

## ETEGRITY DIGITAL MASTER SERVICES TERMS

1. **ENGAGEMENT FOR SERVICES.** In consideration for Client's payment of applicable fees, eTegrity Digital will provide Client with those services specifically set forth in mutually agreed upon Statements of Work signed by each party that references this Agreement (the "Services") in accordance with the terms of the Agreement. Each Statement of Work referencing this Agreement will be subject to and governed the terms and conditions of this Agreement. Statements of Work may only be modified by written agreement signed by authorized representatives of each party. Client shall provide eTegrity Digital with such resources, information, cooperation, and assistance as eTegrity Digital may reasonably request in connection with the performance of the Services. Unless otherwise set forth in a Statement of Work, Client hereby expressly appoints eTegrity Digital its intended agent solely to the extent necessary for eTegrity Digital to perform the Services. Clients agree to not engage with eTegrity Digital employees or contractors outside of the agency or for up to 5 years after their employment with eTegrity Digital for any paid services. Clients also agree not to offer eTegrity Digital employees or contractors' positions of employment outside of the agency.

### 2. FEES; AND PAYMENT.

2.1 **Fees.** In consideration of the Services, Client agrees to pay eTegrity Digital all fees, costs and expenses due as set forth in each Statement of Work (the "Fees"). Further, eTegrity Digital will bill Client for all applicable taxes, if any, in accordance with the billing terms in effect at the time the Fees become payable. All fees are nonrefundable except as expressly set forth herein. Fees are collected via autopay for the set billing period prior to work commencing.

2.2 **Expenses.** Unless set forth to the contrary in a Statement of Work, Client will reimburse eTegrity Digital for the reasonable travel, lodging, media, and related out-of-pocket expenses that eTegrity Digital may incur in performing the Services ("Reimbursable Expenses").

2.3 **Payment.** eTegrity Digital will bill Fees and applicable taxes after the end of each calendar month. Unless set forth to the contrary in a Statement of Work, Client will pay in advance of receipt of Services. Client shall be responsible for payment of all applicable sales, use, excise and other taxes and assessments relating to this Agreement, excluding any taxes based on the net income of eTegrity Digital. We apply payments and credits at our discretion, including in a manner most favorable or convenient for us. In all cases, we will apply payments and credits as required by applicable law. We apply payments and credits at our discretion, including in a manner most favorable or convenient for us. In all cases, we will apply payments and credits as required by applicable law. Each billing period, we will generally apply amounts you pay to the oldest open invoice and to eTegrity Digital fees ahead of media or other expenses.

2.4 **Collections.** Client will reimburse eTegrity Digital for any expenses, including legal fees, related to the collection of past due invoices. eTegrity Digital may notify 3rd party vendors (such as Google, Yahoo, Facebook, and others) when fees are past due or uncollected. All work, including advertising account optimizations and website changes, are the property of eTegrity Digital until paid. If an invoice should become past due, eTegrity Digital may restore Client's advertising campaigns to their status as of the last fully paid invoice.

### 3. MATERIALS, APPROVAL AND OWNERSHIP.

3.1 **Client Materials.** Client acknowledges that in order to perform the Services, eTegrity Digital will require certain Client information, data, trade names, trademarks, service marks, logos, input, content or material of Client or Client's suppliers (collectively, "Client Materials"). Accordingly, Client hereby grants to eTegrity Digital during the term of this Agreement an irrevocable (during the term), non-exclusive license to use and modify the Client Materials as necessary for eTegrity Digital to perform the Services. eTegrity Digital reserves the right to reject or remove in its entirety any Client Materials that violate the terms of a publisher or partner where Client materials will be displayed. eTegrity Digital may rely on the accuracy and completeness of all Client Materials and is under no obligation to independently verify the accuracy or completeness of the Client Materials.

3.2 **Deliverables.** Effective upon eTegrity Digital's receipt of complete payment for a Deliverable, eTegrity Digital assigns all its right, title and interest in and to the final accepted, and fully paid-for version of all Deliverables.

