

GENERAL TERMS AND CONDITIONS

These General Terms and Conditions are agreed to between Imaginuity and Client (together, the “**Parties**”) and shall be part of and incorporated into the attached Estimate(s) (each, an “**Exhibit**”, “**SOW**”, “**Estimate**”, and/or “**Order**” and together with these General Terms and Conditions, the “**Agreement**”). The “**Effective Date**” of the Agreement is the date such Exhibit is last signed by the Parties.

CLIENT ACKNOWLEDGES AND AGREES THAT THESE GENERAL TERMS AND CONDITIONS (I) REQUIRE CLIENT TO INDEMNIFY IMAGINUITY FOR CERTAIN LOSSES, (II) CONTAIN LIMITATIONS ON IMAGINUITY’S LIABILITY UNDER THE AGREEMENT, AND (III) CONTAIN NON-SOLICITATION AND OTHER RESTRICTIVE COVENANTS OF CLIENT. THESE GENERAL TERMS AND CONDITIONS ARE NECESSARY TO IMAGINUITY’S CONTINUED AGREEMENT TO THE AGREEMENT AND THE TRANSACTIONS CONTEMPLATED THEREBY.

1. Services.

1.1. Purpose. Imaginuity shall consult with and assist Client in the development and/or execution of Client’s objectives related to marketing Client’s products and services and shall perform the services as described in and in accordance with the attached Estimate. The term “**Services**” as used in the Agreement refers to the services performed by Imaginuity as described in the Estimate. Each Estimate will identify (a) the tasks to be performed, and the items to be delivered to Client by Imaginuity (each a “**Deliverable**”); (b) the estimated Service Fees and Expenses (all as defined in Section 3); and (c) any additional provisions specific to the nature of the Services to be provided.

1.2. Additional Services. Modifications to the scope of the Services set forth in any Estimate by Client, which result in additional or modified Services to be rendered by Imaginuity, shall be subject to the prior written approval of both Client and Imaginuity, including the terms and conditions of such additional or modified Services and any resulting changes to the Service Fees and/or Expenses.

2. Term and Termination.

2.1. Term of Agreement. Each Exhibit shall commence on the date such Exhibit is last signed by the Parties and shall expire upon completion of the Deliverable or as otherwise explicitly set forth in such Exhibit (the term of the Agreement is referred to herein as the “**Term**”). Once signed by the Parties, an Exhibit shall be non-cancellable, unless explicitly stated otherwise in such Exhibit.

2.2. Termination. The Agreement shall terminate automatically once all Estimates referencing these General Terms and Conditions expire or are terminated. If termination is based upon a Party’s breach of the Agreement, then termination shall be immediate if a Party receives written notice of its breach of the Agreement and such Party fails to cure said breach within thirty (30) days of receipt of said notice. Notwithstanding the foregoing, if Client is not paying Imaginuity timely any Service Fees or Expenses owed, Imaginuity may provide Client written notice immediately suspending the continuation of Services until any and all amounts owed are fully paid. If any amount remains outstanding fifteen (15) days following written notice to Client thereof, Imaginuity may terminate the Agreement immediately without the need for any additional notices to Client and in the event of such termination, Imaginuity will be entitled to the amounts set forth in Section 2.3 in addition to any other damages or losses suffered by Imaginuity relating to or arising out of such termination. Imaginuity will only be required to provide the 15-day notice referenced in the prior sentence two (2) times during any twelve (12) month term.

2.3. Payments Upon Termination. Upon the expiration or termination of the Agreement or any Exhibit for any reason, Client shall pay to Imaginuity all undisputed amounts due and payable hereunder for Services provided to such termination date, as well as for any and all Expenses or purchases that Imaginuity cannot have refunded or otherwise return for credit. In the event that the Agreement or any Exhibit is terminated by Imaginuity for cause or by Client for any reason except as permitted hereby, Client shall also pay to Imaginuity an amount equal to the remaining estimated fees to Imaginuity hereunder as if the Agreement or applicable Exhibit did not terminate.

2.4. Effect of Termination. Upon the expiration or termination of an Exhibit, Imaginuity shall immediately cease providing Services under the terminated Exhibit and shall promptly deliver to Client all Work Product related to such Exhibit, whether completed or work in progress, along with all Client Confidential Information related to such Exhibit in Imaginuity’s or its Subcontractors’ possession or control, but only after any and all Service Fees and Expenses, as well as any other amounts owed hereunder are paid in full by Client.

