

**Agreement**

This Agreement is made as of the 26th day of March, 2013 by and between R.S. Means Company, LLC ("RSMMeans") and Hidalgo County, Texas ("Customer").

Whereas, Customer is purchasing certain products from RSMMeans; and

Whereas, the attached User Agreement sets forth the terms and conditions governing the use by customers of RSMMeans of the RSMMeans Online <sup>TM</sup> Web site ("Web site"); and

Whereas, RSMMeans and Customer wish to modify Section 9 of the User Agreement as provided below;

Now, therefore the parties agree as follows:

1. Section 9 of the attached User Agreement is hereby revised to read as follows:

"To the extent provided for under the Constitution and laws of the State of Texas, you hereby agree to indemnify, defend and hold harmless RSMMeans and its affiliates from and against any and all liability and cost incurred by RSMMeans or the affiliates in connection with any third party claim arising out of any breach of any of your obligations set forth herein. RSMMeans reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you and you shall cooperate as fully as reasonably required in the defense of any such claim. You shall not in any event settle any claim without the prior written consent of RSMMeans".

2. Customer hereby accepts the provisions of the User Agreement and agrees to comply with such provisions in its use of the Web site, as such User Agreement is modified as provided in Section 1 above.

R.S. Means Company, LLC

Hidalgo County, Texas

By \_\_\_\_\_

By \_\_\_\_\_

Name:

Name:

Title:

Title:

SALES HELP: 1-800-334-3509 EMAIL US NOW

## USER AGREEMENT

This User Agreement ("Agreement") sets forth the terms and conditions governing your use of the RSMeans Online™ Web site ("Web site"). Your use of this Web site constitutes your acceptance of these terms and conditions.

This Agreement is between you and R.S. Means Company, LLC ("RSMeans"), a limited liability company organized and existing under the laws of Delaware having its office at 700 Longwater Drive, Norwell, MA. 02061.

### 1. Your Rights.

RSMeans grants you a non-exclusive, non-transferable, limited right to use and display this Web site and the materials provided hereon, provided that you comply fully with this Agreement. You agree not to share your login and password for this Web site with any other individual. You agree not to interrupt, or attempt to interrupt, the operation of this Web site in any way.

**You may not merge the cost data available on this Web site with any software program or extract such cost data other than into a spreadsheet for your personal and/or employment related use on a single computer. You have no right to create derivative works based on or which utilize the cost data available on this Web site, or to sublicense, sell, lend, rent or lease any portion of such cost data to any third party.**

### 2. Fee-Based Services Charges.

Certain products and features of this Web site are available only through the purchase of a site subscription ("Fee-Based Services")

- a. You agree to pay, using a valid credit card which RSMeans accepts, the monthly or annual subscription charges set forth on this Web site, applicable taxes, and other charges incurred on your account in order to access the Fee-Based Services. In accordance with state and local law, your purchase will be taxed using the applicable sales tax or seller's use tax rate for the user's address. The tax listed during checkout is only an estimate. Your invoice will reflect final tax due. RSMeans reserves the right to increase fees, surcharges, and Web site subscription fees, or to institute new fees, at any time, upon reasonable notice posted in advance on this Web site, with such fees to become effective upon the renewal of your then current subscription.
- b. You are responsible for all charges associated with connecting to this Web site, including, without limitation, telephone, modem, and broadband access charges necessary to access the Web site and the Fee-Based Services.
- c. If you purchase an annual site subscription to access the Fee-Based Services your subscription may only be cancelled as hereafter provided, and will automatically renew at the end of the initial subscription period for successive periods of twelve (12) months each unless you or RSMeans provide written notice of cancellation, effective at the end of the initial twelve (12) month subscription period or at the end of the then current twelve (12) month renewal period, as applicable, not less than thirty (30) days prior to the end of the initial or then current renewal period.
- d. For purposes of identification and billing, you agree to provide RSMeans with accurate, complete, and updated information required by the site subscription

registration to the Fee-Based Services ("Registration Data"), including your name, address, email address, telephone number, and applicable payment data (e.g., credit card number, expiration date). Failure to comply with this provision (including falsification of any Registration Data) may, at RSMMeans option, result in immediate suspension or termination of your right to use the Fee-Based Services without refund of any amounts paid by you or cancellation of any amounts then payable by you.

