



## MASTER SERVICE AGREEMENT

This Master Service Agreement ("MSA") and Statement(s) of Work ("SOW") are entered into and effective as of the later of the dates set forth on the signature page of the Proposal Acceptance and Service Order Form ("PAF") or associated Service Proposal (No. \_\_\_\_\_).

**Between:** Inte veo, LLC ("Company"), a Nevada limited liability company operating in Austin, TX.

**And:** \_\_\_\_\_ (' \_\_\_\_\_ ') ("Customer"), with locations in \_\_\_\_\_, \_\_\_\_.

Customer may fax or email a copy of the executed PAF to authorize and activate the services per this MSA and attached SOW. Once such fax or email is received by the Company, the Customer will establish priority in the Customer development queue.

This MSA states all the terms and conditions by which Company delivers and Customer accepts any or all of the services provided by Company. If any terms and conditions set forth herein only apply to a Service not ordered by Customer, then such terms shall have no application to Customer.

<b>Contents of this Document</b>	
<b>Master Service Agreement ( _____ )</b>	
Appendix A	Definitions
<b>Items included under Separate Cover</b>	
Attachment A	Statement of Work(s) (SOW)

The specific quantity, type, and rate for services and/or products to be provided hereunder are identified in the attached SOW. Upon proper execution of initial PAF by Customer; each SOW shall be automatically incorporated into this MSA.

Capitalized terms may be defined and shall have the meanings as set forth in Appendix A.

IN WITNESS WHEREOF, duly authorized representatives of Customer and Company have read the foregoing and all documents incorporated therein, and agree and accept such terms effective as of the date set forth on the signature page of the PAF or associated Service Proposal (No. \_\_\_\_\_):

<b>Inte veo, LLC</b>	
<b>Mailing Address:</b> 500 E. 4 <sup>th</sup> Street, Suite 132	<b>Mailing Address:</b>
<b>City/State/Zip:</b> Austin, TX 78701	<b>City/State/Zip:</b>
<b>Printed Name:</b> Mr. Sean Darwish	<b>Printed Name:</b>
<b>Title:</b> Chief Executive Officer	<b>Title:</b>
<b>Date:</b>	<b>Date:</b>

## 1. Delivery of Services; Terms; Fees

- 1.1. General. By executing this MSA and any subsequent SOW(s), Customer shall accept and pay for, and by executing a SOW, Company shall provide and support, the Services during the Initial Term listed in the SOW and for any Renewal Term. Accordingly, except as expressly provided in this MSA, Company shall provide, and Customer shall pay for, each Service as defined in the SOW through its Initial Term and any subsequent Renewal Term.
- 1.2. Term.
  - 1.2.1. Term Commencement. The term for each Service will commence on the Service Activation Date and shall continue for the entire Initial Term. This MSA shall continue in full force and effect until the termination of the last SOW.
  - 1.2.2. Renewal Term. Each term of each SOW will renew automatically for additional terms equal in length to the Initial Term (each a "Renewal Term") unless Customer notifies Company in writing not less than thirty (90) calendar days prior to the end of the Initial Term (or any subsequent Renewal Term, as applicable), that it wishes to terminate such Service. The termination of any individual Service in the SOW will not affect Customer's obligations to accept and pay for all other contracted Services.
  - 1.2.3. Early Termination. Unless otherwise specified in this MSA, in the event of early termination of this MSA by Customer for default or any other reason, Customer shall pay Company as liquidated damages the monthly fees owed by Customer at the time of such termination multiplied by the total number of months remaining in then current term, together with any other fees (including any other related Fees) of all third parties contracted by the Company on behalf of Customer, as set forth in Section 2.1.

