



## Terms and Conditions (Client) United States

PLEASE READ CAREFULLY THIS AGREEMENT, AS IT CONSTITUTES, TOGETHER WITH AN APPLICABLE STATEMENT OF WORK (“**SOW**”) AND/OR PROJECT PLAN (IF APPLICABLE), A LEGALLY BINDING AGREEMENT AND GOVERNS THE PROVISION BY OPPIZI TO CLIENT OF THE SERVICES IDENTIFIED IN THIS AGREEMENT, THE APPLICABLE SOW AND/OR PROJECT PLAN (IF APPLICABLE).

The following terms and conditions (the “**Agreement**”) govern the sale by Oppizi US Inc., a Delaware corporation with offices located at 490 Post street, suite 640, San Francisco, California 94102 (“**Oppizi**”) of offline marketing services (as defined below) (the “**Services**”) and purchase made by you (“**You**”, “**Client**”), effective as of the commencement date (the “**Commencement Date**”) as defined below in Section 2, all together referred individually or collectively as a “**party**” or the “**parties**”.

BY ACCEPTING ANY SOW INCLUDED BY REFERENCE IN THIS AGREEMENT, CLIENT SIGNIFIES THAT IT HAS READ, UNDERSTOOD AND AGREES TO BE BOUND BY THIS AGREEMENT.

## **RECITALS**

WHEREAS, Oppizi is engaged in the business of providing offline marketing services and related services to businesses.

WHEREAS Client desires to contract with Oppizi to provide the following services:

- (i) an offline Client acquisition campaign service including the production of physical marketing material and apparel and the provision of miscellaneous other services incidental thereto (the “**Campaign Services**”);
- (ii) the distribution of physical marketing material (the “**Distribution Services**”); and
- (iii) the provision of Application services, as defined below (the “**Application Services**”)

all together referred as the “**Services**”

and Oppizi agrees to provide such Services in accordance with the terms and conditions of this Agreement, any SOW and/or any Project Plan (if applicable).

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, Oppizi and Client hereby agree as follows:

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1. Definitions**

In this Agreement, unless the context otherwise requires:

**Affiliate** means any entity which directly or indirectly controls, is controlled by, or is under common control with Oppizi. “**Control**” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interest of the Oppizi.

**Agreement** means this Agreement together with any SOW, and/or Project Plan, appendices and annexures.

**Application(s)** means the website, widgets or applications of Oppizi which may be accessed via a website or mobile device.

**Base Intellectual Property** means all Intellectual Property owned, created or used by the Client.

**Business Day** means any weekday other than a day designated as a holiday under the Oppizi holiday schedule, as revised annually and from time to time.

**Campaign** means an instance of the Campaign Services as set out in a Statement of Work.

**Client** means the company, person or other entity named as the Client in the Statement of Work.

**Commencement Date** means the date determined in accordance with Section 2 or as specified in a Statement of Work.

**Confidential Information** has the meaning provided by Section 8.

**Contract Material** means all materials and deliverables provided by Oppizi to the Client or created or developed by Oppizi in the course of providing the Services, whether before or after the date of this Agreement.

**CPI** means the Consumer Price in the United States Index published by the United States Bureau of Labor Statistics.

**Fees** means the fees payable by the Client to Oppizi for provision of the Services as specified in a SOW and includes any expenses or disbursements payable by the Client as required by a SOW.

**Force Majeure** means a circumstance beyond the reasonable control of a party which results in the party being unable to observe or perform on time an obligation under this Agreement.

**Bankruptcy Event** means any of the foregoing: any liquidation, dissolution or winding up of either party, or of any execution, sale, receivership, insolvency, arrangement, marshalling of assets or liabilities, composition, assignment for the benefit of creditors,

bankruptcy, liquidation, readjustment, reorganization or other similar proceeding relative to a party or its debts, its property or its operations, whether voluntary or involuntary.

**Intellectual Property Rights** means all current and future worldwide statutory intellectual property rights and other proprietary rights (including rights to require information be kept confidential) in respect of know-how, inventions, trade secrets, copyright, trademarks, designs, patents, whether arising under the laws of the United States, or any other country, state or jurisdiction.

