

# **Services Agreement for RTA Fleet Management Software-as-a-Service by Ron Turley Associates Inc**

This Services Agreement for RTA Fleet Management System (“Agreement”) is between Ron Turley Associates, Inc. (“RTA or “Seller”), 17437 N 71<sup>st</sup> Drive, Suite 110, Glendale, AZ 85308, and DuPage County (“COMPANY” or “Customer”) 421 North County Farm Road, Wheaton, IL 60187. RTA or COMPANY may modify this Agreement from time to time, subject to the terms in Section 10 (Changes to this Agreement).

## **1. RTA’s Service Provided and COMPANY’s Use of the Service**

- a. RTA will allow COMPANY to access software provided by RTA through use of encrypted and password protected Web Application, Mobile Application and API’s (collectively the “Service”).
- b. COMPANY is hereby granted a non-exclusive, non-transferable, limited license to access and use the Service subject to the terms and conditions contained in this Agreement.
- c. RTA does not review or pre-screen the contents of electronic data uploaded or posted to the Service (“Content”) by the COMPANY, and RTA claims no intellectual property rights with respect to the Content.
- d. COMPANY agrees not to reproduce, duplicate, copy, sell, resell, or exploit access to the Service, use of the Service, or any portion of the Service, including, but not limited to the HTML or any visual design elements without the express written permission from RTA.
- e. COMPANY agrees not to modify, reverse engineer, adapt or otherwise tamper with the Service or modify another website so as to falsely imply that it is associated with the Service, RTA, or any other software or service provided by RTA.
- f. COMPANY agrees not to use the Service in any manner which may infringe copyright or intellectual property rights or in any manner which is unlawful, offensive, threatening, libelous, defamatory, pornographic, and obscene or in violation of this Agreement.
- g. The Service is protected by United States and international copyright laws and treaties, as well as other laws and treaties. Except for the non-exclusive license granted pursuant to this Agreement, COMPANY acknowledges and agrees that all ownership, license, intellectual property and other rights and interests in and to the Service shall remain solely with RTA.
- h. RTA reserves the rights at any time, and from time to time, to modify or discontinue, temporarily or permanently, any feature associated with the Service, with 30 day written notice.
- i. RTA reserves the right to temporarily suspend access to the Service for operational purposes, including, but not limited to, maintenance, repairs, or

installation of upgrades, and will endeavor to provide 24-hour notice prior to any such suspension, as detailed in section 8.

- j. COMPANY understands and acknowledges that while the software application is not certified, the data center and network equipment provided by AWS holds multiple certifications, viewable at <https://aws.amazon.com/compliance/programs/>.
- k. RTA will provide access to data backups on an automated, scheduled interval should COMPANY desire to archive a local copy of the data backup files. Email [support@rtafleet.com](mailto:support@rtafleet.com) to request this additional service option. No additional fee is charged for this optional service.
- l. The COMPANY understands and agrees that RTA cannot and does not control the flow of data to or from the network or on other portions of the internet. At times, actions or inactions of third parties may impair or disrupt COMPANY's connections to the internet or portions thereof.

## 2. Payment

- a. COMPANY will pay RTA invoices pursuant to Local Government Prompt Payment Act, 50 ILCS 505/1 et. seq. apply to all purchases made by DuPage County. The Act provides that the County must approve or disapprove of an invoice for goods or services within 30 days of the presentation of the invoice or delivery of the goods or services – whichever is later. The County then has 30 days after approval to pay any portion of the invoice which it has not disapproved. Interest, when permitted under the Act, accrues on a monthly basis at 1%.
- b. Such invoices will begin upon execution of this Agreement in accordance with the payment terms enumerated in Section 2(a) above and will continue on the recurring basis as specified in the pricing proposal attached to this Agreement.
- c. No refunds or credits will be issued for partial months that COMPANY utilizes the Service.
- d. If COMPANY fails to pay any payment in accordance with the payment terms enumerated in Section 2(a) above, RTA shall have the right to suspend the COMPANY's access to the Service or take any other steps necessary to ensure payment.
- e. COMPANY may purchase upgrades to the software or service at any time during the term of this Agreement, such as additional vehicle asset licenses, additional user licenses, or software add-on modules. Applicable pricing increase for the upgrades will be applied to the next billing cycle or the following month, whichever is closest.