- e. You agree to promptly update your Registration Data, including your password, in the event of any known or suspected unauthorized use of your subscription, or any known or suspected breach of security, including loss, theft, or unauthorized disclosure of your password or credit card information. In the event of a breach of security, you will remain liable for any unauthorized use of your subscription.

### **3. Your Password.**

As part of the Registration process, you will select a password. This password is for your individual use only. You are responsible for maintaining the confidentiality of any password you use to access the Fee-Based Services, and agree that RSMMeans will have no obligation with regards thereto.

### **4. Privacy Policy.**

The terms and conditions of the RSMMeans privacy policy ("Privacy Policy") applicable to this Web site, as such terms and conditions may be changed by RSMMeans from time to time in its sole discretion, are set out in the section labeled Privacy on the home page of this Web site. Such terms and conditions are incorporated herein and included in this Agreement. As indicated in the Privacy Policy, RSMMeans shall have the right to review estimates and other information created by you in connection with your use of this Web site, and may aggregate such information with information created by other users of this Web site for the purpose of developing statistical data which may be used by RSMMeans and its affiliates for such purposes as RSMMeans and its affiliates may determine in their sole discretion. Click here for the [Latest Privacy Policy](#).

### **5. Copyright and Trademarks.**

All materials on the Web site, including, without limitation, text, images, software, audio and video clips, databases, and Fee-Based Services (collectively, the "Content") are owned or controlled by RSMMeans, which retains all right, title, and interest in and to such Content. The Web site and the Content contain valuable and proprietary information of RSMMeans and others and are protected by the copyright and trademark laws of the United States and other countries, international conventions, and other applicable laws.

You agree not to use any trademarks, service marks, names, logos, or other identifiers of RSMMeans or any other Reed Elsevier business, or their employees, licensors, independent contractors, and affiliates without the prior written permission of RSMMeans or the relevant Reed Elsevier business. In addition, you may not use trademarks, service marks, names, logos, or other identifiers:

- a. In, as, or as part of, your trademarks or those of any third parties;
- b. To identify products or services that are not those of RSMMeans;
- c. In a manner likely to cause confusion; or
- d. in a manner that implies that RSMMeans sponsors or endorses or is otherwise connected with your own activities, products and services or those of third parties.

### **6. Forums.**

RSMMeans may make available to users of this Web site, e-mail notices, newsletters, chat rooms, message boards, bulletin board services or other interactive facilities by means of this Web Site (collectively, the "Forums"). RSMMeans cannot review all communications made on or through the Web site. RSMMeans reserves the right, but has no obligation, to monitor the Forums and to edit, modify or delete any material which RSMMeans in its sole discretion determines to violate this Agreement or to be in any other way offensive or contrary to any RSMMeans policy.

## **7. Links to Other Sites.**

This Web site may contain links and pointers to other sites on the Internet which may be maintained by third parties. Such links do not include an endorsement by RSMMeans or its affiliates of any third-party site or any material contained therein. RSMMeans and its affiliates do not control, and are not responsible for, the availability, accuracy, privacy policy, or currency of such third-party sites or any information, content, products or services accessible from such third-party sites.

## **8. Financial Responsibility.**

You agree not to assign, transfer, or sublicense your rights as a subscriber to the Fee-Based Services. You agree to be financially responsible for all billing activity on your Fee-Based Services account.

## **9. Indemnification.**

You hereby agree to indemnify, defend and hold harmless RSMMeans and its affiliates from and against any and all liability and cost incurred by RSMMeans or the affiliates in connection with any third party claim arising out of any breach of any of your obligations set forth herein. RSMMeans reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you and you shall cooperate as fully as reasonably required in the defense of any such claim. You shall not in any event settle any claim without the prior written consent of RSMMeans.

