

Terms and Conditions for use of Responsiv Cloud

for the provision by Responsiv Solutions Limited of all products and services.

Part number **RL00020 v3.0**

August 2023 Edition

This document consolidates and supersedes all versions and editions published prior to August 2023 of the Terms and Conditions for use of the Responsiv Cloud.

responsiv
simple • effective • distinctive

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1 THIS CLOUD SOLUTIONS AGREEMENT

This Cloud Solutions Agreement between you and Responsiv Solutions, governs your use of and access to the Solution and which 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/) as well as the Transaction Documents as defined in the General Terms and Conditions

This Agreement is effective upon your (a) execution of a Product Entitlement 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.

2 ACTIVATION

- 2.1 With respect to certain Solutions, after our receipt and acceptance of an order (whether placed directly with Responsiv or through a reseller), you will receive Activation Instructions.
- 2.2 The date Activation Instructions are transmitted or, if Activation Instructions are not required, the effective date of the applicable Product Entitlement or the date an offer is executed is the "Activation Date." You are required to provide, maintain, and monitor one dedicated email address for the receipt of notices and other communications related to the Solution.

3 LICENSE

- 3.1 To the extent Software is provided as a part of the Cloud Solution, such Software is provided subject to the license agreement that accompanies the Software, and in the absence of such license, Responsiv-branded Software is subject to the terms of "**TC-RL0001N (Aug2023) Responsiv Software Product License**", which is available at www.responsiv.co.uk/legal. Customer shall be liable for any breach of this Agreement by any End User.
- 3.2 Customer may not
 - 3.2.1 Reverse engineer any portion of a Cloud Service
 - 3.2.2 Assign or resell direct access to a Cloud Service to a third party outside Customer's Enterprise
 - 3.2.3 Combine a Cloud Service with Customer's value add to create a customer branded solution that Customer markets to its End User Customers unless otherwise agreed by Responsiv in writing.

4 PREVIEW SERVICES

- 4.1 Cloud Services or features of a Cloud Services are considered "**Preview**" when Responsiv makes such services or features available at no charge, with limited or pre-release functionality, or for a limited time to try available functionality. Examples of Preview Cloud Services include beta, trial, no-charge, or Preview designated Cloud Services.
- 4.2 Any Preview Cloud Service is excluded from available service level agreements. Not all Preview Cloud Services are covered by support.
- 4.3 Responsiv may change or discontinue a Preview Cloud Service at any time and without notice.
- 4.4 Responsiv is not obligated to release a Preview Cloud Service or make an equivalent service generally available.
- 4.5 Preview services are made available under the Agreement as-is, without warranties of any kind.

5 CLOUD PARTNERS

- 5.1 Should you purchase a Solution from Responsiv that is performed by a member of Responsiv's cloud partner program (a "Cloud Partner") your Solution (a "Partner Solution") may be governed by additional terms and conditions that will be presented on your Offer ("Cloud Partner Terms"). The following Partner Terms and Conditions Is specifically referenced although this Is not an exhaustive list:
 - 5.1.1 IBM Cloud Terms of Use: <https://cloud.ibm.com/docs/overview?topic=overview-terms>
 - 5.1.2 Azure Cloud Terms of Use: [Microsoft Azure Legal Information | Microsoft Azure](#)
 - 5.1.3 4D Hosting Terms of Use: www.4dhosting.com/terms-and-conditions.html
- 5.2 If the provider of any Third-Party Products notifies Responsiv that they have withdrawn or terminated its services or Responsiv's or Customer's access to such services, Responsiv may:
 - 5.2.1 provide Customer access to a functionally equivalent alternative Cloud Service offering; or
 - 5.2.2 terminate the Cloud Service immediately upon the effective date of such termination by the third-party provider by providing notice of termination to Customer.
 - 5.2.3 From time-to-time Cloud Partners Uplift their pricing due to third-parties price changes. In as much as these price changes are passed on to Responsiv, we reserve the right to at the time of such uplift to pass this price change on to the Customer from the effective date of such change, with 30 days' notice to the Customer of any such change.