## 2. Fees and Payment Terms

- 2.1. Fees and Expenses. Customer will pay all fees due according to the prices and terms listed in all SOW(s). Further, Customer shall pay Company for all fees or costs for third party products or services that Company procures on behalf of Customer. The prices listed in the SOW(s) will remain in effect during the Initial Term indicated in the SOW(s) and will continue thereafter, unless modified as set forth in Section 2.2.
- 2.2. Changes in Fees. At any time after the Initial Term, Company may change any of the fees it charges Customer for any Service. Such changes in fees shall be effective thirty (30) calendar days after Company provides written notice to Customer of the change. If any change in fees causes a material and adverse effect to the terms of the Services provided to the Customer, then within ten (10) calendar days from the date of the foregoing notice from Company, Customer must provide written notice to Company that it challenges the changed fees. Within ten (10) calendar days thereafter, Company shall elect either to continue to provide the Services under the prior terms or terminate this MSA, which decision shall be effective ten (10) calendar days after notice of same to Customer.
- 2.3. Payment Terms.
  - 2.3.1. On the Service Activation Date for each Service, Company shall bill Customer for all non-recurring fees indicated in the SOW and the monthly recurring fees for the first month of the term. Customer shall submit all non-recurring fees and the 1<sup>st</sup> month of service fees specified in the SOW to Company upon execution of the PAF. Customer shall also continue to submit the minimum monthly recurring fees to Company on or before the 1<sup>st</sup> of each subsequent calendar month once the service has commenced. All other fees for Services received and expenses incurred for Services during a month (e.g., consulting, creative design, content creation, programming, design, development, marketing, usage fees, and any other professional services) will be invoiced on the 1<sup>st</sup> day of the month following the month in which the Services were provided and payment shall be due upon receipt.
  - 2.3.2. Payment Terms are normally Due Upon Receipt on the 1<sup>st</sup> of each month or as indicated by the SOW or each particular invoice.
- 2.4. Late Payments. Any payment not received within ten (10) calendar days of the date of the invoice will accrue late fees including a \$75 late fee, \$35 for each additional late day and if account balance is not paid off in full by the 10<sup>th</sup> of the month then the Company may elect to disconnect services and a reactivation fee of \$300 will be assessed to commence services. If Customer's account becomes past due, Customer will receive written notice to that effect and will have five (5) business days to respond to the notification (cure period). If Customer fails to respond to the past due notification and make arrangements to bring the account current within the five (5) business days Company may cease the provision of Service until such time as Customer responds to the past due notification and brings its account current. If customer continues to be habitually delinquent in its payments, Company may, upon written notice to Customer, modify the payment terms to require full payment before the provision or continued use of all Services (both currently contracted and scheduled future provisioned), or require other assurances to secure Customer's payment obligations hereunder.
- 2.5. Failure to remit payment. Customer's failure to remit payment for services rendered will constitute a material breach of this agreement.
- 2.6. Taxes. Customer will pay all sales or value-added taxes.
- 2.7. Change Orders and New Services. Customer may request Customized Services outside the scope of the recurring monthly Services Initially contracted and specified in the SOW and can do so via direct mail, fax, email or over the phone. Upon receipt of such requests, Company may communicate to Customer within a reasonable period of time, all proposed fees, charges, and terms associated with the newly requested Customized Services. Afterwards, Customer may communicate approval and authorize such new Customized Services via direct mail, fax, email or over the phone. If Company accepts the new service orders, it will automatically enter such orders as a new addendum to the existing SOW and consider effectively part of the recurring monthly Services. Company will bill Customer for the newly ordered services in the same manner as original Services. Company reserves the right to accept or reject any new Service orders.

## 3. Confidential Information; Intellectual Property Ownership; License Grants

- 3.1. Confidential Information.
  - 3.1.1. Nondisclosure of Confidential Information. Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, vendors, employees, customers, technology, products, and other information held in confidence by the other party (collectively, "Confidential Information"). Confidential Information will include all information in tangible or intangible form that is marked or designated as confidential or that, under the circumstances of its disclosure, should be considered confidential. Confidential Information will also include, but not be limited to, Company Technology, Customer Technology, and the terms and conditions of this MSA. Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or to the limited extent required to achieve the purposes of, this MSA, nor disclose to any third party (except as required by law or to such party's attorneys, accountants and other advisors as reasonably necessary), any Confidential Information of the other party. Each party will take reasonable precautions to protect the confidentiality of the Confidential Information of the other party that are at least as stringent as it takes to protect its own Confidential Information.
  - 3.1.2. Exceptions. Information will not be deemed Confidential Information if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this MSA by the receiving party; or (iv) is independently developed by the receiving party without use of or reference to the Confidential Information of the disclosing party. The receiving party may disclose Confidential Information pursuant to the requirements of a governmental agency or by operation

of law, provided that it gives the disclosing party reasonable prior written notice sufficient to permit the disclosing party to contest such disclosure.