## 3. Term of Service

- a. If COMPANY should wish to cancel the Agreement, it may do so by providing thirty (30) days' notice to RTA of intent to cancel and paying all outstanding charges.

- b. The Agreement shall be for an initial term of one (1) year, with an optional renewal up to one (1) year at a time subject to mutual cancellation at any time upon thirty (30) day written notice from one party to the other.
- c. RTA, in its sole discretion, has the right to suspend or discontinue providing the Service to COMPANY, with 30 days' notice, for non-compliance with this Agreement, and pursue any other remedy legally available to it.
- d. Upon cancellation or termination of this Agreement, RTA will provide a system backup which will be made available for download by COMPANY.
- e. Upon cancellation or termination of this Agreement, all Content associated with such subscription will be irrevocably deleted from the Service after 90 days, and RTA will have no obligations to maintain such Content thereafter.
- f. All outstanding balances must be paid in full prior to data backups being delivered to COMPANY.

#### **4. COMPANY Obligations**

- a. COMPANY shall designate, in writing, contact information for at least two representatives, including emergency contact information. Such representatives shall be notified via e-mail or phone in the event of any emergency related to the Service such as cyber security breach, data loss, or complete service outage. Any obligation of RTA related to any emergency shall be completed once RTA contacts either of the representatives either by telephone message or by sending an email message to a representative. If COMPANY fails to designate such emergency contacts, RTA shall have no obligation in an emergency.
- b. COMPANY shall comply with all reasonable requests of RTA, including, but not limited to, delivering information to RTA such as is necessary to perform the Service. RTA shall not be liable for any failure to deliver the Service that is caused by the failure of COMPANY to comply herewith.

#### **5. Representations of the Parties**

- a. Each party hereto represents and warrants that as of now, and at all times throughout this Agreement, (1) it is duly organized and has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement; and (2) the performance of its obligations under this Agreement does not violate any laws or regulations and does not breach any agreements with third parties.

#### **6. Warranty and Limitation of Liability**

- a. RTA warrants that the Services and intellectual property rights provided by RTA or used by RTA to provide the Services do not infringe on the intellectual property rights of any third party in the United States.
- b. RTA and its officers, employees and affiliates shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, damage to COMPANY's equipment,

goodwill, use, data or other intangible losses, regardless of whether RTA had notice of the possibility of such damages, resulting from the use of the Service, except in the event of such damages arising out of or relating to the willful or negligent act, or willful or negligent omission of RTA, its officers, employees, agents or affiliates, or a breach of RTA's warranty in section 6(a), above.

- c. Notwithstanding anything to the contrary in this Agreement, RTA shall abide by all of its established security procedures and its online privacy policy, if applicable, in all respects; shall at all times comply with its privacy policy and all applicable laws, rules and regulations, and shall use commercially reasonable efforts to prevent the accidental unauthorized use, copying or disclosure of COMPANY's personal information. RTA shall maintain reasonable security measures designed to ensure the confidentiality of such personally identifiable data and to protect it from unwarranted, accidental or unauthorized access, disclosure, modification or destruction.
- d. **LIMITATION OF**
- e. **LIABILITY IN NO EVENT SHALL SELLER BE LIABLE TO CUSTOMER, ITS CUSTOMERS, EMPLOYEES, AGENTS, AND OTHER REPRESENTATIVES FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, REVENUE, GOODWILL, OR USE, WHETHER IN AN ACTION IN CONTRACT, TORT, STRICT LIABILITY, OR IMPOSED BY STATUTE, OR OTHERWISE, EVEN IF SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANY OF THE TERMS CONTAINED HEREIN, SELLER'S LIABILITY FOR ANY CLAIM – WHETHER BASED UPON CONTRACT, TORT, EQUITY, NEGLIGENCE, OR ANY OTHER LEGAL CONCEPT – SHALL IN NO EVENT EXCEED THE PURCHASE PRICE PAID BY THE CUSTOMER FOR THE PRODUCTS, GIVING RISE TO SUCH CLAIM. CUSTOMER HEREBY ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THESE TERMS FAIRLY ALLOCATE THE RISKS BETWEEN SELLER AND CUSTOMER, THAT SELLER'S PRICING REFLECTS THIS ALLOCATION OF RISK, AND BUT FOR THIS ALLOCATION AND LIMITATION OF LIABILITY, SELLER WOULD NOT HAVE ENTERED INTO AN AGREEMENT WITH CUSTOMER FOR THE SALE OF THE PRODUCTS.**
- f. **Seller shall not be liable for, and Customer assumes responsibility and shall indemnify, defend, and hold Seller harmless, to the extent permitted by law, for any and all claims, including without limitation claims for personal injury or property damages, resulting from (a) the improper or inadequate use, storage, handling, operation, assembly, integration, incorporation, assembly, maintenance, or unauthorized alteration, modification, or repair of the Products (including without limitation, the use storage, handling, operation, or integration of the Products contrary to written instructions and/or recommendations of Seller or inadequate training of personnel), (b) changes to construction and materials pursuant to Customer's requests, (c) use of improper tools, resources, or accessories including those but not limited to any third party tools, resources, or accessories that are not approved by Seller or not in accordance with Seller's recommendations, instructions, or directions, (d) acts or omissions of Customer or third parties following the delivery of the Products, € Customer's failure to properly**

