**Rimage Services Agreement**

Last Updated: December 14, 2023

This Services Agreement (this “**Agreement**”) is a binding contract between you, the legal entity identified on the applicable Order Form (“**Customer**,” “**you**,” or “**your**”) and Rimage Corporation (“**Rimage**,” “**we**,” “**our**” or “**us**”) and is effective as of your signing of the applicable Order Form (the “**Effective Date**”).

You are accepting the terms and conditions of this Agreement by: (a) clicking a box indicating acceptance, (b) signing or otherwise agreeing to an Order Form that references this Agreement, (c) accessing or using the Services, or (d) any other method of indicating your acceptance of this Agreement. If you are accepting this Agreement on behalf of a company or other legal entity, you represent that you have authority to bind such entity to this Agreement. If you do not have such authority or do not agree with the terms and conditions of this Agreement, you may not access or use the Services.

1. Definitions.

“**Authorized User**” means Customer and Customer’s employees, consultants, contractors, and agents (a) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement, and (b) for whom access to the Services has been purchased hereunder.

“**Customer Data**” means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or any other Authorized User through the Services.

“**Documentation**” means Rimage’s user manuals, handbooks, and guides relating to the Services provided by Rimage to Customer either electronically or in hard copy form.

“**Fees**” means the fees you are to pay us for your access to and use of the Services as well as for any Professional Services provided by us to you. This may also include any ancillary fees associated with the provision of the Services.

“**Order Form**” means an ordering document signed by you and us that references this Agreement and specifies the Services to be provided by us to you under this Agreement.

“**Professional Services**” means any consulting, implementation, configuration or other services provided by us to you pursuant to a Statement of Work or an Order Form.

“**Rimage IP**” means the Services, the Documentation, and all intellectual property provided to Customer or any other Authorized User in connection with the foregoing. For the avoidance of doubt, Rimage IP includes Aggregated Statistics and any information, data, or other content derived from Rimage’s monitoring of Customer’s access to or use of the Services, but does not include Customer Data.

“**Services**” means the software-as-a-service offering to which you have subscribed via an Order Form, as well as its related components, platform, and any ancillary online or offline applications, products and services provided by us for your access and use of our Services.

“**Statement of Work**” means a document signed by you and us that references this Agreement and describes certain Professional Services (if any) purchased by you under this Agreement and/or pursuant to an Order Form.

“**Third-Party Products**” means any products, content, services, information, websites, or other materials that are owned by third parties and are incorporated into or accessible through the Services.

2. Access and Use.

2.1 Provision of Access. Subject to and conditioned on your payment of Fees and your compliance with all the terms and conditions of this Agreement, Rimage hereby grants you a revocable, non-exclusive, non-transferable, non-sublicensable, limited right to access and use the Services during the Term solely for your internal business operations by the number of Authorized Users and at the data usage levels indicated on the applicable Order Form, in accordance with the terms and conditions herein.

2.2 Documentation License. Subject to the terms and conditions contained in this Agreement, Rimage hereby grants you a non-exclusive, non-sublicensable, non-transferable license for Authorized Users to use the Documentation during the Term solely for your internal business purposes in connection with use of the Services.

2.3 Downloadable Software. Use of the Services may require or include use of downloadable software. Rimage grants you a non-transferable, non-exclusive, non-assignable, limited right for Authorized Users to use downloadable software we provide as part of the Services, subject to the terms of this Agreement and any end user license agreement (EULA) contained within the downloadable software. Any Third-Party Products that consist of downloadable software are subject to the terms of Section 3.4.

2.4 Use Restrictions. You shall not, and shall not permit any Authorized Users to, use the Services, any software component of the Services, or Documentation for any purposes beyond the scope of the access granted in this Agreement. You shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (a) copy, modify, or create derivative works of the Services, any software component of the Services, or Documentation, in whole or in part; (b) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation except as expressly permitted under this Agreement; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (d) remove any proprietary notices from the Services or Documentation; or (e) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law, regulation, or rule.

2.5 Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, Rimage may monitor Customer’s use of the Services and collect and compile data and information related to Customer’s use of the Services to be used by Rimage in an aggregated and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services (“**Aggregated Statistics**”). As between Rimage and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Rimage. You acknowledge that Rimage may compile Aggregated Statistics based on Customer Data input into the Services. You agree that Rimage may (a) make Aggregated Statistics publicly available in compliance with applicable law, and (b) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Customer or Customer’s Confidential Information.

2.6 Reservation of Rights. Rimage reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party, any intellectual property rights or other right, title, or interest in or to the Rimage IP.