3.2. Intellectual Property.

3.2.1. Ownership. This MSA does not transfer to Customer any Company Technology, and all right, title and interest in and to Company Technology will remain the sole property of the Company. Except for the rights expressly granted herein, this MSA does not transfer to Company any Customer Technology, and all right, title and interest in and to Customer Technology will remain solely with Customer. Company and Customer each agrees that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets of the other party.

3.2.2. General Skills and Knowledge. Notwithstanding anything to the contrary in this MSA, Company is not prohibited or enjoined at any time from utilizing any skills or knowledge of a general nature created by Company during the course of providing the Services, including, without limitation, information publicly known or available or that could reasonably be acquired in similar work performed for another customer of Company.

3.3. License Grants.

3.3.1. By Company. Company agrees that, if in the course of accessing and using the Services, it is necessary for Customer to use certain items of Company Technology, then Customer is hereby granted a limited, nonexclusive, personal, royalty-free license, during the term of this MSA, to use the Company Technology solely for purposes of accessing and using the Services. Customer shall have no right to use the Company Technology for any purpose other than accessing and using the Services in accordance with the terms of this MSA.

3.3.2. By Customer. Customer agrees that if, in the course of performing the Services, it is necessary for Company to access Customer Equipment and use Customer Technology, then Company is hereby granted a limited, nonexclusive, personal, royalty-free license, during the term of this MSA, to use the Customer Technology solely for the purposes of delivering the Services to Customer. Company shall have no right to use the Customer Technology for any purpose other than providing the Services.

4. **Inventions Agreement**

4.1. Inventions Agreement. The rights of the parties in any patentable invention conceived or first actually reduced to practice by any party during the term of this Agreement, in the course of such party's work under the Agreement, shall be governed by the following provisions:

4.1.1. Unilateral Inventions: If the invention is exclusively that of one or more of the employees of such party, no right title, or license in the invention shall pass to any other party. The party taking the exclusive title to such invention shall be responsible for the costs of preparing, filing and prosecuting any resulting patent applications, and for reporting the invention to the Government as required by the Patent Rights clause of the Prime Contract.

4.1.2. Joint Inventions: An Invention Addendum must be added to this agreement prior to any joint invention. That Invention Addendum will specify each party's rights to any invention prior to development of that invention. If an invention is jointly that of both parties to this Agreement, then both parties shall share title to the invention (a "Joint Invention"). The Company shall be responsible for preparing, filing and prosecuting any resulting patent application, but cost of such applications shall be borne by each party pro rata share as defined in the Invention Addendum. The Company shall be responsible for reporting the invention to the Agency, while each participating party shall furnish all information required for the filing/prosecution of the patent application and the reporting of the invention to the Agency as required by the Patent Rights clause of the Prime Contract.

4.1.3. Royalties: Each party shall share a pro rata share as defined in the Invention Addendum, undivided title interest in all royalties and other benefits that flow from any Joint Invention as well as in all pending patent applications, patents or equivalents for any Joint Invention.

4.1.4. Patent Fees: Where a patent application for a Joint Invention is filed in which requires the payment of annual taxes of annuities on patent applications or patents, the party that files the patent application shall, prior to filing, request the other party to indicate whether it will agree to pay pro rata share of such annual taxes or annuities. If, within sixty days of receiving such request, the non-filing party fails to assume in writing the obligation to pay its proportionate share of payments, within sixty (60) days of demand, it shall forthwith forfeit to the other party, its share of the title interest to such pending patent application or patent, subject to the retention of a royalty-free, nonexclusive, non-assignable license to make, use, and sell the invention.

