

# LOS RIOS COMMUNITY COLLEGE DISTRICT

**PURCHASE ORDER NO 0001090903**

PURCHASING: (916) 568-3071 • FAX: (916) 568-3145  
 ACCOUNTING OPS: (916) 568-3065 • FAX: (916) 286-3636

PLEASE SEE REVERSE SIDE FOR TERMS AND CONDITIONS.

|                          |                 |            |
|--------------------------|-----------------|------------|
| Date                     | Revision        | Page       |
| 01/25/2017               |                 | 1          |
| Payment Terms            | Freight Terms   | Ship Via   |
| NET 30                   | Shipping Point  | Best Metho |
| Reference:               | Location / Dept |            |
| 829870 GRIGGS N ROUILLES | 01ITC           |            |

**Supplier:** 0000034943  
 SITEIMPROVE INC.  
 7807 CREEKRIDGE CIRCLE  
 MINNEAPOLIS MN 55439

**Phone:** (855) 748-3467  
**Fax:** (800) 409-5612

**email:** info@siteimprove.com

**Ship To:** AMERICAN RIVER COLLEGE  
 RECEIVING  
 4700 COLLEGE OAK DR  
 SACRAMENTO CA 95841  
 United States

**Bill To:** 1919 Spanos Court  
 Sacramento CA 95825-3981  
 United States

Tax Exempt? N

| Line-Sch | Item/Description                           | Quantity UOM | PO Price | Extended Amt | Due Date   |
|----------|--------------------------------------------|--------------|----------|--------------|------------|
| 1- 1     | ANALYTICS SOFTWARE SERVICE<br>SUBSCRIPTION | 1.00 EA      | 6,529.13 | 6,529.13     | 02/08/2017 |

5 RESPONSE CHECK POINTS  
 20,000,000 YEARLY PAGE VIEWS (YPV)  
 250 PAGE BEHAVIOR MAP

PER QUOTE# 41521

SUBSCRIPTION FOR ARC & FLC

|                  |          |
|------------------|----------|
| Sub Total Amount | 6,529.13 |
| Sales Tax Amount | 0.00     |
| Total PO Amount  | 6,529.13 |

| BU    | Acct | Fd | Org        | Prog  | Sub   | Proj | Amount   | BYear |
|-------|------|----|------------|-------|-------|------|----------|-------|
| GENFD | 5890 | 11 | AR.CP.MICR | 67800 | 00000 | 051C | 3,264.57 | 2017  |
| GENFD | 5890 | 11 | FL.CP.PISO | 67100 | 00000 | 051C | 3,264.56 | 2017  |

Verification of this purchase order can be made using the Los Rios Community College District web site listed below. If you have any questions, please contact the Purchasing Office at (916)568-3071.

<http://www.losrios.edu/purchasing/povalidation>



All shipments, invoices, and correspondence must be identified with our Purchase Order Number. Overshipments will not be accepted unless authorized by Buyer prior to shipment.

**Authorized Signature**

Notice to vendor: You are responsible for delivering goods and delivery documents to the Receiving Department at the site. Failure to do so will delay payment processing. Vendor is responsible for obtaining verification of delivery by authorized Receiving Room personnel. Receipt of goods by other parties and failure to obtain authorized signatures may also delay payment. NOTE: PAYMENT TERMS NET 30

MATERIAL SAFETY DATA SHEETS (MSDS) must be provided with the delivery of product as required by law.

## LOS RIOS COMMUNITY COLLEGE DISTRICT

American River College • Cosumnes River College • Folsom Lake College • Sacramento City College

