



## RFT Software License Agreement

READ THE TERMS AND CONDITIONS OF THIS SOFTWARE-LICENSE AGREEMENT (THE “**AGREEMENT**”) CAREFULLY BEFORE SIGNING BELOW. THE AGREEMENT REPRESENTS THE SOLE AND ENTIRE AGREEMENT FOR THE SOFTWARE BETWEEN YOU (“**CUSTOMER**”) AND RF TECHNOLOGIES, LLC. (“**RFT**”), AND IT SUPERSEDES ANY PRIOR AGREEMENTS, PROPOSALS, REPRESENTATIONS, OR UNDERSTANDING BETWEEN RFT AND CUSTOMER (COLLECTIVELY REFERRED TO HEREIN SOMETIMES AS “**PARTIES**” AND IN THE SINGULAR AS “**PARTY**”) RELATING TO SUCH SOFTWARE LICENSING AND MAINTENANCE.

1. **PRELIMINARY STATEMENT.** RFT owns the CODE ALERT® Software, (“**Software**”), the Collected Data Set, and any accompanying User’s Manual(s) and any online documentation, and any and all copies of the foregoing (collectively referred to as the “**Program**”) and, under this separate License Agreement between RFT and the CUSTOMER, RFT granted CUSTOMER, and CUSTOMER accepts, a nonexclusive, nontransferable and limited license to use the Program in accordance with the provisions of said EULA (“**Licensed Software**”).
2. **Definitions**
  - 2.1. “**Maintenance**” shall mean the services provided by RFT hereunder for Licensed Software which shall consist of providing Software updates and documentation changes which may accompany these Software updates subject to the terms and conditions set forth herein.
  - 2.2. “**Release**” shall mean general commercial availability of Software, User Manuals, documentation, and related items. “**Latest Release**” shall mean the most current software that achieved general commercial availability according to official RFT commercialization processes.
  - 2.3. “**Software Family**” shall mean a software platform defined at the sole discretion of RFT. (E.g., Code Alert Enterprise which includes releases 1.1, 2.1, 3.1, etc. where integer numbers relate to a “**Major Release**” and decimal numbers relate to a “**Minor Release**” as defined below.)
  - 2.4. “**Major Release**” shall mean a Release of the entire Licensed Software or some designated part thereof, for the purpose of replacing the earlier Licensed Software in its entirety. Major Releases may add enhancements to usability or value of the product, functional enhancements, Standard Features (as defined below), Licensed Features and/or Licensed Packages (as defined below), at the sole discretion of RFT.
  - 2.5. “**Minor Release**” shall mean a release of the Licensed Software other than a Major Release. Minor Release may include enhancements to usability or value of the product, functional enhancements, and/or Standard Features (as defined below), at the sole discretion of RFT.
  - 2.6. “**Licensed Features**” and “**Licensed Packages**” shall mean optional Software feature or package licenses available to be purchased by Buyer, which enables a feature or set of features within the Software. These features will either be in a “**Purchased**” state or “**Unpurchased**” state according to Buyer purchase.
  - 2.7. “**Standard Features**” shall mean Software features or packages that are considered part of the base software and are available for use without additional purchase or licenses.
  - 2.8. “**RFT CARECONNECT™**” shall mean the integrated electronic messaging software for emergency communication systems.
  - 2.9. “**Collected Data Set**” shall mean the data and database collected in the Software by devices, network components, user inputs, system logs, and all other means.
  - 2.10. “**Installation**” and “**Install**” shall refer to the process of loading software on to a computer system, including placing the Software on a computer instance or updating Software on the computer instance in a manner that makes it functional for the purposes of the Software.
  - 2.11. “**RFT**” includes RF Technologies, Inc., its divisions, assignees, subcontractors, suppliers and affiliates, and their respective directors, officers, employees and agents.
3. **Grant of License.** In this License Agreement, you, the purchaser of the license rights granted by this Agreement, are referred to as “Customer.” Subject to the terms and conditions of this Agreement and so long as Customer is not in breach of any of the terms of this Agreement, RFT grants to Customer and Customer accepts from RFT a non-transferable license (the “**License**”) to use the Program. Except for the License granted above, no other license or right shall be deemed granted or implied under this Agreement.