6 CUSTOMER SOLUTIONS

- 6.1 If you provide End Users any non-Responsiv software or services (including management services) with, through or using the Solution (a "Customer Solution"), you must provide your End Users with this Agreement and your End Users must agree that their use of the Customer Solution is subject to the terms and conditions of this Agreement.
- 6.2 Responsiv is acting as an information technology provider only. Responsiv's directions, suggested usage, or guidance or use of the Cloud Services do not constitute medical, clinical, legal, accounting, or other licensed professional advice. Customer and its

authorized users are responsible for the use of the Cloud Service within any professional practice and should obtain their own expert advice. Customer is responsible for its use of Cloud Services.

- 6.3 You are responsible for any Customer Solution, including:
- 6.3.1 controlling the access to, and use and security of, the Customer Solution and the data residing in or processed via the Customer Solution, including the use of appropriate encryption.
 - 6.3.2 maintaining the security of the passwords and other measures used to protect access to any end-user account.
 - 6.3.3 properly configuring the Solution to work with the Customer Solution and taking your own steps to maintain appropriate back-up of the Customer Solution, including the use of appropriate archiving; and
 - 6.3.4 properly handling and processing notices claiming that the Customer Solution violates a person's rights. Customer agrees to indemnify and hold Responsiv harmless from and against any claims by End Users using the Customer Solution against Responsiv relating to the Customer Solution.

7 CUSTOMER OBLIGATIONS

- 7.1 You are responsible for keeping your account permissions, billing, and other account information current. If you purchased directly from Responsiv, you must pay when due the amounts for the Solution stated in the applicable Product Entitlement or other agreement between you and Responsiv. If you purchased from a reseller, you must pay when due the amounts for each Solution stated in the applicable agreement between you and the reseller.
- 7.2 Certain Solutions may contain features designed to interoperate with Third-Party Products or Cloud Partner services. If the Third-Party Product or Cloud Partner services are no longer made available by the applicable provider, we may stop providing the related Solution feature and you will not be entitled to any refund, credit or other compensation.
- 7.3 In our performance of the Solution, we may obtain information related to your use of the Solution. You agree that we may use such information in an aggregated, anonymized form to assist in improving and optimizing various aspects of the Solution or in support of generic marketing activities related to the Solution.
- 7.4 You represent and warrant that you have obtained all rights, permissions and consents necessary to use and transfer any Customer data or End User data within and outside of the country in which you are located in connection with our (or our Cloud Partners') performance of the Service or your use of the Software (including providing adequate disclosures and obtaining legally sufficient consents from your employees, agents, contractors and End Users).
- 7.5 You are responsible for the data and software you use or store in the cloud, including its maintenance, operation and compatibility in and with the cloud, and any third-party claims regarding the same. You understand and agree that neither Responsiv nor the Cloud Partners have control over the content of the data processed and that Responsiv (or the Cloud Partner, as applicable) performs the Services on your behalf.
- 7.6 If you or an End User transmits data to a third-party website or other provider that is linked to or made accessible by the Solution, you and the End User consent to our or the Cloud Partners, as applicable, enabling such transmission, but such transmission and any related interaction is solely between you and the third-party website or provider and may be subject to additional terms and conditions provided by the third-party website or provider. Neither Responsiv nor the Cloud Partners will be responsible for any disclosures, modifications or deletions of your data resulting from any such transmission. Neither Responsiv nor the Cloud Partners make any warranties about, or will have any liability for, such third-party websites or providers.
- 7.7 You must use reasonable security precautions in connection with your use of the Solution and comply with the AUP and laws and regulations applicable to your use of the Solution. You must cooperate with our reasonable investigation of Service outages, security issues and any suspected breach of this Agreement. We may revise the AUP to add or modify restrictions on use of the Solutions, provided that the changes are commercially reasonable, consistent with industry norms and apply to all customers.
- 7.8 You will be deemed to have taken any action that you permit, enable or facilitate any person or entity to take related to this Agreement or any use of any Solution. You are responsible for the use of the Solutions by any End User and any person who gains access to your or any End User's data or the Solution as a result of your failure to use reasonable security precautions, even if the use was not authorized by you. You will ensure that End Users comply with your obligations under this Agreement and that the terms of your agreement with each End User are consistent with this Agreement and are legally enforceable. If you become aware of any violation of your obligations under this Agreement by an End User, you will immediately terminate such End User's access to the Solution.
- 7.9 You are responsible for selecting, obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Solution and for ensuring that the equipment is compatible with the Solution. You are responsible for properly configuring and using the Solution and taking your own steps to maintain appropriate security, protection and back-up of your data and software, including the use of appropriate encryption, back-up, and archiving. You acknowledge that the Solutions are not intended to replace and do not replace the need for you to maintain regular data back-ups or redundant data archives. You are responsible for maintaining back-up copies of your data that may be stored or processed by us during our provision of Solutions. You understand and agree that we are not responsible for any loss or corruption of your data or software. You remain responsible for properly handling and processing notices claiming that your data or software violates a person's rights.
- 7.10 In connection with certain Solutions, we may provide you with hardware, software, equipment, or other property ("Equipment"). The Equipment is our sole property, and we may immediately take possession of the Equipment following the termination or expiration of this Agreement. You will:
 - 7.10.1 keep the Equipment free and clear of any lien and not pledge as security or otherwise encumber the Equipment.
 - 7.10.2 use the Equipment only to access the Solution and comply with our reasonable Equipment use instructions.