**Material** includes property, information and the subject matter of any category of intellectual property.

**Milestone Dates** means, in respect of a specific task, the target date for the performance of the relevant task.

**Mission** means an instance of Distribution Services to be provided to the Client.

**Products** means any goods provided by Oppizi to the Client, whether as set out in a SOW or otherwise.

**Project Plan** means the document (developed by Oppizi where required by the SOW) which specifies the services, materials and personnel to be contributed by each party and the responsibilities of each party relating to the Services to be provided under this Agreement. A Project Plan will only be developed where required by the SOW.

**Statement of Work (SOW)** means a statement of work, including a quotation, scope of works or estimate, provided to the Client, which describes the Products and/or Services to be supplied.

**Services** means any services stated in a SOW or, in the absence of a SOW, all services that Oppizi provides to the Client including Campaign Services, Distribution Services and Application Services.

**Taxes** means any sales, use and other taxes (other than taxes on Oppizi income) export and import fees, custom duties and similar charges applicable to the Services as described in the SOW that are imposed by any government or other authority.

**Third Party Material** means Material owned by a third party that is included, embodied in or attached to the Contract Material.

**Oppizi Material** means all Material created by Oppizi prior to the commencement of this Agreement.

**Term** has the meaning provided by [Section 14](#).

## 1.2. Interpretation

In this Agreement:

The singular includes the plural and vice versa.

"Including" and similar expressions are not words of limitation.

Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have corresponding meanings.

If something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day.

Headings are for ease of reference and do not affect the construction of this Agreement.

Money amounts are stated in United States currency unless otherwise specified.

The words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient.

## 1.3. Order of precedence

This Agreement is comprised of the following documents which apply in the following order of precedence:

- (a) a SOW;
- (b) a Project Plan (if applicable); and
- (c) the body of this Agreement,

with the result that any inconsistency between these documents will be resolved in favor of the earlier listed document.

## 2. COMMENCEMENT DATE

### 2.1. Client's acceptance of Statement of Work (SOW)

The Commencement Date is the earlier of the date noted in the Contract Details above, the Client signing a SOW, otherwise notifying Oppizi of its acceptance of the SOW, or accepting Products and/or Services from Oppizi.

## 3. PROJECT PLAN

- (a) If the SOW requires the development of a Project Plan, the parties must develop and agree the Project Plan prior to the provision of Services.

- (b) The Client will pay Oppizi for the development of the Project Plan in accordance with the SOW, unless otherwise agreed in writing.
- (c) The Project Plan will describe:
  - (i) the obligations of each party and the resources and facilities which will be provided by each party as required for the supply of the Products and/or the performance of the Services;
  - (ii) if applicable, the Milestone Dates applicable to the supply of the Products and/or the performance of the Services; and
  - (iii) any other the details required by the SOW.
- (d) Once the Project Plan has been developed and agreed, the parties must comply with its terms, unless varied in writing.

#### **4. SERVICES – GENERAL OBLIGATIONS**

##### **4.1. Provision of Services.**

- (a) Oppizi will provide the Client with all Services requested by the Client as specified in the SOW and in accordance with the terms of this Agreement.
- (b) Nothing in this Agreement requires Oppizi to provide any Services if:
  - (i) the Client has not paid for Products and/or Services provided by Oppizi for which payment is then due; or
  - (ii) the Client has breached this Agreement and that breach has not been remedied.
- (c) **Change Request.** Either party may request a modification to any material provision of the SOW by submitting a request in writing to the other party (the “**Change Request**”). The receiving party will have five (5) Business Days to reject the Change Request. If said rejection is not made within the 5 Business Days period, the Change Request is deemed mutually accepted. Such changes may include, for example, changes to the scope of work and any corresponding changes to the estimated fees and schedule. Each accepted Change Order will be incorporated herein by reference and subject to the terms and conditions of this Agreement.

##### **4.2 Cooperation.**

Client will cooperate reasonably and in good faith with Oppizi in Oppizi’s performance of the Services by, without limitation:

- (a) Allocating sufficient resources and timely performing any tasks reasonably necessary to enable Oppizi to perform its Services under this Agreement, each SOW and Project Plan (if applicable);
- (b) Timely deliver any materials and other obligations required under each SOW;
- (c) Timely responding to Oppizi’s inquiries related to the provision of the Services;
- (d) Providing sufficient, qualified personnel capable of performing its duties under each SOW and Project Plan (if applicable) and this Agreement.

