



OPERATIVE MASTER SERVICES AGREEMENT
TERMS & CONDITIONS

This Master Services Agreement specifies the Terms & Conditions under which Customer may subscribe to certain Services, request custom software products, and/or order services from Operative Media, Inc. ("Operative").

1. SERVICES.

(a) Operative will provide standard and/or custom services (collectively, the "Services") to Customer pursuant to a Schedule describing the Services ("Schedule") and/or a Statement of Work describing a project ("SOW"), in each case subject to the terms and conditions of this Master Services Agreement (this Master Services Agreement, together with all Schedules and/or SOWs are collectively referred to as the "Agreement"). The term "Deliverable" means all works of authorship, programs, code, processes, tools, reports, manuals, supporting materials, drawings, diagrams, flowcharts, and concepts, created by Operative for Customer during the Term of this Agreement, other than Custom Deliverables. The term "Custom Deliverable" means all works of authorship, programs, code, processes, tools, reports, manuals, supporting materials, drawings, diagrams, flowcharts, and concepts that are specified in an SOW as being created by Operative specifically for Customer and which are not applicable to Operative's customer base generally.

(b) Customer agrees, at its expense, to make its personnel and/or third party vendors available as reasonably necessary for Operative to complete any of the Deliverables/Custom Deliverables or provide the Services. Customer further agrees to allow Operative reasonable access to Customer's (i) premises and information and materials as requested by Operative and (ii) systems, software and databases, to enable Operative to provide the Services and the Deliverables/Custom Deliverables. Customer acknowledges and agrees that Operative's ability to provide the Services and the Deliverables/Custom Deliverables in accordance with the terms of this Agreement is dependent upon and subject to Customer's timely performance of its obligations under this Agreement and each SOW.

2. OWNERSHIP OF OPERATIVE IP.

(a) Except as set forth in Section 3 below, the parties agree that Operative shall exclusively own and retain all Intellectual Property Rights in and to "Operative IP", defined as the (i) Services; (ii) Deliverables; (iii) all works of authorship, programs, software, code, source code, system design, processes, tools, reports, manuals, supporting materials, drawings, diagrams, flowcharts, business, templates, documents, materials, technology, trademarks, trade secrets, website(s), modifications, updates and enhancements and concepts ("Works"), any of which existed prior to the date of this Agreement, whether created by or for Operative ("Pre-Existing Materials"); (iv) any and all Works that are developed by Operative or jointly by Customer and Operative; and (v) any and all Works developed by Customer that are derived from or that incorporate the Services, Deliverables, or Pre-Existing Materials, including all feedback provided by Customer regarding usability, performance, effectiveness, enhancements, or bugs and all fixes and enhancements based on such feedback. To the extent Operative is not automatically deemed to be the author, inventor or owner of any Operative IP, Customer agrees to assign and hereby assigns, all right, title and interest it may have in any Operative IP to Operative, and agrees to execute all documents necessary to effect Operative's full ownership in and to all Operative IP. Customer appoints Operative its attorney in fact to execute such documents, which appointment is coupled with an interest and is therefore irrevocable. The term "Intellectual Property Rights" means copyrights, trademarks, service marks, trade secrets, know-how, patents, patent applications, moral rights, contractual rights of non-disclosure or any other intellectual property or proprietary rights, however arising, throughout the world.

(b) License Grant. Operative grants Customer a non-exclusive, non-transferable, limited license to use the Operative IP only for the purpose of receiving the Services and/or utilizing the Deliverables in accordance with the terms of this Agreement and each Schedule and/or SOW.

(c) Limitations on Use. Except as otherwise expressly provided in this Agreement, no other license or right shall be deemed granted or implied with respect to the Operative IP. Except as otherwise expressly allowed in this Agreement, Customer shall not (i) use, distribute, sell, sublicense or disclose any of the Operative IP without written authorization of Operative; or (ii) reproduce, modify, prepare derivatives of, reverse assemble, reverse compile or otherwise reverse engineer the Operative IP. Operative and its licensors retain all rights not so granted.