2.7 Suspension. Notwithstanding anything to the contrary in this Agreement, Rimage may temporarily suspend Customer’s and any other Authorized User’s access to any portion or all of the Services if: (a) Rimage reasonably determines that (i) there is a threat or attack on any of the Rimage IP; (ii) Customer’s or any other Authorized User’s use of the Rimage IP disrupts or poses a security risk to the Rimage IP or to any other customer or vendor of Rimage; (iii) Customer or any other Authorized User is using the Rimage IP for fraudulent or illegal activities; (iv) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (v) Rimage’s provision of the Services to Customer or any other Authorized User is prohibited by applicable law; (b) any vendor of Rimage has suspended or terminated Rimage’s access to or use of any third-party services or products required to enable Customer to access the Services; or (c) in accordance with Section 5 (any such suspension described in subclause (a), (b), or (c), a “**Service Suspension**”). Rimage shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. Rimage shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Services Suspension is cured. Rimage will have no liability for any damage, liabilities, losses (including any loss of or profits), or any other consequences that Customer or any other Authorized User may incur as a result of a Service Suspension.

2.8 Professional Services. We will perform Professional Services as set forth in each applicable Statement of Work or Order Form, subject to the terms of this Agreement.

3. Customer Responsibilities.

3.1 Account Use. You are responsible and liable for all uses of the Services and Documentation resulting from access provided by you, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, you are responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by you will be deemed a breach of this Agreement by you. You shall use reasonable efforts to make all Authorized Users aware of this Agreement’s provisions as applicable to such Authorized User’s use of the Services and shall cause Authorized Users to comply with such provisions.

3.2 Customer Data. You hereby grant to Rimage a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Rimage to provide the Services to you. You will ensure that Customer Data and any Authorized User’s use of Customer Data will not violate any policy or terms referenced in or incorporated into this Agreement or any applicable law. You are solely responsible for the development, content, operation, maintenance, and use of Customer Data.

3.3 Passwords and Access Credentials. You are responsible for keeping your passwords and access credentials associated with the Services confidential. You will not sell or transfer them to any other person or entity. You will promptly notify us about any unauthorized access to your passwords or access credentials.

3.4 Third-Party Products. The Services may permit access to Third-Party Products. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions presented to you for acceptance within the Services by website link or otherwise. If you do not agree to abide by the applicable terms for any such Third-Party Products, then you should not install, access, or use such Third-Party Products.

4. Support. We may apply updates, bug fixes, patches, or other error corrections to the Services in our sole discretion.

5. Fees and Payment. Customer shall pay Rimage the Fees as described on the Order Form without offset or deduction. Customer shall make all payments hereunder on or before the due date. If Customer fails to make any payment when due, without limiting Rimage’s other rights and remedies: (a) Rimage may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (b) Customer shall reimburse Rimage for all reasonable costs incurred by Rimage in collecting any late payments or interest, including attorneys’ fees, court costs, and collection agency fees; and (c) if such failure continues for 10 days or more, Rimage may suspend, in accordance with [Section 2.7](#a724817), Customer’s and all other Authorized Users’ access to any portion or all of the Services until such amounts are paid in full. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Rimage’s income.

6. Confidential Information. From time to time during the Term, Rimage and Customer may disclose or make available to the other party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, whether or not marked, designated, or otherwise identified as “confidential” at the time of disclosure (collectively, “**Confidential Information**”). Confidential Information does not include information that, at the time of disclosure is: (a) is already in or later comes into the public domain through no fault of the recipient; (b) known to the receiving party; (c) rightfully obtained by the receiving party on a non-confidential basis from a third party; or (d) independently developed by the receiving party. The receiving party shall not disclose the disclosing party’s Confidential Information to any person or entity, except to the receiving party’s employees, agents, or subcontractors who have a need to know the Confidential Information for the receiving party to exercise its rights or perform its obligations hereunder and who are required to protect the Confidential Information in a manner no less stringent than required under this Agreement. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (a) to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (b) to establish a party’s rights under this Agreement, including to make required court filings.

7. Intellectual Property Ownership; Feedback. As between you and us, (a) we own all right, title, and interest, including all intellectual property rights, in and to the Services and (b) you own all right, title, and interest, including all intellectual property rights, in and to Customer Data. If you or any of your employees, contractors, or agents sends or transmits any communications or materials to us by mail, email, telephone, or otherwise, suggesting or recommending changes to the Services, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like (“**Feedback**”), we are free to use such Feedback irrespective of any other obligation or limitation between you and us governing such Feedback. All Feedback is and will be treated as non-confidential. You hereby assign to us on your behalf, and shall cause your employees, contractors, and agents to assign, all right, title, and interest in, and we are free to use, without any attribution or compensation to you or any third party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although we are not required to use any Feedback.

8. Limited Warranty and Warranty Disclaimer.

8.1 Rimage Limited Warranty. We warrant that (a) the Services shall operate substantially in accordance with the Documentation provided by us when accessed and used in accordance with such Documentation; and (b) any Professional Services will be provided by us in a professional and workmanlike manner and substantially in accordance with the specifications in the applicable Order Form or Statement of Work.

8.2 Customer Data Warranty. You warrant that you own all right, title, and interest, including all intellectual property rights, in and to Customer Data.