**4.3 Delays.** Any delays in the performance of the Services or delivery of any deliverables caused by the Client may result in additional applicable charges for resource time.

- (a) Without limiting any Force Majeure event as described in Section 15 below, Oppizi will not be responsible for any delays (or costs and losses arising from delays) which occur during the course of the Services which arise from any non-compliance by the Client with this Agreement, an applicable SOW or Project Plan, the late supply or provision of instructions and information by the Client or any delays caused by the Client’s third party suppliers and contractors.
- (b) Oppizi will be entitled to extension of time in respect of any schedule, deadline or milestone equal to the duration of any delay caused by Force Majeure as specified in Section 15(a).

#### **5. APPLICATION SERVICES**

##### **5.1. Provision of Application Services; License Grant.**

- (a) Subject to Client’s payment of the Fees due under a SOW and Client’s compliance with the SOW, Oppizi provides the Client with access to an online platform which allows Clients to track the progress of Distribution Services, receive statements, advices and invoices issued by Oppizi and other incidental features that may be added from time to time by Oppizi (the “**Application**”) with a web-based dashboard (the “**Dashboard**”) allowing the Client to request Distribution Services via the Application. Oppizi will establish a Client account (the “**Account**”) and Oppizi’s primary contact with the Client shall be by way of the Client’s administrator designated through the Dashboard (the “**Administrator**”). Oppizi will provide the Administrator all required Dashboard logins.
- (b) Subject to Client’s payment of the Fees due under a SOW and Client’s compliance with the SOW, Oppizi grants Client a limited, non-exclusive, non-transferable, non-sub-licensable, non-assignable license to use the Application solely for the purposes of (i) accessing and viewing statements setting out Missions; (ii) managing and updating the Client Account on file; (iii) reviewing and managing payment statements; (iv) settling outstanding balances on the Client Account; (v) viewing

current, appoint new, and remove Administrators, and (vi) viewing detailed Mission information, which may include number of workers on the Mission, time and date of Mission, Mission location, Mission status, volume of physical marketing material to be distributed or that has been distributed and amount of Fees for that Mission (“**Dashboard Data**”), all together referred as the “**Application Services**”. Oppizi reserves all rights not expressly granted to the Client under this Agreement. For the purpose of this Agreement, any reference to word “**Mission**” shall mean the provision of Distribution Services by Oppizi for a specific day, time and location.

- (c) The Client agrees:
  - (i) to keep all Dashboard login credentials confidential, and
  - (ii) to only permit the Client’s authorized administrators to access the Dashboard.
- (d) Oppizi reserves the right to add, remove and update features and functionality of the Application or the Dashboard at any time.

## **5.2. Restrictions**

- (a) The Client shall use the Application Services only as permitted in this Agreement and subject to the following restrictions. The Client shall not:
  - (i) sell, resell, reframe, rent, distribute, use on a timeshare, outsource or commercially exploit or make the Application Services available to any third party in any way;
  - (ii) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Application Services or any software, or data related to the Services;
  - (iii) modify, translate, or create derivative works based on the Application Services;
  - (iv) copy, store or otherwise access or use any information contained on the Application Services for purposes not expressly permitted in this Agreement;
  - (v) upload or distribute any files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of the Application Services;
  - (vi) probe, scan, test the vulnerability of, or circumvent any security mechanisms used by the website, servers, or networks connected to the Application Services; poses or create a privacy or security risk to any person;
  - (vii) maliciously reduce or impair the accessibility of the Application Services;
  - (viii) use the Application Services to post, promote, or transmit any unlawful, harassing, libelous, abusive, threatening, harmful, hateful, or otherwise objectionable material;
  - (ix) use the Application Services for any purpose that is not expressly permitted under this Agreement;
  - (x) transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability;
  - (xi) upload any content that infringes any intellectual property or other proprietary rights of any party;
  - (xii) violate any local, state, national or international law or any other regulation or court order;
  - (xiii) misrepresent your identity with another person.
- (b) Oppizi reserves the right to suspend the Client’s access to and use of the Application for breach of this Agreement.