#### 4. Customer Entitlement to Software and Maintenance Support

- 4.1. For the first twelve (12) months from purchase date, CUSTOMER will be granted a Software License to all Major Releases and Minor Releases of software that occur within the Software Family during the term of this agreement ("Entitlement"). The Entitlement will include provision for Standard Features, Purchased Licensed Features and Purchased Licensed Packages previously purchased by CUSTOMER. Such Major Releases or Minor Releases, when delivered, shall become part of the Licensed Software and be maintained in accordance with this Agreement and shall otherwise be subject to all of the terms of the License Agreement.
- 4.2. Excluded from this Entitlement are Licenses for Unpurchased Licensed Features and Unpurchased Licensed Packages. These features and packages must be purchased separately to be activated within the Software.
- 4.3. Remote Maintenance support for Major Releases and Minor Releases will include remote support via Telephone and Virtual Private Network (VPN) connection, provided the VPN has been previously tested and approved by RFT technical support. Customer assumes certain responsibilities outlined in Section 7 regarding remote installations support.
- 4.4. When applicable, Remote Maintenance support will be included in the Entitlement, limited to installation of the Latest Release and the Release just prior to the Latest Release. For example, if two subsequent releases are numbered 1.0 and 1.1, upon Release 1.0 Entitlement will include maintenance to Install Release 1.0 and Release 1.1. Remote Support must be used within the Entitlement term as defined in this Section 4.
- 4.5. Maintenance support for Major Releases and Minor Releases will include remote support, provided the remote connection has been previously tested and approved by RFT technical support. Customer assumes certain responsibilities outlined in Section 8 regarding remote installations support.
- 4.6. In the event CUSTOMER does not have a remote connection, in order to satisfy any delivery obligation hereunder, RFT may, in its discretion, send CUSTOMER in digital media form a single copy of any Software updates or modification to the Software provided pursuant to this Agreement, together with instructions for CUSTOMER'S installation and implementation thereof. Such Software updates or modification, when delivered, shall become part of the Licensed Software and be maintained in accordance with this Agreement and shall otherwise be subject to all of the terms of this Agreement.

#### 5. Excluded Items

- 5.1. On-site update or upgrade assistance is not provided hereunder but may be made available through other Service Agreements, or at RFT's sole discretion on a case-by-case basis at then-current RFT rates for labor, travel time, transportation, subsistence and materials, during normal business hours, excluding holidays observed by RFT.
- 5.2. Maintenance services are excluded hereunder if such services are required because of one or more of the following:
  - 5.2.1. Licensed Software modification, customization, or installation other than as recommended by RFT or other alteration by the CUSTOMER; or repairs, maintenance, modification or other services performed on Licensed Software by persons not authorized by RFT;
  - 5.2.2. Any damage to any Licensed Software arising from or caused by any casualty, act of God, riot, war, the unauthorized acts of third parties (including CUSTOMER'S employees, agents or clients), failure or interruption of any electrical power, air conditioning, humidity control, or telephone or email communications or any other like cause;
  - 5.2.3. Licensed Software installed on hardware and/or operated in a system configuration that does not support the Licensed Software.
- 5.3. CUSTOMER shall be solely responsible for all problems arising as set forth above in 5.2.1 through 5.2.3.
- 5.4. All Hardware is excluded from this Agreement, including but not limited to Desktop Computers, Server Computers, Hard Drives, PC Accessories, or other computer or system components, power supplies, etc. Server upgrades at the customer's expense may be required to take delivery of software upgrades.
- 5.5. RFT, in its sole discretion, may offer one or more of the services excluded in this Article and may require CUSTOMER to pay then-current RFT rates for labor, travel time, transportation, subsistence and material and an additional fee to be negotiated on a case-by-case basis.



