



OPERATIVE MASTER SERVICES AGREEMENT TERMS & CONDITIONS

These Terms & Conditions apply to Operative's Master Services Agreement under which Customer may subscribe to certain Services, request custom software products, or order services from Operative.

1. RULES OF INTERPRETATION.

(a) Any headings are solely for convenience or reference and shall not affect the meaning or construction of this Agreement. All references to a number of days mean calendar days, unless stated otherwise. 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.

(b) The order of preference in the event of an inconsistency, ambiguity, contradiction or conflict between the terms of this Agreement, its Schedules, Statements of Work, any amendments to any of the foregoing and any Change Orders 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.

2. SERVICES.

(a) Any standard or custom services (collectively, the "Services"), shall be provided pursuant to a Schedule or Statement of Work, as appropriate, to this Agreement (a "Schedule" or "SOW"), as provided by Operative, and shall be subject to the terms and conditions of this Agreement, unless otherwise expressly stated therein. The term "Deliverables" means all works of authorship, programs, code, processes, tools, reports, manuals, supporting materials, drawings, diagrams, flowcharts, and concepts, created by Operative specifically for Customer during the Term of this Agreement, as further described in a SOW.

(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 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. Customer acknowledges and agrees that Operative's ability to provide the Services and the 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.

3. OWNERSHIP OF OPERATIVE IP. Except as set forth in Section 4 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, code, processes, tools, reports, manuals, supporting materials, drawings, diagrams, flowcharts, business, templates, documents, materials, technology, trademarks, software, source code, website(s), modifications, updates and enhancements and concepts ("Works"), any of which existed prior to the Effective Date of this Agreement, whether created by or for Operative ("Pre-Existing Materials"); and (iv) any and all Works that are developed by Operative, jointly by Customer and Operative, or by Customer and that are derived from or relate to the Services, Pre-Existing Materials or Deliverables. 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, patents, patent applications, moral rights, contractual rights of non-disclosure or any other intellectual property or proprietary rights, however arising, throughout the world.

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

(b) 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.

4. CUSTOMER RIGHTS. Customer exclusively owns and retains all right, title, and interest in and to i) its business, technology, trademarks, and websites and all other Intellectual Property Rights in materials that are developed and owned by Customer prior to the Effective Date of this Agreement; and ii) any and all Works that Customer develops independently of any collaboration from Operative, that are not derived from or that do not directly relate to the Services, Pre-Existing Materials or Deliverables, and that relate to Customer's properties or data (collectively, "Customer Materials"). Customer grants to Operative a non-exclusive, fully paid license to use, reproduce, distribute and prepare derivatives of the Customer Materials for purposes of performing the Services and creating Deliverables.

5. CONFIDENTIALITY. (a) As used herein, the term "Confidential Information" shall mean all non-public information disclosed by a party hereunder (the "Disclosing Party"), whether written or oral, that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential.

(b) A party receiving Confidential Information ("Receiving Party") shall not directly or indirectly, at any time, without the prior written consent of the Disclosing Party, use or disclose the Confidential Information or any part thereof in a manner detrimental to the other party or for any use other than necessary for the performance of that party's obligations under this Agreement.

(c) The term Confidential Information does not include information which: (i) has been or becomes publicly available without breach of an agreement regarding its confidentiality; (ii) Receiving Party properly possesses prior to disclosure hereunder; (iii) is lawfully received from a third-party having rights therein without restriction; (iv) is independently developed by the Receiving Party through persons who have not had, either directly or indirectly, access to or knowledge of such Confidential Information; (v) is disclosed pursuant to a requirement of a governmental entity or the disclosure of which is required by law.

(d) 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.

(e) 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.

(f) Receiving Party agrees to return to the Disclosing Party, destroy and/or permanently delete, at Disclosing Party's discretion, all Confidential Information (including all copies thereof and all materials created based on Confidential Information) promptly following the Disclosing Party's request, and certify such in writing.

(g) In addition to any other rights and remedies hereunder or at law, Receiving Party acknowledges and agrees that due to the nature of the Confidential Information its confidentiality obligations to Disclosing Party hereunder are of a unique character and agrees

that any breach of such obligations may result in irreparable and continuing damage to Disclosing Party for which there may be no adequate remedy in damages and relating to which Disclosing Party will be authorized and entitled to seek injunctive relief, without the necessity of posting a bond or other security, even if otherwise normally required.

6. 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 Effective Date, and 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.

7. 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 for such Services and Deliverables, in U.S. dollars, upon Customer's receipt of an invoice from Operative, pursuant to the terms set forth therein. Customer agrees to pay any attorneys' fees and/or collection costs incurred by Operative in collecting any past due amounts from Customer.

9. 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 Dashboard 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.

10. 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.

11. WARRANTY DISCLAIMERS AND LIABILITY LIMITATIONS. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS OF THE SERVICES OR OPERATIVE IP FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. OPERATIVE AND ITS LICENSORS SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY TECHNICAL MALFUNCTION, TELECOMMUNICATION OR INTERNET OUTAGES OR PROBLEMS, COMPUTER ERROR, CORRUPTION OR LOSS OF INFORMATION BEYOND OPERATIVE OR ITS LICENSORS' CONTROL. EXCEPT WITH RESPECT TO LIABILITIES ARISING UNDER A PARTY'S INDEMNIFICATION OBLIGATION OR A BREACH OF CONFIDENTIALITY OR SECTION 3(b), OR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (A) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF SUCH PARTY IS MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES, AND (B) NEITHER PARTY'S AGGREGATE LIABILITY FOR DAMAGES UNDER THIS AGREEMENT SHALL EXCEED 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.

12. 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; Severability; Modification. This Agreement, including any Schedules and/or SOWs, and any NDA signed by the parties, is the entire agreement of the parties, and supersedes all prior agreements and communications between the parties with respect to the subject matter of this Agreement, and represents the complete integration of the parties' agreement. Each party acknowledges that it has had an opportunity to review and have its attorney review and negotiate the terms hereof. 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 (for Operative, an "authorized representative" means only the CEO and CFO) of the party against whom the modification is asserted.

(e) 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.

(f) 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 without prior written consent 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 Section 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.

(g) Force Majeure. Except for the obligation to pay sums due hereunder, neither party shall be responsible for delays or failures in performance of this Agreement resulting from acts beyond its reasonable control.

(h) Marketing. Neither party will issue any publicity or general marketing communications concerning this relationship without the prior written consent of the other party, which consent will not be withheld unreasonably; provided, however, that Operative shall have the right to use Customer's name and logos in general marketing materials related to the Services.

(i) Non-Solicitation. Each party agrees that during the term of this Agreement and for a period of one year after termination of this Agreement, that party shall not solicit, discuss employment or consultancy, or hire for a position relating to the technology or activities in which Operative is involved, any employee or consultant of the other party, without written authorization. This subsection shall not apply to general solicitations through the use of advertising recruiters or otherwise.

(j) 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.

(k) 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.

(l) Attorneys' Fees. In the event of any dispute arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.