

TERMS AND CONDITIONS

These Terms and Conditions (the “Terms”) are incorporated by reference into an Order Form (together with the Terms, the “Agreement”) executed by Real Green Systems (“RGS”) and Customer (as identified in the Order Form). These Terms and Conditions govern all use of the Systems and Services identified in the Order Form.

1. **Definitions**

1.1. “**Customer Data**” means any data, information or other materials of any nature whatsoever provided to RGS and/or used by Customer in the course of implementing and/or using the Systems or Services.

1.2. “**Order Form**” means the ordering document executed by Customer and RGS that references and incorporates these Terms.

1.3. “**Systems**” means the Internet-based software application(s) and related website(s) marketed and distributed by RGS, as well as any improvements, modifications, releases, updates, upgrades and derivative works of such Systems.

1.4. “**Services**” means the consulting services provided by RGS, which may include, but are not limited to, data conversions, customizations, training and other related services (as may be further defined in the Order Form).

2. **License Grant.** Subject to the terms and conditions of this Agreement, including payment of all applicable fees as due, RGS grants Customer a limited, non-exclusive, non-transferable, non-sublicensable license to access the Systems via the Internet, strictly for its own internal business operations during the Term. All rights not expressly granted to Customer by RGS hereunder are fully reserved.

3. **Use Restrictions.** Customer shall not: (1) attempt to decrypt, reverse engineer, disassemble, decompile, or otherwise attempt to discern, discover, copy, or disclose the source code, algorithms, processes, or ideas supporting the Systems; (2) disclose the Systems or documentation thereto to any third party, nor allow any third party to access, observe, analyze or view the operation of the Systems; (3) access or utilize or allow anyone else to access or utilize the Systems remotely except as otherwise expressly allowed herein; (4) copy, license, lease, rent, distribute, sell, make available, assign, sublicense or use Systems in a timesharing or service bureau arrangement, or transfer any of Customer’s rights, duties, and obligations hereunder, and any such sublicense, assignment, or other transfer shall be void; (5) modify, frame, translate, or create any derivative works of the Systems; (6) remove or alter any RGS trademark, logo, copyright or other proprietary notice, legend, symbol from the Systems; or (7) use the Systems in any way not expressly provided for in this Agreement.

4. **Data & Ownership**

4.1 **Systems.** Customer acknowledges and agrees that (i) RGS is the exclusive owner of all right, title and interest in and to the Systems, the documentation and any deliverables, including, but not limited to, US and international patent, copyright, trademark, trade secret, and trade dress rights, and (ii) RGS owns and hereby retains all right, title, and interest in and to any and all improvements, modifications, releases, updates, upgrades and derivative works of such Systems.

4.2 **Customer Data.**

a. RGS acknowledges and agrees that, in accordance with the PCI DSS Customer Notice attached to these Terms as **Exhibit A** and incorporated by reference: (i) Customer shall own all right, interest and title in and to its Customer Data in all forms, (ii) RGS shall not sell Customer Data, and (iii) RGS is responsible for the security of cardholder data that it possesses, processes, or transmits on behalf of Customer, to the extent it could impact the security of Customer’s cardholder data environment.

b. Subject to the terms and conditions of this Agreement, Customer grants to RGS a limited, royalty-free, fully paid-up, non-exclusive, non-transferable license to process, copy, store, record, transmit, display, view, print or otherwise use Customer Data for any of the following

purposes: (i) to provide the Systems and services to Customer, (ii) for RGS’ usage provided that RGS has rendered such Customer Data anonymous, or (iii) as necessary to monitor and improve the Systems and Services (including the development of new features and functionality).

c. When processing Customer Data, Customer shall (i) limit data storage in accordance with data retention and disposal policies and procedures, (ii) train handlers of credit card data to do so properly and securely, (iii) not store Primary Account Numbers (“PAN”) or Sensitive Authentication Data after authorization, or (iv) send PAN by insecure means.

5. **Confidentiality**

5.1 **Confidential Information.** “Confidential Information” includes the Systems (including methods or concepts utilized therein), trade secrets (as defined by applicable law), and any information disclosed by either party to the other party, including but not limited to any business or technical information, product plans, designs, costs, product prices (including the pricing under this Agreement), financial information, marketing plans, business opportunities, personnel, research, development or know-how and Customer Data, and if such is orally disclosed, reduced to writing by the disclosing party within 30 days of such disclosure. The receiving party is liable for all misuse by employees, consultants or other third parties of the disclosing party’s Confidential Information or for the use of the disclosing party’s Confidential Information for any purpose not expressly set forth in this Agreement, including but not limited to developing competitive products.