## **6. INTELLECTUAL PROPERTY**

### **6.1 Client Intellectual Property Rights; License Grant.**

Client is and shall remain the owners of all right, title and interest in and to the Base Intellectual Property. The Client hereby grants Oppizi an irrevocable, royalty free and worldwide license (with an unlimited right of sub-license) to use or allow the use of Base Intellectual Property for the purpose of fulfilling Oppizi’s obligations and provide the Services under this Agreement.

### **6.2 Oppizi Intellectual Property Rights.**

- (a) Application Services; Dashboard and Dashboard Data. Oppizi and its Affiliates are and shall remain the owners of all right, title and interest in and to the Application Services, Dashboard and Dashboard Data, including any updates, enhancements and new versions thereof, all data related to the use of the Application Services and all related documentation and materials provided or available to Client in connection with this Agreement. In accordance with Section 5.1 (b), and subject to Client’s payment of the Fees due under a SOW and Client’s compliance with the SOW, Oppizi grants Client a limited license to use the Application Services.
- (b) Contract Material. Unless expressly specified otherwise in a SOW, all Contract Material developed by Oppizi in the course of providing the Services to Client are and shall remain the property of Oppizi. Client hereby immediately and irrevocably assigns and transfer to Oppizi, without further action, any and all rights, titled and interests Client may have in the Contract

Material (including any moral rights any of Client's personnel may have). To the extent any personnel of the Client have any moral rights in respect of any Contract Material, the Client agrees to procure and deliver to Oppizi such personnel's moral right consent assignment to Oppizi.

- (c) **Contract Material License Grant.** Subject to Client's payment of the Fees due under a SOW and Client's compliance with the SOW, Oppizi grants to the Client (subject to payment of all amounts payable under this Agreement) a royalty free, non-transferrable, perpetual license, without the right to sublicense, to use the Contract Materials for the Client's internal business operations only related to the purposes of the project or business activity to which the Services relate (the "**Contract Material License**").
- (d) **Client's names and logos.** If Oppizi is required to communicate the brands, trademarks and/or logos of the Client (hereafter the "**Client Trademarks**"), Client grants Oppizi permission to use the Client Trademarks in any marketing materials of Oppizi (including without limiting, Oppizi's website, social media profiles, slides). At Client's request, Oppizi shall include a trademark attribution notice giving notice of the Client's ownership of its Trademarks in the marketing materials in which the Client's name or logo appear.
- (e) **Preparatory Material.** Oppizi and its Affiliates shall remain the sole owner of all masters, drafts, rushes and other preparatory material and the Client will not be entitled to such originals. The Client may request duplicates of these materials at additional cost.

## 7. FEES

- 7.1. **Fees.** The Client must pay Oppizi the Fees in respect of the Services in accordance with this Agreement and the terms of a SOW.
- 7.2. **Invoice and payment.** Unless otherwise set forth in a SOW, Client must pay the Fees in full before any Products and/or Services are delivered by Oppizi to Client. After the signature of a SOW, Oppizi will send an invoice to Client regarding the Services to be provided in accordance with this Agreement, a SOW and/or a Project Plan. Client shall pay Oppizi all Fees set forth in Oppizi's invoice within fourteen (14) Business Days after the date of the Oppizi's invoice.
- 7.3. **Out of scope service.** Where Oppizi provides the Client with services that are outside the scope of the services specified in a SOW, the services are subject to a further agreed Fee or otherwise charged at Oppizi's standard hourly rates then applicable, which shall be payable in full before these additional services are performed.
- 7.4. **Disputed invoices.** If the Client wishes to dispute an invoice it must:
  - (a) pay Oppizi all parts of the invoice which are not disputed; and
  - (b) If the Client, in good faith, disputes the accuracy of the amount invoiced, Client shall pay, before the invoice due date, such amount as it in good faith believes to be correct and provide written notice stating the reasons why the remaining disputed amount is incorrect, along with supporting documentation. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights hereunder. In the event that it is determined or agreed that Client must or will pay the disputed amount, Client shall then pay interest from and including the original payment due date until, but excluding, the date the disputed amount is received by Oppizi, at the rate of 2% per month as mentioned in Section 7.5 below.
- 7.5. **Default in payment.** If the Client fails to pay any amount payable under this Agreement by the due date then, except where the amount has been validly disputed pursuant to Section 7.4, Oppizi may (without prejudice to any other remedies to which it is entitled):
  - (a) charge the Client interest on the amount due and not paid, for the duration that the payment is outstanding by the Client, at the rate of 2% per month calculated daily; and/or
  - (b) suspend performance of Oppizi's obligations under this Agreement without any liability to the Client for any loss or damage suffered or incurred in respect of the suspension, until such amounts are paid in full.
- 7.6. **Other rights and obligations not affected.** The exercise by Oppizi of any of Oppizi's rights under Section 7.5 does not affect:
  - (a) the Client's obligations; or
  - (b) any other rights or remedies Oppizi may have in relation to the default by the Client under this Agreement or any other agreement between Oppizi and the Client.
- 7.7. **Variation.** The Fees set forth in a SOW may be revised annually with the first pricing review occurring (12) twelve months after the Commencement Date of this Agreement. Oppizi will change the Fees provided a ten (10) days prior written notice to the Client. New prices will apply immediately to all SOW made after such notice period. Any Fee increase will be the greater of the change in the CPI between the anniversary date and the date on which the Fee was last set; or 5%.
- 7.8. **Expenses.** The Client must pay Oppizi or reimburse Oppizi for any expenses which the Client is required to pay or incur under the SOW or otherwise in order to provide the Products and/or Services.