### PURCHASE ORDER TERMS AND CONDITIONS

1. **APPLICABLE LAW:** The contract resulting from this order shall be governed by the laws of the State of California
2. **COMPLETION OF ORDERS:** LRCCD reserves the right to withhold payment until order is completed.
3. **DISCOUNTS:** Please show cash payment discount offered on your invoice in connection with any discount offered, time will be computed from date of delivery of the supplies or equipment, or from date correct invoices are received in the office specified by LRCCD if the latter date is later than the date of delivery. Payment is deemed to be made for the purpose of earning discount, on the date payment is mailed or on behalf of LRCCD.
4. **INVOICES:** Invoices shall be prepared and submitted in duplicate unless otherwise specified. Invoices shall contain Purchase order number, date, description of items, sizes and quantities, unit prices, extended totals, place and date of delivery. Invoices or vouchers not on printed bill heads shall be signed by the CONTRACTOR or person furnishing the supplies or services. Every invoice shall be properly itemized. If LRCCD has not received billing for product or services within a one year period LRCCD will not be held responsible for satisfying the debt.
5. **CHANGES:** No change or modification in terms, quantities, or specifications may be made without express authorization in writing from the LRCCD Purchasing Office and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto. If unit cost of any item exceeds the amount shown by 10% or \$250.00 whichever is less do not ship. Contact LRCCD Purchasing at the phone number provided.
6. **BILL OF LADING:** If Bill of Lading is applicable to this order, send originals to "Ship to" address and duplicate Bill of Lading with invoices to "Bill to" address. All correspondence, invoices, bills of lading, shipping memos, packages, etc., must show purchase order number. If factory shipment, advise factory to comply.
7. **TRANSPORTATION CHARGES:** Invoices for prepaid transportation charges must be supported by original receipted expense bills.
8. **FOB POINT AND FREIGHT CHARGES:** Unless otherwise specified on this order, all items shall be delivered FOB Destination. No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, or for any other purpose will be paid by LRCCD unless expressly included and itemized in the order. Unless otherwise shown, on "FOB Shipping Point" transactions, CONTRACTOR shall arrange for lowest cost transportation, prepay and add freight to invoice and furnish supporting freight bills if the amount exceeds \$50.00. On "FOB Shipping Point" transactions, should any shipments under this purchase order be received by LRCCD in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the equipment and/or material, CONTRACTOR on request of LRCCD shall at CONTRACTOR's own expense assist LRCCD in establishing carrier liability by supplying evidence that the equipment and/or materials was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions. Shipments that are California intrastate in nature and where freight is to be borne by LRCCD shall be tendered to carriers with written instructions that rate and charges may not exceed the lowest lawful rates on file with the California Public Utilities Commission.
9. **PATENT INDEMNITY:** The CONTRACTOR shall hold LRCCD, its officers, agents and employees harmless from alleged liability of any nature or kind, including costs and attorney fees and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract or purchase order.
10. **TAXES:** Certain articles sold to LRCCD are exempt from certain Federal excise taxes. LRCCD will reimburse the CONTRACTOR for, or pay directly, all California State and local sales and use taxes applicable to this purchase.
11. **EQUAL OPPORTUNITY EMPLOYER:** The acceptance of this purchase order by a supplier of goods and services is a certification that such supplier complies with all provisions of executive order 11246 and is an equal opportunity employer.
12. **GENERAL SAFETY ORDERS:** All materials, supplies and services sold to LRCCD shall conform to the general safety orders of the State of California. All materials, except as otherwise specified, must be new and of the best quality of their respective kinds.
13. **INDEMNIFICATION:** CONTRACTOR shall indemnify, defend and hold harmless LRCCD, its trustees, officers, agents, employees and volunteers, from any and all claims, demands, suits, causes of action, damages, penalties, breaches of this agreement, infringement of patent rights, costs, expenses, violations of employee occupational health and safety laws, attorney fees, losses or liability, property damage, personal injuries to or death of persons, arising out of, alleged to have arisen out of, or relating in any way to CONTRACTOR's work to be performed under this agreement, except if caused solely by the negligence of LRCCD.
14. **TERMINATION:** LRCCD may terminate this agreement and be relieved of the payment of any consideration to CONTRACTOR should CONTRACTOR fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination LRCCD may proceed with the work in any manner deemed proper by LRCCD. The cost to LRCCD shall be deducted from any sum due the CONTRACTOR under this agreement and the balance if any, shall be paid the CONTRACTOR upon demand.
15. **ASSIGNMENT:** Without the written consent of LRCCD, this agreement is not assignable by CONTRACTOR either in whole or in part.
16. **PUBLIC WORKS PROJECTS:** CONTRACTOR must comply with Public Contract Code.
17. **CA LABOR CODE:** Pursuant to Section 1700, and following, the CONTRACTOR shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. Copies of such prevailing rate of per diem wages are on file at the Business Office of the Los Rios Community College District, 1919 Spanos Court, Sacramento, CA 95825. Those copies shall be made available to any interested party upon request. The CONTRACTOR shall forfeit, as penalty to the LRCCD, Fifty Dollars (\$50.00) for each calendar day or portion thereof, for each workman paid less than the stipulated prevailing rates for any work done under the contract by him/her or by any subcontractor under him, in violation of the provisions of such Labor Code.
18. **NOTICE:** Your employees may be exposed to hazardous substances during the course of their work while on LRCCD property. For additional information on the hazardous substances that your employees may be exposed to contact the LRCCD General Services Department at (916) 568-3048.
19. **INSURANCE:** CONTRACTOR shall, at all times, maintain in full force and effect the following insurance: Workers' Compensation, Commercial General Liability, Auto Liability, and Professional Liability if licensed professional. Policy limits for each shall be at least \$1,000,000 AND \$3,000,000 AGGREGATE for bodily injury, personal injury and property damage. Any combination of General Liability and Excess Coverage can be combined to meet the Aggregate. LRCCD shall be named as an additional insured on CONTRACTOR's policies. The CONTRACTOR shall provide a certificate of insurance and required endorsements to comply with this section at least 15 days prior to commencement of work under this contract. The certificate shall state that LRCCD will be given 30 days notice of any material change or cancellation in coverage.
20. **DISQUALIFIED EMPLOYEES:** CONTRACTOR shall ensure that persons who perform services on LRCCD property have not been convicted of any felony, or any controlled substance offense or any sex offense as those terms are defined by Education Code section 87008-87010. If LRCCD determines that any person employed by CONTRACTOR to work on LRCCD property is incompetent, unfaithful, intemperate, disorderly, abusive or is otherwise unsatisfactory, CONTRACTOR shall cause that employee to be removed from working on LRCCD property immediately, and that person shall not be employed again on LRCCD property.
21. **WORK AUTHORIZATION:** Prior to LRCCD's acceptance of this Agreement, CONTRACTORS who are not U.S. citizens must provide verification of (a) work authorization status from the appropriate U.S. Department of State; (b) a copy of their U.S. visa; (c) the number of days present in the U.S.; and (d) tax treaty status. LRCCD shall not make any payments to CONTRACTOR unless CONTRACTOR holds the appropriate U.S. visa. CONTRACTOR is responsible for ensuring they are in possession of the appropriate visa.
22. **WARRANTY:** CONTRACTOR expressly warrants that all materials, goods, equipment, services, and/or labor shall conform to the requirements set forth or incorporated into this order and any applicable industry standards or requirements, shall be merchantable and free from defects in workmanship, materials and/or design (including latent defects), and shall perform as specified. CONTRACTOR further warrants that all materials, goods, equipment, services, and/or labor will be fit and sufficient for the particular purposes intended by LRCCD. Unless agreed upon otherwise between LRCCD and CONTRACTOR, the warranty period shall be the longer of: (a) any express warranty included in this service agreement; (b) one year after the materials, goods, equipment, services, and/or labor are accepted by LRCCD; or (c) any warranty period provided under any applicable California law.