3. CUSTOMER RIGHTS. Customer exclusively owns and retains all right, title, and interest in and to (i) the Custom Deliverables (but not the Intellectual Property Rights relating to the creation for such Custom Deliverables, including the templates and methodologies for such Custom Deliverables, all of which are Operative IP); (ii) its business, technology, trademarks, ad creatives, campaign parameters, and websites and all other Intellectual Property Rights in materials that are developed and owned by Customer prior to the date of this Agreement; and (iii) any and all Works that Customer develops independently that are not derived from or incorporate the Services, Deliverables, or Pre-Existing Materials (collectively, "Customer Materials"). Customer grants to Operative a non-exclusive, fully paid license (A) to use, reproduce, distribute and prepare derivatives of the Customer Materials for purposes of performing the Services and creating Deliverables/Custom Deliverables, and (B) to collect, analyze and prepare derivatives of non-personally identifiable data resulting from Customer's use of the Services and to use and distribute such non-identifiable data on an aggregate basis with data from several other publishers as long as Operative does not disclose Customer's identity or the identity of persons associated with Customer.

4. CONFIDENTIALITY.

(a) As used herein, the term "Confidential Information" means all non-public information disclosed directly or indirectly by one party (including its employees, agents and representatives, the "Disclosing Party") to the other party ("Receiving Party") in connection with the transactions contemplated by this Agreement (including the pricing, terms and conditions of this Master Services Agreement and each Schedule and/or SOW), whether furnished before or after the date of this Agreement, and whether written, oral or in electronic form. The term Confidential Information does not include information that (i) is now (or hereafter becomes) generally available to the public other than as a result of a disclosure by the Receiving Party in violation of this Agreement; (ii) is lawfully received by Receiving Party on a non-confidential basis from a third-party that is not bound by a confidentiality obligation; and (iii) is independently developed by employees or agents of the Receiving Party who have not had, either directly or indirectly, access to or knowledge of the Confidential Information.

(b) Each Receiving Party hereby agrees that it will preserve the confidentiality of the Confidential Information and that it will not, directly or indirectly, disclose the Confidential Information or use the Confidential Information or any part thereof in a manner detrimental to the other party or for any purpose other than as necessary for the Receiving Party's performance of its obligations under this Agreement. The Receiving Party may disclose the Confidential Information to its employees and representatives but only to the extent that they (i) need access to the Confidential Information for the performance of its obligations under this Agreement, and (ii) have been informed of the confidential nature of the Confidential Information and have agreed to be bound by the terms hereof. Each Receiving Party hereby agrees to be responsible for any breach of Section 4 by its employees and representatives.

(c) If Receiving Party is requested by a court, governmental entity or other third-party to disclose any Confidential Information, it will promptly notify Disclosing Party to permit Disclosing Party to seek a protective order or take other appropriate action, and will assist in such activities. Receiving Party shall only disclose the part of the Confidential Information as is required by law to be disclosed and

Receiving Party will use its best efforts to obtain confidential treatment therefor.

(d) Receiving Party acknowledges that the Confidential Information is the exclusive property of and belongs solely to the Disclosing Party and shall not claim otherwise for any purpose.

(e) Upon request from the Disclosing Party, the Receiving Party (i) will promptly return all written Confidential Information furnished to it, (ii) will destroy and permanently delete all documents, memoranda, notes and other records (regardless of form and including all copies thereof) that reflect, or were prepared on the basis of, the Confidential Information and will certify such destruction in a certificate signed by an officer who has personally supervised such destruction, and (iii) will not retain any copies, extracts, or other reproductions in whole or in part.

(f) Each Receiving Party acknowledges and agrees that its confidentiality obligations are of a unique character, that any breach or threatened breach of Section 4 will cause irreparable material injury to the Disclosing Party, that money damages would not be a sufficient remedy for any breach of Section 4 and that, in the event of any breach or threatened breach, in addition to all other applicable rights and remedies hereunder or at law, the Disclosing Party shall be entitled to specific performance and equitable relief (including without limitation a temporary restraining order and injunctive relief), without being required to prove damages or furnish any bond or other security.

5. TERM AND TERMINATION.

(a) Term. The term of each Schedule or SOW shall be as set forth in such Schedule or SOW. This Agreement shall commence as of the date of this Agreement and shall remain in effect until all Schedules and SOWs have terminated, unless earlier terminated as set forth herein. The termination of any Schedule or SOW shall not cause the termination of any other Schedule, SOW or of this Agreement.