7.9. **Taxes.** Unless otherwise expressly stated, all prices or other sums payable are exclusive of any taxes, levies, duties or similar governmental assessments of any nature, including for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively “**Taxes**”). You are responsible for paying all Taxes associated with the payment of the Services. If Oppizi has the legal obligation to collect such Taxes, the amount of such Taxes will be invoiced to Client and Client will pay such amount, unless Client provides Oppizi with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Oppizi is solely responsible for taxes assessable against Oppizi based on Oppizi’s income, property and employees.

## 8. CONFIDENTIAL INFORMATION

8.1. **Definition of Confidential Information.** “**Confidential Information**” means all information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of each party includes the terms and conditions of this Agreement and all SOWs or Project Plan (including pricing), as well as business and marketing plans, strategies, data, technology and technical information, product plans and designs, and business processes disclosed by such party.

8.2. **Exclusions.** However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

8.3. **Protection.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any SOW or Project Plan to any third party other than its Affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate’s, legal counsel’s or accountant’s compliance with this “Confidentiality” section.

8.4. **Permitted Disclosures.** Notwithstanding anything to the contrary in this Agreement, neither party will disclose any Confidential Information to any third party without the prior written consent of the other party. Notwithstanding the foregoing, each party may disclose Confidential Information without the prior written consent of the other Party (i) as required by any court or other governmental body, (ii) as otherwise required by law, (iii) to legal counsel of the parties, (iv) in confidence, to their respective accountants, banks, and financing sources and other professional advisors, (v) in confidence, in connection with an actual or proposed merger, acquisition, or similar transaction; or (vi) if compelled by law, in which case the Party compelled to make the disclosure will use its best efforts to give the other party advance notice of the requirement.

8.5. **Right of Equitable Relief.** The parties acknowledge that violations of the covenants and obligations of this Agreement may cause the non-breaching party irreparable injury for which an adequate remedy at law may not be available. Therefore, the non-breaching party may be entitled to seek all remedies that may be available under equity, including immediate injunctive relief, in addition to whatever remedies may be available at law.

## 9. NON-SOLICITATION

9.1 **Non-Solicitation.** During the term and for a period of twelve (12) months thereafter (collectively the “**Non-Solicitation Period**”), the Client agrees, that it will not, directly or indirectly, solicit or induce the employment or services of any of the Oppizi’s or its Affiliates employees or consultants who were involved in the performance under this Agreement, the SOW and/or Project Plan, when such solicitation is done by the Client through the use of Oppizi’s Confidential Information. Both parties acknowledge that (i) any newspaper or other public solicitation not directly specifically to that person will not be deemed to be a solicitation for purpose of this Section, and (ii) this [Section 9.1](#) is not intended to limit the individual’s right to change jobs. At any time after the Termination of this Agreement, the Client will not represent itself as being in any way currently connected with or interested in the business of Oppizi.

9.2 **Reasonableness of Restrictive Covenant.** The Client acknowledges that it has carefully read and considered [Section 9.1](#) of this Agreement and agrees that the restrictions set forth therein are fair and reasonable, are supported by valid consideration, and are reasonably required to protect the legitimate business interests of Oppizi.