5.2 **Exclusions.** Confidential Information does not include that which (a) is legally in the receiving party’s possession at the time of disclosure without it (or the providing third party) having breached an obligation of confidentiality; (b) is or becomes part of the public knowledge or literature other than as a result of action or inaction of the receiving party (c) is approved for release by written authorization of the disclosing party or (d) is documented to have been independently developed by the receiving party without access to the Confidential Information.

5.3 **Use and Disclosure Restrictions.** Each party will not use or permit others to use the other party’s Confidential Information except as otherwise permitted herein and will not disclose such Confidential Information to any third party, except to those employees and authorized consultants who have a need to know, in order for the party to exercise its rights and fulfill its obligations under this Agreement. The parties shall maintain adequate processes, including but not limited to, requiring that all employees and consultants be bound by written agreements which contain disclosure restrictions at least as protective as those set forth herein. However, each party may disclose the Confidential Information of the other party (a) pursuant to a judicial order or valid subpoena, so long as such party will promptly notify the disclosing party and provide it with an opportunity to preclude or limit such production, or (b) on a confidential basis to its legal or financial advisors.

6. **Non-Solicitation.** During the Term and for a period of twelve months thereafter, Customer shall not, directly or indirectly, in any manner solicit or induce for employment any person who performed any work under this Agreement who is then in employment of RGS.

7. **Publicity and Advertising.** Customer acknowledges and agrees that RGS may issue press releases or endorsements which reference

Customer or includes Customer's logos or other marks or insignias.

8. Backups and Software Maintenance

8.1 Back-ups. If Customer has fulfilled all of its requirements under this Agreement, Customer may receive two free backups via electronic transfer, per year, upon request. Additional backups will result in a \$200 charge per backup. In addition, in the event of termination or expiration of this Agreement, RGS shall retain Customer Data for a period of 90 days following termination or expiration, and Customer shall have the option of obtaining final backups of said Customer Data via electronic transfer at any time during the 90 day period, at the cost of \$200.00 per copy.

8.2 Software Maintenance and Updates. RGS will provide Customer with periodic updates and upgrades to the Systems when such are made commercially available by RGS to its other customers, as part of the subscription, at no additional cost.

9. Warranty. During the Initial Term, the Systems will substantially conform to the description and/or specifications set forth in Systems published documentation, when the Systems is properly operated, in all material respects. Provided that Customer is current with its subscription fees, the sole and exclusive obligation of RGS and Customer's sole and exclusive remedy under this warranty shall be for RGS to use commercially reasonable efforts to promptly modify and/or correct the Systems so that it conforms to the foregoing. THE FOREGOING IS EXCLUSIVE OF ALL WARRANTIES, AND RGS DISCLAIMS ALL WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

10. Limitation of Liability. IN NO EVENT SHALL RGS OR ITS CONTRACTORS, SUPPLIERS OR AGENTS BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, LOST SAVINGS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF CUSTOMER DATA, COST OF PROCUREMENT OF SUBSTITUTE TECHNOLOGY OR SERVICES, OR OTHER DAMAGES OF ANY KIND ARISING OUT OF THE OPERATION OF THE SYSTEMS EVEN IF RGS HAS BEEN ADVISED OF THE POSSIBILITY OR PRIOR OCCURRENCE OF SUCH DAMAGES. RGS' MAXIMUM CUMULATIVE LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT (REGARDLESS OF THE FORM OF ACTION) SHALL NOT EXCEED THE AMOUNT OF FEES PAID UNDER THIS AGREEMENT DURING THE PRIOR SIX MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

11. Term and Termination

11.1 Term. Subject to Section 11.2, the Agreement is effective as of the date specified on the Order Form (the "Effective Date") and will continue in effect until the first anniversary of the Effective Date (the "Initial Term"). Unless earlier terminated as specified in this Agreement, upon expiration of the Initial Term, this Agreement shall automatically renew for consecutive renewal terms (each, a "Renewal Term", and together with the Initial Term, the "Term") equal to 12 months, unless 60 days written notice of its intent not to renew is provided to the other party prior to the expiration of the then-current Term.

11.2 Subsequent Order Forms. If a subsequent order form for new or additional products or services incorporating the Terms is executed by the parties during the Term, then the expiration date of such subsequent agreement shall be aligned with the expiration date of this Agreement and shall automatically renew for consecutive renewal terms in

accordance with its terms. For example, if the Effective Date of the Agreement is January 1, 2019, and the effective date of such subsequent agreement is March 1, 2019, then both the Agreement and such subsequent agreement shall expire on December 31, 2019, and automatically renew for an additional twelve-month term commencing on January 1, 2020, unless sooner terminated or non-renewed in accordance with their respective terms.