# Los Rios Community College District

## Requisition

Page \_\_\_\_\_ of \_\_\_\_\_

Req. No. **829870**

P.O. No.

|                          |
|--------------------------|
| Vendor Code              |
| Approved by / Date       |
| Reviewed by / Date       |
| Dispatched Method / Date |

DATE 1/17/17 VENDOR Siteimprove  
 ADDRESS 7807 Creekridge Circle  
 CITY Minneapolis STATE MN ZIP 55439  
 E-MAIL info@siteimprove.com  
 PHONE 855-748-3467 FAX 800-409-5612

| DELIVERY INSTRUCTIONS        |               |
|------------------------------|---------------|
| <b>ITC</b>                   | <b>IT</b>     |
| Department Building Location | Department    |
| <b>ARC</b>                   | <b>IT</b>     |
| College/District Location    | Date Required |
| <b>PRT</b>                   | <b>Jan 22</b> |
| Division                     | Date Required |

| ITEM                                                                  | DESCRIPTION                                                                                                  | ORDERED  |      | AMOUNT     |             |
|-----------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|----------|------|------------|-------------|
|                                                                       |                                                                                                              | QUANTITY | UNIT | UNIT PRICE | TOTAL PRICE |
|                                                                       | *Use additional paper if necessary and please reference requisition number. DO NOT USE A SECOND REQUISITION. |          |      |            |             |
| 1                                                                     | Analytics Software Service Subscription                                                                      |          |      |            | 6,792.92    |
| 2                                                                     | with 5 response check points, 20,000,000                                                                     |          |      |            |             |
| 3                                                                     | yearly page views, 250 page behavior                                                                         |          |      |            |             |
| 4                                                                     | map.                                                                                                         |          |      |            |             |
| 5                                                                     | *Subscription for ARC and FLC                                                                                |          |      |            |             |
| 6                                                                     |                                                                                                              |          |      |            |             |
| 7                                                                     | See Attached quote # 40907                                                                                   |          |      |            |             |
| 8                                                                     |                                                                                                              |          |      |            |             |
| 9                                                                     |                                                                                                              |          |      |            |             |
| 10                                                                    |                                                                                                              |          |      |            |             |
| 11                                                                    |                                                                                                              |          |      |            |             |
| 12                                                                    |                                                                                                              |          |      |            |             |
| 13                                                                    |                                                                                                              |          |      |            |             |
| Purchases Charged to Categorical Programs, Grants or Special Projects |                                                                                                              |          |      | Tax        |             |
| This purchase is in compliance with the requirements of _____         |                                                                                                              |          |      |            |             |
| Program Name                                                          |                                                                                                              |          |      |            |             |
| For grants/special projects _____                                     |                                                                                                              |          |      |            |             |
| Program Director/Coordinator Signature _____                          |                                                                                                              |          |      | Total      | 6,792.92    |
| Project/Grant Number                                                  |                                                                                                              |          |      |            |             |
| Program Goal/Objective Number/Explanation                             |                                                                                                              |          |      |            |             |