(b) Termination for Cause. Either party may terminate this Agreement and/or any SOW or Schedule upon written notice of termination if the other party: (1) defaults in the performance of or breaches any material requirement or obligation created by this Agreement, which default or breach is not cured within thirty (30) days following the defaulting or breaching party's receipt of written notice of default; (2) ceases doing business in the normal course; (3) is the subject of any state or federal proceeding (whether voluntary or involuntary) relating to its bankruptcy, insolvency or liquidation that is not dismissed within ninety (90) days; or (4) makes an assignment for the benefit of creditors or a receiver is appointed for a substantial part of the other party's assets. If Operative terminates this Agreement for cause, as set forth above, then all SOWs and Schedules to this Agreement shall also immediately terminate. Payment obligations of accrued amounts for Services rendered and any claims relating to this Agreement shall survive any termination of a Schedule or SOW.

(c) Effects of Termination; Survival. Upon termination of this Agreement, all rights and licenses granted hereunder shall cease, except as otherwise provided in this Agreement. Upon termination for any reason (other than breach by Operative), all payments due through the remainder of the Term of any Schedule or SOW will accelerate and become immediately due and payable. Those provisions of this Agreement which, by their nature, are meant to survive termination shall so survive, and include without limitation provisions related to ownership of intellectual property, confidentiality, indemnification, limitation of liability, warranties and representations, governing law and venue, payment and non-solicitation.

6. FEES AND PAYMENT TERMS. Unless otherwise stated in a Schedule or SOW, Customer shall pay Operative the fees set forth in the applicable Schedule or SOW in U.S. dollars upon Customer's receipt of an invoice from Operative. Customer agrees to pay all attorneys' fees and/or collection costs incurred by Operative in collecting any past due amounts from Customer.

7. REPRESENTATIONS AND WARRANTIES.

(a) Each party warrants and represents at all times that it has the right, power and authority to enter into this Agreement and each Schedule or SOW, and it is duly organized, validly existing and in

good standing under the laws of the state of its incorporation or formation.

(b) Operative represents that, to the best of its knowledge, the Services and Deliverables, including the Operative.One ASP application, do not infringe on any valid and enforceable Intellectual Property Right of any third party.

(c) Customer represents that with respect to any third party advertising materials ("Third Party Materials") that are delivered to Operative, Customer has obtained the right to use the Third Party Materials, and that Operative's use of such Third Party Materials will not infringe the Intellectual Property Rights of any third party.

(d) Customer represents that the Customer Materials do not infringe on, violate or misappropriate any valid and enforceable Intellectual Property Rights of any third party.

8. INDEMNIFICATIONS. Each party will indemnify, defend and hold harmless the other party and that party's officers, directors, employees, successors and assigns (the "Indemnified Parties") from and against any losses, liabilities, damages, fines, penalties, settlements, liens, judgments, costs and expenses, including reasonable attorney fees, and interest (including taxes) resulting from, arising out of, or relating to: (i) any breach by that party of any of its obligations or representations hereunder, or (ii) injury or death, or damage to any property caused by or arising from the negligent acts or omissions of that party. Operative shall have no indemnification obligation to Customer with regard to any claim to the extent that the claim or allegation is based on: (1) a violation by Customer of this Agreement; or (2) the inclusion of any Customer Materials or Third Party Materials in any Operative IP. Indemnification hereunder shall be subject to the Indemnified Party promptly giving the indemnifying party notice of a claim for indemnification and providing assistance as reasonably requested by the indemnifying party.

9. WARRANTY DISCLAIMER AND LIMITATION ON LIABILITY. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT (INCLUDING ALL SCHEDULES, SOWS AND EXHIBITS), NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY THAT ANY SERVICE OR DELIVERABLE WILL MEET ALL NEEDS AND EXPECTATIONS. EXCEPT FOR LIABILITIES RELATING TO INFRINGEMENT, MISUSE OR MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY OR CONFIDENTIAL INFORMATION AND FOR LIABILITIES RELATING TO A PARTY'S DUTY TO DEFEND THE OTHER PARTIES AGAINST THIRD-PARTY CLAIMS UNDER SECTION 8 (AND TO PAY SETTLEMENTS, JUDGMENTS AND DAMAGES TO THE THIRD PARTIES BRINGING SUCH THIRD-PARTY CLAIMS), IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES, EMPLOYEES OR REPRESENTATIVES BE LIABLE TO THE OTHER PARTY FOR (A) INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS AND LOST OPPORTUNITIES), EVEN IF SUCH PARTY IS MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES, AND (B) DAMAGES IN EXCESS OF AN AMOUNT EQUAL TO THE TOTAL SUM PAYABLE BY CUSTOMER TO OPERATIVE DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE ON WHICH THE LIABILITY AROSE.

