

USER AGREEMENT

This User Agreement ("Agreement"), and the terms and conditions set forth herein are a legal contract governing your use of the RSMeans Online™ Website ("Website"), both as a paid subscriber or as a free trial user. Your use of this Website 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 1099 Hingham Street, Suite 201, Rockland, MA 02370.

1. Your Rights

RSMeans grants you a non-exclusive, non-transferable, limited license to use and display this Website and the materials provided hereon, provided that you comply fully with this Agreement. You agree not to share your login and password for this Website with any other individual. You agree not to interrupt, or attempt to interrupt, the operation of this Website in any way. The Website consists of construction cost data ("Cost Data") and proprietary models ("Models") (collectively "Data"). You are licensed to use the Data made available on the Website solely in the regular course of construction estimating and related work.

The license includes the right to download and temporarily store insubstantial portions of the Cost Data ("Downloaded Data") in a spreadsheet for your personal and/or employment related use on a single storage device under your exclusive control solely (i) to display internally such Downloaded Data and (ii) to include and distribute the Downloaded Data in a construction estimate or related work prepared for a specific project, to be distributed to a specific party, provided such party agrees not to further disseminate the Downloaded Data. You acknowledge your responsibility in assuring compliance with the foregoing by any third party to whom you transmit Downloaded Data pursuant to the preceding sentence.

You may not merge the Cost Data available on this Website 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 may not use, copy, download, store, publish, modify, translate, transmit, transfer, sell or prepare derivative works of the Data, or any portion of the Data, in any form or by any means, except (i) as expressly permitted by this Agreement, or (ii) with RSMeans' express written permission. Downloaded Data shall not be stored or used in an archival database or other searchable database except as expressly permitted by this Agreement. You shall not sell, license or distribute Data (including printouts and Downloaded Data) to third parties, except as expressly permitted by this Agreement, or use the Data as a component of or as a basis for any material or product offered for sale, license or distribution.

Except for the license granted in this Agreement, all rights, title and interest in the Data, in all formats and media throughout the world, including all copyrights, are and will continue to be the exclusive property of RSMeans.

You represent, warrant and covenant to RSMeans that you and your employees and independent contractors who access the Data are not employees or independent contractors of competitors of RSMeans or The Gordian Group, Inc., or of any company that delivers construction cost data. You also represent, warrant and covenant to RSMeans that you have entered into this Agreement under your true name and are not, directly or indirectly, impersonating any real or fictitious person or entity or otherwise acting to withhold your actual identity.

2. Fee-Based Services Charges

Certain products and features of this Website 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 annual subscription charges ("Subscription Fees") set forth on this Website, applicable taxes, billing terms, and other charges incurred on your account in order to access the Fee-Based Services. All Subscription Fees are non-refundable under any circumstances. The Subscription Fee you will be charged will be the price posted on the Website on the date that you purchase 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 Website subscription fees, or to institute new fees, at any time, upon reasonable notice posted in advance on this Website, with such fees to become effective upon the renewal of your then current subscription.

b. **IMPORTANT NOTICE: RSMEANS WILL AUTOMATICALLY RENEW YOUR SUBSCRIPTION ON THE DAY YOUR INITIAL TWELVE (12) MONTH SUBSCRIPTION PERIOD EXPIRES (THE "RENEWAL DATE"), AND YOU AUTHORIZE RSMEANS TO CHARGE YOUR CREDIT CARD WITH THE APPLICABLE SUBSCRIPTION FEE AND ANY SALES OR SIMILAR TAXES THAT MAY BE IMPOSED ON YOUR SUBSCRIPTION FEE PAYMENT ON THE RENEWAL DATE; UNLESS YOU CANCEL PRIOR TO THE RENEWAL DATE.**

c. **YOU MAY CANCEL YOUR SUBSCRIPTION AT ANY TIME BY CONTACTING RSMEANS CUSTOMER SERVICE, PROVIDED THAT ANY SUBSCRIPTION FEES CHARGED PRIOR TO THE EFFECTIVE DATE OF CANCELLATION WILL NOT BE REFUNDED, IN WHOLE OR IN PART. YOU WILL NOT BE ELIGIBLE FOR A PRO-RATED REFUND OF ANY PORTION OF THE SUBSCRIPTION FEES PAID FOR ANY UNUSED DAYS OF THE THEN-CURRENT SUBSCRIPTION TERM FOR WHICH YOU HAVE PAID, AND YOUR SUBSCRIPTION WILL EXPIRE AT THE END OF THE THEN-CURRENT SUBSCRIPTION TERM.**

d. You are responsible for all charges associated with connecting to this Website, including, without limitation, telephone, standard text message rates, modem, and broadband access charges necessary to access the Website and the Fee-Based Services.

e. 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 RSMeans 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.

f. 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. Free Trial Users

a. Free trials are granted for a one-time use, once per user during any consecutive twelve (12) calendar month period. Free trials may be terminated by RSMeans without prior notice if there is a violation of the provisions of this Agreement, such termination to be without prejudice to the right of RSMeans to pursue any and all other remedies available to it in equity or at law.

b. You agree to provide RSMeans with your basic contact information including your name, company name, address, email address, telephone number, and other information requested by RSMeans. By using the Website and/or the Fee Based Services, you authorize RSMeans to contact you by mail, email, landline and mobile phone. These communications may include information about RSMeans' services and features of the Website, notices about applicable fees and charges, transactional information and other information concerning or related to the Website and/or Fee Based Services.