- 7.10.3 not remove, relocate, or move the Equipment from the specific location where it was first installed without our prior written approval.
- 7.10.4 provide adequate, secure and proper space at your facility to install Equipment, it being agreed that we are not obligated to install Equipment in poorly ventilated, air conditioned or inadequately maintained room(s);
- 7.10.5 be responsible for risk of loss and damage to the Equipment equal to the present value of the Equipment's fair market value.
- 7.10.6 not remove, cover, or alter plates, labels, or other markings on the Equipment; and
- 7.10.7 provide a secure link such as a static IP address for the Equipment.

8 CUSTOMER LICENSE GRANT TO RESPONSIV

- 8.1 Customer grants to Responsiv (and the Cloud Partners, if applicable) the necessary rights to operate any Customer-provided software, including a non-exclusive, royalty-free license (which shall terminate upon termination of the applicable Solution) to install, deploy, use, execute, reproduce, display, perform and run such software (including, without limitation, guest operating systems and application programs), as are reasonable or necessary for Responsiv or the Cloud Partner, if applicable, to perform or provide the Solution. As between you and Responsiv or you and the Cloud Partner, you are responsible for providing, updating, uploading, and maintaining any Customer-provided software and paying all fees associated therewith, including any software license and maintenance fees. If, to provide the Solution, we or our Cloud Partner, as applicable, are required to install, patch, manage or otherwise use or access software that you license from a third-party software vendor, then you represent and warrant that you have obtained a written license agreement with the vendor that permits us to perform these activities.
- 8.2 Customer grants to Responsiv or Responsiv's Cloud Partner, as applicable, a non-exclusive, royalty-free license to access, use, reproduce, modify, perform, display, and distribute Customer and End User data as is reasonable or necessary for Responsiv or Cloud Partner to perform or provide the Solution. It is Customer's responsibility to obtain, at its own expense, all licenses, consents, and approvals required to grant to Responsiv (or Responsiv's Cloud Partner) the rights and licenses in this Agreement.