I hereby certify the items/services listed above are to be obtained in accordance with District Policy, Conflict of Interest Code, P-8611 and all other applicable district, state, and federal policies, rules, regulations and laws.

REQUESTED BY: Nicole GRI665 TYPED/PRINT DATE 1/18/2017  
 REQUESTED BY: [Signature] SIGNATURE DATE 1/18/2017  
 AUTHORIZED: [Signature] DEAN OR AUTHORIZED SIGNATURE DATE 1/18/17  
 APPROVED: [Signature] VICE PRESIDENT, ADMINISTRATION DATE 1/18/17

Gentd/5890/11 / AR. CR. MIOCR  
 Bus. Unit Account \* Fund Org  
67800/00000/2017/051C \$ 3,396.46  
 Program Sub-Class BY Proj/Grnt Amount  
Gentd/5890/11 / FL. GP. PISO  
 Bus. Unit Account \* Fund Org  
67100/00000/2017/051C \$ 3,396.46  
 Program Sub-Class BY Proj/Grnt Amount

\* Asset Location - For equipment purchases over \$200 (Accounts 6480, 6490, 6491, 6493, 6495, and computers) complete the area below indicating the final location where equipment will be housed.  
 Location Code \_\_\_\_\_ Dept. \_\_\_\_\_  
 Building \_\_\_\_\_ Room No. \_\_\_\_\_

Instructions on Reverse

## Bucher, Jeff

---

**From:** Hart, Kristy  
**Sent:** Tuesday, January 17, 2017 11:20 AM  
**To:** Bucher, Jeff; Crow, Scott  
**Cc:** Ross, Gabe; 'lsk@siteimprove.com'; Griggs, Nicole  
**Subject:** RE: Analytics

Jeff,

Thank you! Please use the following line item for FLC's share:

GENFD 5890 11 FL.CP.PISO 67100 00000 2017 051C

Kristy

---

**From:** Bucher, Jeff  
**Sent:** Tuesday, January 17, 2017 10:16 AM  
**To:** Hart, Kristy <HartK@flc.losrios.edu>; Crow, Scott <CrowA@arc.losrios.edu>  
**Cc:** Ross, Gabe <RossG@losrios.edu>; 'lsk@siteimprove.com' <lsk@siteimprove.com>; Griggs, Nicole <GriggsN@arc.losrios.edu>  
**Subject:** FW: Analytics

Hello,

They pro-rated us so the Analytics software purchase will sync up with the main Siteimprove maintenance fee in the future. We are currently paying for the first 206 days of the agreement with this quote.

We will be invoiced \$6792.92 for the analytics tool each college ARC, FLC pays \$3,396.46

The annual cost which we will see again in August 2017 is currently listed at \$12,036

I can write the req here at ARC. If I can get a budget string from FLC I will have our Business Office staff process the req and send it on to DO purchasing.

Thank you

Jeff Bucher  
IT Supervisor  
American River College  
(916) 484-8015  
[bucherj@arc.losrios.edu](mailto:bucherj@arc.losrios.edu)

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**From:** Luke Kaney [<mailto:lsk@siteimprove.com>]  
**Sent:** Wednesday, January 11, 2017 8:44 AM  
**To:** Crow, Scott <[CrowA@arc.losrios.edu](mailto:CrowA@arc.losrios.edu)>

## Software-as-a-Service Subscription Agreement

This Software-as-a-Service Subscription Agreement ("Agreement") is by and between Siteimprove, Inc., a California corporation with a business address at 7807 Creekridge Circle, Bloomington, MN 55439, and its Affiliates (defined below) (collectively, "Siteimprove") and Los Rios Community College District ("Customer" / "you" / "your") for Siteimprove services. This Agreement consists of the following: (A) this Software-as-a-Service Subscription Agreement document; (B) Exhibit A, "Website(s); (C) Exhibit B, "Terms and Conditions"; and (D) any other exhibits listed in this Agreement.