5. **Company Representations and Warranties**

5.1. Authorities and Performance of Company. Company warrants that (i) it has the legal right to enter into this MSA and perform its obligations hereunder, (ii) the performance of its obligations and delivery of the Services will not violate any applicable U.S. laws or regulations or cause a breach of any MSA's with any third parties, and (iii) it will perform the Services in a manner consistent with industry standards. In the event of a breach of the warranties set forth in Section 5.1, Customer's sole remedy is termination of this MSA pursuant to Section 9, provided that Section 1.2.3 shall not apply to such termination.

5.2. Service Level Warranty. Company does not warranty that Services will meet the Customer's expectations or requirements. The entire risk as to the quality and performance is with Customer. Except as otherwise specified in this MSA, Company provides its Services "AS IS" and without warranty of any kind. The parties agree that (i) the limited warranties set forth in this section are the sole and exclusive warranties provided by each party, and (ii) each party disclaims all other warranties, express or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose, relating to this MSA, performance or inability to perform under this MSA, the content, and each party's computing and distribution system. If any provisions of this agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this agreement and shall not affect the validity and enforceability of any remaining provisions.

5.3. Disclaimer of Third Party Actions. Company does not and cannot control the flow of data within the general Internet or any of the major search engines (e.g., Google, Bing, Yahoo, etc.) Such flow depends in large part on the controls and guidelines of search engines and other Internet properties provided or controlled by other third parties. At times, actions or omissions of such search engines or third parties can impair or disrupt Customer's ranking and digital presence online. Although Company will use commercially reasonable efforts to take actions it deems appropriate to remedy and avoid such events, Company cannot guarantee that such events will not occur. Accordingly, except to the extent of the express warranties set forth in any attached Schedule, Company disclaims any and all liability resulting from, or related to, such events.

5.4. Customer Acknowledgments. Company has no control over the policies of search engines or directories with respect to the type of sites and/or content that they accept now or in the future. Customer's web site(s) may be excluded from any search engine or directory at any time at the sole discretion of the search engine or directory entity. Company will resubmit those pages that have been dropped from the index. Some search engines and directories may take as long as two (2) to four (4) months, and in some cases longer, after submission to list Customer's web site(s). Occasionally, search engines and directories will stop accepting submissions for an indefinite period of time. Occasionally, search engines and directories will drop listings for no apparent or predictable reason. Often, listings will "reappear" without any additional submissions. Should the listing not reappear, Company will re-submit the web site(s) based on the current policies of the search engine or directory in question.

## 6. Customer Obligations

### 6.1. Warranties of Customer.

6.1.1. General. Customer represents to Company and warrants that (i) it has the legal right and authority, and will continue to own or maintain the legal right and authority, during the term of this MSA to use the Services; (ii) the performance of its obligations and use of the Services (by Customer, its customers and users) will not violate any applicable laws, regulations or the AUP or cause a breach of any MSA's with any third parties or unreasonably interfere with use of the services offered by the Company to third parties; (iii) Customer represents to Company and unconditionally guarantees that any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to Company are owned by Customer, or that Customer has permission from the rightful owner to use each of these elements, and will hold harmless, protect, and defend Company and its subcontractors from any claim or suit arising from the use of such elements furnished by Customer; (iv) Customer guarantees any elements of text, graphics, photos, designs, trademarks, or other artwork provided to Company for inclusion on the website above are owned by Customer, or that Customer has received permission from the rightful owner(s) to use each of the elements, and will hold harmless, protect, and permission from the rightful owner(s) to use each of the elements, and will hold harmless, protect, and defend Company and its subcontractors from any liability or suit arising from the use of such elements; and (v) From time to time governments enact laws and levy taxes and tariffs affecting Internet electronic commerce. Customer agrees and assumes sole responsible for complying with such laws, taxes, and tariffs, and will hold harmless, protect, and defend Company and its subcontractors from any claim, suit, penalty, tax, or tariff arising from Customer's exercise of Internet electronic commerce.