9 SUSPENSION, DELETION AND MODIFICATION

- 9.1 We may suspend all or part of the Solution or your access to or use of data stored in the cloud,
 - 9.1.1 if you (or the reseller, from which you purchased) default on payment obligations for 15 days or more.
 - 9.1.2 upon receipt of a law-enforcement request; or
 - 9.1.3 when we have a commercially reasonable belief that you have breached this Agreement or that your use of the Solution poses an imminent security risk or may subject Responsiv to liability.
- 9.2 We will use commercially reasonable efforts to give you at least 24 hours' notice of a suspension unless we (or the Cloud Partner) determine in our commercially reasonable judgment that a suspension on shorter or contemporaneous notice is necessary to protect us, the Cloud Partner, or our customers.
- 9.3 For customers purchasing a Responsiv-delivered Solution, we may delete your Customer Content
 - 9.3.1 60 days following any termination by us pursuant to Clause **Error! Reference source not found.** of this Agreement, or
 - 9.3.2 if you (or the reseller, from which you purchased) fail to renew an applicable Product Entitlement within 60 days of expiration. For customers purchasing a Partner Solution, the retention and deletion of Customer Content will be governed by the applicable Cloud Partner Terms.
- 9.4 If we are providing the Solution in connection with a trial program such as a demo, evaluation, pilot or proof of concept (a "Trial"), immediately following the conclusion of the Trial we may delete Customer Content stored in the cloud without any obligation to return Customer Content to you. If, however, immediately following the conclusion of the Trial you renew the Solution for the standard term, we will keep Customer Content in the cloud in accordance with this Agreement.
- 9.5 We or the Cloud Partner may modify the functionality or features of the Solution at any time, provided that the modification does not materially denigrate the functionality of the Solution (as described in the applicable Product Entitlement) during the Term. We or the Cloud Partner will not be liable to you or any third-party for any such modification. From time to time, we or the Cloud Partner may change the location where the Solution is delivered; provided, however, we or the Cloud Partner will remain responsible for the delivery of the Solution.
- 9.6 It may be necessary for us or the Cloud Partner to perform scheduled or unscheduled repairs or maintenance, or remotely patch or upgrade the Software, which may temporarily degrade the quality of the Solution or result in a partial or complete outage of the Solution. Although we cannot guarantee that you will receive advance notice of repairs or maintenance, we will endeavour to provide at least 7 days' notice of scheduled updates and patches or such notice as is set forth in the applicable Cloud Partner Terms.
- 9.7 Responsiv may withdraw a Cloud Solution on 12 months' notice, unless otherwise stated in an Offer. Responsiv will continue to provide the Cloud Service for the remainder of the unexpired term or work with the Customer to migrate to another Responsiv offering.

10 GENERAL TERMS

- 10.1 Specifically note the clauses in the **Responsiv General Terms and Conditions** dealing with Definitions, Payment (Clause 2), Termination (Clause 3) and Liability (Clause 11) and that these General Terms and Conditions fully apply to any Agreement, including this one.

11 WARRANTY AND EXCLUSIONS

- 11.1 The Solution, together with all third-party products and open-source software provided by Responsiv, is provided "as is." Responsiv (including its affiliates, contractors, and agents, and each of their respective employees, directors, and officers), on behalf of itself and its licensors, Cloud Partners, and suppliers (collectively and together with Responsiv, the "Responsiv Parties"), makes no

express or implied warranty with respect to the Solution or any of the software or services included therein, including but not limited to any warranty,