## 6. Data Usage

- 6.1. The Software License granted herein allows Customer non-exclusive use of the Collected Data Set contained in the Software, including data regarding system performance, alarms and alerts, and other data or metrics made available via reporting functions of the Software, or exporting functions of the Software. This License is limited to Customer and authorized agents specified in Section 6. This License is granted for the period covered by the Software License detailed in Section 11.
- 6.2. In the event Software Licenses are terminated Customer will retain right to use any portion of the Collected Data Set exported for archive purposes, provided data is archived prior to the deadlines set forth in Section 11.4. Customer must inform RFT, in writing, of all data retained prior to the deadlines set forth in Section 11.4.
- 6.3. RFT retains all rights to Collected Data Set use excepting those rights granted Customer in this Section 5. All other data integrations, modifications, manual or automatic data export processes, real-time or retrospective data collections, or other unauthorized use constitutes a breach of this License Agreement.
- 6.4. RFT is under no obligation to store the Collected Data Set for any specific period of time, and has sole discretion as to the duration, method, and location of data retention.

## 7. Customer's Covenants

- 7.1. Customer shall not disclose the Program or any part thereof except to those of its employees who require such disclosure to perform duties in the scope of their employment for Customer. Customer shall maintain the Program so as to prevent unauthorized disclosure or copying. Customer shall (a) adopt and enforce such internal policies, procedures, and monitoring mechanisms as are necessary to ensure the Program is used only in accordance with the terms of this Agreement; and (b) take all steps necessary to ensure no person or entity will have unauthorized access to the Program.
- 7.2. Customer shall not assign, sublicense, lease, encumber, or otherwise transfer or attempt to transfer the Program or any portion thereof or otherwise permit any third party to use or have access to the Program whether by timesharing, networking, or any other means, unless the following conditions are satisfied: (a) Customer seeks and receives RFT's prior written consent to the transfer; (b) Customer transfers the Program and accompanying written material on a permanent basis; (c) Customer retains no copies; and (d) the recipient provides RFT written consent to the transfer including agreement to be bound by the terms and conditions of this Agreement. Notwithstanding any such transfer, Customer shall remain a party to this Agreement and shall not be relieved of any of its responsibilities or obligations hereunder. RFT will not unreasonably withhold consent to transfers executed as described herein.
- 7.3. Excepting provision for data export as outlined in Section 5, Customer shall not modify, translate, reverse engineer, decompile, or disassemble the Software or possess the Software or any portion thereof other than in machine-readable object code.
- 7.4. Customer shall have the right to make a copy of the Software solely for archival or backup purposes. Customer shall not copy the Software in whole or in part except as provided above and shall not permit any third party to make a copy of the Software.
- 7.5. Customer shall not remove any copyright, trademark, patent, or other proprietary notices from the Program or any portion thereof.
- 7.6. Customer shall use the License only on equipment approved by RFT. If the License is used by Customer on equipment which has not been approved by RFT, such use shall be at Customer's sole risk and shall constitute a waiver of any and all warranties provided herein.
- 7.7. In addition to any other rights and remedies which Customer may have at law or in equity, in the event of Customer's breach or threatened breach of any of the provisions of this Section 6, RFT shall have the right to obtain a permanent or preliminary injunction preventing such breach or threatened breach.

## 8. Customer Responsibilities

- 8.1. Customer assumes full responsibility for (a) the selection of the licensed software; (b) the proper installation and use of the licensed software; (c) verifying the results obtained from the use of the licensed software; and (d) taking appropriate measures to prevent loss of data, protect against software viruses and protect against software security breach.



- 8.2. Customer is responsible to schedule and maintain versions of Software to within one version of the current latest Major or Minor release. See Section 4.4 for exclusions of service for versions of Software more than one release out-of-date.
- 8.3. Customer is responsible to maintain System operation and readiness for update or upgrade to the Software. Any additional time or materials required to achieve readiness for Software update or upgrade will result in additional charges to Customer, notwithstanding any additional Service Agreements.
- 8.4. Customer is solely responsible for security and life safety procedures during system update or system upgrade. Appropriate measures for life safety including but not limited to guarding doors, providing alternate call systems, and all other life safety needs must be defined by Customer policies and procedures. In the event life safety system is inoperable during the update or upgrade process, either planned or unplanned, Customer is responsible for executing these alternate life safety procedures.
- 8.5. Customer is responsible for purchase of Microsoft Client Access Licenses to provide concurrent web access in applicable software systems.