3. Compensation, Payment Terms, and Disbursements.

3.1. Service Fees. Client agrees to pay Imaginuity the “**Service Fees**” outlined in each Estimate.

3.2. Reimbursable Expenses. Client shall reimburse Imaginuity for its reasonable out-of-pocket expenses incurred in providing the Services (“**Expenses**”). All Expenses are subject to prior written approval by Client, and may include, but shall not be limited to: travel expenses to and from work sites, meal expenses, administrative expenses (such as courier and reproduction expenses), lodging expenses if work demands overnight stays, and miscellaneous travel-related expenses (parking and tolls). Imaginuity must provide documentation to Client of all Expenses in order to receive reimbursement.

3.3. **Non-Payment.** Where payment of any undisputed amount due is not made within ten (10) days from its respective due date, Imaginuity, without prejudice to any other right or remedy it may have, shall be entitled to charge interest on the outstanding amount at a rate of one and a half percent (1.5%) per month or the maximum allowed by applicable law, whichever is less. Such interest shall be calculated from the due date for payment to the date of actual payment, both days inclusive, compounded monthly in arrears. Client agrees and undertakes to pay such interest, which it hereby accepts as fair and reasonable.

3.4. **Taxes.** All fees quoted or rates specified in an Exhibit include, and Imaginuity shall separately state on all billing, set aside, and pay over to the taxing authority in the state of Texas, all sales, use, excise, gross receipts, value added, business, occupation, and other transaction-based taxes that may be levied upon either Party in the state of Texas in connection with the Services ("**Texas Transaction Taxes**"). Imaginuity shall be solely responsible for, and hold Client harmless against, any Texas Transaction Taxes, together with any interest and penalties thereon, not separately stated on the original invoice on which such Texas Transaction Taxes were required to be charged or on an amended invoice issued within one hundred and eighty (180) days of the date of issuance of such original invoice. Client shall be solely responsible for, and hold Imaginuity harmless against, any sales, use, excise, gross receipts, value added, business, occupation, and other transaction-based taxes that may be levied upon either Party outside of the state of Texas in connection with the Services.

3.5. **Invoices.** Unless otherwise specified in the applicable Exhibit, Imaginuity will submit invoices to Client on a monthly (or more frequent) basis. Client shall pay all properly invoiced amounts upon Client's receipt of Imaginuity's invoice, less any credits (if any) due to Client under the applicable Exhibit.

4. **Representations, Warranties, and Covenants.**

4.1. **Imaginuity's Representations, Warranties and Covenants.** Imaginuity represents and warrants that (a) it has the right, power and authority to enter into the Agreement and to perform the Services and that the Services do not materially conflict with, and shall not result in any material breach or default under, any other agreement to which Imaginuity is subject; (b) its obligations hereunder shall be performed at all times by qualified personnel, consistent with the standards prevailing in the industry and in material compliance with all applicable federal, state and local laws, orders and regulations; (c) it has all licenses and permits necessary and appropriate to perform the Services; (d) except as expressly set forth in an Exhibit, the Work Product shall be Imaginuity's original work product free and clear of all liens and encumbrances of any kind; (e) it has valid and binding agreements with all of its Personnel sufficient to allow Imaginuity to fully assign all right, title and interest in the Work Product to Client, if applicable; (f) the Services, Imaginuity Materials, and Work Product (including without limitation any third party materials incorporated therein) will not violate any applicable law, statute, ordinance or regulation; and (g) subject to Section 4.3 herein below, it will use its actual knowledge and exercise commercially reasonable efforts to ensure that the Deliverables shall not infringe upon any other copyrighted materials, identifying marks, trade names, trademarks, or other intellectual property of any third party. The warranties set forth in this Section 4.1 will be effective for a period of 30 days following Client's acceptance of Deliverables in accordance with the terms of the Agreement (the "**Warranty Period**"). Client must notify Imaginuity in writing during the Warranty Period if Client believes the Deliverable(s) do not meet these standards, in which case Imaginuity's sole obligation, and Client's sole remedy, is for Imaginuity to use commercially reasonable standards to attempt to correct any defects in the Deliverable(s). If Imaginuity is unable to correct any such defects after a reasonable period of time, Client's sole and entire remedy is termination of the relevant Exhibit in exchange for a refund of the amount paid by Client to Imaginuity for the portion of the Deliverable(s) which Imaginuity is unable to correct.