"Deliverables" means

any materials described in a Statement of Work as a "Deliverable" that eTegrity Digital develops specifically for Client and

for which Client specifically pays eTegrity Digital but excluding Third Party Materials (defined below). eTegrity Digital will retain

all ownership of any materials developed hereunder that do not constitute Deliverables pursuant to the terms of this Agreement, as well as any ideas, concepts, know-how, knowledge, techniques, tools, approaches, methodologies, templates, operating instructions, standardized features, other technology, or any intellectual property rights created,

developed, owned or licensed by eTegrity Digital (i) prior to the Effective Date of this Agreement or (ii) during the term of this Agreement but outside the scope of this Agreement and any Statement of Work. All rights not expressly granted by eTegrity Digital in the Agreement are reserved.

**3.3 Third Party Materials.** Client acknowledges that certain third-party materials (such as talent rights, video, photography, film footage, music, artwork, designs, software, and other content) ("Third Party Materials") may be incorporated into Deliverables as eTegrity Digital and Client may agree upon. Additionally, Client may provide eTegrity Digital Third-Party Materials. eTegrity Digital must fully disclose to Client the terms of any such license and receive prior approval from Client prior to utilizing any Third-Party Materials in a Deliverable. Client agrees to use Deliverables incorporating third party materials in a manner consistent with the Third-Party Materials license terms. To the extent Client provides eTegrity Digital Third-Party Materials, Client hereby represents and warrants that Client owns or has all rights necessary or desirable to allow eTegrity Digital to use the Third-Party Materials to provide Services.

**4. REPRESENTATIONS AND WARRANTIES.** Client represents that, all information provided by Client, including information in Client Materials and Third-Party Materials, is accurate, complete and current. Client represents and warrants that it has all rights in the Client Materials and Third-Party Materials provided by Client necessary to grant the licenses in this Agreement and to allow eTegrity Digital to perform Services. Client represents and warrants that the Client Materials and any Third-Party Materials provided by Client (a) do not violate any law or regulation of any governmental agency, (b) do not infringe or misappropriate in any manner on any copyright, patent, trademark, trade secret or any other intellectual property rights of any third party, (c) do not violate any rights of any person or entity, including without limitation rights of publicity or privacy, (d) are not false or misleading, (e) are not involved in hate activity or promoting violence or discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age and (f) are not defamatory, libelous, slanderous or threatening.

#### **5. WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY.**

5.1 ETEGRITY DIGITAL PROVIDES ITS SERVICES ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. NEITHER ETEGRITY DIGITAL NOR ANY OF ITS LICENSORS, EMPLOYEES, AGENTS, CONSULTANTS OR CONTRACTORS MAKES ANY WARRANTY OR REPRESENTATION WHATSOEVER REGARDING THE SERVICES, DELIVERABLES, ANY INFORMATION, SERVICES OR PRODUCTS PROVIDED OR AVAILABLE THROUGH OR IN CONNECTION WITH THE SERVICES OR ANY RESULTS OBTAINED THROUGH THE USE THEREOF. ETEGRITY DIGITAL HEREBY DISCLAIMS ON BEHALF OF ITSELF AND ALL OF ETEGRITY DIGITALS' SUPPLIERS, LICENSORS AND/OR LICENSEES ANY AND ALL WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES REGARDING PERFORMANCE OR RESULTS OF THE SERVICES.

5.2 EXCEPT FOR INDEMNIFICATION OBLIGATIONS CONTAINED HEREIN, ETEGRITY DIGITAL'S AGGREGATE LIABILITY HEREUNDER SHALL BE LIMITED IN ALL CASES TO THE AGGREGATE AMOUNT OF SERVICE FEES (BUT EXPRESSLY EXCLUDING ANY MEDIA FEES) PAID BY ANY ADVERTISER IN THE 6 MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO THE LIABILITY. MULTIPLE CLAIMS WILL NOT ENLARGE THIS LIMIT. IN NO EVENT WILL ETEGRITY DIGITAL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING THE USE OR INABILITY TO USE THE SERVICES. ADVERTISER AGREES THAT ADVERTISER WILL NOT HOLD ETEGRITY DIGITAL RESPONSIBLE FOR THE SELECTION OR RETENTION OF, OR ANY ACTS, ERRORS, OR OMISSIONS BY, ANY THIRD PARTY IN CONNECTION WITH THE SERVICES.