6.1.2. Breach of Warranties. In the event of any breach of any of the foregoing warranties, in addition to any other remedies available at law or in equity, Company will have the right, in its sole reasonable discretion, to suspend immediately any of the Services if deemed reasonably necessary by Company to prevent harm to Company or its business. If practicable and depending on the nature of the breach, Company may provide notice and opportunity to cure. Once cured, Company will promptly restore the Services.

6.2. Compliance with Law and AUP. Customer shall use the Services only for lawful purposes and in accordance with this MSA. Customer will comply at all times with all applicable laws and regulations and the AUP, as updated by Company from time to time. The AUP is incorporated herein and made a part hereof by this reference. Company may change the AUP by posting such changes to the Company web site located at [http://inteveo.com/page\\_termsfuse.html](http://inteveo.com/page_termsfuse.html). Customer agrees that it has received, read, and understands the current version of the AUP. Customer shall comply with AUP terms and, in the event of a failure to comply, Customer will be subject to immediate suspension or termination of Services. Notwithstanding any suspension or termination of the Service due to violation of this Section 5.2, Customer shall continue to pay its committed minimum monthly recurring fees and all other Service Charges as set forth on all SOW(s). Customer acknowledges that it is the sole responsibility of Customer to ensure all usage of Company's services complies with all applicable laws and regulations and the AUP.

6.3. Restrictions on Use of Services. Customer shall not, without the prior written consent of Company (which may be withheld in its sole discretion), resell the Services, in whole or in part, to any third parties. Reselling of the Service(s) is defined as any sale of any part of the Service(s) to a third party that requires Company to invoice a third party directly. Customers providing access to the Service(s) to Customer's clients in whole or in part and subsequently invoicing the client(s) directly are not considered reselling the Service(s).

### 6.4. Company Supplied Equipment.

6.4.1. Delivery and Term. On or prior to the Service Activation Date, if required, Company shall deliver to Customer, at the designated Customer Location, any contractually obligated Company Supplied Equipment. Customer shall have the right to use the Company Supplied Equipment for the Initial Term set forth in the SOW and any additional period agreed to by Company as defined in this MSA. Customer shall not remove or alter in any manner any Company Supplied Equipment without the prior written consent of Company. Customer will not remove, alter or destroy any labels on the Company Supplied Equipment stating that it is the property of Company and shall allow reasonable access to Company Supplied Equipment for Company employees and/or designated authorized agents. The Customer must provide prior written notice and the written approval from Company before moving any Company Supplied Equipment from the address listed on the applicable SOW and Hand Receipt that accompanies the Company Supplied Equipment.

6.4.2. Title. The Company Supplied Equipment shall always remain the sole property of Company. Customer shall have no right or interest in or to the Company Supplied Equipment except as expressly provided in this MSA and the applicable SOW and shall possess the Company Supplied Equipment subject and subordinate to the rights of Company. Customer will, at its own expense, keep the Company Supplied Equipment free and clear from any liens or encumbrances of any kind (except any caused by Company) and will indemnify and hold Company harmless from and against any loss or expense caused by Customer's failure to do so. Customer shall give Company immediate written notice of any attachment or judicial process affecting the Company Supplied Equipment or Company's ownership.

6.4.3. Use, Maintenance and Repair. Customer will, at its own expense, keep the Company Supplied Equipment in good repair, appearance and condition, other than normal wear and tear. Customer shall use the Company Supplied Equipment in a commercially reasonable manner. Any repair of the Company Supplied Equipment caused by normal use and not due to negligence of the Customer will be the sole responsibility of Company. The Customer will be responsible for any reasonable assistance in this process (i.e. boxing equipment up and shipping it to Company or providing access to the equipment for Company or third party personnel).

## 7. Insurance

7.1. Company Minimum Levels. If Company delivers to Customer any contractually obligated Company Supplied Equipment, then Company agrees to keep in full force and effect during the term of this MSA: (i) comprehensive general liability insurance in an amount not less than \$1 million per occurrence for bodily injury and property damage; and (ii) workers' compensation insurance in an amount not less than that required by applicable law. Company agrees that it will ensure and be solely responsible for ensuring that its contractors and subcontractors obtain and maintain the same types and amount of coverage's as required of Company herein.