4.2. **Client's Representations, Warranties, and Covenants.** Client represents and warrants that (a) it has all rights necessary to provide the rights granted to Imaginuity with respect to the Client Materials hereunder; (b) to the best of Client's knowledge, any information it gives to Imaginuity, including product claims, will be accurate; (c) Client further represents that any and all copyrighted materials, identifying marks, trade names, and other intellectual property that it gives to Imaginuity do not and will not infringe any other copyrighted materials, identifying marks, trade names, trademarks, or other intellectual property. In the event that Imaginuity performs Services on Client's premises, Client shall provide the following: (i) a reasonably suitable work environment for the performance of the Services; (ii) reasonable access to and use of Client's facilities and relevant information; and (iii) timely assistance in the correction of any hardware or software problems that would reasonably and materially affect the performance of Services.

4.3. **Final Approval.** Client has the sole responsibility to provide final legal approval of all Deliverables created and/or provided by Imaginuity and Imaginuity shall be under no obligation to independently verify the accuracy, completeness, legality, or non-infringement of the Client Materials or Deliverables. Once Client has provided such final legal approval (or otherwise simply approved such Deliverables for distribution to the public), Client has the sole responsibility with respect to such Deliverables' compliance with applicable laws, and Imaginuity shall not be liable for, or otherwise be responsible for indemnifying Client against any claims, causes or suits arising from, any alleged infringement and/or misrepresentation that may be claimed. Further, if Client desires to protect any Deliverables from infringement by others, Client shall be exclusively responsible for seeking any and all measures and steps to legally protect and/or register such Deliverables with the applicable governmental or other authority. Client hereby further grants to Imaginuity a worldwide, irrevocable, perpetual, royalty-free, fully paid-up, non-exclusive, fully assignable, sub-licensable license to use, modify, offer, sell, distribute, import, create derivative works from, publicly perform and publicly display the Deliverables for the purpose of advertising Imaginuity's services, including on its website by showcasing the Deliverables a work sample, and for the purpose of using elements of the Deliverables to create works for third parties and for Imaginuity's internal use, provided such use does not disclose Client's identity or any of Client's Confidential Information.

5. Restrictive Covenants. Imaginuity and Client acknowledge and agree that in the course of performing their respective obligations under the Agreement, each will be introduced to and work with officers, employees, agents and representatives of the other. Imaginuity and Client acknowledge and agree that officers, employees, agents and representatives of each are valuable resources, in whom each respective Party has invested considerable time, effort and resources. Therefore, Imaginuity and Client agree that for the duration of the Agreement and for two (2) years thereafter, each shall not directly or indirectly solicit, interfere with, entice away, hire or employ (whether as an employee, agent, representative, consultant, independent contractor or otherwise), regardless of who initiated contact, any officer, employee, agent or representative of the other or who has been an officer, employee, agent or representative of the other Party during the prior 12-month period. In the event of a breach or threatened breach of this Section 5, Imaginuity and Client acknowledge that damages would be impossible to calculate and agree that each shall be entitled to injunctive relief and liquidated damages describe below in a court of appropriate jurisdiction to remedy any breach or threatened breach of this Section 5 to the extent permitted by applicable law. Notwithstanding the prior sentence and because damages are difficult to calculate, if a Party breaches this Section 5, the Parties agree that damages will be difficult to ascertain. Consequently, in the event of such a breach the Parties agree that the breaching Party shall pay to the other as liquidated damages, and not as a penalty, one year's compensation offered to the employee or contractor by the breaching Party.

6. Confidential Information.

6.1. Each Party acknowledges and agrees that all information it receives from the other Party during the course of its performance under the Agreement will be considered "**Confidential Information**" (defined below) owned by the respective disclosing Party. With respect to the receipt and use by a Party of all such Confidential Information, the receiving Party agrees at all times from the Effective Date of the Agreement and for a period of three (3) years following termination of the Agreement (except for trade secrets for which the obligation shall extend in perpetuity), to hold in strictest confidence and to protect the confidentiality of the Confidential Information of the other in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either Party exercise less than reasonable care in protecting such information. During the Term, each Party shall use the Confidential Information of the other Party exclusively for the purpose of performing under the Agreement as contemplated herein, and shall not disclose to any person, firm or corporation without written authorization of the disclosing Party, any Confidential Information of the disclosing Party except in compliance with the Agreement. Notwithstanding anything to the contrary in the Agreement, Imaginuity shall not be prohibited or restricted at any time by Client from utilizing general knowledge, skills and experience and any ideas, concepts, know-how and techniques retained in the unaided memory of an individual and acquired during the course of the performance of the Services. Each Party understands and agrees that "**Confidential Information**" means any proprietary information, technical data, trade secrets or know-how, including, but not limited to, research, products, services, plans, sales and marketing reports and any other related reports, Client lists and clients, developments, inventions, processes, formulas, technology, software (both developed and in-process), applications (both developed and in-process), designs, drawings, marketing information, projections, finances or other business information disclosed by a Party to another Party either directly or indirectly in writing, orally or by drawings or observation. Each Party further understands that Confidential Information does not include any of the foregoing items which are already known by the receiving Party, have become publicly known or made generally available through no wrongful act of the receiving Party or others who were under confidentiality obligations as to the item or items involved, and/or are independently developed by the receiving Party without use or reference to Confidential Information or otherwise becomes known by the general public. For the purposes of the Agreement, "**Client Confidential Information**" means all Confidential Information belonging to Client.