## 9. Intellectual Property

- 9.1. Customer acknowledges and agrees that RFT has and will retain all right, title, interest, and ownership in and to the Software and its source code together with any updates, any Collected Data Sets and User Manuals, and any modifications, revisions, changes, copies, partial copies, translations, compilations, and any derivative work and any copies or updates (collectively "RFT's Property").
- 9.2. CUSTOMER further acknowledges and agrees that the Software updates, modifications, and Major or Minor Releases, upgrades and the like to the Software, including all intellectual property rights associated therewith, made or provided by RFT pursuant to this Agreement, whether alone or with any contribution from CUSTOMER or CUSTOMER'S personnel, shall be owned exclusively by RFT. To the extent CUSTOMER or CUSTOMER'S personnel may acquire any right or interest therein by operation of law, CUSTOMER irrevocably assigns all such right and interest exclusively to RFT and, at the request of RFT, shall take reasonable actions to effect such assignments. CUSTOMER shall maintain and enforce agreements and policies with its personnel sufficient to give effect to the provisions of this Section.
- 9.3. All applicable rights to patents, copyrights, trademarks, trade secrets, and all other property rights in RFT's Property shall be and shall remain in RFT, and neither Customer nor its employees, agents, or assigns shall have any property interest in RFT's Property. RFT shall have all authorship rights therein. Any application or modification developed by either Customer or RFT to be used in conjunction with the Program will be included in RFT's Property.
- 9.4. RFT's Property shall belong exclusively to RFT, with RFT having the right to obtain and to hold in its own name, patents, copyright registrations or trademark registrations, or such other protection as may be appropriate to the subject matter and any extensions and renewals thereof.
- 9.5. Customer acknowledges that RFT's Property constitutes confidential proprietary information and trade secrets of RFT, whether or not any portion thereof is or may be the subject of a valid copyright or patent. Customer shall maintain all information and data contained in RFT's Property or any portion thereof in strict confidence.

## 10. Software Maintenance Fees

- 10.1. The CUSTOMER shall pay an annual maintenance subscription fee equal to a percentage of the list purchase price of the Software, plus an annual fee adjustment. RFT may increase Software License and Maintenance fees each year. In most circumstances, typical annual increases are approximately 5%.
- 10.2. Increases above typical levels may include but are not limited to the following:
  - 10.2.1. RFT may apply a higher than typical increase when necessary due to inflation, rising operating costs, or major enhancements. Examples of cost changes include, but are not limited to:
  - 10.2.2. Increased labor or staffing costs (engineering, support, cybersecurity)
  - 10.2.3. Higher cloud hosting or data storage expenses
  - 10.2.4. Increased costs for third party software, APIs, or service providers
  - 10.2.5. Infrastructure upgrades such as servers, security systems, or monitoring tools
  - 10.2.6. New or expanded regulatory compliance requirements



10.2.7. Expansion of software functionality, including Major Releases or new Licensed Features

10.3. All charges payable hereunder are exclusive of taxes. CUSTOMER will pay all applicable taxes or provide a certificate of exemption from such taxes acceptable to taxing authorities.

10.4. The first year of use of the RFT CARECONNECT™ alerting feature, there will be no maintenance charge to the CUSTOMER. Then every year after, there will be a yearly maintenance fee. If CUSTOMER opts out of RFT CARECONNECT™, CUSTOMER remains responsible for payment of other maintenance fees under this Agreement.

## 11. Term and Termination

11.1. **Software License:** The License granted to Customer hereunder will continue per the terms of this agreement unless terminated as provided herein.

11.1.1. RFT shall have the right to terminate this Agreement and the License granted herein upon ten (10) days written notice to Customer if Customer or its agents or employees breaches or violates any provisions of this Agreement or any of the terms of the Terms and Conditions of Sale for the Software.

