



WEBSITE DEVELOPMENT

STANDARD TERMS AND CONDITIONS

- A. Client commitment:** Client agrees to allocate time and process information, as needed, during the duration of the project. Client agrees to review the system per the Project Management Plan and provide timely feedback for the approvals/changes/iterations.
- B. Change Orders:** In the event Client desires to make any modifications to the SOW, Client and Rimage Designs shall enter into a Change Order (the "Change Order"). The Change Order will include: the scope of services to be provided, the scope of services to be provided by Client, the deliverable schedule, and the cost/payment schedule for the modifications. All Change Orders shall be effective upon execution by both parties, and shall be attached to and incorporated into this SOW.
- C. Timeline:** Rimage Designs shall not be deemed in breach of the SOW or any milestone in the event Rimage Designs' failure to meet its responsibilities and time schedules is caused by Client's failure to meet (or delay in) its responsibilities and time schedules set forth in the SOW or as otherwise requested by Rimage Designs. Client shall be responsible for making, at its own expense, any changes or additions to Client's current systems, software, and hardware that may be required to support operation of the Services.
- D. Intellectual Property Rights and License:** Client and Rimage Designs agree that upon payment in full of the fees associated with the Services, Client shall own all worldwide right, title, and interest in and to the tangible work product created from the Services (including, its source code and documentation, if any) (the "Custom Programming"). Client and Rimage Designs agree that Rimage Designs shall retain a world-wide, royalty-free, non-exclusive, transferable, and perpetual right and license to the Custom Programming including, but not limited to, the right to modify, amend, create derivative works, rent, sell, assign, lease, sublicense, or otherwise alter or transfer the Custom Programming. Client shall be responsible for researching, obtaining, and filing all trademark, copyright, patent, or other intellectual property protections for the Custom Programming, its look and feel, any logos, any "tag lines," or any other Web site content or documentation designed or developed by Rimage Designs for Client. Rimage Designs shall own all worldwide right, title, and interest in and to the Rimage Designs Content, but shall provide Client (upon payment in full of the fees associated with the design and development Services) a worldwide, royalty-free, non-exclusive, transferable and perpetual right and license to use the Rimage Designs Content. During the course of development,

Rimage Designs may make use of 3rd party tools that it owns development licenses for. These licenses will not transfer the customer and will remain the sole property of Rimage Designs. Client and Rimage Designs agree that all sites that Rimage Designs will create will contain in the footer navigation a Rimage Designs branding statement with appropriate keyword and anchor text links as defined by Rimage Designs (for example, "Powered by Rimage Designs").

- E. **Term and Termination:** The SOW shall be effective as of the date identified and shall continue in effect until complete payment of the Fees or until earlier terminated as provided herein. The SOW may be terminated by either party upon written notice to the other, if the other party breaches any material obligation provided hereunder and the breaching party fails to cure such breach within thirty (30) days of receipt of the notice. Client shall pay Rimage Designs for all Services rendered and work performed up to the effective date of termination for any reason. Rimage Designs shall provide Client with an invoice for the foregoing fees promptly upon termination of the SOW. Within ten (10) days after the termination or expiration of the SOW, each party shall return to the other all Proprietary or Confidential Information of the other party (and any copies thereof) in the party's possession or, with the approval of the party, destroy all such Proprietary or Confidential Information. "Proprietary or Confidential Information" shall include, but is not limited to, written or oral contracts, trade secrets, know-how, business methods, business policies, memoranda, reports, records, computer retained information, notes, or financial information. Proprietary or Confidential Information shall not include any information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of the receiving party; (ii) was previously known to the receiving party or rightly received by the receiving party from a third party; (iii) is independently developed by the receiving party; or (iv) is subject to disclosure under court order or other lawful process.
- F. **Limited Warranties:** Rimage Designs warrants that for a period of ninety (90) days from the completion of the Services, the Custom Programming and Rimage Designs Content will operate in accordance with all the material terms of the SOW. All warranty claims not made in writing within such period shall be deemed waived. As the sole and exclusive remedy of Client for breach of the foregoing warranty, Rimage Designs shall, at its option, either correct the nonconformity or refund to Client the dollar amount attributable to the number of actual hours Rimage Designs spent developing the defective portion of the Custom Programming or Rimage Designs Content. Rimage Designs shall not be liable for failures caused by third party hardware or software (including Client's own systems), misuse of the Custom Programming or Rimage Designs Content, or the negligence or willful misconduct of Client. Rimage Designs warrants that the professional Services will be performed in a workmanlike and professional manner by appropriately qualified personnel.
- G. **DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY:** EXCEPT AS SET FORTH IN THIS SOW, THE CUSTOM PROGRAMMING AND RIMAGE DESIGNS' CONTENT IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND RIMAGE