**6. INDEMNIFICATION.** Client shall indemnify, defend (with counsel reasonably acceptable to eTegrity Digital) and hold harmless eTegrity Digital, its officers, directors, shareholders, affiliated entities and persons, employees, agents, representatives and attorneys from and against all claims, causes of actions, demands, judicial and administrative proceedings, liabilities, forfeitures, errors, damages, costs and expenses (including without limitation, reasonable attorneys' fees and attendant costs and expenses, whether suit is filed or proceedings instituted thereon), directly or indirectly arising in connection with any alleged breach of any representation or warranty made by Client herein or breach or default by Client of any of Client's other obligations hereunder.

**7. RELATIONSHIP OF PARTIES.** The relationship of the parties established under this Agreement is that of independent contractors and neither party are a partner, employee, agent or joint venture partner of or with the other, and neither party has the right or authority to assume or create any obligation on behalf of the other party.

#### **8. TERM AND TERMINATION.**

**8.1 Term.** This Agreement commences on the Effective Date and will continue for an initial term of 1 month ("Initial Term") from the Effective Date unless terminated earlier as allowed in this Agreement. Upon the expiration of the Initial Term, the term of this Agreement will automatically extend for successive terms of 1 month, provided that

either party may terminate this Agreement, effective upon the expiration of the Initial Term or the then-current extension period, by notifying the other party in before the next invoice has run. No refunds will be given.

**8.2 By Client.** Client may terminate this Agreement at any time. Unused funds of any campaign spend will not be refunded. A credit with the agency may take place if at least 75% of the spend is unused in the cancellation month.

**8.3 Suspension.** eTegrity Digital may, in its sole discretion, suspend performance of Services if (i) payment is not received when due, (ii) eTegrity Digital cannot charge fees to Client's credit card, (iii) Client's check is returned, (iv) a chargeback is posted to Client's credit card, or (v) if eTegrity Digital believes that Client provided false or misleading information or breached the terms of this Agreement.

**8.4 By either party due to breach.** Either party may terminate this Agreement immediately upon written notice to the other party, without judicial or arbitral action and without prejudice to any other remedies it may have, if (i) the other party materially breaches any of its obligations hereunder and fails to remedy such material breach to the notifying party's satisfaction within 30 days after it demands such cure, or (ii) the other party assigns all or a substantial part of its business or assets for the benefit of creditors, permits the appointment of a receiver for its business or assets, becomes subject to any legal proceeding relating to insolvency, bankruptcy, reorganization, or the protection of creditors' rights or otherwise ceases to conduct business in the normal course.

**8.5 Effects of Termination.** Upon the expiration or termination of this Agreement for any reason, (i) Client will promptly pay eTegrity Digital all fees and expenses that may be due and outstanding for the Services that eTegrity Digital has performed as of the effective date of termination, (ii) all rights granted by eTegrity Digital shall immediately terminate, and (iii) all Statements of Work in effect as of the effective date of termination or expiration shall continue in full force and effect in accordance with their terms and conditions subject to the terms of this Agreement. Sections 2, 4-6, 8.6, 9 and 10 will survive expiration or termination of the Agreement for any reason.