6.2. Equitable Relief. Each Party acknowledges and agrees that the other Party's breach of this Section 6 would cause irreparable injury for which the aggrieved Party would not have an adequate remedy at law. In the event of a breach, the aggrieved Party shall be entitled to injunctive relief in addition to any other remedies it may have at law or in equity, without posting of bond and liquidated damages by the breaching Party (which, for the avoidance of doubt, is not a penalty but is a reasonable amount to compensate Imaginuity for its damages) in an amount equal to one year's anticipated fees for Imaginuity hereunder.

6.3. Return of Confidential Information. Imaginuity shall deliver to Client an export of all Client Data in Imaginuity's designated format, at any time upon Client's request (but no more than one time per calendar year) and also upon termination of the Agreement or any Exhibit, but only after any and all Service Fees and Expenses outstanding are paid in full. Except as set forth in the preceding sentence, Imaginuity shall, in accordance with Client's directions, return or destroy all Confidential Information in its possession or control, including any information or materials based in whole or in part on the Confidential Information, and an officer of Imaginuity shall certify compliance with the foregoing in writing to Client.

7. Proprietary Rights.

7.1. Imaginuity Materials. Client acknowledges that, in the course of performing the Services, Imaginuity may use software, software design, code, computer programs and related processes, programs, applications, instructions, methods, and techniques that have been previously developed by Imaginuity, or that are created by Imaginuity for this engagement but that are non-custom and have general applicability to Imaginuity's other customers, excluding for avoidance of doubt any Client Data, Client Materials, or Client Confidential Information (collectively, the "**Imaginuity Materials**") and that same shall remain the sole and exclusive property of Imaginuity. Imaginuity hereby grants Client a perpetual, non-exclusive, non-transferable, non-sublicensable license to use the Imaginuity Materials as incorporated in the Deliverables, and Client acknowledges that it has no rights to use the Imaginuity Materials apart from the Deliverables or in any other matter without the written consent of Imaginuity.

7.2. **Ownership of Work Product.** Except with respect to the Imaginuity Materials, Client owns and shall retain all right, title and interest in all Deliverables, Client Data (defined below), Client Confidential Information and other Work Product that are conceived, created, produced, reduced to practice or otherwise developed for Client by or on behalf of Imaginuity under or in connection with the Services, including all copyright, patent, trademark, trade secret and other intellectual property rights (“**Intellectual Property Rights**”) therein. “**Work Product**” includes all Deliverables, Client Data and other materials delivered to Client under or in connection with the Agreement. Notwithstanding the foregoing, Work Product shall not include any Deliverables or creations provided and/or presented to Client pursuant to the Agreement, if not accepted or approved by Client during the Term. The Parties intend that all Deliverables shall be deemed a “**work made for hire**” within the meaning of the copyright laws of the United States and any similar laws of other jurisdictions, and Client shall own all right, title, and interest in such Deliverables. To the extent, if any, that Imaginuity or its Personnel have rights in Deliverables notwithstanding the foregoing, subject to Section 7.1, Imaginuity hereby irrevocably assigns to Client, and agrees that Client shall be the sole and exclusive owner of, all right, title and interest in and to the Deliverables, including without limitation all Intellectual Property Rights and other proprietary rights therein that may be secured in any place under laws now or hereafter in effect and for the avoidance of doubt, specifically excluding the Imaginuity Materials. Any assignment of Intellectual Property Rights hereunder includes all rights of paternity, integrity, disclosure, withdrawal, and any other rights that may be known as or referred to as “**moral rights**” (collectively “**Moral Rights**”). To the extent that such Moral Rights cannot be assigned under applicable law and to the extent allowed by the laws in the various countries where Moral Rights exist, Imaginuity hereby waives and relinquishes such Moral Rights. For the purposes of the Agreement, “**Client Data**” means all information relating to Client or the Services accessed, used, processed or created by Imaginuity or on its behalf pursuant to the Agreement during the Term.