**communicate Seller's instructions and warnings to users of the Products, or (f) Customer's, its employees, agents, representatives, customers or any third party's non-compliance with applicable laws, rules and regulation, (g) Force Majeure, or (h) ordinary wear and tear of the Products (e.g., sweep bristles). Seller acknowledges that the Customer has made no representations, assurances, or guaranties regarding the Customer's legal capacity to indemnify Seller as provided for in this Contract. In the event a court of competent jurisdiction holds that Customer is deemed to lack the lawful authority or ability to indemnify, defend or hold harmless the Seller, or any person or entity claiming a right through Seller, or in the event of changes in the laws of the State of Illinois governing Customer's indemnification authority, such occurrence(s) shall not affect the validity and enforceability of the remainder of this Contract or the parties' rights and obligations provided for therein.**

**In jurisdictions that limit or preclude limitations or exclusion of remedies, damages, or liability, such as liability for gross negligence or willful misconduct or do not allow implied warranties to be excluded, the limitation or exclusion of warranties, remedies, damages, or liability set forth in these Terms are intended to apply to the maximum extent permitted by applicable law, and these Terms shall be deemed amended to comply with such limitations or exclusions. Customer may also have other rights that vary by state, country or other jurisdiction.**

### **7. Database Access Provisions**

- a. In consideration for using the SQL Database format of RTA, RTA is offering this section as a Letter of Understanding concerning the DATA and issues that may arise in connection with an open database system. If COMPANY has requested direct access to the database, be it understood that:
- b. To provide direct connection to the COMPANY SQL database, making it available for connection from SQL Management Studio, Crystal Reports, or integrating with other SQL-aware applications, RTA must place the database on a SQL database server that is connected to the internet. The SQL server connection string listens on a non-standard port and is protected by standard SQL Server security features. A user account specific to COMPANY will be provided and is used solely to access the database. For additional security, a firewall prevents anonymous entities from connecting to the database server. COMPANY will need to provide RTA with the public IP address(es) from which COMPANY will be connecting to the database so that we may allow the connection.
- c. All database connections are read only.
- d. COMPANY is hereby notified that if a data element in a table is deemed to be invalid, RTA will use all diligence to determine the nature of the source of the invalidity. If source of the error is determined to be from an outside query operation or user modification to the data, RTA can assist in correcting the data at our standard professional services rate of \$250/hour.
- e. RTA is requesting that write access to the data be limited (e.g., Not available to non-technical users) to only certain users of the Service.

- f. RTA recognizes the value of using database systems to enhance data availability, access, and reporting. RTA Tech support will support the normal database access questions (field definitions, linkage relationships) but cannot assist in writing queries, forms, or other data-access objects and methods without a formal engagement for those services.
- g. COMPANY will specify static IP addresses that will be connecting to the RTA database by emailing Company Name and IP address(es) to support@rtafleet.com. Connections from all other addresses outside the Service will be blocked.