**9. CONFIDENTIALITY.** "Confidential Information" means all documents, information, documentation, reports, financial or other data, records, forms, and other materials relating to a party's business that is obtained by the other party from the first party while performing or receiving any Services, whether tangible or intangible and whether stored, compiled, or memorialized physically, electronically, graphically, in writing, or by any means now known or later invented, in all cases that is marked or identified at the time of disclosure or receipt as being "confidential." Notwithstanding the foregoing, Confidential Information does not include work product or information developed during performance of this Agreement or information which: (i) is already known to the recipient at the time of disclosure; (ii) is or becomes publicly known through no wrongful act or failure of recipient; (iii) is independently developed by recipient without benefit of the other party's Confidential Information; or (iv) is received from a third party which is not under and does not thereby breach an obligation of confidentiality. Each party agrees to always protect the other's Confidential Information and in the same manner as each protects the confidentiality of its own proprietary and confidential materials, but in no event with less than a reasonable standard of care. Recipient will deliver to the other party all Confidential Information and all copies thereof (and all other property obtained from or through the other party) when the other party requests the same or immediately upon termination of this Agreement, whichever occurs earlier. Neither party shall, except with respect to those of its employees with a need to know under this Agreement, use or disclose to any person, firm or entity any Confidential Information of the other party without such other party's express, prior written permission; provided, however, that notwithstanding the foregoing, recipient may disclose Confidential Information to the extent that it is required to be disclosed pursuant to a statutory or regulatory provision or court order. The confidentiality restrictions and obligations imposed by this Section 9.1 shall terminate 2 years after the initial disclosure.

## **10. GENERAL.**

**10.1 Law.** This Agreement will be governed by the laws of the State of Arizona, without regard to its principles of conflicts of laws. Any dispute under this Agreement shall be brought only in the state and Federal courts located in Tucson, Arizona, and the parties hereby irrevocably consent to the personal jurisdiction and venue of these courts.

**10.2 Assignment.** Neither party may, directly or indirectly, in whole or in part, by operation of law or otherwise, assign or transfer this Agreement or delegate any of its obligations under this Agreement without the other party's written consent. Any attempted assignment, transfer or delegation without such prior written consent will be void and unenforceable. Notwithstanding the foregoing, eTegrity Digital may assign this Agreement upon notice, but without prior approval, to an affiliate or in connection with a consolidation, merger, acquisition or sale of all or substantially all of its assets. If this Agreement is validly assigned, then this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

**10.3 Benefit.** eTegrity Digital has business relationships with media providers and other third parties. We may mark up the cost of certain services and may receive financial or other benefits for the referral of services or products.

**10.4 Waiver.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**10.5 Headings.** The headings of the sections of this Agreement have been included only for convenience, and will not be deemed in any manner to modify or limit any of the provisions of this Agreement, or be used in any manner in the interpretation of this Agreement.

**10.6 Notice.** Any notices or other communications required or permitted to be given or delivered hereunder shall be in writing and shall be delivered personally, by courier service, by facsimile machine or by registered or certified mail, return receipt requested, postage pre-paid, to Company and to Customer.

**10.7 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

**10.8 No Third-Party Beneficiaries.** Nothing in this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities on any third party (including without limitation any employees or agents of either party) other than the parties or their respective successors and permitted assigns.

**10.9 Force Majeure.** Either party shall be excused from performance and shall not be liable for any delay in whole or in part (except for the payment of money), caused by the occurrence of any contingency beyond the reasonable control of the excused party or its subcontractors or suppliers. These contingencies include, without limitation, war, sabotage, insurrection, riot or other act of civil disobedience, act of public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof affecting the terms hereof, accident, fire, explosion, flood, severe weather or other act of God, shortage of labor, fuel, raw material or machinery or technical system failure.

**10.10 Entire Agreement; Modification.** This Agreement and Statement(s) of Work constitute the entire agreement between the parties about the subject matter hereof. ETEGRITY DIGITAL HEREBY OBJECTS TO AND REJECTS ANY AND ALL DIFFERENT OR ADDITIONAL TERMS OR CONDITIONS CONTAINED IN ANY SUCH DOCUMENT SUBMITTED BY CLIENT OR ITS AGENTS TO ETEGRITY DIGITAL. No oral or written representation that is not expressly contained in this Agreement is binding on Client or eTegrity Digital. No amendment or modification to this Agreement or any Statement(s) of Work shall be binding on either party unless in writing and signed by authorized representatives of both parties. eTegrity Digital reserves the right to discontinue offering any of the Services at any time.