7.3. **Client Materials.** Client’s information, creations, designs, content, copywriting, data, mailing lists, customer lists, Client Data, and other materials, and all trademarks and service marks (whether registered or at common law), trade names, business names, or any derivatives of any of the foregoing, provided to Imaginuity or to which Imaginuity has access in the course of performing the Services (the “**Client Materials**,”) and all other Client Confidential Information shall be and remain the sole and exclusive property of Client. Imaginuity shall have no rights in the Client Materials or other Client Confidential Information other than the limited, non-exclusive license to use them for the sole and exclusive purpose of providing the Services in accordance with the Agreement, including a license to store, record, transmit, maintain, and display the Client Materials only to the extent necessary in the provisioning of the Services. All use of the Client Materials and all goodwill therein shall inure to Client’s benefit.

7.4. **No License.** Except as expressly set forth herein, no license is granted by either Party to the other with respect its Confidential Information, Imaginuity Materials, or Client Materials, as applicable and all rights are expressly reserved. Nothing in the Agreement shall be construed to grant to either Party any ownership or other interest in the other Party’s Confidential Information, Imaginuity Materials, or Client Data.

8. **Insurance.** At all times during the Term hereof, Imaginuity will maintain general liability insurance in the minimum amounts of at least \$1,000,000 per claim/\$2,000,000 aggregate issued by an insurance company with a Best’s Financial rating of at least “A”.

9. **Indemnification.**

9.1. **Imaginuity Indemnification.** Imaginuity shall defend, indemnify and hold harmless Client and its officers, directors, other corporate officials, employees, agents and representatives (collectively, the “**Client Indemnitees**”) from and against any and all losses, liabilities, damages, awards, settlements, judgments, fees, costs or expenses (including reasonable attorneys’ fees and costs of investigation) (“**Losses**”) arising out of or resulting from any acts, errors, or omissions in breach of the Agreement by Imaginuity, Imaginuity’s affiliates, independent contractors, employees of Imaginuity and Imaginuity’s affiliates, and any such other third parties.

9.2. **Client Indemnification.** Client shall defend, indemnify and hold harmless Imaginuity and its officers, directors, other corporate officials, employees, agents and representatives (collectively, the “**Imaginuity Indemnitees**”) from and against any and all suits, claims, demands, causes, losses, liabilities, damages, awards, settlements, judgments, fees, costs or expenses (including reasonable attorneys’ fees and costs of investigation) (“**Losses**”) arising out of or resulting from any acts, errors, or omissions in breach of the Agreement by Client, Client’s affiliates, independent contractors, employees of Client and Client’s affiliates, and any such other third parties, as well as any Losses asserted by any third party arising out of the Work Product and/or Services provided by Imaginuity hereunder, as well as arising out of Client’s use of the Work Product and/or results of the Services.

9.3. **Indemnification Procedures.** An indemnified party may elect (but under no circumstance shall be obligated) to undertake or assume the defense of any such claim, demand, inquiry, investigation or proceeding (an “**Indemnified Matter**”), and to conduct and supervise all settlement negotiations related to any Indemnified Matter. However, the indemnifying party shall pay the legal fees and other expenses an indemnified party incurs in connection with the investigation, defense and settlement of any Indemnified Matter that an indemnified party undertakes to defend or assume. An indemnified party’s election to undertake or assume the defense or settlement of an Indemnified Matter shall in no way or circumstance extinguish or diminish the indemnifying party’s obligation to indemnify and hold the indemnified parties harmless.

10. **Limitation of Liability.** NOTWITHSTANDING ANY OTHER PROVISION SET FORTH HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, AND/OR CONSEQUENTIAL DAMAGES, ARISING