This offer is only valid if signed by you on or before January 23, 2017. After that date, please contact Siteimprove to issue a new offer.

Below is a description of the modules that are included in the Agreement ("Included Services"):

| Included Services                                                                                                                                   | Limits (the "Limits")*             |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| <b>Response</b><br>Monitors website's availability and performance.                                                                                 | 5 Response Check Points            |
| <b>Analytics</b><br>Provides detailed website analytics and statistics. <u>This service requires the implementation of a script on the website.</u> | 20,000,000 Yearly Page Views (YPV) |
| <b>Behavior Map</b>                                                                                                                                 | 250 Pages                          |

\* The Limits consist of the following and their applicable definitions:

**Pages:** A Page is an electronic document created with HTML and accessible with a browser.

**Response Check Points:** Response Check Points are single URLs that are monitored for up-time and response time performance from a series of reliable servers across the globe.

**Yearly Page Views:** Yearly Page Views are the total number of Page Views a website will generate over the course of 365 days. A "Page View" is a single view by a website user of a page on a website that is being tracked by the Siteimprove Analytics tracking code. If a user clicks reload after reaching the page, it is counted as an additional Page View. If a user navigates to a different page and then returns to the original page, an additional Page View is recorded.

**PDFs:** Portable Document Format (PDF) is a file format that has captured all the elements of a printed document as an electronic image that you can view, navigate, print, or forward to someone else. To be included in this subscription a PDF must be hosted on one of the covered websites.

### Access to the services

Please allow up to five business days for setup to the Included Services to be completed. The Included Services can be accessed at <http://my.siteimprove.com>. At that location, you can administer the logins for your authorized users. The Included Services also include free training and tech support.

### Limitations

The Included Services are subject to the following limitations:

- Your use of the Included Services is subject to the Limits. If you exceed the Limits, we will notify you that continued use in excess of the Limits may subject you to additional charges which will be documented in a mutually-agreed change order.
- Included Services may only be run on the website(s) listed in Exhibit A.
- Websites can be added to the Included Services, subject to the approval of Siteimprove.
- You must be the owner of the approved website(s).
- You can only add websites – approved websites cannot be replaced with different websites.
- Included Services may only be run on public websites that do not contain sensitive or personal information.

## Limit Increases

Increasing the Limits for the Included Services are available at the rates and increments indicated below. These rates and increments may be updated annually. If an increase is requested after the start of the Initial or Renewal Term, the cost will be pro-rated.

| Limit Increase          | Additional annual subscription fee |
|-------------------------|------------------------------------|
| Pages                   | \$700 per 250 pages                |
| PDFs                    | \$750 per 2,500 PDFs               |
| Yearly Page Views (YPV) | \$1,500 per 2,500,000 YPV          |
| Response Check Points   | \$100 per Check Point              |

## Term

The first date for this Agreement (the "Effective Date") is January 23, 2017. This Agreement will remain in force for a period of 1 year and 206 days following the Effective Date (the "Initial Term"). After the Initial Term, this Agreement will automatically renew for one or more additional consecutive periods of 12 months (the "Renewal Term") until terminated according to Section 3 (Termination) of the Terms.

## Subscription Fees

The annual subscription fee (excluding applicable taxes) for the Included Services is: **\$12,036** (the "Fee").

This Fee includes a discount of 32.38%, which is only valid through January 23, 2017.

For the first 206 days of this Agreement, you will be invoiced a one-time fee of \$6,792.92. This amount is in addition to the Fee and will be invoiced as listed below.

## Invoices & Payments

All invoices are sent to the email address listed in the Billing Information section. If an email address is not listed, your invoice will be sent to the most current email address that Siteimprove has on file.

You will be invoiced as follows:

- Upon signing this Agreement, you will be invoiced for \$6,792.92.

- At the conclusion of the first 206 days of this Agreement on August 17, 2017, You will be invoiced for the Fee
- At least 45 days prior to the expiration of the Initial or Renewal Term, you will be invoiced for the Fee.

All invoices must be paid pursuant to the terms set forth in Section 2 of the Terms and Conditions (Exhibit B).

## Billing Information

When you subscribe to the Included Services, we need to collect and process your personal information in order to identify you as a customer, to process payments and to send you invoices. This information is collected in this Agreement. We may transfer such information to affiliates for the purpose of the same.

You have the right to access, correct, modify and erase personal information you have given us. You may exercise these rights by contacting [privacy@siteimprove.com](mailto:privacy@siteimprove.com)

Contact information for invoicing:

Name:

Accounts Payable - Los Rios Community College District

Address:

1919 Spanos Court

SACRAMENTO, CA 95825-3981

Email:

Phone:

916-568-3065

## Customer Information

Is a Purchase Order Number ("PO") required?