11.3 Termination. RGS may turn off the Service and terminate this Agreement upon written notice if: (a) a bankruptcy proceeding is instituted by or against Customer which is not dismissed within 60 days from the commencement thereof, or (b) Customer breaches any of its obligations under this Agreement, including its obligation to pay amounts due hereunder, and Customer fails to cure said breach within 30 days from the date of RGS' written notice. Upon any termination or expiration of this Agreement, Customer shall immediately pay all amounts due and payable to RGS through the effective date of termination, and in the case of Customer's uncured breach, or in the event of Customer's early termination without cause, Customer shall be liable for early termination fees as set forth below.

11.4 Effect of Termination. Upon any termination or expiration, all access, and RGS licenses and corresponding Services related to the Systems, maintenance and support shall terminate immediately. Each party shall either return or securely destroy all copies of all Confidential Information belonging to the other party.

12. Payment. Payments for recurring fees will be invoiced on a monthly basis unless a different period is set out in the applicable Order Form. Customer shall pay half of any implementation fees on the Effective Date and the other half ninety days thereafter. Payments may be made by ACH or credit card processing for monthly payments, unless other terms are agreed upon. If payments are made by credit card, additional charges may apply in accordance with applicable law. RGS shall have the right to increase fees on an annual basis on the anniversary of the then-current Term of this Agreement, up to an amount equal to the greater of: (i) the percentage rate of increase for the immediately preceding 12-month period in the Consumer Price Index, as published by the Bureau of Labor Statistics of the United States Department of Labor or (ii) three percent (3%). All fees are to be paid in U.S. dollars and, when paid, are non-cancelable, non-contingent and non-refundable. All fees are exclusive of taxes, including but not limited, to sales, use, transfer, privilege, excise, VAT and all other taxes and duties. Amounts which are not received by the due date shall be subject to a late fee of one and one-half percent (1.5%) or the highest amount allowed under applicable law, whichever is lower, compounded monthly, commencing from the payment due date. Fees and expenses due from Customer under this Agreement may not be withheld or offset by Customer against other amounts for any reason.

13. Early Termination Fees. Customer understands and acknowledges that in the event of an early termination without cause by Customer, early termination fees shall apply. Early termination fees shall be in addition to any other fees owed by Customer for Services or other contracted professional services and/or training. Early termination fees shall be computed based on the monthly fees due multiplied by the number of months remaining in the then-current Term. Such early termination fees will be invoiced to Customer in one lump sum within 15 days of Customer's termination notice, and will be due net 30 days from the date of invoice. Early termination fees shall be deemed to be liquidated damages and not a penalty.

14. Equitable Relief. The parties agree that a material breach of the license or confidentiality provisions of this Agreement would cause irreparable injury to RGS for which monetary damages would not be an adequate remedy, and therefore RGS shall be entitled to equitable relief

in addition to any other remedies it may have hereunder or at law.

15. **General.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Michigan, without regard to its conflict of laws principles. Customer and RGS agree that the sole venue and jurisdiction for disputes arising from this Agreement shall be the appropriate state or federal court located in Oakland County, State of Michigan. The prevailing party in any action to enforce this Agreement will be entitled to recover its reasonable attorney's fees and costs in connection with such action. Except for a party's payment obligations hereunder, a party shall be excused from any delay or failure to perform all or any part of this Agreement by events, occurrences, or causes beyond its reasonable control including but not limited to, acts of God, labor disputes, strikes, riots, acts of terrorism, war or governmental requirement ("Force Majeure Events"). Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. If any provision of this Agreement is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Agreement

shall remain enforceable. Each party shall comply with all applicable laws and regulations including federal, state and local, laws, orders and regulations which may apply in connection with this Agreement, or any Order Form pursuant to the Agreement. Without prejudice to the generality of the foregoing, each party agrees to comply with all applicable laws and regulations relating to trade and export control (including those of the United States as applicable), and to cooperate in good faith to ensure compliance with the foregoing. Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given (i) if by hand delivery, upon receipt thereof, (ii) if by mail or by facsimile transmission, upon receipt thereof, or (iii) if by next day delivery service, upon such delivery. This Agreement and related Order Form (and any addenda or amendments hereto): (i) represents the entire agreement between the parties relating to the subject matter of this Agreement, (ii) supersedes all prior agreements, representations and warranties relating to the subject matter of this Agreement, and (iii) may only be amended, canceled or rescinded by a writing signed by both parties. Section 2 (Ownership), Section 3 (Confidentiality), Section 8 (Limitation of Liability), and Section 12 (General) shall survive any termination of this Agreement.

Exhibit A
PCI DSS Customer Notice