## **8. Service Level Agreement (SLA)**

- a. **Service Scope.** The following Services are covered by this section:
  - 1. Staffed telephone support
  - 2. Monitored email support
  - 3. Software monitoring
  - 4. Data Center monitoring
  - 5. Service Uptime

b. **COMPANY Requirements.** COMPANY responsibilities and/or requirements in support of this Agreement include:

1. Payment for service-related invoices at the agreed interval.
2. Reasonable availability of COMPANY representative(s) and/or COMPANY IT staff when resolving a service-related incident or request.
3. COMPANY IT staff is responsible for local computers, printers, and local network infrastructure maintenance.
4. COMPANY IT staff is responsible for maintaining a suitable internet connection and communication with applicable Internet Service Providers.
5. COMPANY will notify RTA by email ([support@rtafleet.com](mailto:support@rtafleet.com)) of changes in staff requiring addition or deletion of server user accounts within 1 business day.
6. COMPANY maintains user accounts and user privileges within the RTA Fleet Management Software.
7. Provide information about hours of operation to assist service administrators in scheduling planned maintenance for minimal disruption to COMPANY.
8. If hours of operation coincide with RTA business hours, work with service administrators to accommodate necessary maintenance during business hours.

c. **RTA Requirements.** RTA's responsibilities and/or requirements in support of this Agreement include:

1. Installing, configuring, and maintaining servers and network infrastructure related to the service.
2. Maintaining disk storage related to the service.
3. Appropriate notification to COMPANY for scheduled maintenance which would occur during COMPANY's normal operating hours (operating hours provided by COMPANY to RTA during initial setup of the service).
4. Appropriate notification to COMPANY for major data or system architecture changes.
5. Install upgrades and updates to the Fleet Management Software.
6. Provide access to downloadable data backups on an automated, scheduled interval should COMPANY desire to archive a local copy of the data backup files. COMPANY will submit request to service administrators ([support@rtafleet.com](mailto:support@rtafleet.com)) if access to data backups is desired.
7. Service Commitment. Use commercially reasonable efforts to make the service available with a Monthly Uptime Percentage of at least 99.8%, in each case during any calendar month.
  1. In the event RTA does not meet the Service Commitment, COMPANY will be eligible to request a Service Credit.
  2. If the monthly uptime is between 99.5% and 99.79%, COMPANY may request up to 10% of the monthly service charge.
  3. If the monthly uptime is less than 99.5%, COMPANY may request a credit of 50% of the monthly service charge.
  4. Ensure that data backups are encrypted using 256-bit Advanced Encryption Standard (AES-256).

5. Ensure that 3 copies of data backups are retained for 90 days, then permanently deleted.
  6. Ensure that backups are stored in separate physical data center campuses.
  7. Use commercially reasonable efforts to achieve the following Recovery Point Objective:
    - If SQL data needs to be restored as a result of a data entry error or other issue not related to storage media failure, the data can be recovered to any recent point in time within 1 minute of the problem.
    - If SQL data needs to be restored as a result of physical storage media failure, the data can be restored with a maximum loss of 15 minutes of data.
    - If images, documents, saved reports, data export files, etc. need to be restored, the data can be restored with a maximum loss of 2 hours. If Vision format data needs to be restored, the data can be restored with a maximum loss of 4 hours.
- d. **Exclusions.** The Service Commitment does not apply to any unavailability, suspension or termination of service or performance issues: (i) that result from a suspension of the Agreement; (ii) caused by factors outside of RTA's reasonable control, including any force majeure event or Internet access or related problems beyond the physical point at which the private network of Ron Turley Associates' data center connects to the public network; (iii) that result from COMPANY equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within RTA's direct control); (iv) that result from any scheduled maintenance, with at least one business day notice provided to COMPANY via email; (v) that result from any routine scheduled maintenance outside of COMPANY's normal business hours; (vi) arising from RTA's suspension and termination of COMPANY's right to use the Fleet Management Software service in accordance with the Agreement. If availability is impacted by factors other than those used in RTA's Monthly Uptime Percentage calculation, then RTA may issue a Service Credit considering such factors at RTA's discretion.
- e. **Service Availability.** Coverage parameters specific to the service(s) covered in this Agreement are as follows:
- Access to the service: 24/7 (99.8% uptime)
  - Telephone support: 5:00 A.M. to 5:00 P.M. Monday – Friday Arizona Time
    - Calls received out of office hours will be handled on the next business day
    - Calls received on holidays will be handled on the next business day
    - Email support: Monitored 5:00 A.M. to 5:00 P.M. Monday – Friday
    - Emails received outside of office hours handled on the next business day
    - Software monitoring: Monitored 5:00 A.M. to 5:00 P.M. Monday – Friday