DESIGNS EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY, FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR CONNECTED IN ANY WAY WITH THE SOW, THE CUSTOM PROGRAMMING OR THE RIMAGE DESIGNS' CONTENT, OR FOR ANY CLAIM BY ANY THIRD PARTY. THE TOTAL LIABILITY FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) TO THE OTHER SHALL NOT EXCEED THE FEES PAID TO RIMAGE DESIGNS. THIS LIMITATION OF LIABILITY SHALL APPLY EVEN IF THE EXPRESS WARRANTIES SET FORTH ABOVE FAIL IN THEIR ESSENTIAL PURPOSE. RIMAGE DESIGNS MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH REGARD TO ANY THIRD PARTY PRODUCTS, THIRD PARTY CONTENT OR ANY SOFTWARE, EQUIPMENT, OR HARDWARE OBTAINED FROM THIRD PARTIES.

- H. **Indemnification Obligations:** Client shall indemnify and hold harmless Rimage Designs (and its subsidiaries, affiliates, officers, agents and employees) from any and all claims, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees and all related costs and expenses) incurred by Rimage Designs as a result of any claim, judgment, or adjudication against Rimage Designs related to or arising from (a) any photographs, illustrations, graphics, audio clips, video clips, text, data or any other information, content, display, or material (whether written, graphic, sound, or otherwise) provided by Client to Rimage Designs (the "Client Content"), or (b) a claim that Rimage Designs' use of the Client Content infringes the copyright or trade secret rights of a third party. To qualify for such defense and payment, Rimage Designs must: (i) give Client prompt written notice of a claim; and (ii) allow Client to control, and fully cooperate with Client in, the defense and all related negotiations. Rimage Designs shall indemnify and hold harmless Client (and its subsidiaries, affiliates, officers, agents and employees) from any and all claims, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees and all related costs and expenses) incurred by Client as a result of any claim, judgment, or adjudication against Client arising from a claim that Client's use of the Rimage Designs Content, as permitted under this SOW, infringes the copyright or trade secret rights of a third party. To qualify for such defense and payment, Client must: (i) give Rimage Designs prompt written notice of a claim; and (ii) allow Rimage Designs to control, and fully cooperate with Rimage Designs in, the defense and all related negotiations. Rimage Designs shall have no obligation to indemnify Client under this Section to the extent the infringement arises from (i) the Client Content, (ii) specifications provided by Client or its agents; (iii) use of the Custom Programming or Rimage Designs Content in combination with non-Rimage Designs approved third party products, including hardware and software, (v) modifications or maintenance of the Custom Programming or Rimage Designs' Content by a party other than Rimage Designs, (vi)

misuse of the Custom Programming or Rimage Designs' Content, and (vii) failure of Client to implement any improvement or updates to the Custom Programming or Rimage Designs' Content, if the infringement claim would have been avoided by the use of the improvement or updates.