10. MISCELLANEOUS.

(a) Governing Law and Venue. This Agreement will be governed and interpreted in accordance with the laws of the State of New York without reference to conflicts of laws principles. Jurisdiction and venue for all disputes hereunder shall be in New York, New York and the parties hereby irrevocably consent to such jurisdiction and venue.

(b) WAIVER OF JURY TRIAL. THE PARTIES WAIVE ANY RIGHT TO A JURY TRIAL IN ANY PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES OR DELIVERABLES PROVIDED HEREUNDER.

(c) Notices. Notices and communications hereunder shall be in writing and deemed served when received by hand delivery, certified mail (return receipt requested), by recognized overnight courier, or

by facsimile (electronically confirmed and followed up immediately by standard United States mail), to an officer of the other party.

(d) Entire Agreement. This Agreement, including any Schedules and/or SOWs, is the entire agreement of the parties, represents the complete integration of the parties' agreement, and supersedes all prior agreements and communications between the parties with respect to the subject matter of this Agreement (including all prior non-disclosure and confidentiality agreements signed by the parties in anticipation of the business relationship described in this Agreement). In the event of an inconsistency, ambiguity, contradiction or conflict between the terms of this Agreement, its Schedules, SOWs, any amendments to any of the foregoing and any Change Orders, the order of preference is: (i) the terms of any amendment to this Agreement, (ii) then the terms of this Agreement, unless expressly overridden by a Statement of Work or Schedule; (iii) then the terms of the Schedules to this Agreement, and (iv) then the terms of a Statement of Work.

(e) Interpretation. The parties acknowledge and agree that (i) each party and its counsel have reviewed the terms and provisions of this Agreement and have contributed to its revision, (ii) the normal rule of construction, to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of it, and (iii) the terms and provisions of this Agreement shall be constructed fairly as to all parties hereto and not in favor or against any party, regardless of which party was generally responsible for the preparation of this Agreement. All references to a number of days mean calendar days, unless stated otherwise.

(f) Severability; Modification. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the remaining provisions shall not be affected or impaired. This Agreement may be modified only by a written agreement executed by an authorized representative of the party against whom the modification is asserted. No documents exchanged or course of dealings by the parties shall modify the terms of this Agreement unless in writing signed by an authorized representative of both parties.

(g) No Waiver. The failure of a party to exercise any right or privilege arising out of this Agreement shall not preclude it from requiring that the other party fully perform its obligations or preclude it from exercising such a right or privilege at any time.

(h) Assignment. This Agreement shall not be assigned or transferred in whole or in part by either party without the prior written

consent of the other, provided that either party may assign this Agreement upon written notice to the other party and without requiring any consent from the other party in connection with a public offering of its securities or in a sale of all or substantially all of its assets to which this Agreement relates or by way of merger, consolidation, or similar transaction. Any purported assignment or transfer in violation of this paragraph shall be void. Nothing in this Agreement shall be construed as permitting a trustee or purchaser in bankruptcy to assume this Agreement without the written consent of the other party. Subject to the foregoing restrictions, this Agreement will bind and benefit the parties and their successors and permitted assigns.

(i) Force Majeure. Except for the obligation to pay sums due hereunder, neither party shall be responsible for defaults, delays or failures in performance of this Agreement (including, without limitation, technical malfunctions, telecommunication or internet outages or problems, computer errors, or corruption or loss of information) resulting from acts, events, circumstances or causes beyond its control.

(j) Use of Name. Either party may use the other party's name and logo in its marketing collateral, websites, and promotional materials to identify Customer as a customer of Operative and vice versa.

(k) Non-Solicitation. During the term of this Agreement and for a period of one year after termination of this Agreement, Customer hereby agrees that it and its affiliates shall not, directly or indirectly, solicit, discuss employment or consultancy with, or hire any employee or consultant of Operative or its affiliates.

(l) Competition. Customer acknowledges and agrees that Operative may, without limitation, accept subscriptions from or grant licenses to other persons, firms, corporations, or other entities, including entities that compete with Customer, for Services and products, on any terms Operative deems appropriate.

(m) Headings. Any headings are solely for convenience or reference and shall not affect the meaning or construction of this Agreement.

(n) Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed to be an original, all of which, when taken together, shall constitute one and the same instrument.