

## **CUSTOMER AGREEMENT**

**PLEASE READ THIS AGREEMENT AND INDICATE YOUR ACCEPTANCE BY CHECKING THE “I ACCEPT” BOX IN THE PROPOSAL OR STATEMENT OF WORK. ACCEPTANCE OF THIS AGREEMENT MEANS YOU ARE BOUND BY THE TERMS OF THIS LICENSE AGREEMENT. YOU MAY NOT COMPLETE THE TRANSACTION WITHOUT ACCEPTING THE TERMS OF THIS AGREEMENT.**

**YOU MAY PRINT THIS AGREEMENT OR SAVE IT AS A FILE ON YOUR COMPUTER, OR A COPY CAN BE PROVIDED TO YOU UPON REQUEST.**

This Agreement by and between Levi, Ray & Shoup, Inc. (“LRS” or “we”) and the entity signing below (“Customer” or “you”) shall become effective as of the date of the latest signature set forth below (“Effective Date”). Both parties may be referred to as “us.”

This Agreement covers business transactions you may enter into with LRS, including but not limited to the following: design and development of Websites and applications for use on the Internet, Website hosting, Domain Name registration, database services, email hosting, list server, Website security, and design and development of audio and/or video content.

This document, including the General Terms and Conditions attached hereto and incorporated by this reference, and Statements of Work, Design, Development and Hosting Schedules, Third Party Purchase Agreements, and other documents signed by us pursuant to this Agreement constitute the complete agreement regarding these transactions and replace any prior oral or written communications between us.

This Agreement is divided into three sections:

**Section 1.0 contains the General Terms and Conditions that apply to all transactions taking place under this Agreement.**

**Section 2.0 contains the terms and conditions which apply to transactions involving the Design and Development of a website.**

**Section 3.0 contains terms and conditions that apply when the transaction involves the licensing of LRS Antilles Content Manager software.**

**Section 4.0 contains terms and conditions that apply when the transaction involves the use of software as a service offerings.**

## 1.0 GENERAL TERMS AND CONDITIONS

### 1.1 Definitions.

- 1.1.1. "Affiliate" means (a) a company or other business entity (Company) which owns all or a controlling interest of a party as evidenced by either ownership of a majority of the outstanding shares entitled to vote for the election of directors of such party, or direct or indirect control over the management of such party, or (b) a Company in which a party owns all or a controlling interest as evidenced by either ownership of a majority of the outstanding shares entitled to vote for the election of directors of such Company, or direct or indirect control over the management of such Company.
- 1.1.2. "Agreement" means this Customer Agreement, including any Orders, Statements of Work, or Schedules signed by LRS and Customer.
- 1.1.3. "Deliverable" means any one of the deliverables defined as such in the applicable Proposal or Statement of Work.
- 1.1.4. "Derivative Work" means any modifications made to any deliverable including, but not limited to, computer source code or object code.
- 1.1.5. "Domain Name" means the alpha-numeric name associated with the Customer's Website, Web Pages, or electronic mail.
- 1.1.6. "Final Deliverable" means the version of a Website, Website enhancement, Program and/or other deliverables that LRS presents to Customer as substantially meeting all specifications set forth in the applicable Proposal and which is accepted by Customer as such.
- 1.1.7. "Intellectual Property Rights" means: (a) Rights in any patent, copyright, trademark, trade dress, and trade name; (b) Related registrations and applications for registration; and (c) Trade secrets and know-how.
- 1.1.8. "Internet" means the global computer network comprising interconnected networks using standard Protocols.
- 1.1.9. "Internet Service Provider" or "ISP" means an entity that enables the uploading and downloading of data between remote computers and the Internet.
- 1.1.10. "Maintenance" means the maintenance and support services referenced herein and described in the Maintenance Plan, as applicable.
- 1.1.11. "Maintenance Due Date" means the date upon which maintenance fees are due for Software. The initial Maintenance Due Date shall be the end of the Warranty Period and subsequent Maintenance Due Dates shall be the first day of each month thereafter.
- 1.1.12. "Program" means an audio and/or video presentation and/or other products and services developed by LRS as described in the applicable Order or Schedule.
- 1.1.13. "Proposal" means the LRS Web Services Proposal provided to Customer that outlines and describes the services to be performed by LRS for Customer.
- 1.1.14. "Protocols" means a set of rules that regulate the way data is transmitted between computers (e.g., TCP/IP protocols).
- 1.1.15. "Software" means the latest version of LRS Antilles Content Manager™ software with the applicable modules and any documentation, customizations, new releases, fixes, and any modifications thereto made available to Customer pursuant to this Agreement or the Maintenance Plan regardless of the media or format in which they are delivered or made available.
- 1.1.16. "Test Version" means each version of the Website presented for testing and acceptance.
- 1.1.17. "Warranty Period" means the time period beginning on the go-live date for the Software as communicated to the Customer by LRS and ending ninety (90) days thereafter.

- 1.1.18. "Web Page" means each individual screen display contained in Customer's Website and may consist of more than one data file.
- 1.1.19. "Website" means all Web Pages and Domain Names associated with Customer and its products or services, and which are developed by LRS and/or stored on an LRS Internet server computer.

1.2 **Payment of Fees for Services.**

- 1.2.1. Payment Terms. Unless otherwise specified, all charges are invoiced the first day of each month for any services performed the prior month. All fees and charges shall be payable within thirty (30) days of receipt of invoice for the same. LRS reserves the right to charge interest at the rate of 1.5% per month, or the maximum amount allowed by law, whichever is less, on such unpaid amounts for each calendar month, or fraction thereof, on any payment to LRS which is more than forty-five (45) days in arrears.
- 1.2.2. License Fee. There is a separate fee for any software licensed hereunder. If Customer is licensing software pursuant to this agreement, the applicable license fee shall be invoiced upon execution of this Agreement, with payment due thirty (30) days thereafter.
- 1.2.3. Taxes. All fees payable to LRS hereunder shall be exclusive of all applicable taxes based or measured thereon, or on this transaction, and Customer shall be responsible for the payment of all such taxes, excluding taxes based on LRS' income. LRS' invoice shall not include any amount for taxes unless the same are listed apart from the fees and LRS is authorized to collect the same. If Customer is tax exempt, Customer will not be responsible for, nor will it be invoiced for any tax, provided LRS receives a copy of Customer's tax exempt certificate prior to the issuance of the applicable invoice.

