditions prior to signature of any Agreement, or any subsequent Agreement.

## 9 THIRD PARTY NOTICES

9.1 The Program may include third party code that Responsiv, not the third party, licenses to Customer under this Licence. Notices, if any, for the third-party code ("Third Party Notices") are included for Customer's information only. These notices can be found in the Program's file(s). Information on how to obtain source code for certain third-party code can be found in the Third-Party Notices. If in the Third-Party Notices Responsiv identifies third party code as "Modifiable Third-Party Code".

9.2 Responsiv authorizes Customer to a) modify the Modifiable Third-Party Code and b) reverse engineer the Program modules that directly interface with the Modifiable Third-Party Code if it is only for the purpose of debugging Customer's modifications to such third-party code. Responsiv 's service and support obligations, if any, apply only to the unmodified Program.

9.3 For Responsiv Cloud

9.3.1 The Solution may include third party code that Responsiv, not the third party, licenses to Customer under this Agreement. Notices, if any, for the third-party code ("Third Party Notices") are included for Customer's information only.

9.3.2 Responsiv Solution may contain IBM software and services and You agree to be bound to the terms contained in the specific IBM Program License Document ("LI") and other licensing files, including NOTICES files that accompany or are included in these Programs.

## 10 NOTICES

10.1 Any notice (other than for or in court proceedings) given to a party under or in connection with this Agreement shall be in writing and shall be a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or b) sent by email to its main contact.

10.2 Any notice shall be deemed to have been received: i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service and iii) if sent by email, immediately on transmission (provided no error message is generated).

## 11 HIGH RISK DISCLAIMER

11.1 Software or solutions may not be used in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, life-support machines or any other application in which the failure of the software could lead directly to death, personal injury or environmental or property damage (collectively, "High-Risk Activities")

## 12 LIMITATION OF LIABILITY

12.1 The following provisions (This Section 12) set out Our entire financial liability (including without limitation any liability for the acts or omissions of Our employees, agents and sub-contractors) to You in respect of any breach of the Contract howsoever arising, any use made by You of the Services, the Deliverables or any part of them; and any representation, misrepresentation (whether

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innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

12.2 The limitations and exclusions in this Section 122 (Limitation of Liability) apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

12.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

12.4 Subject to conditions 12.2 and 12.5, our total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the lower of (i) the price paid under the Agreement or (ii) the value paid by You to Us for the Services delivered by Us to You in the 6 months prior to the claim arising, except where the liability has arisen in connection with conditions 5 (Intellectual Property Rights) and Condition 6 (Confidentiality) in which case Our total liability to You shall not exceed £200,000.

12.5 The limitation will not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which Responsiv is legally liable.

12.6 Under no circumstances is Responsiv or any of its staff or associates (Including Cloud or Program Partners) liable for any of the following, even if informed of their possibility:

12.6.1 loss of, or damage to, data.

12.6.2 incidental, exemplary, or indirect damages, or for any economic consequential damages.

12.6.3 special, incidental, exemplary, or indirect damages or consequential damages; or

12.6.4 wasted management time or lost profits, business, revenue, goodwill, or anticipated.

12.6.5 lost profits, business, revenue, goodwill, or anticipated savings, even if they arise as an immediate consequence of the event that generated the damage.

12.7 The limitation and exclusion of liability herein agreed applies not only to the activities performed by Responsiv but also to the activities performed by its suppliers and staff and represents the maximum amount for which Responsiv as well as its suppliers and Program developers are collectively responsible.

12.8 No right or cause of action for any third party is created by this Agreement or Licence or any transaction under it, nor is Responsiv responsible for any third-party claims against Customer except as permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by Responsiv ’s negligence for which Responsiv is legally liable to that third party.

12.9 A person who is not a party to this agreement shall not have any rights under the Agreement (Rights of Third Parties) Act 1999 to enforce any term of this Licence or Agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

## 13 FORCE MAJEURE

13.1 Neither Customer nor Responsiv is responsible for failure to fulfil any obligations due to causes beyond its control.

13.2 Force Majeure Event means any event or circumstance not within a party's reasonable control, but You may not claim that an inability to make a payment is affected by a Force Majeure Event.

13.3 A party affected by a Force Majeure Event must notify the other party promptly, but if it does so, it shall not be in breach of this Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

13.4 If the Force Majeure Event prevents, hinders or delays the relevant party's performance of its obligations for a continuous period of more than four weeks, the party not affected by the Force Majeure Event may terminate this Contract by giving four weeks written notice to that party, provided that the Force Majeure Event continues throughout that notice period.