## 10. PRIVACY

(a) In performing their respective obligations under this Agreement, each party will comply with applicable privacy and data protection laws. In respect of any data to which the Client gives Oppizi access or possession for the purpose of providing the Services, the Client warrants that Oppizi’s access or possession (as applicable) for that purpose complies with applicable privacy and data protection laws.

- (b) When accessing or handling the Client's data, Oppizi will comply with the Client's applicable reasonable policies that have been disclosed to Oppizi in writing.

## 11. REPRESENTATIONS, WARRANTIES, AND DISCLAIMERS

**11.1. Representations.** Each party represents and warrants that it has validly entered into this Agreement and has the legal power to do so.

**11.2. Oppizi Limited Warranty for Campaign and Distribution Services.** Oppizi warrants that the Campaign and Distribution Services will be performed in a professional and workmanlike manner and will substantially conform to all specifications set forth in the SOW and/or Project Plan and for a period of seven (7) days after the Campaign Services and Distribution Services have been performed ("**Warranty Period**"). If any Campaign Services and/or Distribution Services are not performed in substantial conformance with the SOW, Client will notify Oppizi, in writing, within the Warranty Period. The Client's notice must specifically identify and explain each alleged non-conformance with the terms of the SOW. Client's sole and exclusive remedy and Oppizi entire liability shall be the re-performance of the applicable Campaign Services and/or Distribution Services. If Oppizi is unable to re-perform the Campaign Services and/or Distribution Services, the Client will be entitled to recover the fees paid to Oppizi for the deficient Campaign Services and/or Distribution Services. THE FOREGOING STATES CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR WARRANTY CLAIMS RELATED TO THE CAMPAIGN AND DISTRIBUTION SERVICES.

**11.3. Disclaimer for all other Services.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 11.2, OPPIZI AND ITS SUPPLIERS DISCLAIMS ALL OTHER CONDITIONS AND REPRESENTATIONS, WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES OF QUALITY, PERFORMANCE, NONINFRINGEMENT, ANY WARRANTIES CREATED BY A COURSE OF DEALING, COURSE OF DEALING, OR TRADE USAGE.

**11.4. Application Services: No Service Guarantee.** CLIENT ACKNOWLEDGE AND AGREE THAT THE APPLICATION SERVICES AND THE DASHBOARD ARE PROVIDED "AS IS". CLIENT ACKNOWLEDGES AND AGREES THAT OPPIZI DOES NOT WARRANT THAT THE APPLICATION SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. CLIENT FURTHER ACKNOWLEDGES AND AGREES THAT THE APPLICATION MAY BE UNAVAILABLE AT ANY TIME OR FOR ANY REASON (e.g., MAINTENANCE). OPPIZI DOES NOT REPRESENT OR WARRANT THAT THE APPLICATION IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CLIENT.

## 12. INDEMNIFICATION

**12.1 Mutual Indemnification.** Each party (the "**Provider**") will defend the other party (the "**Recipient**") against any Claim made or brought against the Recipient by a third party alleging that any information, design, specification, instruction, software, data or material furnished by the Provider hereunder ("**Material**") infringes or misappropriates such third party's intellectual property rights, and will indemnify the Recipient from any damages, attorneys fees and costs finally awarded against the Recipient as a result of, or for amounts paid by Recipient under a settlement approved in writing by Provider of, any such Claim, provided that the Recipient: (a) promptly gives the Provider written notice of the Claim; (b) gives the Provider sole control of the defense and settlement of the Claim (except that the Provider may not settle any Claim unless it unconditionally releases the Recipient of all liability); and (c) gives the Provider all reasonable assistance, at the Provider's cost. The Provider will have no liability for any such Claim to the extent that (i) it arises from specifications or other Material provided by the other party, or (ii) such claim is based on the Recipient's use of a superseded or altered version of Material if infringement or misappropriation would have been avoided by the use of a subsequent or unaltered version of the Material that was provided to the Recipient. In the event that some or all of the Material is held or is reasonably believed by the Provider to infringe or misappropriate, the Provider may in its discretion and at no cost to the Recipient (A) modify or replace the Material so it is no longer claimed to infringe or misappropriate, (B) obtain a license for the Recipient's continued use of the Material in accordance with this Agreement, or (C) require return of the affected Material and all rights thereto from the Recipient. If the Provider exercises option (C), either party may terminate the relevant SOW or Project Plan upon ten (10) days' written notice given within 30 days after the Provider's exercise of such option, subject to the "Consequences of Termination" Section below.