1.3 **Confidential Information.**

- 1.3.1. The parties recognize that each may come into possession of information that comprises valuable trade secrets and other confidential information ("Confidential Information") which is exclusively owned by the conveying party. Both parties expressly recognize that Confidential Information is conveyed to them under conditions of confidentiality, and agree that the receiving party shall not disclose any information identified as Confidential Information or which the receiving party knows, or reasonably should know, is Confidential Information to any third party during the term of the Agreement, and for a period of two (2) years following the Termination or expiration of the Agreement.
- 1.3.2. The parties may, however, disclose Confidential Information only to their employees who need to know Confidential Information in order to assure the parties' compliance with the other terms and conditions of the Agreement. For purposes of the Agreement, Confidential Information does not include the Software, which is protected under separate provisions of the Agreement. Confidential Information does not include: (a) information already known or independently developed by recipient; (b) information in the public domain through no wrongful act of the recipient; (c) information received by the recipient from a third party who had no obligation of confidentiality or (d) information that is subject to disclosure pursuant to court order.
- 1.3.3. Injunctive Relief. Nothing contained in this Agreement shall prohibit either party from seeking injunctive relief for violation or threatened violation of this Section 1.3, as both parties agree that a material breach of this Section would give rise to irreparable harm not adequately compensable by money damages.

- 1.4 **Employees.** During the term of this Agreement and for twelve (12) months thereafter, Customer will not knowingly solicit, offer employment to, or hire any person who performed services pursuant to the Agreement who is either an employee of LRS or has terminated his/her employment relationship with LRS less than 180 days prior to such hiring, solicitation or offer of employment.
- 1.5 **Termination/Remedies.**
- 1.5.1. Right To Terminate. LRS reserves the right to terminate the Agreement immediately if any fees or charges are not paid within ninety (90) days of receipt of invoice. Either party may terminate the Agreement if the other party breaches any material provision hereof and fails, within ten (10) days after receipt of notice of breach, to correct such default or to commence corrective action reasonably acceptable to the other party and proceed with due diligence to completion.
- 1.5.2. Post-Termination Rights. After Termination by any party for any reason, LRS shall retain the right to recover all accrued charges due and owing by Customer to LRS, and Customer agrees that it waives any right it may have against LRS to offset fees payable by Customer to LRS. After Termination, provided all fees due to LRS have been paid, LRS shall deliver to Customer one (1) copy of the production versions of the files or other content developed by LRS and required for the proper functioning of the Website or Program. This content shall include editable copies of files containing markup language for displaying data on the web, un-editable compiled code of the Software or third-party tools that LRS has licensed, all image and graphic files, client-side scripting files, and a database restore file (if applicable). All other code and content, including but not limited to, drafts, preparatory materials (e.g., sketches, concepts not utilized, artwork, mechanical files, layered image files, computer files, etc.), third party products, prior versions, or iterations, shall not be part of the content delivered to the Customer except as mutually agreed in writing by the parties and upon payment of a mutually agreed fee. However, use of any such content is subject to all use restrictions contained in the Agreement.
- 1.5.3. Survival. All logical provisions that should survive Termination of the Agreement shall. Termination of the Agreement is without prejudice to the rights and obligations of the parties that have accrued up to and including the date of Termination.
- 1.5.4. Remedies. All rights and remedies of the parties shall be cumulative but shall always be limited by sections 1.7 and 1.9.
- 1.6 **Deliverables and Acceptance**
- 1.6.1. Deliverable Schedule. Any Deliverables and their associated schedules will be set forth in the relevant Proposal or SOW. LRS agrees to start the project on the agreed-upon project start date. LRS reserves the right to adjust the Deliverable schedule based on Customer staff unavailability, delays in Customer's performance of its duties and obligations or due to scope changes.
- 1.6.2. Acceptance. LRS shall submit Deliverables to the Primary Contact for approval. Customer shall have ten (10) days to accept or reject the Deliverable in writing. Any Deliverable for which LRS does not receive written notice of either acceptance or rejection within the applicable timeframe shall be deemed accepted. Customer's use of the Deliverable in a production environment will be considered acceptance. If a Deliverable is rejected by Customer, the written rejection must

specify the reasons for rejection and must be based upon the Deliverable's failure to conform to a material requirement or specification.

- 1.6.3. If Customer rejects a Deliverable, LRS shall have a reasonable amount of time within which to resubmit the Deliverable. Upon resubmission, the Deliverable shall either be accepted or rejected in accordance with the provisions stated above. If the Deliverable is rejected a second time, LRS shall be able to resubmit the Deliverable again for acceptance or rejection in accordance with the provisions stated above. If the Deliverable is rejected for a third time because of a problem which LRS was unable to correct, then Customer may terminate this Agreement for cause upon written notice.
- 1.6.4. Notwithstanding anything to the contrary in this Agreement, the only basis upon which Customer may reject the Final Deliverable is if it does not perform in accordance with the specifications as set forth in the Proposal. If Customer does not provide LRS with a written notice of rejection of the Final Deliverable specifying in what ways it does not perform in accordance with the specifications within ten (10) days, the Final Deliverable shall be deemed accepted and any applicable warranty period will begin.