13.5 We shall not in any circumstances have any liability to You under the Contract if We are prevented from, or delayed in, performing Our obligations under the Contract or from carrying on Our business by acts, events, omissions or accidents beyond Our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving Our workforce or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

## 14 TERM AND RENEWAL

14.1 The “Term” for any Solution begins on the Activation Date and extends for the period indicated in the Product Entitlement or Offer (or, if you purchased through a reseller, the applicable period in our order with the reseller).

14.2 Should an Entitlement or Transaction Document have an Auto Renewal clause and if you purchased directly from Responsiv, unless you decline auto-renewal in writing at least thirty (30) days prior to the expiration of the Term or unless auto-renewal is explicitly disclaimed in a Product Entitlement or an Offer, we may automatically renew this Agreement and the related Solution(s) for a successive Term at our then-current list price.

14.3 By continuing to use the Solution(s) beyond the expiration of the applicable Term, we may renew this Agreement and the related Solution(s) at our discretion for a successive Term at our then-current list price. If you purchased through a reseller, the terms and

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conditions for renewal for the purchase will be as agreed between you and the reseller, provided the reseller has properly procured the Solution(s) on appropriate terms from Responsiv.

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# Terms and Conditions for use of Responsiv Consulting and Support Services

*for the provision by Responsiv Solutions Limited of all consulting and support products and services. This includes but is not limited to; Professional Services, Assistance Services, Managed and Hosted Services.*

Part number **RL0004Q v7.0**

August 2023 Edition

*This document consolidates and supersedes all versions and editions published prior to August 2023 of the Terms and Conditions for Consulting and Assistance Services.*

responsiv

simple · effective · distinctive

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This Consulting or Support Agreement between you and Responsiv Solutions, governs your use of Responsiv Consulting and Support Services and should be read with **TC-RL000CQ: Responsive Data Processing Addendum (DPA)** and **TC-RL000G7: Responsiv General Terms and Conditions** as published on the Responsiv website (www.responsiv.co.uk/legal/) and sets out the terms of use *for all* Responsiv Software products as well as the Transaction Documents as defined in the General Terms and Conditions.

This Agreement is effective upon your (a) execution of a Solution Description or an Order Form; (b) acceptance of these terms pursuant to an online or offline process; (c) accessing or using the Solution; or (d) acceptance of terms between you and a reseller that reference this Agreement.

**1 DEFINITIONS**

1.1 Below are specific definitions for this document and these should be read in conjunction with the Definitions in the Responsiv General Terms and conditions as published on the Responsiv Website.

1.1.1 **Assistance**: means that We will provide technical expertise and experience to support Your team as defined in a Term Agreement that includes leading and managing as well as delivering artefacts required to achieve the necessary outcome; it remains Your responsibility to authorise changes and confirm fitness for purpose of any proposed or implemented changes made on Your behalf by Responsiv.

1.1.2 **Our Project Manager:** Our manager for the Project, appointed in accordance with condition 3.3.

1.1.3 **Pre-existing Materials:** materials which existed before the commencement of the Project or commencement of services, or that were not created under the agreement.

1.1.4 **Project:** the project as described in the accompanying Agreement.

1.1.5 **Project Milestone:** a date by which a part of the Project is estimated to be completed, as set out in an Agreement.

1.1.6 **Your Project Manager:** Your manager for the Project appointed in accordance with condition 4.1.1.

**2 APPLICATION OF CONDITIONS**

2.1 These Conditions shall:

2.1.1 apply to and be incorporated in the Contract; and

2.1.2 prevail over any inconsistent terms or conditions contained in, or referred to in any, confirmation of order, or specification, or implied by law, trade custom, practice, or course of dealing.

2.2 In the event of a conflict between Transaction Document and these conditions, the Transaction Document will take priority.

2.3 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on Us unless in writing and signed by Our duly authorised representative.

2.4 Your signature on the Agreement constitutes an offer by You to purchase the Services specified in it on these Conditions. The execution and return of a copy of the Agreement by Us, or Our commencement or execution of work pursuant to the Agreement, establishes a contract for the supply and purchase of those Services on these Conditions. Any other terms and conditions attached to, enclosed with, or referred to in, the Agreement shall not apply to this Contract.

**3 OUR OBLIGATIONS**

3.1 We shall use reasonable endeavours to manage and complete the Project, and to deliver the Deliverables to You, in accordance with all material respects with the Transaction Document.