11.1.2. RFT shall upon termination have the right, at any time, to take immediate possession of the Program and all copies wherever located without demand or notice.

11.1.3. Customer shall upon termination of the License (a) discontinue all use of the Program; (b) deliver to RFT or destroy all media containing the Program, or any part thereof and all copies of the Program, or any part thereof contained in any computer memory, hard drive, networks or data storage apparatus under the control of Customer; and (c) certify to RFT within five (5) days after the termination of this Agreement that Customer has delivered to RFT or destroyed all copies of the Program in accordance with this Section 9.

11.1.4. Without limiting any of the above provisions, if this Agreement is terminated by RFT as a result of Customer's failure to comply with any of its obligations under this Agreement or the Terms and Conditions of Sale, Customer shall continue to be obligated for any payments due.

11.1.5. Termination of the License shall be in addition to and not in lieu of any other remedies available to RFT at law or in equity. All provisions of this Agreement relating to disclaimers of warranties, limitation of liability, remedies or damages, and RFT's proprietary rights shall survive termination.

11.2. **Software Maintenance:** Upon execution of this Agreement by CUSTOMER, the term shall commence on the date of acceptance of the Licensed Software and continue for an initial twelve (12) month term. Thereafter, provided CUSTOMER has paid the required fees, as provided for herein and in the applicable order documentation, and Customer has provided written notice to RFT of its intent to renew this Agreement at least thirty (30) days before expiration of the initial twelve (12) month term, this Agreement shall commence on the first day following date of expiration of the initial (12) month term (or in the case of renewal, annually on the anniversary of that date) and shall continue in effect for a period of twelve (12) months.

11.2.1. RFT may terminate this Agreement by giving written notice of termination to CUSTOMER upon the occurrence of any of the following events: (a) CUSTOMER defaults in the performance of any material requirement or obligation created by this Agreement or the License Agreement, or (b) CUSTOMER fails to make any payment within thirty (30) days of its due date.

11.2.2. No termination of this Agreement shall release CUSTOMER from any obligation to pay any amount that has accrued or become payable at or prior to the date of termination.

11.2.3. CUSTOMER may opt out of RFT CARECONNECT™ at time of initial installation of Licensed Software, upgrade or at one year anniversary of installation of Licensed Software or upgrade.

11.2.4. In the event that the CUSTOMER does not renew this Agreement, and then later wishes to reinstate software maintenance (thereby creating a lapse in software maintenance coverage), RFT is not obligated to reinstate the coverage but may, in RFT's sole discretion, reinstate the coverage provided that the CUSTOMER purchases a new software maintenance agreement, installs the then-current Release of Licensed Software and pays the fees for the lapsed period of coverage at the then-current rates of RFT.

11.2.5. RFT has the right to notify CUSTOMER at any time in writing that the Licensed Software will not be supported after a given date ("Termination of Support Date"). The Termination of Support Date shall not be less than thirteen (13) months from the date of the notice. RFT shall have no obligation to update



Licensed Software after the Termination of Support Date. CUSTOMER agrees to such termination of support.

All communications from CUSTOMER relating to the termination of this Agreement shall be directed to RFT at the address indicated in Section 13 herein below. No sales person or field representative of RFT shall be authorized to act or make any commitment for RFT except pursuant to written instructions made and signed by a duly authorized representative of RFT.