**12.2 Exclusive Remedy.** THIS "INDEMNIFICATION" SECTION STATES THE INDEMNIFYING PARTY'S SOLE LIABILITY TO, AND THE INDEMNIFIED PARTY'S EXCLUSIVE REMEDY AGAINST, THE OTHER PARTY FOR ANY TYPE OF CLAIM DESCRIBED IN THIS SECTION 12.

## 13. LIMITATION OF LIABILITY

**13.1 Limitation of Liability.** EXCEPT WITH RESPECT TO CLAIMS PURSUANT TO SECTION 12 AND/OR FOR ANY BREACH OF A PARTY'S OBLIGATIONS OF CONFIDENTIALITY UNDER SECTION 8, IN NO EVENT SHALL OPPIZI'S AGGREGATE LIABILITY WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT, STATEMENT OF WORK AND/OR PROJECT PLAN EXCEED THE TOTAL NET AMOUNT PAID BY CLIENT UNDER THE SOW FOR THE SPECIFIC SERVICES OUT OF WHICH THIS LIABILITY AROSE.



**13.2. Exclusions of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY CLAIM ARISING OUT OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, REGARDLESS OF THE THEORY OF LIABILITY AND HOWEVER CAUSED, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, PRODUCTS LIABILITY OR NEGLIGENCE, AND WHETHER OR NOT SUCH PARTY WAS OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO CLIENT. THIS AGREEMENT SETS FORTH SPECIFIC LEGAL RIGHTS, AND CLIENT MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. THE DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS OF LIABILITY UNDER THIS AGREEMENT WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## **14. TERM AND TERMINATION**

**14.1. Term.** This Agreement commences on the Commencement Date and will remain in effect until either (i) the parties have fulfilled their obligations, or (ii) until terminated in accordance with this Section.

**14.2. Termination for Convenience.** Either party may terminate this Agreement at any time for convenience upon a thirty (30) days written notice to the other. Unless otherwise agreed in writing, termination pursuant to this [Section 14.2](#) will not relieve Client of its obligations under any SOW and/or Project Plan in effect when a party terminates this Agreement, which obligations will continue to be governed by this Agreement. Termination pursuant to this [Section 14.2](#) will not relieve Client of its obligation to pay for any Services or expenses performed or paid pursuant to any SOW and/or Project Plan.

**14.3. Termination for Cause.** Either party may terminate this Agreement immediately upon written notice if: (i) the other party breaches any provision of this Agreement and a SOW and/or Project Plan and does not cure that breach within fourteen (14) Business Days after receiving written notice from the other party, or (ii) the other party commits a material breach of this Agreement, any SOW and/or Project Plan that is not capable of being cured. Oppizi may terminate this Agreement upon written notice to Client if Client: (i) terminates or suspends its business, (ii) becomes insolvent, (iii) admits its writing its inability to pay its debts, makes an assignment for the benefit of creditors, or

**14.4. Consequences of termination.** If a notice of termination is given under [Section 14.2](#) or [Section 14.3](#), all monies payable to Oppizi under this Agreement or which would have become payable but for that termination will, to the extent permitted by law, become immediately due and payable, and:

- (a) each party may repossess any of its property in the possession, custody or control of the other party;
- (b) Oppizi may retain any monies paid in respect of any and all Services already provided by Oppizi at the time of notice of termination;
- (c) Oppizi may charge for all Services performed in respect of which no Fee has been previously charged;
- (d) Oppizi may charge for all costs, disbursements and expenses, incurred in expectation of performing all of the requirements of the SOW including the cost of any Products and/or Services purchased on behalf of or for on-supply to the Client prior to the termination date (except to the extent the Client has already paid the applicable Fee for those items);
- (e) each party may require the other party to deliver to it or erase or destroy, or procure the delivery, erasure or destruction (as applicable), all materials containing its Confidential Information and certify its compliance with these obligations; and
- (f) each party may pursue any additional or alternative remedies provided by law.