- 11.1.1 of merchantability, fitness for a particular purpose, suitability, or non-infringement,
- 11.1.2 relating to the performance of software (including whether the software is or will be secure, accurate, complete, without error, or free of viruses, worms or other harmful components or program limitations, or that any errors in the software will be corrected) or our performance of the services (including whether the services are or will be uninterrupted, timely or without error) or the security of the solution or whether the Solution is suitable for high-risk activities,
- 11.1.3 regarding the results to be obtained from the Solution (including the accuracy, quality, reliability, suitability, completeness, truthfulness, usefulness or effectiveness of any reports, data, results, or other information obtained or generated by you related to your use of the software) or the results of any recommendation by us, or
- 11.1.4 arising out of any course of dealing or trade usage. Any warranty on a third-party product is provided by the publisher, provider, or original manufacturer, whether such third-party product is designated by us as "certified," "approved" or otherwise. In the event we are providing the Solution in connection with a trial, the Solution is provided "as is" and "as available" without any warranties.
- 11.2 The Customer accepts responsibility for:
 - 11.2.1 testing its IT system and components and ensuring their compatibility with the Solution, and
 - 11.2.2 the selection of the Solution to achieve its intended results and acknowledges that the Solution has not been developed to meet the individual requirements of the Customer.
- 11.3 With respect to your or End User's use of the software, you assume the entire cost of all necessary servicing, repair, or correction of problems caused by viruses or other harmful components, unless such problems or viruses are the direct result of our gross negligence or wilful misconduct.
- 11.4 You agree that the operation and availability of the systems used for accessing and interacting with the Solutions, including telephone, computer networks and the internet, or for transmitting information can be unpredictable and may, from time to time, interfere with or prevent access to or use or operation of the Solutions. We will not be liable for any such interference with or prevention of your or End User's access to, or use of, the Solutions or the impact such interference or prevention may have on our ability to perform the Solutions.
- 11.5 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties, or other terms as to satisfactory quality or fitness for purpose.
- 11.6 These warranties are Customer's exclusive warranties and replace all other warranties or conditions, express or implied, including, but not limited to, any implied warranties or conditions of merchantability, satisfactory quality, fitness for a particular purpose, title, and any warranty or condition of non-infringement.

12 INDEMNIFICATION

- 12.1 We will defend and indemnify you from and against any claims, damages, liabilities, losses, costs and expenses (including reasonable legal fees) arising out of or relating to any third-party claim or action that the Solution (excluding Third-Party Products and open-source software) infringes or misappropriates that third-party's Intellectual Property rights enforceable in the country in which the Solution is sold to you.
- 12.2 In addition, if we receive prompt notice of a claim that, in our reasonable opinion, is likely to result in an adverse ruling, then we will, at our option:
 - 12.2.1 obtain a right for you to continue using the Software or that allow us to continue performing the Services.
 - 12.2.2 modify the Software or Services to make them non-infringing.
 - 12.2.3 replace the Software or Services with a non-infringing equivalent; or
 - 12.2.4 refund any pre-paid fees for the allegedly infringing Services that have not been performed or provide a reasonably depreciated or pro rata refund for the allegedly infringing Software.
- 12.3 Notwithstanding the foregoing, we will have no obligation under this Clause 13 for any claim resulting or arising from:
 - 12.3.1 modifications of the Software or Services that were not performed by or on behalf of us.
 - 12.3.2 the combination, operation or use of the Software or Services in connection with a Third-Party Product (the combination of which causes the claimed infringement); or
 - 12.3.3 our compliance with your written specifications or directions, including the incorporation of any software or other materials or processes provided by or requested by you.
- 12.4 This Clause 13 states Customer's exclusive remedies for any third-party Intellectual Property claim or action, and nothing in this Agreement or elsewhere will obligate us to provide any greater indemnity to Customer.
- 12.5 You will defend and indemnify the Responsiv Parties from and against any claims, damages, liabilities, losses, costs and expenses (including reasonable legal fees) arising out of or relating to any third-party claim or action relating to:
 - 12.5.1 your failure to obtain or maintain any appropriate license, Intellectual Property rights or other permissions, regulatory certifications or approvals associated with technology or data provided by you, or associated with Software, Third-Party Products or other components directed or requested by you to be installed or integrated as part of the Solution.
 - 12.5.2 your breach of this Agreement or violation of any applicable law, regulation or order.