## **12. Limited Warranty**

- 12.1. RFT warrants that for twelve (12) months after the date of Customer's receipt of the Software, the Software will perform substantially as specified in the user documentation delivered with the Software and that the Software media will be free of defects in materials and workmanship under normal use; provided, however, that RFT shall not be liable under this warranty if the Software has been modified or altered by anyone other than RFT, if the Software has been abused or misapplied, or if Customer has failed to incorporate all upgrades provided to Customer by RFT. In the event of a breach of this warranty, Customer's sole remedy shall be to return the defective Software to RFT for replacement. The provisions of this Section 12 state the exclusive liability of RFT, and the exclusive remedy of Customer, with respect to any claim arising hereunder.
- 12.2. RFT warrants that it will render its services hereunder in a good and workmanlike manner consistent with customary industry standards. As RFT's sole responsibility and CUSTOMER'S exclusive remedy in the event of any material failure to meet such standard, RFT shall make a commercially reasonable effort to remedy any resulting discrepancies. Any claim based on the foregoing warranty must be submitted in writing within ninety (90) days after delivery or the date of required delivery of the pertinent service.
- 12.3. This Limited Warranty is applied to Software only as specified in this Section 12. This Limited Warranty does not apply to future Major Releases or Minor Releases of software to which Customer may or may not be entitled within this Agreement. No hardware or any other components sold or serviced by RFT are covered under this Limited Warranty.
- 12.4. Except as expressly set forth in Section 12, RFT does not make, and Customer hereby expressly waives, any warranties express or implied. RFT hereby excludes all implied warranties to the extent permitted by law, including but not limited to any implied warranty arising by statute or otherwise in law or from a course of dealing or usage of trade. All warranties of merchantability or fitness for a particular purpose are expressly excluded.
- 12.5. RFT DOES NOT WARRANT THAT THE QUALITY OR THE PERFORMANCE OF THE LICENSED SOFTWARE SHALL MEET CUSTOMER'S REQUIREMENTS; THAT THE LICENSED SOFTWARE WILL BE COMPATIBLE WITH ANY PARTICULAR USER PLATFORM OR INTERFACE; THAT THE CUSTOMER SHALL BE ABLE TO ACHIEVE ANY PARTICULAR RESULTS FROM USE OF THE LICENSED SOFTWARE; THAT THE FUNCTIONS CONTAINED IN THE LICENSED SOFTWARE OR ANY MODIFICATIONS, SOFTWARE UPDATES TO THE LICENSED SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE LICENSED SOFTWARE OR ANY MODIFICATIONS, SOFTWARE UPDATES THERETO WILL BE UNINTERRUPTED OR ERROR FREE.
- 12.6. RFT MAKES NO REPRESENTATION, GUARANTEE OR WARRANTY AS TO THE SCOPE OR VALIDITY OF ANY INTELLECTUAL PROPERTY RIGHTS OR THAT CUSTOMER'S USE OF THE PROGRAM SHALL BE FREE FROM INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS HELD BY THIRD PARTIES. RFT INCURS NO OBLIGATION OR LIABILITY FOR BRINGING ACTIONS AGAINST THIRD PARTIES FOR ALLEGED INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT WITHIN THE SCOPE OF THIS AGREEMENT OR FOR DEFENDING CUSTOMER AGAINST THE SAME.

## **13. Limitation of Liabilities and Remedies**

- 13.1. **DISCLAIMER AND RELEASE.** THE WARRANTIES, CONDITIONS, REPRESENTATIONS, OBLIGATIONS AND LIABILITIES OF RFT AND REMEDIES OF CUSTOMER SET FORTH IN THIS AGREEMENT, ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND CUSTOMER HEREBY WAIVES, RELEASES AND RENOUNCES, ALL OTHER WARRANTIES AND OTHER OBLIGATIONS AND LIABILITIES OF RFT, AND ANY OTHER RIGHTS, CLAIMS AND REMEDIES OF CUSTOMER AGAINST RFT, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO MAINTENANCE, THE PROGRAM, INCLUDING THE SOFTWARE AND DOCUMENTATION, ANY MODIFICATIONS, SOFTWARE UPDATES TO THE LICENSED SOFTWARE, OR OTHER HARDWARE OR SOFTWARE IN THE SYSTEM OF THE CUSTOMER, OR ANY PROGRAMMING, OR ANY OUTPUT BASED ON USE OF THE LICENSED SOFTWARE, ANY NONCONFORMANCE OR DEFECT OR SOFTWARE PROBLEM IN ANY SOFTWARE OR DOCUMENTATION OR ANY OTHER MATERIALS OR INFORMATION OR OTHER THINGS PROVIDED UNDER THIS AGREEMENT BY OR ON BEHALF OF RFT OR WITH



RESPECT TO THE INSTALLATION, USE, OPERATION, OR SUPPORT OF THE PROGRAM, EVEN IF RFT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES INCLUDING BUT NOT LIMITED TO ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR LOSS OF OR DAMAGES TO ANY PROPERTY OF CUSTOMER, OR WITH RESPECT TO ANY SOFTWARE PROBLEM, BUG, DEFECT, VIRUS, SECURITY BREACH, DEFICIENCY OR ERROR IN THE PROGRAM INCLUDING THE SOFTWARE AND DOCUMENTATION.