Yes, please provide Purchase Order Number: \_\_\_\_\_

No

If a PO is required, will you be providing a new PO for each invoice?

Yes

No, the provided PO number can be used for the initial invoice and all subsequent invoices.

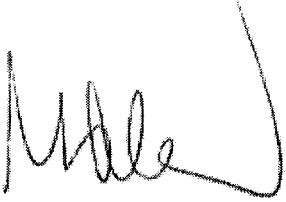


## Signatures

By signing below, each party acknowledges that it has carefully read and agrees to be bound by the terms of this Agreement. This Agreement will become effective on the Effective Date.

SITEIMPROVE Inc.

Los Rios Community College District



---

Signature

---

Signature

Morten Ebbesen

---

Name

---

Name

January 11, 2017

---

Date

---

Date

## Exhibit A: Website(s)

The Included Services may be run on the following website(s):

- [www.arc.losrios.edu](http://www.arc.losrios.edu)
- [www.flc.losrios.edu](http://www.flc.losrios.edu)

## Exhibit B: Terms and Conditions

### 1. DEFINITIONS

a. **Interpretation.** Capitalized terms used in these Terms and Conditions will have the meanings ascribed to them in the Agreement or as defined below. Terms other than those defined below will be given their plain English meaning and terms of art having specialized meanings in the software industry will be construed in accordance with industry standards. Unless the context otherwise requires, words importing the singular include the plural and words importing the masculine include the feminine and vice versa where the context so requires.

b. **"Affiliate"** means any entity directly or indirectly controlling or controlled by or in common control with a party, where "control" is defined in this context as the ownership of at least fifty percent (50%) or more of the voting stock or other interest entitled to vote on general decisions reserved to stockholders, partners, or other owners of such entity. An entity shall no longer be an Affiliate when through loss, divestment, dilution or other reduction of ownership, the requisite control no longer exists.

c. **"Confidential Information"** means information that is marked or otherwise identified as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used that either party discloses on or after the Effective Date, to the other party or its parents, affiliates' employees, contractors, officers, directors, partners, agents, attorneys, accountants or advisors. Confidential Information includes: business processes, practices, methods, policies, plans, operations, services, strategies, techniques, agreements, contracts, terms of

agreements, transactions, potential transactions, negotiations, pending negotiations, know-how, trade secrets, computer programs, computer software, applications, operating systems, software design, web design, databases, records, financial information, results, accounting information, accounting records, legal information, pricing information, credit information, payroll information, staffing information, internal controls, security procedures, sales information, revenue, costs, communications, original works of authorship, customer information, and customer lists. Confidential Information does not include information that: (a) was in the public domain prior or subsequent to the time such portion was communicated to the receiving party, through no fault of that party; (b) was rightfully in the receiving party's possession free of any obligation of confidence at or subsequent to the time such portion was communicated by the disclosing party; (c) was developed by the receiving party independently of and without reference to any information communicated by the disclosing party; (d) was communicated by the disclosing party to an unaffiliated third party free of any obligation of confidence; or (e) is approved by the disclosing party for release by the receiving party.

### 2. INVOICES; PAYMENTS; PAST-DUE INVOICES

Unless expressly agreed otherwise, the Fee for the Initial Term will be invoiced on the Effective Date. At least 45 days prior to the expiration of the Initial or Renewal Term. Customer will be invoiced for the Fee for the Renewal Term. Customer will pay all invoices within 30 days of issuance. Unless expressly agreed otherwise, all prices are in United States Dollars. There is no

charge for updates to, or new releases of, Included Services. However Siteimprove may launch new modules/services/products that are not covered by the Fee. In the event that an invoice becomes past-due, Siteimprove will notify Customer by phone or email. After Siteimprove has provided notice, Customer will have five business days to pay the past-due invoice. If Customer fails to make the payment by the end of the cure period, then Siteimprove reserves the right to: (i) begin charging Customer interest for the past-due amount at an interest rate of 1.5% per month, or the highest rate allowed by applicable law, whichever is smaller; (ii) discontinue the Included Services; or (iii) terminate this Agreement pursuant to Section 3 (a) (Termination).

### 3. TERMINATION

- a. **For Material Breach.** Either party may terminate this Agreement in the event of a material breach by the other party of its obligations under this Agreement if the other party fails to cure the breach within 30 days after receipt of written notice of breach.
- b. **For Convenience.** During the Initial Term or Renewal Term, either party may terminate this Agreement at any time for its convenience, with or without cause, by giving written notice to the other party at least 60-days prior to the start of the Renewal Term. Customer remains liable for payment of all Fees owed and will not be entitled to a credit or refund when the Agreement is terminated pursuant to this Section 3(b).