- 12.5.3 any inaccurate representation regarding the existence of an export license or any allegation made against the Responsiv Parties due to your violation or alleged violation of applicable Control Laws.
 - 12.5.4 your provision of any Excluded Data to Responsiv.
 - 12.5.5 tax liabilities that are your responsibility.
 - 12.5.6 your use of the Solution.
 - 12.5.7 the failure of any End Users to comply with your obligations under this Agreement; and
 - 12.5.8 your provision of your own services, software, technology, or solution.
- 12.6 Each party will defend and indemnify the other party against any third-party claim or action for personal bodily injury, including death, to the extent directly caused by the indemnifying party's gross negligence or wilful misconduct while performing its obligations under this Agreement.

13 INDEMNIFICATION PROCEDURE

- 13.1 The indemnified party will:
- 13.1.1 promptly notify the indemnifying party in writing of any claim.
 - 13.1.2 grant the indemnifying party sole control of the defense and resolution of the claim; and
 - 13.1.3 cooperate with the indemnifying party, at the indemnifying party's expense, in defending and resolving the claim. Failure to provide prompt notice, however, will not affect the indemnifying party's obligations to the extent the failure does not materially prejudice the indemnifying party's ability to defend the claim.
- 13.2 In no event will an indemnifying party consent to the entry of any judgment or enter into any settlement with respect to any third-party claim without the prior written consent of the indemnified party (not to be unreasonably withheld) unless the judgment or settlement involves only the payment of money damages, without admission of fault, and expressly and unconditionally releases the indemnified party from all liabilities and obligations with respect to the claim.

14 CLOUD SOLUTIONS AGREEMENT ACCEPTABLE USE POLICY

- 14.1 This Cloud Solutions Agreement Acceptable Use Policy (the "AUP") sets forth certain limitations and restrictions required in connection with your use and your End Users' use of (a) the Solutions, and (b) any online portal, console, dashboard, or similar interface used in accessing the Solutions (the "Portal").
- 14.2 We may revise this AUP from time to time to add or modify restrictions on your use or your End Users' use of the Solutions or the Portal.
- 14.3 If you or your End Users violate this AUP, we may suspend or terminate your use or your End Users' use of the Solutions.
- 14.4 Terms used in this AUP that are capitalized and not otherwise defined have the meanings set forth in the Responsiv Cloud Solutions Agreement.
- 14.5 You are prohibited from:
- 14.5.1 attempting to use or gain unauthorized access to our or to any third-party's networks or equipment;
 - 14.5.2 permitting other individuals or entities to copy the Solutions;
 - 14.5.3 providing unauthorized access to or use of Activation Instructions;
 - 14.5.4 attempting to probe, scan or test the vulnerability of the Solutions or of a system, account or network of Responsiv or any of our customers or suppliers;
 - 14.5.5 interfering or attempting to interfere with service to any user, host or network;
 - 14.5.6 engaging in fraudulent, offensive or illegal activity of any nature;
 - 14.5.7 uploading any content, or engaging in any activity, that is pornographic, obscene, harassing, abusive, slanderous or defamatory or that encourages, promotes or expresses racism, hatred, bigotry or violence;
 - 14.5.8 engaging in any activity that infringes the intellectual property rights or privacy rights of any individual or third-party;
 - 14.5.9 transmitting unsolicited bulk or commercial messages;
 - 14.5.10 intentionally distributing worms, Trojan horses, viruses, corrupted files or any similar items;
 - 14.5.11 restricting, inhibiting or otherwise interfering with the ability of any other person, regardless of intent, purpose or knowledge, to use or enjoy the Solutions (except for tools with safety and security functions); or
 - 14.5.12 restricting, inhibiting, interfering with or otherwise disrupting or causing a performance degradation to any Responsiv (or Responsiv supplier) facilities used to deliver the Solutions.
- 14.6 We may investigate suspected violations of this AUP. We may report suspected violations of this AUP to applicable law-enforcement authorities or third parties and may cooperate with any investigation of illegal activities associated with your use or your End Users' use of the Solutions, the Portal, the system or network, or any violation of this AUP.