7.2. Customer Minimum Levels. In order to provide Customers with Company Supplied Equipment at Customer Location, Company is required by its insurers to ensure that Customer maintains adequate insurance coverage. Customer agrees to keep in full force and effect during the term of this MSA: (i) comprehensive general liability insurance in an amount not less than \$1 million per occurrence for bodily injury and property damage; and (ii) workers compensation insurance in an amount not less than that required by applicable law. Customer agrees that it will ensure and be solely responsible for ensuring that its agents (including contractors and subcontractors) obtain and maintain the same types and amount of coverage's as required of Customer herein.

7.3. Certificate of Insurance. Prior to installation of any Customer Equipment in the Customer Location, Customer will deliver to Company, certificates of insurance which evidence the minimum levels of insurance set forth above and property insurance on the Company Supplied Equipment, if any, and cause its insurance provider(s) to name Company as an additional insured and notify Company in writing of the effective date thereof.

## 8. Limitations of Liability

- 8.1. In no event shall Company be liable to Customer for any indirect, special, exemplary, or consequential damages, including any implied warranty of merchantability or fitness for a particular purpose or implied warranties arising from course of dealing or course of performance, lost profits, whether or not foreseeable or alleged to be based on breach of warranty, contract, negligence or strict liability, arising under this MSA, loss of data, or any performance under this MSA, even if such party has been advised of the possibility of such damages and notwithstanding the failure of essential purpose of any limited remedy provided herein. There shall be no refunds. Company makes no warranty of any kind, where expressed or implied, with regards to any third party products, third party content or any software, equipment, or hardware obtained from third parties.
- 8.2. Consequential Damages Waiver. Except for a breach of Section 3.1 ("Confidential Information"), in no event will Company be liable or responsible to Customer for any special, incidental, punitive, indirect, exemplary, or consequential damages, including, but not limited to, lost revenue, lost profits, replacement goods, loss of technology, rights or services, loss of data, or interruption or loss of use of service or equipment, even if advised of the possibility of such damages, whether arising under theory of contract, tort (including negligence), strict liability or otherwise.
- 8.3. Basis of the Bargain; Failure of Essential Purpose. The parties acknowledge that Company has set its prices and entered into this MSA in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the parties. The parties agree that the limitations and exclusions of liability and disclaimers specified in this MSA will survive and apply even if found to have failed of their essential purpose.

## 9. Indemnification

- 9.1. Indemnification. Customer shall indemnify and hold harmless Company (and its subsidiaries, affiliates, officers, agents, co-branders or other partners, and employees) from any and all claims, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees and all related costs and expenses) incurred by Company as a result of any claim, judgment, or adjudication against Company related to or arising from (a) any photographs, illustrations, graphics, audio clips, video clips, text, data or any other information, content, display, or material (whether written, graphic, sound, or otherwise) provided by Customer to Company (the "Customer Content"), or (b) a claim that Company's use of the Customer Content infringes the intellectual property rights of a third party. To qualify for such defense and payment, Company must: (i) give Customer prompt written notice of a claim; and (ii) allow Customer to control, and fully cooperate with Customer in, the defense and all related negotiations.
- 9.2. Notice. Indemnification obligations hereunder shall be subject to: (i) receiving prompt written notice of the existence of any Action; (ii) Company being able to, at its option, control the defense of such Action; (iii) permitting the Company to participate in the defense of any Action; and (iv) receiving full cooperation of the Customer in the defense thereof.