- I. **Confidentiality:** The parties agree to hold each other's Proprietary or Confidential Information in strict confidence. The parties agree not to make each other's Proprietary or Confidential Information available in any form to any third party or to use each other's Proprietary or Confidential Information for any purpose other than as specified in this SOW. Each party's Proprietary or Confidential Information shall remain the sole and exclusive property of that party. The parties agree that in the event of use or disclosure by the other party other than as specifically provided for in this SOW, the non-disclosing party may be entitled to equitable relief. Notwithstanding termination or expiration of this SOW, Rimage Designs and Client acknowledge and agree that their obligations of confidentiality with respect to Proprietary or Confidential Information shall continue in effect for a total period of two (2) years from the date of the SOW.
- J. **Miscellaneous:** Either party shall be excused from delays in performing or from failing to perform its obligations under this SOW to the extent the delays or failures result from causes beyond the reasonable control of the party, including, but not limited to: acts of God or of the public enemy; U.S. or foreign governmental actions; strikes; communications, or utility interruption or failure; fire; flood; epidemic; and freight embargoes. The validity of this SOW and the rights, obligations and relations of the parties hereunder shall be construed and determined under and in accordance with the laws of the State of Florida therein as applied to contracts to be performed in Florida between Florida residents; provided, however, that if any provision of this SOW is determined by a court of competent jurisdiction to be in violation of any applicable law or otherwise invalid or unenforceable, such provision shall to such extent as it shall be determined to be illegal, invalid or unenforceable under such law be deemed null and void, but this SOW shall otherwise remain in full force. Suit to enforce any provision of this SOW, or any right, remedy or other matter arising therefrom, will be brought exclusively in the state or federal courts located in Hillsborough County, Florida. Client agrees and consents to venue in Hillsborough County, Florida and to the in personam jurisdiction of the aforementioned courts. If any dispute arising out of this SOW is litigated between the parties, the prevailing party shall be entitled to recover its reasonable attorneys' fees in addition to any other relief to which it may be entitled. Client and Rimage Designs agree that Rimage Designs shall perform its duties under this SOW as an independent contractor. Any written notice or demand required by this SOW shall be sent by registered or certified mail (return receipt requested), personal delivery, overnight commercial carrier, or other guaranteed delivery to the other party at the address set forth herein. This SOW and all attached exhibits represent the entire understanding and agreement between the parties with respect to the subject matter hereof, and merge all prior discussions between them and supersede and replace any

and every other agreement or understanding which may have existed between the parties to the extent that any such agreement or understanding relates to the Services herein. Client hereby acknowledges that it has not reasonably relied on any other representation or statement that is not contained in this SOW, or made by a person or entity other than Rimage Designs. This SOW may be amended only by a written agreement signed by both parties. This SOW is the result of arm's length negotiations between the parties and shall be construed to have been drafted by all parties such that any ambiguities in this SOW shall not be construed against either party. Client agrees not to hire, solicit for hire, or retain the services of Rimage Designs' employees during the period of time that said employee is employed by Rimage Designs and for six months thereafter. If Client breaches this covenant in any respect, Client agrees to pay Rimage Designs, as liquidated damages, two times said employee's annual salary. In the event that a court finds any provision of this SOW invalid and/or unenforceable, the parties agree that the remaining provisions shall remain valid and in force. Neither party shall be deemed by mere lapse of time (without giving notice or taking other action hereunder) to have waived any breach by the other party of any of the provisions of this SOW. Further, the waiver by either party of a particular breach of this SOW by the other party shall not be construed as, or constitute, a continuing waiver of such breach, or of other breaches of the same or other provisions of this SOW. Unless indicated otherwise, all references to "days" shall mean business days. This SOW may be executed in two (2) or more counterparts and all counterparts so executed shall for all purposes constitute one agreement, binding on all parties, including email or facsimile transmissions hereof.

DEFINITIONS in Terms and Conditions

As used in this Agreement, the terms listed below shall have the following definitions:

- SOW: SOW is defined as Statement of Work outlining services to be preformed.
- User: User shall refer to those people who are using the system in an operational environment.
- Administrator: Administrator shall refer to the end user of the secure areas of the site being specified as administrative or content managed. This includes to all references of SiteManager, Web Modules, and Content Manager or Managed items.
- Custom Programming: Tangible work product (Source code, documentation, and/or application programs) created from the Services excluding Rimage Designs' Content.
- Rimage Designs' Content: Source code, documentation, and/or application programs that were previously written or developed by Rimage Designs.
- Business Day: Monday through Friday inclusive, except business holidays of Rimage Designs.

- Site Map: The Site Map is a visual interpretation of the Site Development Details. The Site Map may or may not include all items to be developed and the Site Development Details take precedent.
- Site Development Details: The functional deliverable of the collection of services as provided.
- Public Facing: Areas of the Web site or software that is available to users who are not logged in and have access via the World Wide Web.
- Administrative Facing: Secure areas of the Web site or software purposely created for the maintenance of the Public Facing areas.
- Maintenance: The updating of application programs in order to meet changing requirements, such as adding new functions, updating for new browser requirements, and changing data formats. It also includes updating and population of data and content within a website or application.

Payment terms:

- 25% advance upon contract signing
- Balance upon migration of the application to production

Payments will be by check towards:

Rimage Designs LLC
124 Seven Oaks Dr.
Mulberry 33860