- 13.2. RFT SHALL HAVE NO OBLIGATION OR LIABILITY, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF RFT), OR OTHERWISE, FOR LOSS OF USE, REVENUE, OR PROFIT, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, CLAIMS OF SERVICE INTERRUPTION OR FOR ANY OTHER INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY, ECONOMIC, STATUTORY OR CONSEQUENTIAL DAMAGES WITH RESPECT TO MAINTENANCE, THE PROGRAM, INCLUDING THE SOFTWARE AND DOCUMENTATION, ANY MODIFICATIONS, SOFTWARE UPDATES TO THE LICENSED SOFTWARE, OR OTHER HARDWARE OR SOFTWARE IN THE SYSTEM OF THE CUSTOMER, OR ANY PROGRAMMING, OR ANY OUTPUT BASED ON USE OF THE LICENSED SOFTWARE, ANY NONCONFORMANCE OR DEFECT OR SOFTWARE PROBLEM IN ANY SOFTWARE OR DOCUMENTATION OR ANY OTHER MATERIALS OR INFORMATION OR OTHER THINGS PROVIDED UNDER THIS AGREEMENT BY OR ON BEHALF OF RFT OR WITH RESPECT TO THE INSTALLATION, USE, OPERATION, OR SUPPORT OF THE PROGRAM, EVEN IF RFT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 13.3. THE LIABILITY OF RFT TO CUSTOMER FOR ANY REASON AND UPON ANY CAUSE OF ACTION WHATSOEVER, WHETHER IN TORT, CONTRACT, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE FEE PAID TO RFT BY CUSTOMER FOR THE LICENSE.
- 13.4. THESE DISCLAIMERS AND LIMITATIONS OF LIABILITY WILL APPLY (A) REGARDLESS OF ANY OTHER CONTRARY PROVISION OF THE AGREEMENT; (B) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND PRODUCT LIABILITY) OR OTHERWISE, AND (C) REGARDLESS OF WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. EACH PROVISION IN THE AGREEMENT WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTY OR CONDITION OR EXCLUSION OF DAMAGES IS SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND IS TO BE ENFORCED AS SUCH. LICENSOR SHALL HAVE NO LIABILITY FOR LOSS OF DATA OR DOCUMENTATION, IT BEING UNDERSTOOD THAT CUSTOMER IS RESPONSIBLE FOR REASONABLE BACKUP PRECAUTIONS.
14. **Delays.** The date on which the obligations of RFT are required to be fulfilled will be extended for a period equal to the time lost by reason of any delay arising directly or indirectly from (a) acts of God, unforeseeable circumstances, acts (including a delay or failure to act) of any governmental authority (de jure or de facto), war (declared or undeclared), riot, revolution, priorities, fires, floods, strikes, labor disputes, sabotage, terrorism, or epidemics; (b) inability due to causes beyond the reasonable control of RFT to timely obtain instructions or information from CUSTOMER, necessary and proper labor, materials, components, facilities, or transportation; or (c) any other cause beyond the reasonable control of RFT. The foregoing extension will apply even though such cause(s) may occur after the performance by RFT of its obligations has been delayed for other causes.
15. **Notices**
  - 15.1. Except for requests for Maintenance, any notice or communication to a Party required or permitted hereunder shall be in writing and effective on the date when (a) served by personal delivery, (b) received via registered or certified U.S. mail, return receipt requested, postage prepaid, (c) prepaid overnight courier service, or (d) sent by facsimile transmission with confirmation in writing sent by first class U.S. Mail to the other Party.
  - 15.2. Each Party shall promptly give written notice to the other of any address change. Requests for Maintenance should be sent by the Customer Contact(s) via email addressed to: tech@rft.com
16. **Successor and Assigns.** CUSTOMER shall not assign, sublicense, or transfer its rights or delegate its obligations under this Agreement without the prior written consent of RFT, and any attempt to do so shall be void. This Agreement shall be binding upon the respective successors and assigns of the Parties to this Agreement.
17. **Equitable Relief.** CUSTOMER agrees that any breach of this Agreement by it will cause irreparable damage and that, in the event of such breach, in addition to all remedies at law, RFT shall have the right to an injunction, specific performance, or other equitable relief to prevent violation of these terms and without the requirement of posting a bond or undertaking or proving injury as a condition for relief.