## **10. Disclaimer of Warranty.**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE WEB SITE (INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, FEE-BASED SERVICES, MATERIALS AND INFORMATION MADE AVAILABLE THEREON OR ACCESSED BY MEANS THEREOF) ARE PROVIDED AS-IS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, COMPATIBILITY, SECURITY, ACCURACY, OR NON-INFRINGEMENT. To the fullest extent permissible by law, RSMMeans and its affiliates shall not be liable for your use of or inability to use the Web site under any circumstances, including, but not limited to, by reason of the negligence by RSMMeans. RSMMeans does not warrant that the functions contained in the Web site or the Fee-Based Services will be uninterrupted or error-free, that defects will be corrected, that the Web site or Fee-Based Services will meet any particular criteria of performance or quality, or that the Web site, including Forums or the server(s) on which the Web site is operated, are free of viruses or other harmful components.

## **11. Limitation of Liability.**

USE OF THE WEB SITE IS AT YOUR OWN RISK. YOU ASSUME FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM YOUR DOWNLOADING AND/OR USE OF FILES, INFORMATION, COMMUNICATIONS, CONTENT, OR OTHER MATERIAL (INCLUDING, WITHOUT LIMITATION, SOFTWARE) ACCESSED THROUGH OR OBTAINED BY MEANS OF THE WEB SITE. UNDER NO CIRCUMSTANCES SHALL RSMEANS OR ITS AFFILIATES, OR ANY PROVIDER OF THE TELECOMMUNICATIONS OR NETWORK SERVICES FOR RSMEANS OR ITS AFFILIATES, BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES DIRECTLY OR INDIRECTLY RELATED TO THE USE OF, OR THE INABILITY TO USE, THE WEB SITE OR FEE-BASED SERVICES, EVEN IF RSMEANS, ITS AFFILIATES, OR THEIR PROVIDERS OF TELECOMMUNICATIONS OR NETWORK SERVICES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF RSMEANS AND ITS AFFILIATES HEREUNDER IS LIMITED TO THE AMOUNT, IF ANY, ACTUALLY PAID BY YOU FOR ACCESS AND USE OF THE FEE-BASED SERVICES DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING YOUR NOTICE OF CLAIM. YOU HEREBY RELEASE RSMEANS AND ITS AFFILIATES FROM ANY AND ALL OBLIGATIONS, LIABILITIES AND CLAIMS IN EXCESS OF THIS LIMITATION. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

## 12. Termination.

RSMeans reserves the right to restrict, suspend or terminate your access to the Fee-Based Services in whole or in part, without notice, with respect to any breach or threatened breach by you of any portion of this Agreement. If RSMeans terminates this Agreement based on a breach of any portion of this Agreement, RSMeans will not refund any amounts paid or cancel any amounts then payable by you and reserves the right to refuse to provide a subscription or any Fee-Based Services to you in the future.

## 13. Modifications.



### a. To this Agreement.

RSMeans has the right to modify this Agreement. Any modification is effective immediately upon posting to the Web site or distribution via electronic mail or conventional mail. Your continued use of the Web site following posting or other notice of any modification to this Agreement shall be conclusively deemed an acceptance of all such modification(s). Your only right with respect to any dissatisfaction with any modifications made pursuant to this provision, or any policies or practices of RSMeans in providing the Web site, including, without limitation, any change in the Content, is to cancel your subscription in accordance with the subscription help instructions.

### b. To the Web site.

RSMeans has the right to modify, suspend or discontinue the Web site or any portion thereof, at any time, including the availability of any area of the Web site, including, without limitation, the Fee-Based Services. RSMeans may also impose limits on certain features and services or restrict your access to part or all of the Web site without notice or liability.

## 14. General

This Agreement constitutes the entire agreement between you and RSMeans with respect to the Web site, and, if applicable, the Fee-Based Services and supersedes all prior and contemporaneous written or verbal agreements between you and RSMeans. Failure by RSMeans to enforce any provision of this Agreement shall not be construed as a waiver of any provision or right. Interpretation and enforcement of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts. In the event that any portion of this Agreement is held unenforceable, the unenforceable portion shall be reformed to reflect as nearly as possible the original intentions of the parties, and the remainder of the Agreement shall remain in full force and effect.

Subscribing to RSMeans Online indicates your agreement to the terms and conditions set forth above.