**14.5. Surviving Provisions.** Any provision of this Agreement, the SOW and/or Project Plan will survive any termination or expiration if by its nature and context it is intended to survive, including sections titled "Contract Material License Grant", to "Fees", "Confidentiality", "Representations, Warranties and Disclaimers", "Indemnification", and "Limitation of Liability".

## **15. FORCE MAJEURE**

- (a) Oppizi will not be liable for any delay or failure to perform its obligations under a SOW or this Agreement if that delay is due, in whole or in part, to any events, occurrences, or causes beyond the reasonable control and without the negligence of Oppizi, including but not limited to, acts of Gods, strikes, lockouts, riots, acts of war, earthquakes, fire and explosions, failure of internet (collectively referred as "**Force Majeure**").
- (b) If a delay or failure by Oppizi to perform its obligations due to Force Majeure exceeds sixty (60) days, either party may immediately terminate the Agreement on providing notice in writing to the other party, in which event Oppizi will not be deemed to have breached this Agreement.
- (c) If this Agreement is terminated pursuant to [Section 15\(b\)](#), Oppizi will refund moneys previously paid by the Client under this Agreement for the Services which were not provided due to Force Majeure.

## **16. MISCELLANEOUS**

- 16.1. Subcontractors.** Oppizi may, in its sole discretion, sub-contract the performance of all or part of its obligations under this Agreement. Without limiting the generality of this Section 16.1, the Client acknowledges that Oppizi will sub-contract the Distribution Services to independent contractors.
- 16.2. Relationship of the parties.** The relationship of the parties under this Agreement is that of independent contractors. Neither party will be deemed to be an employee, agent, partner, franchisor, franchisee nor legal representative of the other party for any purpose and neither will have any right, power, or authority to create any obligation or responsibility on behalf of the other.
- 16.3. Entire Agreement; Modification.** This Agreement, SOW and Project Plan (as applicable) constitute the entire agreement between the parties for the supply of the Products and/or Services and supersedes all prior representations, statements and understandings or undertakings, whether verbal or in writing. No modification or alteration of any provision of this Agreement will be valid except those in writing signed by each party.
- 16.4. Assignment.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign or transfer this Agreement in whole or in part by operation of law or otherwise, without the other party's prior written consent. Any attempt to transfer or assign this Agreement without such written consent will be null and void. Notwithstanding the foregoing, however, either party may assign this Agreement without consent to the acquiring or surviving entity in a merger or acquisition in which such party is the acquired entity (whether by merger, reorganization, acquisition or sale of stock) or to the purchaser of all or substantially all of such party's assets. Oppizi may assign or transfer this Agreement to its Affiliates.
- 16.5. Waiver.** Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed as a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. No exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.
- 16.6. Governing Law.** This Agreement will be interpreted and construed in accordance with the laws of the State of California, without regard to conflict of law principles. The parties hereby consent to the exclusive jurisdiction and venue of the state and federal courts located in San Francisco County, California for resolution of any disputes arising out or relating to this Agreement.
- 16.7. Notices.** Any notice, required or permitted under the terms of this Agreement or required by law must be in writing and must be delivered (a) in person, (b) by first class registered mail, or air mail, as appropriate, posted and fully prepaid to the appropriate address set forth in the preamble to this Agreement, or (c) via facsimile. Notices will be considered to have been given at the time of actual delivery in person, four (4) Business Days after deposit in the mail as set forth above, or upon receipt of facsimile confirmation. Either party may change its address for notice by notice to the other party given in accordance with this Section 16.7.
- 16.8. Severability.** If any provision or portion thereof, of this Agreement is found to be invalid, unlawful or unenforceable to any extent, such provision of this Agreement will be enforced to the maximum extent permissible by applicable law so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. The parties will negotiate in good faith an enforceable substitute provision for any invalid or unenforceable provision that most nearly achieves the intent and economic effect of such provision.
- 16.9. Construction.** The headings of sections of this Agreement are for convenience only and are not to be used in interpreting this Agreement.
- 16.10. No-third Party Beneficiaries.** The parties hereto expressly agree that there are no third-party beneficiaries of this Agreement.
- 16.11. Counterparts.** Facsimile scanned or electronic signatures on this Agreement and a SOW and/or Project Plan will bind the parties to the same extent as originals. This Agreement may be executed in multiple counterparts, each is an original and all of the counterparts together constitute one single agreement between the parties.