3.2 We shall use reasonable endeavours to meet the performance dates specified in the Agreement, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

3.3 We shall appoint Our Project Manager who shall have authority to contractually bind Us on all matters relating to the Project. We shall use reasonable endeavours to ensure that the same person acts as Our Project Manager throughout the Project but may replace them from time to time where reasonably necessary in the interests of Our business.

3.4 We will ensure that all Our personnel engaged in delivering the Services comply with such health and safety standards as are notified to Us by You from time to time.

**4 YOUR OBLIGATIONS**

4.1 In addition to any obligations specified in the Agreement, You shall:

4.1.1 co-operate with Us in all matters relating to the Project and appoint Your Project Manager, who shall have the authority to bind You on matters relating to the Project.

4.1.2 provide in a timely manner such access to Your premises, data, software and networks, and such office accommodation and other facilities, as is requested by Us either in the Agreement or from time to time.

4.1.3 provide in a timely manner such information as We may request (at Your own cost) and ensure that such information is accurate in all material respects. For the avoidance of doubt this will include provision of test data where requested.

4.1.4 be responsible (at Your own cost) for the selection and implementation of procedures and controls relating to the access to Your IT systems, security, encryption, and all data within Your systems.

4.1.5 provide in a timely manner (at Your own cost) all such licences, consents and/or permissions as may be required to enable Us to undertake work on Your systems; and

4.1.6 be responsible (at Your own cost) for preparing the relevant premises for the supply of the Services.

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4.2 You acknowledge that the provision of the Services may impact the operation of your systems, and You agree that You will be solely responsible for ensuring appropriate back up procedures are in place prior to, and during the Services to protect and preserve Your data.

4.3 We will not be responsible for the accuracy, completeness, or quality of Your business or system configuration data. It will remain Your responsibility to recover from data loss or corruption, and for assuring the suitability of that data for resumption of processing following an incident.

4.4 If Our performance of Our obligations under the Contract is prevented or delayed by any act or omission of You or Your agents, sub-contractors or employees, You shall allow Us a reasonable extension to complete any services and shall be liable to pay to Us on demand all reasonable costs, charges or losses sustained or incurred by Us (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to Us confirming such costs, charges and losses to You in writing.

**5 PERSONNEL**

5.1 Each party will assign personnel that are qualified to perform the tasks assigned to each party under the relevant Agreement, but each acknowledges that they are responsible for the supervision, direction, control and compensation of its own personnel.

5.2 You shall not, without Our prior written consent, at any time from the date of the Contract to the expiry of twelve (12) months after the completion of the Services, solicit or entice away from Us or employ or attempt to employ, any person who is, or has been, engaged as an employee or sub-contractor of Us.

5.3 Any consent given by Us in accordance with condition 5.25.2 shall be subject to You paying to Us a sum equivalent to 40% of the then current annual remuneration of Our employee or sub-contractor or, if higher, 40% of the annual remuneration to be paid by You to such employee or sub-contractor.

**6 CHANGE CONTROL**

6.1 If You wish to change the scope of the services, then Your Primary Contact or Project Manager will be responsible for submitting details of the required change in writing to the Responsiv Owning Manager or appointed Project Manager.

6.2 If We wish to change the scope of the services, then Our Responsiv Owning Manager or Project Manager will be responsible for submitting details of the required change in writing to the Your Owning Manager or appointed Project Manager.

6.3 In the event of a proposed change, We shall provide a written estimate to You of the likely time required to implement the change, the likely effect of the change on the terms or duration of the Agreement, any variations to Our charges arising from the change.

6.4 If either party request a change to the scope of the Services, the other party shall not unreasonably withhold or delay consent to it.

6.5 We have no obligation to proceed with a change unless and until the parties have agreed in writing on the necessary variations to Our charges, the Agreement, and any other relevant terms of the Contract to take account of the change.

6.6 Agreements that are fixed price or risk based, including but not limited to Incident Support Agreements, Outcome based services, and Fixed Price Services, will be based on full disclosure of all information likely to affect our determination of a fair price. This means any information that will impact demand, effort, or diversity of skills, which includes but is not limited to properly detailing the capacity, update frequency, or history of support issues for a supported environment, complex or previously discovered challenges in a solution, or specific operating practices[1] that are required to complete our work.

6.7 Your licenced entitlement where appropriate. You will inform us of any change to that entitlement or if there is a significant difference between entitlement and deployed licence You will provide us with the details and evidence.

**7 CHARGES AND PAYMENT**

7.1 Conditions that shall apply if the Services are to be provided on a time-and-materials basis:

7.1.1 the charges payable for the Services shall be calculated in accordance with Our standard daily fee rates as amended from time to time.