## 1.7 **Warranties and Disclaimer.**

- 1.7.1. Limited Warranty for Website or Program Design and Development. LRS warrants that for ninety (90) days following acceptance of the Final Deliverable, the Final Deliverable shall function substantially in accordance with the specifications set forth in the Proposal. However, LRS does not warrant that the Final Deliverable will be error free. Further, LRS warrants that it has the full right, power and authority to sell, distribute or license any third-party information supplied by LRS.
  - 1.7.1.1. The warranty shall be void and LRS' service and/or Maintenance obligations do not include the following circumstances: (a) Corruption or loss of the Software or data due to hardware failure or fault has occurred; (b) Any interference with, change to or modification of the Software by the Customer or a third party, except where modification is allowed by LRS' prior written permission; (c) The failure of the Customer to install any fix or other modification made available; or (d) Customer is in material breach of this Agreement.
- 1.7.2. CUSTOMER'S EXCLUSIVE AND SOLE REMEDY FOR THE BREACH OF THE WARRANTIES CREATED IN THIS SECTION 1.7 SHALL BE TO OBTAIN THE REPAIR, REPLACEMENT OR CORRECTION OF THE FINAL DELIVERABLE OR, IF LRS IS NOT ABLE TO EFFECTUATE SUCH REPAIR, REPLACEMENT OR CORRECTION WITHIN A REASONABLE PERIOD OF TIME, CUSTOMER SHALL BE ENTITLED TO A RETURN OF THE FEES ACTUALLY PAID TO LRS UNDER THE APPLICABLE AGREEMENT.
- 1.7.3. Limited Warranty for Services. Any services provided hereunder shall be provided in a workman-like manner using reasonable care and skill.
- 1.7.4. NO OTHER WARRANTIES. EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN THIS SECTION 1.7 OR IN ANY SCHEDULE, LRS MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY OR FITNESS FOR A PARTICULAR PURPOSE.
- 1.7.5. Disclaimer. In providing Website design, development or hosting services under the Agreement, LRS is only providing code underlying the Website or hosting services according to the descriptions and representations set forth in this

Agreement. LRS does not control or provide advice to Customer regarding the uses Customer may make of the Website or any transactions Customer may undertake via the Internet. The parties agree LRS is not providing any legal advice to Customer on any subject including, but not limited to, copyright, trademark or other intellectual property, libel, contract enforceability, data processing or Website accessibility. Customer, not LRS, shall have the sole responsibility for verifying the legal implications and legal sufficiency of the content on the Website. As such, LRS has no responsibility or liability of any kind related to the content of the Website, including Customer's exclusion of a privacy policy or data processing agreement, or any transactions or interactions Customer may be involved in as a result of, or related to, its Website. Except for those obligations explicitly undertaken by LRS in the Agreement, Customer releases LRS, its employees and agents and agrees to indemnify and hold them harmless from any other claims, suits, losses, expenses, including reasonable attorneys' fees, damages and liabilities of whatsoever nature which Customer or any third party might have against LRS in any way arising out of or in connection with the Agreement or the Website.

1.8 **Indemnification.**

- 1.8.1. LRS' Duty to Indemnify. If a claim is made by a third party against Customer that, if true, would cause a breach of a warranty set forth in Section 1.7, LRS shall defend against such claim at its own expense and shall indemnify Customer and hold it harmless against any settlement or final judgment, including an award of attorneys' fees, that may be awarded by a court of competent jurisdiction against Customer as a result of the foregoing; provided, however, that Customer shall give LRS prompt written notice of such claim and shall provide LRS with all reasonable cooperation. LRS has no obligation to pay Customer's attorneys' fees so long as LRS has assumed the defense of the claim in a timely fashion. Further, LRS shall have no liability or duty to Customer for any claim pursuant to this Section if such claim is based on Customer's, or a third party's addition, modification or customization to the Final Deliverable.
- 1.8.2. LRS' Right to Correct. If a claim is made by a third party against Customer that, if true, would cause a breach of a warranty set forth in Section 1.7, or if LRS believes that a likelihood of such a claim exists, LRS shall, in LRS' sole discretion, procure for Customer the right to continue using the Final Deliverable, modify it to make it compliant with the warranties set forth in Section 1.7 but continue to meet the Final Deliverable's functionality, or replace it with non-infringing material of like utility that complies with the warranties provided in Section 1.7; provided, however, if none of the foregoing is reasonably available to LRS, either party may terminate the Agreement, in which case Customer shall cease using the Final Deliverable and return it to LRS and, if during the first five (5) years from delivery of the Final Deliverable, LRS shall refund to Customer the fees actually paid to LRS under the Agreement for development of the Final Deliverable.
- 1.8.3. Customer's Duty to Indemnify. Customer warrants that the portions of the Final Deliverable supplied by Customer do not infringe any third party patent, copyright, trade secret or other proprietary right enforceable in the United States. Customer shall indemnify LRS and hold it harmless against any final judgment, including an award of attorneys' fees, that may be awarded by a court of competent jurisdiction against LRS as a result of breach of the foregoing; provided that LRS shall give Customer prompt written notice of such claim and shall provide Customer with all reasonable cooperation. Customer has no obligation to pay LRS' attorneys' fees once Customer has assumed the defense of the infringement claim. Further,

Customer shall have no liability or duty to LRS for any claim of infringement pursuant to this Section if such claim is based on text, data, graphics, or any other information supplied by LRS.

1.8.4. Customer agrees to indemnify, defend and hold LRS harmless from and against any and all claims, losses, expenses, demands or liabilities, including attorneys' fees and costs, incurred by LRS in connection with any claim by a third party (including any intellectual property claim) arising out of (i) materials and content submitted to, posted to or transmitted to Customer's website, or (ii) Customer's use of LRS' services in violation of this Agreement or in violation of any applicable law. LRS reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by Customer, and Customer shall not in any event settle any such claim or matter without the prior written consent of LRS. Customer further agrees to indemnify and hold harmless LRS from any claim arising from any third party's use of information or materials of any kind that submitted to, posted to or transmitted to Customer's website.