### 4. INCLUDED SERVICES

Subject to the terms and conditions of this Agreement, Siteimprove will allow the Customer to access to the Included Services.

- a. **Ownership.** Customer acknowledges and agrees that Siteimprove owns and shall remain the sole owner of all intellectual

property rights vested in the Included Services created prior to or during the performance by the parties of this Agreement. This ownership right includes any inventions, patents, utility model rights, copyrights, design rights, mask works, trademark rights, or know-how, whether registered or not.

- b. **Use.** The right to access the Included Services is worldwide, non-transferable, non-assignable (except as permitted in this Agreement) and limited in time to access and use during the Initial and any Renewal Terms and solely for Customer's internal business purposes by Customer's authorized agents. Customer will have access to the Included Services only for those website domain(s) authorized pursuant to this Agreement.

- c. **Restrictions.** This right is not a perpetual right to use, and Customer has no right to retain or to use the Included Services after termination of the Initial or Renewal Term. Customer has no right to rent, lease, assign, transfer, sublicense, display or otherwise distribute or make the Included Services available to any third party. Without limiting the generality of any other provisions stated in this Agreement, the Included Services may not be (a) used in the performance of services for or on behalf of any third party or as a service bureau; (b) modified, incorporated into or combined with other software, or created as a derivative work of any part of the Included Services; (c) used to process any sensitive or personal information; or (d) used for any illegal purpose. Customer may not modify, disassemble, decompile or otherwise reverse engineer the Included Services nor permit any third party to do so except as expressly permitted by law. Siteimprove reserves all rights not expressly granted to Customer under this Agreement. The use of Siteimprove's intellectual property beyond

the express access grant in this Section 4 is outside the scope of this Agreement.

d. **Support.** During the Initial and Renewal Term, Siteimprove will provide support to Customer pursuant to its then-current standard support plan. In no event will Siteimprove be obligated to furnish support for any version of the Included Services that Customer has modified or altered in any way.

e. **Operational Data.** The Included Services are designed to collect certain operational data, which may be used by Siteimprove for various business purposes, which may include customer support, verifying the need for and providing updates to the Included Services, market research and product planning, verifying Customer's compliance with the terms and conditions of this Agreement and protecting Siteimprove's intellectual property. If Customer has used the Included Services outside the parameters set forth in the Agreement, Customer will be required to pay additional fees to cover the additional use.

## 5. REPRESENTATIONS AND WARRANTIES

a. **For Siteimprove.** Siteimprove represents and warrants that: (i) it has the full power and authority to enter into and perform its obligations under this Agreement; (ii) this Agreement has been duly authorized, executed and delivered by it and constitutes the valid, legal and binding agreement of it and is enforceable against it; (iii) entering into and performing its obligations under this Agreement will not result in any breach of, or constitute a default under, any other agreement to which it is a party; and (iv) the Included Services will perform substantially as described in this Agreement, provided that it is used in accordance with the Agreement, including on the specified domains. These representations and

warranties are only for the benefit of Customer.

b. **For Customer.** Customer represents and warrants that: (i) it has the full power and authority to enter into and perform its obligations under this Agreement; (ii) this Agreement has been duly authorized, executed and delivered by it and constitutes the valid, legal and binding agreement of it and is enforceable against it; (iii) entering into and performing its obligations under this Agreement will not result in any breach of, or constitute a default under, any other agreement to which it is a party; and (iv) it has full and legal right or authorization to display, disclose, transfer, assign or convey the information set forth and accessible on the websites on which the Included Services will be administered.

c. **Disclaimer.** Except for the express representations and warranties listed in this Agreement, each party makes no representations or warranties of any kind, whether express or implied, and expressly disclaims all warranties of title, non-infringement, merchantability, and fitness for a particular purpose. Unless set forth in this Agreement, no oral or written information or advice given by either party will create a representation or warranty.

## 6. FORCE MAJEURE

No party will be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control ("Force Majeure Events"). Force Majeure Events include: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts,

riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; and (i) shortage of adequate power or transportation facilities. A change in economic circumstances is not a Force Majeure Event. If a Force Majeure Event occurs, the Impacted Party will provide prompt notice to the other party, stating the period of time the failure or delay is estimated to last. In the event that the Impacted Party's failure or delay remains uncured for a period of 30 days following written notice, either party may terminate this Agreement upon five days' written notice.