Failure to fully comply with all applicable provisions of this Agreement may, at RSMeans option, result in immediate suspension or termination of your right to use the RSMeans Online™ Website.

c. You agree to promptly update all information provided to RSMeans, including your password, in the event of any known or suspected unauthorized use of your free trial, or any known or suspected breach of security, including loss, theft, or unauthorized disclosure of your password. In the event of a breach of security, you will remain liable for any unauthorized use of your free trial.

d. Free trials are not intended for academic projects and/or student use. All inquiries for such uses must be made by calling 800-448-8182 or emailing customersupport@rsmeans.com.

e. You are responsible for all charges associated with connecting to this Website, including, without limitation, telephone, standard text message rates, modem, and broadband access charges necessary to access the Website.

4. 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 Website, and agree that RSMeans will have no obligation with regards thereto.

5. Privacy Policy

Please review the Privacy Policy of RSMeans and The Gordian Group, Inc., the parent company of RSMeans, which is available by clicking the link provided herein.

You agree to provide RSMeans with your basic contact information including your name, company name, address, email address, telephone number, and other information requested by RSMeans. You authorize RSMeans to contact you by mail, email, landline and mobile phone. These communications may include information about RSMeans' services and features of the Website,

notices about applicable fees and charges, transactional information and other information concerning or related to the Website and/or Fee Based Services.

6. Copyright and Trademarks

All materials on the Website, including, without limitation, text, images, software, audio and video clips, databases, Data, and Fee-Based Services (collectively, the "Content") are owned or controlled by RSMeans, which retains all right, title, and interest in and to such Content. The Website and the Content contain valuable and proprietary information of RSMeans 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 RSMeans or The Gordian Group, or their employees, licensors, independent contractors, and affiliates without prior written permission from RSMeans. 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 RSMeans;
- c. In a manner likely to cause confusion; or
- d. in a manner that implies that RSMeans sponsors or endorses or is otherwise connected with your own activities, products and services or those of third parties.

7. Forums

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

8. Links to Other Sites

This Website 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 RSMeans or its affiliates of any third-party site or any material contained therein. RSMeans 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.

9. Financial Responsibility

Your subscription and the rights and privileges provided hereunder are personal and non-transferable. You agree not to assign, transfer, or sublicense your rights as a subscriber to the Fee-Based Services or as a free trial user. You agree to be financially responsible for all billing activity on your Fee-Based Services account.

10. Indemnification

You hereby agree to indemnify, defend and hold harmless RSMeans and its affiliates from and against any and all liability and cost incurred by RSMeans 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.

11. Disclaimer of Warranty

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE WEBSITE (INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, FEE-BASED SERVICES, DATA, 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, COMPATABILITY, 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 Website 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 Website or the Fee-Based Services will be uninterrupted or error-free, that defects will be corrected, that the Website or Fee-Based Services will meet any particular criteria of performance or quality, or that the Website, including Forums or the server(s) on which the Website is operated, are free of viruses or other harmful components.

12. Limitation of Liability

USE OF THE WEBSITE 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 WEBSITE. 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 WEBSITE 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.

13. Termination

RSMMeans reserves the right to restrict, suspend or terminate your access to the Website and/or 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, such termination to be without prejudice to the right of RSMMeans to pursue any and all other remedies available to it in equity or at law. If RSMMeans terminates this Agreement based on a breach of any portion of this Agreement, RSMMeans 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.

14. Modifications

a. To this Agreement.

RSMMeans has the right to modify this Agreement. Any modification is effective immediately upon posting to the Website or distribution via electronic mail or conventional mail. Your continued use of the Website 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 RSMMeans in providing the Website, including, without limitation, any change in the Content, is to cancel your subscription in accordance with the subscription help instructions or to terminate your free trial use of the Website.

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

15. General

This Agreement constitutes the entire agreement between you and RSMMeans with respect to the Website, Data, and the Fee-Based Services, and supersedes all prior and contemporaneous written or verbal agreements between you and RSMMeans. Failure by RSMMeans 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 RSMMeans Online or using RSMMeans Online on a free trial basis indicates your agreement to the terms and conditions set forth above.

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