1.9 **Limitation of Liability.**

1.9.1. EXCEPT FOR A CLAIM UNDER SECTION 1.8.1, LRS' TOTAL LIABILITY FOR DAMAGES UNDER THE AGREEMENT, REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY (INCLUDING CONTRACT, TORT OR WARRANTY), SHALL BE LIMITED TO THE FEES ACTUALLY PAID TO LRS UNDER THE AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM. IN NO EVENT SHALL LRS BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF DATA, OR LOSS OF USE) THAT MIGHT ARISE AS A RESULT OF THE PERFORMANCE OR BREACH OF THE AGREEMENT OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT.

1.9.2. Independent Remedies. The limitation of LRS' liability for Customer damages as provided in Section 1.9 shall be independent of the remedies provision of Sections 1.3 and 1.7 and shall be valid and enforceable whether or not the remedies set forth in Section 1.3 and 1.7 "fail of their essential purpose" under the Uniform Commercial Code, the Uniform Computer Information Transactions Act, or similar laws applicable to the Agreement.

1.10 **Mutual Non-Assignment and no Third-Party Beneficiaries.**

1.10.1. Neither party may assign the Agreement without the prior written permission of the other except to an Affiliate, or where all or substantially all of the assets of a party are sold to, or merged or consolidated with, another company. Any attempted assignment except as permitted above shall be void. Notwithstanding anything to the contrary stated herein, no assignment allowed hereunder shall be valid until the other party receives a valid assignment signed by both the assignor and assignee transferring all rights and obligations hereunder to the assignee.

1.10.2. No Intended Third-Party Beneficiaries. Nothing in the Agreement is intended to confer on any person or entity, other than the parties and their authorized successors, any rights or remedies under or by reason of the Agreement.

1.11 **Export Compliance.** Customer agrees to comply fully with all relevant export laws and regulations of the United States, including but not limited to the U.S. Export Administration Regulations (collectively, "U.S. Export Controls"). Without limiting the generality of the foregoing, Customer expressly agrees that it shall not, and shall cause its representatives to agree not to export, directly or indirectly, re-export, divert, or transfer

the Software or direct product thereof to any destination or Company restricted or prohibited by U.S. Export Controls.

- 1.12 **Force Majeure.** Except for payment obligations, neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fire, pandemic, strikes (excluding a party's own employees), insurrection or riots, earthquakes, or tornadoes, (an "Event of Force Majeure").
- 1.13 **Waiver.** The failure of either party to seek relief for the other party's breach of any duty under the Agreement shall not waive any right of the non-breaching party to seek relief for any subsequent breach. A party's performance after the other party's default shall not be construed as a waiver of that default.
- 1.14 **Governing Law and Jurisdiction.** The construction, validity and performance of the Agreement shall be governed by, and construed in accordance with, the laws of the State of Illinois, and the parties expressly waive its choice of law rules. The parties agree that venue and jurisdiction for any litigation arising out of, related to, or regarding the validity of, the Agreement shall lie in the County of Sangamon, State of Illinois.
- 1.15 **Notice.** All Customer notices or demands required hereunder shall be in writing and shall be delivered by registered or certified mail postage pre-paid, or by an overnight express service, e.g., Federal Express, UPS, etc., to the person set forth below. LRS notices to Customer under this agreement will be provided to the designated Primary Contacts. Any notice or demand shall be deemed to have been delivered on the date of delivery or refusal, as the case may be, set forth on the return receipt. Notices shall be addressed as follows:

Levi, Ray & Shoup, Inc.  
Attn: General Counsel  
2401 W. Monroe Street  
Springfield, IL 62704

- 1.16 **Entire Agreement.** The Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the matters stated herein, and the Agreement contains all of the covenants and agreements between the parties with respect thereto. The Agreement may be amended or modified only in writing, and shall be effective only after affixation of both parties' signatures.
- 1.17 **Severability.** If any provision of the Agreement or the application of such provision to any person, entity or circumstance shall be held invalid, the remainder of the Agreement, or the application of such provision to any persons, entities or circumstances, other than those as to which it is held invalid, shall not be affected.
- 1.18 **Acceptance of Reproductions as Originals.** Any reproduction of the Agreement, including Amendments, and other documents signed by either party pursuant to the Agreement, made by reliable means may be delivered, fully or partially executed, to the other party electronically. Any such reliable reproduction of the Agreement or other document shall be considered an original in all respects and any authorized signature thereon shall be deemed genuine.
- 1.19 **Marketing Rights.** Customer grants LRS permission to use publicly accessible screen captures of the Program or public Website pages and to use descriptions of the Final Deliverable in LRS' marketing materials, including Customer's logo and the LRS Website portfolio, which may include links to the Customer website. LRS shall first obtain Customer's written permission to use any screen captures, site descriptions or work descriptions of pages that are not publicly accessible. Notwithstanding anything to the contrary stated herein, written permission may be obtained by e-mail for purposes of this Section. Customer may revoke marketing rights permission at any time upon written notice to LRS.