#### 7. LIMITATION OF LIABILITY

- a. In no event will either party or its agents, officers, directors, employees, successors, assigns, or Affiliates be liable to the other party or its agents, officers, directors, employees, successors, assigns, or Affiliates for any indirect, incidental, consequential, punitive, or other special damages. This limitation includes any loss of profits, business interruption, goodwill, loss of data/content or the restoration of any of those items.
- b. In addition to and without limiting the generality of Section 7(a), the aggregate liability of either party for any and all claims arising out of or relating to this Agreement will, in any circumstances, be limited to the Fees paid or payable by Customer to Siteimprove for the right to access or use the Included Services during the Initial Term or any Renewal Term (as the case may be).

#### 8. CONFIDENTIALITY

Each party will: (a) hold Confidential Information in confidence; (b) use its best efforts to protect Confidential Information in accordance with the same degree of care with which it protects its

own Confidential Information; and (c) not disclose the other party's Confidential Information to any third party, except in response to a valid order by a court or other governmental body or as required by law. The receiving party will promptly give notice to the disclosing party of any unauthorized use or disclosure of the disclosing party's Confidential Information. The receiving party agrees to assist the disclosing party in remedying any such unauthorized use or disclosure of the disclosing party's Confidential Information. At any time, upon written request, the receiving party will return or destroy the Confidential Information that the disclosing party has provided to it.

#### 9. ASSIGNABILITY

This Agreement is binding upon and will inure to the benefit of the parties, their legal representatives, successors, and assigns. Except as otherwise expressly provided in this Agreement, neither party may assign, transfer, convey or encumber this Agreement or any rights granted in it, either voluntarily or by operation of law, without the prior written consent of the other party. Any attempt to do so is null and void. Notwithstanding the foregoing, a party shall have the right to assign this Agreement to its parent entity or affiliates or to a successor entity in the event of a merger, consolidation, transfer, sale, stock purchase, or public offering, provided the assignee is subject to all obligations of the Agreement.

#### 10. NOTICES

Unless expressly set forth in the Agreement, all notices and other communications required by this Agreement must be in writing and sent to the parties at the addresses set forth below via overnight courier service, express postal service, or email with read-receipt. Notices are effective only: (a) upon receipt; and (b) if the party giving the Notice has complied with the requirements of this Section. Notice to Customer should be sent to the address set

forth in the Billing Information Section. Notice to Siteimprove should be sent to:

Siteimprove, Inc.  
Attn: Legal Department  
7807 CreekrIDGE Circle  
Bloomington, MN 55439  
With a copy to:  
[legal@siteimprove.com](mailto:legal@siteimprove.com)

#### 11. CONSUMER PRICE INDEX

The agreement is made in line with the Consumer Price Index (CPI). At the time of invoicing for the Renewal Term, the parties agree that the Fee may be increased to align with the latest CPI. The increase may not be more than 3% of the prior year's contract value.

#### 12. GOVERNING LAW

This Agreement will be governed by and construed in accordance with the laws of California and the United States of America, except for its conflicts of law rules and principles. In the event of any suit or proceeding arising out of or related to this Agreement, the courts of California will have exclusive jurisdiction and the parties will submit to the jurisdiction of those courts.

#### 13. NO WAIVER

The delay or failure of either party to exercise any right, power, or privilege under this Agreement is not to be treated as a waiver of that right, power, or privilege.

#### 14. PUBLICITY

Customer consents to Siteimprove reproducing and publicizing its trading name, trademarks, logos and any Included Services utilized by Customer, on the corporate website of Siteimprove and in company presentations. Customer retains the right to revoke this

consent through written notification to Siteimprove.

#### 15. COUNTERPARTS

The Agreement may be executed in any number of counterparts. Each counterpart is an original and, when combined with another counterpart, will be treated as part of the same document. Any counterparts of this Agreement may be delivered electronically in PDF format; these formats have the same effect as an original executed counterpart.

#### 16. SEVERABILITY

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective to the extent of that prohibition or unenforceability in that jurisdiction. The validity, enforceability, or legality of the remaining provisions will not be affected.

#### 17. ENTIRE AGREEMENT

This Agreement constitutes and expresses the entire agreement and understanding between the parties. This Agreement supersedes any prior communications, understanding, commitments, or agreements, oral or written, with respect to the subject matter of this Agreement. The parties are not relying on any representations or warranties other than those expressly listed in this Agreement. Any standard or boilerplate terms and conditions included on any document provided by one party to another (e.g., click-wrap agreements and purchase orders) are not part of this Agreement and will not be binding on either party. Any changes or modifications to this Agreement must be in writing, acknowledge the intent to amend the terms and conditions of this Agreement and be signed by an authorized representative of both parties before taking effect.