

1. ACCESS:

This end user Terms of Use Agreement provides End User and Customer (and its subcontractors, clients and network members) access to a proprietary online subscription service with functionality for:

- IPA/MSO Management Tools
- Member Management
- Clinical Data Analytics & Reporting

Rimage Solutions will provide this functionality (“Service”) through its portal www.careanalytix.com within its secure web server environment under the terms below and through a desktop software client “internet browser” that will act as the interface to the Service. This Agreement contemplates one or more orders for the Services, which orders are governed by the terms of this Agreement and will describe the Services ordered in more detail (these orders may be provided electronically online or via written order forms).

- End User and Customer may allow its (a) employees, business affiliates, clients and contractors to access the Services in compliance with the terms of this Agreement, which access must be for the sole benefit of Customer, and (b) clients (only if customer is acting as a service provider to them) access to the Service as part of providing IPA/MSO Management services to such clients (“Service Provider”).
- Customer and all end users are responsible for the compliance with this Agreement by their employees, business affiliates, contractors and clients, as the case may be.
- Each employee, business affiliate, contractor and client, as the case may be, must agree to Rimage Solutions’ this end user license agreement before using the Rimage Solutions software.

2. USE OF SERVICES

a) Rimage Solutions Responsibilities:

Rimage Solutions will (i) use commercially reasonable efforts to make the Services available, except for (x) scheduled outages, or (y) unavailability caused by force majeure, and (ii) provide customer support for the Services (if enrolled)

b) Customer Responsibilities

Customer (i) is solely responsible for Customer Data and the relevant copyrights or trademarks, (ii) must use commercially reasonable efforts to prevent unauthorized access to the Services, and notify Rimage Solutions promptly of any such unauthorized access, and (iii) may use the Services only in accordance with its user guide and applicable law.

Customer may not (w) sell, resell, rent or lease the Services outside of this contract, (x) use the Services to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party rights (including without limitation any privacy rights), (y) interfere with or disrupt the integrity or performance of the Services, or (z) attempt to gain unauthorized access to the Services or their related systems or networks.

3. WARRANTY/SERVICE LEVEL AGREEMENT

a) Rimage Solutions Limited Warranty

Rimage Solutions warrants to Customer and all end users that commercially reasonable efforts will be made to maintain the contracted online availability of the Services in any given month (excluding scheduled outages).

b) Mutual Compliance with Laws Warranty

Each party represents and warrants to the other party that it will comply with all applicable laws regarding its performance under this Agreement.

5. MUTUAL CONFIDENTIALITY

a) Definition of Confidential Information

Confidential Information means all confidential information disclosed by a party (Discloser) to the other party (Recipient), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (Confidential Information). Rimage Solutions's Confidential Information includes without limitation the Services.

b) Protection of Confidential Information

The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees, contractors and clients (as the case may be) who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this Agreement.

c) Exclusions

Confidential Information excludes information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information.

6. PROPRIETARY RIGHTS

a) Reservation of Rights by Rimage Solutions

The software, database schema, programming, workflow processes, user interface, designs, know-how and other technologies provided by Rimage Solutions as part of the Services are the proprietary property of Rimage Solutions, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Rimage Solutions. Rimage Solutions reserves all rights unless expressly granted in this Agreement.

b) Customer Restrictions

Customer may not:

1. Use the Services or the Licensed Documentation beyond its internal operations;
2. Reverse engineer the Services or the Licensed Documentation;
3. Remove or modify any proprietary marking or restrictive legends in the Service; or
4. Access the Service to (i) build a competitive product or service, or (ii) copy any feature, function or graphic of the Service for competitive purposes.

c) Customer Data

All clinical data uploaded by Customer remains the sole property of Customer, as between Rimage Solutions and Customer (Customer Data), subject to the other terms of this Agreement. Customer grants Rimage Solutions a non-exclusive term license to use, modify, copy and prepare derivative works of the Customer Data for purposes of Rimage Solutions performing under this Agreement. Customer may at any time access its Customer Data from the Services. Rimage Solutions may use during and after this Agreement all aggregate non-identifiable information and data for purposes of enhancing the Services, technical support and other business purposes, all in compliance with the HIPAA Privacy Standards, including without limitation the limited data set and de-identification of information regulations.

d) Licensed Documentation

The Services user guides, sample data, marketing materials and other material provided or accessible through the Services (hereafter “Content”), are licensed to Customer and End Users as follows: Rimage Solutions grants Customer and End Users a non-exclusive, license for the duration of the Services to such material for Customer’s internal use solely with the Services, with the right to make additional copies of the material for such duration and purpose (Licensed Documentation).

Restrictions: Customer may not use outside the United States, publish, distribute or create any derivative work (including without limitation translation), transfer, sell, lease, license or otherwise make available the Content, or a portion or copy of such content, except as expressly provided in this Agreement.

7. EXCLUSION OF DAMAGES AND LIMITATION OF LIABILITY

a) Exclusion of Certain Damages

EXCEPT FOR A VIOLATION OF RIMAGE DESIGNS’ INTELLECTUAL PROPERTY RIGHTS OR FOR THE INDEMNITIES BELOW, NEITHER PARTY IS LIABLE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY, LOSS OF DATA OR INFORMATION, AND ANY FAILURE OF DELIVERY OF THE SERVICES).

b) Limitation of Liability

RIMAGE SOLUTIONS’ LIABILITY FOR ANY and ALL DAMAGES RELATING TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) WILL BE ACCORDING TO THE SERVICE CONTRACT AND DOES NOT EXCEED THE ACTUAL AMOUNT PAID BY END USER WITHIN THE PRECEDING 6 MONTHS UNDER THIS AGREEMENT.