## 2.0 DESIGN AND DEVELOPMENT

- 2.1 **Project Management.** The parties agree that Customer's participation in all phases of the design and development is essential. Customer shall designate up to two (2) individuals to act as Customer's liaison to LRS with the power to make binding ongoing decisions under this Agreement for Customer ("Primary Contacts"). The Primary Contacts shall work with LRS in good faith to complete the project on schedule and in accordance with the Proposal.
- 2.2 **Design.**
- 2.2.1. Specifications. LRS agrees to design and develop the Website or Program according to the mutually agreed upon specifications set forth in the Proposal. LRS and Customer recognize that the specifications outline all elements Customer wishes to incorporate into the Final Deliverable, including images and graphics; define the functionality Customer desires between multiple Web Pages as applicable; and the functionality Customer desires between the Final Deliverable and users.
- 2.2.2. Customer Agreement to Specifications. Customer hereby expressly represents by signing this Agreement that the specifications contained in the Proposal accurately describe the Website or Program Customer has requested as of the date of this Agreement.
- 2.3 **Development.**
- 2.3.1. Modification during Design and Development. During the Design and Development process, LRS or Customer may propose modifications to the Website or Program. LRS shall not perform any work on any proposed modification without a Primary Contact's prior written authorization, which may be communicated via e-mail. If Customer elects to use a purchased third-party theme in place of a custom Website design, the layouts of each Website page will be limited to those available at the time of purchase. Except for cosmetic changes (e.g., color scheme, logo or contents of image containers), no modifications will be made to the layouts of the purchased theme.
- 2.3.2. Additional Development Time. The parties acknowledge that modifications may increase the hours required, and therefore the cost, for development and the delivery schedule may be delayed as a result of the modifications. Prior to beginning work on any modifications which will result in additional cost, LRS will first, in writing, request approval of the additional charges.
- 2.3.3. Test Version. LRS shall provide a version of the Website or Program as applicable for Customer's testing ("Test Version").
- 2.3.4. Testing. Customer shall perform complete testing and/or final proofreading of all aspects of the Test Version after LRS' provision of the Test Version.
- 2.3.5. Acceptance. Customer shall indicate its acceptance of the Test Version in writing, or Customer shall make suggested modifications, in writing, which shall be incorporated by LRS into the deliverable according to the terms of Section 2.3.1, above. If Customer does not suggest modifications within ten (10) working days of delivery of the Test Version, it shall be deemed accepted. CUSTOMER EXPRESSLY WAIVES ANY RIGHT TO REVOKE ACCEPTANCE.
- 2.3.6. Modified Test Version. LRS shall prepare a Modified Test Version by incorporating Customer's suggested modifications into the immediately preceding Test Version. LRS shall submit the Modified Test Version to Customer and Customer shall test for acceptance in the same manner as set forth in Section 2.3.4. Customer shall accept the Modified Test Version or suggest modifications as set forth in Section 2.3.5. If Customer does not suggest modifications to any Modified

Test Version within ten (10) working days of delivery of the Modified Test Version, it shall be deemed accepted.

2.4 **Modifications After Final Acceptance.**

2.4.1. Modifications. The parties may agree to have LRS provide modifications to the Website or Program or perform additional development services under the Terms of this Agreement either by entering into a written SOW or by approving such services via email from a Primary Contact. Except as otherwise provided in the applicable addendum or order, the services shall be provided at hourly rate set forth in the Proposal.

2.5 **Copyright and Intellectual Property Ownership.**

2.5.1. LRS' Retained Rights. Customer expressly recognizes that it is not the author or owner of the Software, any Antilles code, images, graphics or data provided to Customer by LRS, nor the attendant Intellectual Property Rights. LRS retains all rights in the Software, all preparatory materials (*e.g.*, sketches, concepts not utilized, artwork, mechanical files, computer files, etc.), prior versions, or iterations, in any media.

2.5.2. Customer's Retained Rights. Customer shall retain all rights, including attendant Intellectual Property Rights, in any data it provides under this Agreement, including any work derived from any portion of the provided data.

2.5.3. Grant of License. Upon acceptance of these terms but prior to delivery of the Final Deliverable, LRS grants to Customer a perpetual, royalty free license to Customer, its successors and its assigns, to use the Software as reasonably necessary during the design and development process. Upon delivery and acceptance of the Final Deliverable, LRS irrevocably grants, assigns and otherwise transfers exclusively and in perpetuity to Customer, its successors and assigns, a fully paid, royalty-free, perpetual license to reproduce the Software, to prepare Derivative Works therefrom, and to publicly perform or to publicly display the Software only in conjunction with Customer's use of the applicable Program or Website the Final Deliverable. Customer also shall be deemed the author and owner of the Domain Name and Customer's uniform resource locator (URL), if any, and the attendant Intellectual Property Rights or any work embodying them or derived therefrom. LRS does not assign to Customer the right to sublicense the Software, any Derivative Works prepared from the Software, or any portion thereof. Notwithstanding the foregoing or anything to the contrary herein, the parties agree that LRS reserves the royalty-free right to use and distribute, for any purpose, subsets or modules of the Final Deliverable which do not contain Customer Confidential Information.

2.5.4. Third-Party Products. LRS may incorporate third party products such as photos or graphic images into the Final Deliverable. LRS represents that it has the right to incorporate such third-party products. However, LRS makes no warranty regarding Customer's right to use such material for other purposes other than the intended use of the Final Deliverable and uses for such other purposes may be subject to additional restrictions or fees imposed by the owner of such third-party products. A complete list of such third-party products is available in the Antilles administrator dashboard, or upon written request.

2.6 **Domain Name and Setup.**

2.6.1. Scope. If Customer has already secured rights to the desired domain name(s), Customer is under no obligation to have LRS perform domain registration. However, unless Customer undertakes domain name server responsibilities, Customer agrees to make LRS the administrative contact of their registered

domain(s) for the term of this Agreement in order for LRS to properly set up and administer domain name server functionality for Customer's Website.

2.6.2. Domain Registration. In exchange for Customer's payment of all applicable costs and fees set forth in the Proposal, LRS shall register with a commercially recognized domain name registrar (Registrar) the Domain Name or Names selected by Customer. Prior to registration, LRS will search the Registrar to determine whether the selected name is available. However, LRS will not conduct any other type of search, including but not limited to a trademark search. LRS does not guarantee that Customer shall be assigned its desired name, and LRS is not responsible if any domain name has been issued to another entity. Customer shall pay LRS in advance for any domain registration renewals.