- RTA Fleet Management Software records error conditions to a log file when possible. RTA service administrators monitor the logs and perform necessary actions during business hours.
  - Data Center monitoring: 24/7
  - Server hardware and data center network are monitored with industry standard tools 24/7 by RTA service administrators as well as technicians on duty at the contracted Network Operations Center where RTA servers are located.
- f. **Service Requests.** In support of services outlined in this Agreement, the RTA will respond to service-related incidents and/or requests submitted by the COMPANY within 0-4 hours (during business hours) and provide an incident status to COMPANY staff.

## 9. Miscellaneous Provisions

- a. COMPANY shall not assign this Agreement without the express written consent of RTA, which shall not be unreasonably withheld. Any assignment contrary to this provision will be null and void.
- b. Any notice required to be given under this Agreement shall be in writing and may be made either by over-night mail or by electronic mail with return receipt requested. Such notice will be deemed given the following business day regardless of the manner in which it was sent. Notice to COMPANY shall be delivered to the email address for COMPANY's primary contact on file. Notice to RTA shall be given to the following email address: [support@rtafleet.com](mailto:support@rtafleet.com).
- c. RTA may not use the name of COMPANY in its marketing efforts or any other use of the name of COMPANY without prior written consent from COMPANY.
- d. **Dispute Discussion.** In the event of a dispute between the Parties arising out of this Agreement, representatives of each Party shall meet (either in person or by telephone), within 10 days after receipt of a notice from either Party specifying the nature of the dispute, to review a Party's claims for the basis of such dispute and attempt to resolve in all such claims. Thereafter, if the Parties are unable to resolve the dispute within such time period, the matter shall be escalated to a Vice President (or a more senior officer) of each party, who will meet, either in person or by telephone, within 15 days of such escalation. If the dispute remains unresolved after such escalation, then the Parties may proceed with all remedies available at law or equity.
- e. **Severability; Waiver.** If any provisions of this Agreement are held to be invalid, illegal, or unenforceable under present or future laws, such provisions will be struck from this Agreement or amended, but only to the extent of their invalidity, illegality, or unenforceability. The parties remain legally bound by the remaining terms of this Agreement, and this Agreement will be deemed reformed in a manner as consistent as reasonably possible with the original intent of the parties as expressed in this Agreement. Failure of either party to enforce any right under this Agreement will not be deemed a waiver of such right and will not constitute a waiver of its future enforcement of such right or any other rights.

- f. Integration; Modification. This Agreement expresses the complete and final understanding of the parties with respect to the subject matter hereof, and supersedes all prior communications between the parties, whether written or oral, with respect to the subject matter hereof. No modification of this Agreement will be binding upon the parties hereto, unless in writing and executed by COMPANY and RTA.
- g. Headings; Number and Gender. All headings and captions are for convenience only and are of no meaning in the interpretation or effect of this Agreement. Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender, or no gender include all genders.
- h. The respective rights and obligations of RTA and COMPANY, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the rights and obligations regarding payment, ownership, confidentiality, limitation of liability, indemnification, cybersecurity, and data access and ownership, shall survive the termination or expiration of this Agreement.

**10. Changes to this Agreement**

- a. RTA or COMPANY may update or modify this Agreement from time to time. Any updates or modifications must be done in writing and mutually executed. If the parties mutually agree to modify this Agreement during the License Term or Subscription Term, the modified version will be effective upon the next renewal of a License Term, Support and Maintenance term, or Subscription Term, as applicable.
- b. This Agreement remains valid until superseded by a revised agreement mutually agreed upon by RTA and COMPANY. This Agreement *supersedes* and replaces any prior *agreements*, representations, or understandings, whether written, oral, or implied, between RTA and COMPANY regarding the agreement described herein.

DUPAGE COUNTY

RON TURLEY ASSOCIATES INC

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_