## 18. Governing Law and Dispute Resolution



- 18.1. The validity, construction and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, without regard to that jurisdiction's conflicts of laws or choice of law rules, and each Party agrees to submit to the exclusive jurisdiction of the State Courts and Federal Courts located in the State of Wisconsin.
- 18.2. Any dispute, controversy or claim arising out of or relating to this Agreement shall be resolved by arbitration. The arbitration will be conducted by a single arbitrator selected by the parties. In the event the Parties cannot agree on a single arbitrator, a three-person arbitration panel will be used with each party selecting one arbitrator and the two arbitrators selecting a third. The arbitration will be conducted in English in accordance with the Commercial Arbitration Rules of the American Arbitration Association without regard to the amount in dispute. The decision of the arbitrator(s) shall be binding and enforceable in any State or Federal Court in Wisconsin and each party consents to the personal jurisdiction of any State or Federal Court in Wisconsin. The expenses of the arbitration (excluding each party's own attorneys' fees, costs and expenses) shall be paid in equal shares, but the total of such expenses plus any award of attorneys' fees, costs and expenses shall be paid as the arbitrator(s) determines. Nothing in this section precludes RFT from seeking provisional or equitable relief in the State or Federal Courts of Wisconsin.
19. **Attorney's Fees.** If any legal action or proceeding is brought for the enforcement of this License Agreement or arises from an alleged breach, dispute, default or misrepresentation in connection with any of the provisions of this License Agreement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred as a result of such legal action or proceeding.
- 20. Miscellaneous**
- 20.1. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement, and the Parties acknowledge that this Agreement is intended solely for the benefit of the Parties, their successors and permitted assigns, and nothing herein, whether express or implied, shall infer upon any person or entity, other than the Parties, their permitted successors and assigns, any legal or equitable rights whatsoever to enforce any provision of this Agreement.
- 20.2. **Force Majeure.** RFT shall be excused from performance of its obligations under this Agreement if such a failure to perform results from compliance with any requirement of applicable law, acts of God, fire, strike, embargo, terrorist attack, war, insurrection or riot or other causes beyond the reasonable control of RFT (each a "Force Majeure Event"). Any delay resulting from any of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances.
- 20.3. **Severability.** If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited or eliminated to the maximum extent necessary that this Agreement will remain enforceable and in full force and effect.
- 20.4. **Entire Agreement.** This License Agreement constitutes the entire Agreement between the parties. No modification of this Agreement will be effective unless in writing and signed by the party against whom enforcement is sought. Any provisions in any purchase order, quotation, acknowledgment or other forms or contract documents applicable to any service, performance, purchase, or other transaction that are inconsistent, or in conflict, with any of the provisions of this Agreement will be ineffective and not applicable, unless the inconsistent or conflicting provisions are in a written agreement dated subsequent to the effective date of this Agreement and signed by RFT.
- 20.5. **No Waiver of These Items.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.
- 20.6. **Survival.** Sections 9, 12, 13, 18 and 19 of this License Agreement shall survive any termination of the License Agreement.
21. **Acknowledgement.** By accepting, implementing and using Software, Customer and/or transfer recipient acknowledges that it has read and understands this Agreement and agrees to be bound by its terms. Customer further agrees this Agreement supersedes any prior agreement, oral or written, and any other communications relating to the subject matter hereof.