2.6.3. Domain Name Disputes. LRS shall not undertake to resolve any disputes or litigation on Customer's behalf involving Domain Name registration.

## 2.7 **Hosting Services.**

2.7.1. Customer's Plan. If Customer has selected Website Hosting Services, in exchange for Customer's payment of the monthly fees associated with Customer's Plan LRS shall provide the services as set forth in the Proposal for that Plan.

2.7.2. Hosting Service Fees. LRS shall not change the monthly fee for Customer's Plan during the twelve-month period beginning with the first date LRS hosts the Website ("Hosting Date"), except for any changes due to increases in server space or hit capacity utilized by Customer. LRS may change the rates set forth in the Proposal for subsequent periods by no more than ten (10) percent.

2.7.3. Payment of Monthly Fees. Customer shall pay the appropriate monthly fee in advance. If Customer fails to pay all outstanding bills more than thirty (30) days after the due date or if payment is returned or rejected, LRS shall have the right to suspend display of the Website on the Internet. Suspension does not relieve Customer from its obligation to pay any and all accrued fees, charges and costs due to LRS. Suspended service may be resumed by LRS, at LRS' sole discretion, after LRS has received full payment of all amounts due, including interest or other applicable charges, and payment of reconnection services payable at LRS' then-current rate.

2.7.4. Website Analytics. The parties agree that LRS will provide access to standard reports regarding site visits and users.

2.7.5. Cached Hits. Customer expressly recognizes that the actual number of hits to the Website may differ from the numbers reported by LRS due to caching of the Website on the Internet.

2.7.6. At no additional cost to Customer, LRS shall provide interfaces between the Website and certain third-party tools which are licensed to LRS, and which provide enhanced functionality for the Website. If Customer changes hosting providers, Customer will need to address the availability of such interfaces or alternatives to them with its new hosting provider. A complete list of such third-party tools is available upon written request.

2.7.7. Term. Unless terminated sooner pursuant to the terms of this Agreement, the initial hosting term shall be for twelve (12) months, beginning at the date of final deliverable acceptance. Thereafter, the term shall automatically renew for one-month periods until otherwise terminated. During the initial term, the Website Hosting Services may not be terminated without cause. Thereafter, either party may terminate the Website Hosting Services at any time without cause upon sixty (60) days' written notice.

## 2.8 **LRS' Duties.**

- 2.8.1. Website Storage and Internet Link. If Customer has elected LRS to host the website, LRS shall store the Website on an LRS Web server. The parties expressly recognize that Web servers and pages are susceptible to crashes and down time. LRS shall maintain the infrastructure and ability to link with the Internet, but LRS cannot guarantee and warrants neither a continuous and uninterrupted link nor any particular response rate or download time.
- 2.8.2. Backup. In case of server crashes, power outages, maintenance, service or improvement, LRS shall run a backup once per day, and will retain thirty-one (31) restore points. LRS also makes one (1) tape backup per month, and it is saved for twelve (12) months.
- 2.8.3. Maintenance. LRS may, at its own discretion, temporarily suspend all service for the purpose of repair, maintenance, or improvement of any LRS systems. However, where it is reasonably practicable under the circumstances, LRS shall provide prior notice and conduct such work during traditional business off hours and will restore service as soon as is reasonably practicable. Customer shall not be entitled to any setoff, discount, refund. Or other credit, in case of any service outage which is beyond LRS' control, or which is reasonable in duration.
- 2.8.4. Privacy. Message and data encryption, if any, is provided as set forth in Proposal.
- 2.9 **Customer's Duties.**
  - 2.9.1. Security. Although LRS shall provide security as set forth in Customer's Plan, the parties expressly agree that it is impossible to guarantee flawless security. If password protected pages are contained within the Website, Customer is solely responsible for the release of passwords and password management.
  - 2.9.2. Caching by LRS Permitted. Customer expressly grants to LRS a license to cache the entirety of the Website in RAM. Customer expressly agrees that such caching is deemed "fair use" under the United States Copyright Act and is not an infringement of any of Customer's Intellectual Property Rights.
  - 2.9.3. Use of Microsoft Software. Customer agrees the Terms and Conditions Regarding Use of Microsoft Software, as incorporated by this reference, shall apply to Customer regarding any Microsoft Corporation software provided by LRS for the hosting of Customer's Website. Further, Customer shall not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Microsoft software.
- 2.10 **Order and Payment Information Forwarding.**
  - 2.10.1. Order Form and Order Collection. Customer and LRS shall mutually agree upon any order entry form and order collection procedures that shall be contained on the Website. The parties shall mutually agree in writing to any modifications to the order entry form. However, LRS' responsibility regarding the order entry form, order collection procedures or any modifications thereto shall be for their technical functionality only and not the legal adequacy or enforceability of the form or procedures.
  - 2.10.2. Order Storage. Orders shall be stored on a daily basis and identified by the relevant date. Storage of orders increases the size of the Website which may result in increased cost to Customer. Notwithstanding anything to the contrary herein, LRS shall not store entire credit card numbers and/or personally identifiable information.
  - 2.10.3. Order Retrieval and Transmission. Customer's daily orders shall be stored on a server that is protected by a password Customer may use to retrieve its orders. Customer is solely responsible for the security and proper use of the password, and must take all necessary steps to ensure the password is kept confidential, secure,

used properly and not disclosed to unauthorized people. Customer shall immediately notify LRS if it knows of or suspects unauthorized use.