8.3 EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN [SECTION 8.1](#a578362), THE SERVICES ARE PROVIDED “AS IS” AND RIMAGE SPECIFICALLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. RIMAGE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. RIMAGE MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET YOUR OR ANY OTHER PERSON’S OR ENTITY’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OF YOUR OR ANY THIRD PARTY’S SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

9. Indemnification. Customer shall indemnify, hold harmless, and, at Rimage’s option, defend Rimage and its officers, directors, employees, agents, affiliates, licensors, successors, and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees arising from or relating to any third-party claim, suit, action, or proceeding (“**Third-Party Claim**”) (a) that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party’s intellectual property rights; or (b) arises from Customer’s or any Authorized User’s negligence or willful misconduct or use of the Services in a manner not authorized by this Agreement; provided that Customer may not settle any Third-Party Claim against Rimage unless Rimage consents to such settlement, and further provided that Rimage will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

10. Limitations of Liability. IN NO EVENT WILL RIMAGE BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER RIMAGE WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL RIMAGE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE EXCEED THE TOTAL AMOUNTS ACTUALLY PAID TO RIMAGE UNDER THE ORDER FORM OR STATEMENT OF WORK FOR THE SERVICES OR PROFESSIONAL SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.

11. Term and Termination.

11.1 Term. The term of this Agreement shall begin on the Effective Date and remain in effect for the term set forth in the Order Form, including any renewal terms, or until earlier terminated as set forth herein (collectively, the “**Term**”). At the end of the initial or any successive renewal term, unless otherwise set forth on the applicable Order Form, the Services subscription will automatically renew for additional successive term as indicated on the Order Form at the Fees designated by Rimage prior to such renewal date, unless either party provides the other party with written notice of non-renewal at least thirty (30) days prior to the end of the applicable Term. The term of each Statement of Work will be as set forth on the Statement of Work.

11.2 Termination. Either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (a) is incapable of cure; or (b) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach.

11.3 Either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (a) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (b) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (c) makes or seeks to make a general assignment for the benefit of its creditors; or (d) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

11.4 Effect of Termination. Termination or expiration of an individual Order Form or Statement of Work will not be deemed a termination of this Agreement so long as other Order Forms or Statements of Work remain in effect. Termination of this Agreement will, however, terminate all outstanding Order Forms and Statements of Work. Upon termination of this Agreement, Customer shall immediately discontinue use of the Rimage IP. No expiration or termination of this Agreement will affect Customer’s obligation to pay all Fees that may have become due before such expiration or termination, or entitle Customer to any refund.

11.5 Survival. This Section 11.5, Sections 1, 2.5, 5, 6, 7, 8.3, 9, 10, 11.5, 13, 14, 15, and 16, and any right, obligation, or required performance of the parties in this Agreement which, by its express terms or nature and context is intended to survive termination of this Agreement, will survive any such termination.

12. Modifications. You acknowledge and agree that we have the right, in our sole discretion, to modify any part or all of this Agreement. If we modify this Agreement, the updated Agreement will be posted at <https://www.rimage.com>/SOPHIA-terms. The updated Agreement will become effective and binding on the next business day after it is posted. When we modify this Agreement, the “Last Updated” date above will be updated to reflect the date of the most recent version. We encourage you to review these Terms periodically. Your continued use of the Services after the effective date of the modifications will be deemed your acceptance of the modified Agreement.

13. Export Regulation. The Services utilize software and technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Services or the software or technology included in the Services to, or make the Services or the software or technology included in the Services accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, regulation, or rule. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Services or the software or technology included in the Services available outside the U.S.

14. U.S. Government Rights. Each of the software components that constitute the Services and the Documentation is a “commercial product” as that term is defined at 48 C.F.R. § 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. § 12.212. Accordingly, if you are an agency of the US Government or any contractor therefor, you receive only those rights with respect to the Services and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other U.S. Government customers and their contractors.

15. Governing Law and Jurisdiction. This agreement is governed by and construed in accordance with the internal laws of the State of Minnesota without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Minnesota. Any legal suit, action, or proceeding arising out of or related to this agreement or the rights granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Minnesota in each case located in Hennepin County, Minnesota, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

16. Miscellaneous. This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. Any notices to us must be sent to our address at 201 General Mills Blvd, Golden Valley, MN 55426, and must be delivered either in person, by certified or registered mail, return receipt requested and postage prepaid, or by recognized overnight courier service, and are deemed given upon receipt by us. Notwithstanding the foregoing, you hereby consent to receiving electronic communications from us. These electronic communications may include notices about applicable fees and charges, transactional information, and other information concerning or related to the Services. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing. The invalidity, illegality, or unenforceability of any provision herein does not affect any other provision herein or the validity, legality, or enforceability of such provision in any other jurisdiction. Any failure to act by us with respect to a breach of this Agreement by you or others does not constitute a waiver and will not limit our rights with respect to such breach or any subsequent breaches. This Agreement may not be assigned or transferred for any reason whatsoever without our prior written consent and any action or conduct in violation of the foregoing will be void and without effect. We expressly reserve the right to assign this Agreement and to delegate any of our obligations hereunder. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.