7.1.2 Our standard daily fee rates are calculated on the basis of a 7.4-hour day worked between 8.00 am and 7.00 pm on weekdays (excluding weekends and public holidays);

7.1.3 Work undertaken outside of the hours referred to in the standard daily fee rates will be charged in hourly increments at the overtime rate multiple of the normal rate as set out in the Agreement.

7.1.4 Onsite work will attract a minimum charge of a standard day.

7.1.5 Remote work will attract a minimum charge of half a standard day.

7.1.6 We shall ensure that all Our personnel maintain an appropriate record of their time spent on the Project to calculate the charges covered by each monthly invoice referred to in condition 7.1.7 and

7.1.7 We shall invoice You on the earlier of (i) the completion of the project, or (ii) monthly in arrears for Our charges for time, expenses and materials (together with sales taxes where appropriate) for all unbilled work, calculated as provided in this condition 6.7 and the Agreement.

7.1.8 All charges and rates are subject to review at any time during the term on giving three months' notice.

[1] Operating practices include but are not limited to release or testing procedures, requirement for detailed documentation, sign-off procedures, or schedules.

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7.2 Conditions that shall apply if the Services are to be provided on a Fixed Price basis:

7.2.1 the total price for the Services shall be the amount set out in the Agreement.

7.2.2 The total price shall be paid to Us in instalments as set out in the Agreement on achieving the corresponding Project Milestone.

7.2.3 On achieving a Project Milestone, We shall invoice You for the charges that are then payable, together with expenses and the costs of materials (and sales tax, where appropriate), calculated as provided in condition 7.2.1.

7.2.4 We shall invoice You on the earlier of (i) the completion of the project or (ii) the completion of an agreed milestone (together with sales taxes where appropriate) for all unbilled work, calculated as provided in these terms and conditions and the Agreement.

7.2.5 In the case of termination of fixed price contracts, the Customer remains liable for payment of the full fee. This clause does not prejudice Customers rights under valid grounds to terminate as specified In Clause 3.2 (Termination) of TC-RL000G7 Responsiv General Terms and Conditions.

7.3 Conditions that shall apply if the Services are provided as a Term Agreement

7.3.1 Payment terms for Term Agreements require payment to be received prior to the start date of the term. Assistance obligations will begin after the later of the term start date or the receipt of payment.

7.3.2 Services defined in the Agreement that include capped entitlements, for example number of Assistance calls or capped number of hours of Assistance, will forfeit all remaining entitlements at the end of each entitlement period.

7.3.3 All payments payable to Us under the Contract shall become due immediately on termination of the Contract. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

7.4 Conditions that shall apply if the Services are provided as a Defined Outcome Agreement

7.4.1 Payment terms for Defined Outcome Agreements require payment to be received prior to the start date of the agreement. Consulting or Support obligations will begin after the later of the term start date or the receipt of payment.

7.4.2 Services defined in the Agreement that include capped entitlements, for example number of Assistance calls or capped number of hours of Assistance, will forfeit all remaining entitlements at the end of each entitlement period.

7.4.3 All payments payable to Us under the Contract shall become due immediately on termination of the Contract. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

## 8 ADDITIONAL CHARGES AND TAX

8.1.1 The charges specified in an Agreement may exclude expenses associated with subsistence, travelling and any other ancillary expenses reasonably incurred by Our personnel in connection with the agreement, and the cost of any materials or services reasonably and properly provided by third parties required by Us for the supply of the Services. In these cases, the Customer will be invoiced for the additional cost incurred.

8.1.2 All prices and charges are stated exclusive of tax (VAT or other applicable taxes and charges), which will be payable at the then current rate.

8.1.3 Amounts are due upon receipt of invoice and payable as specified in the Agreement. The Customer agrees to pay accordingly, including any late payment fee. Payment may be made electronically to an account specified by Responsiv or by other means agreed to by the parties.

## 9 GENERAL

9.1 In the event of any dispute arising out of or in connection with any Agreement of the Contract, the matter will be first raised between the Project Managers, and if the dispute cannot be resolved in good faith discussions between them within 20 working days, the dispute will be escalated to a senior director within each party for further good faith discussions.

9.2 Specifically note the clauses In the **Responsiv General Terms and Conditions** dealing with Definitions, Payment (Clause 2), Termination (Clause 3) and Liability (Clause 13) and that these General Terms and Conditions fully apply to any Agreement, including this one.

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