- 2.10.4. Customer Shall Process Orders and Payments. Customer shall be solely responsible for shipping user orders and collecting user payments.
- 2.10.5. No Agency. The parties agree LRS is only Customer's Website host, and is not Customer's partner, selling agent, distributor, marketer, or affiliate. Customer warrants that Customer shall comply with all laws pertaining to the offer or sale of goods or services through LRS' Internet facilities.
- 2.10.6. Customer Warranties. Customer further warrants that it shall not permit any defamatory or illegal content to be posted or otherwise located within Customer's Web Site. If LRS receives notification of a claim that any such content is posted or otherwise located within Customer's Web Site, LRS shall have the right, but not the obligation, to remove or block access to the defamatory or illegal content.

### **3.0 LRS ANTILLES CONTENT MANAGER**

#### **3.1 Retained Rights and Grant of License.**

- 3.1.1. LRS' Retained Rights. Customer expressly recognizes that it is not the author or owner of the Software, any Antilles code, images, graphics or data provided to Customer by LRS, nor the attendant Intellectual Property Rights. LRS retains all rights in the Software, all preparatory materials (*e.g.*, sketches, concepts not utilized, artwork, mechanical files, computer files, etc.), prior versions, or iterations, in any media.
- 3.1.2. Customer's Retained Rights. Customer shall retain all rights, including attendant Intellectual Property Rights, in any data it provides under this Agreement, including any work derived from any portion of the provided data.
- 3.1.3. Grant of License. Upon acceptance of these terms but prior to delivery of the Final Deliverable, LRS grants to Customer a royalty free license to Customer, its successors and its assigns, to use the Software as reasonably necessary during the design and development process. Upon delivery and acceptance of the Final Deliverable and payment in full, LRS irrevocably grants, assigns and otherwise transfers exclusively and in perpetuity to Customer, its successors and assigns, a fully paid, royalty-free, perpetual license to reproduce the Software, to prepare Derivative Works therefrom, and to publicly perform or to publicly display the Software only in conjunction with Customer's use of the applicable Program or Website. Customer also shall be deemed the author and owner of the Domain Name and Customer's uniform resource locator (URL), if any, and the attendant Intellectual Property Rights or any work embodying them or derived therefrom. LRS does not assign to Customer the right to sublicense the Software, any Derivative Works prepared from the Software, or any portion thereof. Notwithstanding the foregoing nor anything to the contrary herein, the parties agree that LRS reserves the royalty-free right to use and distribute, for any purpose, subsets or modules of the Final Deliverable which do not contain Customer Confidential Information.
- 3.1.4. Third-Party Products. LRS may incorporate third party products such as photos or graphic images into the Final Deliverable. LRS represents that it has the right to incorporate such third-party products. However, LRS makes no warranty regarding Customer's right to use such material for other purposes other than the intended use of the Final Deliverable and uses for such other purposes may be subject to additional restrictions or fees imposed by the owner of such third-party products. A complete list of such third-party products is available in the Antilles administrator dashboard, or upon written request.

- 3.2 **Restrictions on Use/No Outsourcing.**
- 3.2.1. The Software shall be used only in machine-readable form and only by the Customer for the internal business purposes of the Customer, except as otherwise set forth herein. Notwithstanding anything to the contrary stated herein, Customer shall not use the Software for “outsourcing” or as a part of a service bureau business or otherwise for the benefit of unaffiliated third parties who pay, directly or indirectly, for its benefit.
- 3.2.2. Customer may allow its contractors temporary access to the Software, but only to the extent such access is necessary to allow the Customer to directly use the Software or its computer systems effectively. Such contractors must sign a nondisclosure agreement which shall prohibit disclosure or dissemination to third parties, or using for their own benefit, all or part of the Software. Such nondisclosure agreements do not have to specifically name the Software in order to comply with this Section in order to be effective.
- 3.3 **Protection of Software and Customer’s Confidential Information.**
- 3.3.1. Acknowledgment of Trade Secrets. This Agreement does not transfer any ownership or title in the Software to Customer and all such ownership rights will remain in LRS or its suppliers. Customer acknowledges LRS’ representation that the Software contains valuable trade secrets and is protected by United States and international copyright laws and treaties. Customer may not disclose or make available to third parties the Software or any portion thereof without LRS’ prior written approval, except as specifically allowed under Section 3.2.2. LRS has the exclusive right to modify and enhance the Software, and the Customer hereby agrees that it will make no effort to reverse engineer, reverse assemble, decompile, or otherwise attempt to derive source code from the Software except as expressly authorized by applicable law for purposes of achieving interoperability.
- 3.3.2. Return Copies. Upon termination of this Agreement, unless it is superseded by another agreement between the parties, Customer shall immediately return the Software and all copies thereof to LRS. Alternatively, Customer shall immediately destroy the Software and all copies thereof and, upon request, certify in writing to LRS its compliance with this paragraph within five (5) days after such request.
- 3.3.3. Proprietary Notices. All copies of the Software, in whole or in part, shall contain all restrictive and proprietary notices as they appear on the copy of the Software provided by LRS. In no event may Customer copy in whole or in part the Software without LRS’ prior written consent.
- 3.3.4. Customer’s Confidential Information. All information, documents, or records to which LRS has access as a result of this Agreement and in which the Customer has rights or which is marked as confidential shall be treated by LRS as the Customer’s proprietary information and shall not be disseminated or disclosed to third parties without Customer’s prior written consent.
- 3.4 **Maintenance, Software Support and Source Code Escrow.**
- 3.4.1. Maintenance Fees. Maintenance shall be provided without charge to Customer until the end of the warranty period, and thereafter only upon Customer's payment in full of the Maintenance fees due. Maintenance fees shall always be paid in advance on or before the Maintenance Due Date, and shall increase annually by not more than 25%.
- 3.4.2. LRS’ obligation to provide Maintenance for the Software shall automatically be cancelled if the Maintenance fees are not paid within thirty (30) days after due. Should Customer elect to reinstate Maintenance within the first six (6) months after Maintenance has been cancelled, or elect Maintenance within six (6) months of the initial Maintenance Due Date, all Maintenance fees that would have been paid, but

for the cancellation or the failure to elect Maintenance prior to the Maintenance Due Date, plus a reinstatement fee equal to 30% of the unpaid Maintenance amount, must be paid up to the amount it would cost Customer to be re-licensed for the Software. Any election to reinstate or begin Maintenance later than the six (6) month periods referenced above shall be subject to fees as mutually agreed by the parties.