8. TERM, TERMINATION, SUSPENSION OF SERVICE AND RETURN OF DATA

a) Term

This Agreement continues as agreed to in a Master Services Agreement with Customer or otherwise from month-to-month (Term) by default, and is terminable (with or without cause): by Customer upon advance notice, and by Rimage Solutions upon at least 5 days advance notice or as agreed to in the Master Services Agreement.

Actions upon Termination

- (i) Upon any termination as provided in 8(a) above by Customer, Rimage Solutions must refund any prepaid and unused fees covering the remainder of the Term.
- (ii) Upon any termination as provided in 8(a) above by Rimage Solutions, Customer must pay any unpaid fees covering the remainder of the Term, and destroy all Rimage Solutions property. Customer upon request will confirm that it has complied with these requirements.

b) Return of Data

- (i) Before termination of this Agreement, Customer may download its Customer Data. The Customer Data will only be provided in Microsoft Excel (.XLS) or Common Separated Values (.CSV) file format and only includes patient records (including patient demographics and clinical information) and claim records (including encounter and claim information).
- (ii) After termination, Rimage Solutions has no obligation to maintain any of the Customer Data.
- (iii) If Customer is acting as a Service Provider, the data of a client of Customer will be provided to that client upon the instruction of Customer and that client (unless based on Rimage Solutions's belief applicable law requires otherwise).

c) Suspension of Service for Violations of Law

Rimage Solutions may immediately suspend the Services and remove applicable Customer Data if it in good faith believes that, as part of using the Services, Customer may have violated a law. Rimage Designs may try to contact Customer in advance, but it is not required to do so.

9. INDEMNITY

a) By Rimage Solutions

If a third-party claims that End User's use of the Services (other than related to the End User and Customer's Data) infringes that party's patent, copyright or other proprietary right, Rimage Solutions will defend End User against that claim at Rimage Solutions' expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by Rimage Solutions, provided that Customer:

- i. promptly notifies Rimage Solutions in writing of the claim; and
- ii. allows Rimage Solutions to control, and cooperates with Rimage Solutions in, the defense and any related settlement.

If such a claim is made, Rimage Solutions could continue to enable End User and Customer to use the Services or to modify it. If Rimage Solutions determines that these alternatives are not reasonably available, Rimage Solutions may terminate the Services (without any liability to Customer) upon notice to End User and Customer and with the return of any prepaid and unused fees.

b) By End Users/Customer

End User and Customer must indemnify, defend, and hold harmless Rimage Solutions against all third-party claims (including without limitation by governmental agencies), demands, damages, costs, penalties, fines, and expenses (including reasonable attorneys' fees and costs) arising out of or related to:

- i. End User and Customer's breach of any representation, warranty, obligation, covenant or agreement in this Agreement,
- ii. any unauthorized use, access or distribution of the Services by End User and Customer,
- iii. violation of any individual's privacy rights related to information submitted under Customer's account, or
- iv. fraudulent, invalid, duplicate, incomplete, unauthorized, or misleading information submitted under End User and Customer's account.

10. ARBITRATION and GOVERNING LAW

All claims and disputes arising under or relating to this Agreement are to be settled by binding arbitration in Polk County, in the State of Florida. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. The parties reserve the right to object to any individual who shall be employed by or affiliated with a competing organization or entity. An award of arbitration may be confirmed in a court of competent jurisdiction, within Polk County, Florida.

End User and Customer consents to the personal jurisdiction of such courts and waives any claim that it is an inconvenient forum. In case of litigation of any kind, the prevailing party in litigation is entitled to recover its attorneys' fees and costs from the other party.

11. MISCELLANEOUS OTHER TERMS

a) Entire Agreement and Changes

This Agreement constitutes the entire agreement between the parties, and supersedes all prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. No modification or waiver of any term of this Agreement is effective unless both parties sign it.

b) No Assignment

Neither party may assign or transfer this Agreement or an order to a third party, except that this Agreement with all orders may be assigned as part of a merger, or sale of all or substantially all of the business or assets, of a party.

c) Independent Contractors

The parties are independent contractors with respect to each other.

d) Enforceability

If any term of this Agreement is invalid or unenforceable, the other terms remain in effect.

e) No Additional Terms

Rimage Designs rejects additional or conflicting terms of a form-purchasing document.

f) Order of Precedence

If there is an inconsistency between this Agreement and an order, the order prevails.

g) Survival of Terms

Any terms that by their nature survive termination or expiration of this Agreement, will survive.

i) Promotional References and Customer Name

Rimage Solutions may use Customer's name and logo in customer lists and related promotional materials describing Customer as a customer of Rimage Solutions, which use must be in accordance with Customer's trademark guidelines and policies.

DEFINITIONS:

- 1) Data Analytics Software: This software, which is offered as “a software as a service”, available at www.careanalytix.com
- 2) Customer: Primarily the business entity paying for the subscription.
- 3) Authorized User: Customer or its business affiliates, employees, subcontractors, network members or clients of customer that are authorized.
- 4) Customer Data: Medical and Non-Medical information uploaded or saved by customer (or its subcontractor, business affiliate, network member or client) to the application
- 5) 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 server, network, firewall and hosting environment related tasks.
- 6) Business Day: Monday through Friday, except business and national holidays observed by Rimage Solutions.
- 7) Provider: Physician or responsible Doctor, which in this case may be a subscriber (or member) to the customer’s network.