OUT OF OR IN CONNECTION WITH THE AGREEMENT INCLUDING LOSS OF USE, LOSS OF BUSINESS, ECONOMIC LOSS, LOSS OF DATA, OR LOSS OF PROFITS, WITHOUT REGARD TO THE FORM OF ACTION (INCLUDING CONTRACT, NEGLIGENCE, OR OTHER TORTIOUS ACTIONS) ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE; PROVIDED, HOWEVER, THAT THE FOREGOING EXCULPATION OF LIABILITY SHALL NOT APPLY WITH RESPECT TO DAMAGES INCURRED AS A RESULT OF (A) THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY; (B) A CLAIM OF INDEMNIFICATION PURSUANT TO SECTION 9; (C) IMAGINUIITY'S BREACH OF SECTION 6 OR SECTION 7; OR (D) TO THE EXTENT COVERED BY THE INSURANCE SET FORTH IN SECTION 8. HOWEVER, THE LIABILITY OF IMAGINUIITY, WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, EQUITY, NEGLIGENCE, TORT, OR OTHERWISE FOR ALL EVENTS, ACTS, OR OMISSIONS UNDER THE AGREEMENT OR IN CONNECTION WITH THE SERVICES, WORK PRODUCT OR DELIVERABLES, SHALL NOT EXCEED SIX MONTHS' OF FEES DUE TO IMAGINUIITY UNDER THE AGREEMENT OR TO THE EXTENT COVERED BY THE INSURANCE SET FORTH IN SECTION 8.

11. **General.** The Agreement supersedes all prior agreements and understandings between the Parties hereto relating to the subject matter hereof and may not be amended or modified except by a written instrument signed by both Parties. In the event of a conflict between the terms and conditions of the Agreement and the terms and conditions of any Estimate, the terms and conditions of the Agreement shall control unless specifically excluded or modified within such Estimate. The Agreement, including any Estimate, shall be governed by and construed in accordance with the laws of the State of Texas, without reference to its provisions as to conflicts of laws. Exclusive venue for any claim or suit arising hereunder shall be in Dallas County, Texas. The Agreement shall be construed as if all Parties prepared the Agreement. Client shall have the right, without the prior consent of Imaginuity, to assign the Agreement to any successor, parent, subsidiary, affiliated or unaffiliated Client whether by way of merger, sale, acquisition, operation of law, or otherwise. Imaginuity shall also have the right, without the prior consent of Client, to assign the Agreement which shall include, but not be limited to, an assignment or transfer to any successor, parent, subsidiary, affiliated or unaffiliated Client whether by way of merger, sale acquisition, operation of law, or otherwise. Any notice or document required or permitted to be delivered hereunder shall be in writing and deemed to be delivered: (A) three (3) days after the same shall have been deposited in the United States mail, postage prepaid, certified, return receipt requested; or (B) the next business day if same shall be sent by a national overnight courier with a tracking system. Notices shall be addressed to the Parties hereto at the respective addresses set out in the introduction to the Agreement. If either Party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, war, pandemic or other biological threat, threat of war, terrorism or government prohibition, then upon written notice to the other Party, the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay; provided, however, the Party so delayed shall exercise its best efforts to remedy any such cause of delay or cause preventing performance. All of the covenants, agreements, terms and conditions to be observed and performed by the Parties hereto shall be applicable to, binding upon, and inure to the benefit of the Parties and their respective successors and, to the extent assignment is permitted hereunder, their respective assigns. One (1) or more waivers of any covenant or condition by a Party shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by a Party to or of any act by the other Party requiring such consent or approval shall not be deemed to render unnecessary the consenting Party's consent or approval to or of any subsequent similar act. No breach of a covenant or condition of the Agreement shall be deemed to have been waived by any Party unless such waiver is in writing and signed by the waiving Party. If any provision of the Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the invalid, illegal or unenforceable provision shall be replaced by a valid, legal and enforceable provision that comes closest to the intent of the Parties underlying the invalid, illegal or unenforceable provision. To facilitate execution, the Agreement may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of all Parties hereto be contained on any one counterpart hereof. Additionally, the Parties hereto hereby covenant and agree that, for purposes of facilitating the execution of the Agreement, (a) the signature pages taken from separate individually executed counterparts of the Agreement may be combined to form multiple fully executed counterparts and (b) a facsimile or electronic signature shall be deemed to be an original signature. Each person signing the Agreement on behalf of a Party warrants that he or she is duly authorized by all necessary and appropriate corporate action to execute the Agreement. Except as otherwise explicitly set forth in the Agreement, nothing in the Agreement shall prevent either Party from entering into similar arrangements with third parties. Imaginuity shall not, without Client's prior written approval, (a) advertise or otherwise publicize the existence or terms of the Agreement, any Exhibit or any other aspect of the relationship between Client and Imaginuity; or (b) use Client's name or any trade name, trademark or service mark belonging to Client in press releases or in any form of advertising other than as expressly permitted in the Agreement.

12. **Survival.** The following provisions of these General Terms and Conditions will survive any termination or expiration of the Agreement: Sections 2, 5 through 7, and 9 through 12.