- 3.4.3. LRS will provide maintenance as follows: (a) upgrades to the licensed version of the Software which shall consist of a new copy of the Software or a module of the base, unmodified, Software containing fixes, improvements, modifications or changes made generally available to customers by LRS (As used herein “upgrades” do not include changes or new functionality that are accompanied by a change in the Version number of the Software); (b) development and application of fixes related to failures of the Software to perform as warranted during the Warranty Period or any period of paid Maintenance; (c) LRS will store a copy of the Software and track all changes or additions made by LRS to the Software; (d) if, in the reasonable judgment of the parties, an on-site visit to Customer is necessary to develop a fix, LRS will make an on-site visit at LRS’ expense; and (e) LRS shall store the Software on a server located at LRS’ corporate headquarters that is backed up to tape on a weekly basis and stored in a secure, off-site location (“Remote Location”). In case of a natural disaster or other event of Force Majeure that prevents LRS from accessing the Software at LRS’ corporate headquarters as necessary for LRS to provide Maintenance and Software Support, LRS shall make all commercially reasonable efforts to retrieve all necessary Software files from the Remote Location and restore the data to a working server.
- 3.4.4. LRS will provide Software Support as follows: (a) development and application of modifications to the Software not made generally available to all licensees of the Software; (b) telephone support from 8:00 AM to 5:00 PM current US Central Time, Monday through Friday, excluding LRS holidays, to address questions regarding the usage of the Software; and (c) modifications not related to a failure of the Software to perform as warranted. Requests for Software Support shall be available on a time and material basis at the then current Software Support rate. However, LRS shall not proceed to incur Software Support hours without Customer’s prior written approval, including via email. Each instance of Software Support hours will be billed a half-hour minimum charge and in one-quarter hour increments for any additional time.
- 3.4.5. This Agreement shall not be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods.

#### **4.0 SOFTWARE AS A SERVICE**

- 4.1 **Provision of Services.** LRS may, from time to time under this Agreement, offer Software as a Service (“Service”) options to Customer whereby LRS will host the software and deliver it to Customer over the internet as a service. Any such services will be specified in the Proposal or under a Statement of Work signed by the Parties.
- 4.2 **Right to Use.**
  - 4.2.1. Subject to the Terms and Conditions of this Agreement, LRS grants to Customer during the Term of this Agreement a nontransferable, nonexclusive right to use the Service solely for Customer’s own business operations. Customer (a) shall not license, sell, rent, lease, transfer, assign or otherwise make the Service available to third parties; (b) shall not modify, make derivative works of, disassemble, reverse

compile or reverse engineer any part of the Service; and (c) must make reasonable efforts to prevent unauthorized third parties from accessing the Service.

- 4.2.2. Customer grants to LRS and its third-party providers a non-exclusive, nontransferable right to copy, store, record, transmit, display, view, print or otherwise use (a) Customer data, including Confidential Information, solely to the extent necessary to provide the Service, and (b) any Customer trademarks provided to LRS for the purpose of including them in the Service. The Parties agree that by providing Customer with the Service, LRS does not acquire any right, title and/or interest in any content provided by Customer to LRS for the provision of the Services. Customer is responsible for all content provided to LRS.

#### 4.3 **Proprietary Rights.**

- 4.3.1. Customer acknowledges and agrees that the Service and any necessary software used in connection with the Service contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Customer further acknowledges and agrees that the content or information presented to the Customer through the Service may be protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except where expressly provided otherwise by LRS, nothing in the Service or this Agreement shall be construed to confer any license to any of LRS' (or its third-party providers' intellectual property rights).

#### 4.4 **Terms of Service.**

- 4.4.1. Customer agrees to comply with all applicable local, state and national laws and regulations in connection with its use of the Service, including but not limited to all privacy and personal information protection laws and regulations.
- 4.4.2. Customer understands that the processing and transmission of Customer's electronic communications are necessary to Customer's use of the Service. Customer expressly consents to LRS's use and storage of electronic communications and/or Customer data. Customer agrees that such data will be transmitted over the Internet, and over various networks, only part of which may be owned and/or operated by LRS, and that unauthorized parties may access data when communicated across the Internet. Customer agrees that LRS is not responsible for any data which is lost, altered, intercepted or stored without authorization during transmission.

#### 4.5 **Payment, Term, Suspension and Termination.**

- 4.5.1. The Service shall be billed at the rate indicated in the Proposal or SOW. The Services shall be invoiced on the first day of the month, with payment due 30 days thereafter, unless the Parties have agreed otherwise in the Proposal or SOW. LRS reserves the right to suspend the Service if Customer's payment is thirty (30) days or more overdue. The term of the Service shall be contained in the Proposal or SOW.
- 4.5.2. LRS reserves the right to immediately suspend access to the Service if LRS reasonably concludes that Customer's use of the Service is causing harm to LRS or to others. LRS will not be liable to Customer for any suspension of services pursuant to this section.
- 4.5.3. Either Party may terminate the Service upon sixty (60) days' written notice to the other party in the event of a material breach of this Agreement, provided that the alleged breach is not cured during the sixty (60) day notice period. Customer may cancel the Service, effective at the end of the then-current term, by providing LRS with at least thirty (30) days' written notice prior to the end of the term. Customer's right to use the Service shall end immediately upon termination or upon the effective date of the cancellation.