## 10. Termination

- 10.1. Termination for Cause. Either party may terminate this MSA if: (i) the other party breaches any material term or condition of this MSA and fails to cure such breach within thirty (30) calendar days after receipt of written notice of the same, except in the case of Customer's failure to pay fees, which must be cured within five (5) calendar days after receipt of written notice from Company; (ii) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) calendar days of filing; or (iii) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) calendar days of filing. If Customer terminates this MSA for cause for any of the reasons set forth in this Section 10.1, then Section 1.2.3 shall not apply to such termination.
- 10.2. Effect of Termination. Upon the effective date of termination of this MSA:
- 10.2.1. Company will immediately cease providing the Services; and
- 10.2.2. any and all payment obligations of Customer under this MSA for Services provided through the date of termination will immediately become due. If Customer fails to pay such amounts on the date due, then Company shall impose the late fees set forth in Section 2.4; and
- 10.2.3. within thirty (30) calendar days of such termination, each party will return all Confidential Information of the other party in its possession and will not make or retain any copies of such Confidential Information, except as required to comply with any applicable legal or accounting record keeping requirement; and
- 10.2.4. Customer will remove, package and ship (shipping charges will be paid by Company and such removal and packaging to be undertaken in a commercially reasonable manner) all Company Supplied Equipment back to Company within fifteen (15) calendar days of effective date of termination. If Customer fails to do so, Company will have the right to (a) charge the Customer and the Customer will pay the fair market value of the Company Supplied Equipment; or (b) recover and take possession of such Equipment, and for this purpose may enter any premises of Customer where such equipment is located during normal working hours to remove Company Supplied Equipment. Customer will promptly surrender the Company Supplied Equipment to Company in as good order and condition as originally delivered, reasonable wear and tear excepted.
- 10.3. Survival. The following provisions will survive any expiration or termination of the MSA: Sections 1.2.3, 2.1, 2.3, 3.1, 3.2, 7, 8, 9, and 10.

## 11. Miscellaneous Provisions

- 11.1. Force Majeure. Except for Customer's obligation to make payments to Company, neither party will be liable for any failure or delay in its performance under this MSA due to any cause beyond its reasonable control, including acts of war, acts of God, terrorism, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the actions or omissions of Company), provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If Company is unable to provide Service(s) for a period of thirty (30) consecutive calendar days as a result of a continuing force majeure event, Customer may cancel the Services.
- 11.2. Marketing. Customer agrees that, during the term of this MSA, Company may publicly refer to Customer, orally and in writing, as a customer of Company. Customer will allow Company complete discretion to use Customer's name in a listing of new, representative, or continuing customers in a press release, on its website, or in other marketing materials or dissemination of information. Customer will permit a watermark of Company's logo on the DIVE™ encoded-content or DIVE Player. Customer will agree to cooperate in joint marketing activities or in issuing a joint press release at the request of Company, subject to prior written consent and approval of the form and substance of such materials by Company.
- 11.3. Government Regulations. Customer will not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. in connection with this MSA without first complying with all export control laws and regulations which may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Customer operates or does business.

- 11.4. Non-Solicitation. During the term of this MSA and continuing through the first anniversary of the termination of this MSA, Customer agrees that it will not, and will ensure that its affiliates do not, directly or indirectly, solicit or attempt to solicit for employment any persons employed by Company or contracted by Company to provide Services to Customer.
- 11.5. No Third Party Beneficiaries. Company and Customer agree that, except as otherwise expressly provided in this MSA, there shall be no third party beneficiaries to this MSA, including but not limited to the insurance providers for either party or the customers of Customer.
- 11.6. Governing Law; Dispute Resolution. This MSA is made under and will be governed by and construed in accordance with the laws of the State of Texas (except that body of law controlling conflicts of law) and specifically excluding from application to this MSA that law known as the United Nations Convention on the International Sale of Goods. Customer and Company agree to make a good-faith effort to resolve any disagreement arising out of, or in connection with, this MSA through negotiation. Should the parties fail to resolve any such disagreement within ten (10) days, any controversy or claim arising out of or relating to this MSA, including, without limitation, the interpretation or breach thereof, shall be submitted by either party to arbitration in Travis County, Texas and in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be conducted by one arbitrator, who shall be (a) selected in the sole discretion of the American Arbitration Association administrator and (b) a licensed attorney with at least ten (10) years experience in the practice of law and at least five (5) years experience in the negotiation of technology contracts or litigation of technology disputes. The arbitrator shall have the power to enter any award that could be entered by a judge of the state courts of Texas sitting without a jury, and only such power, except that the arbitrator shall not have the power to award punitive damages, treble damages, or any other damages which are not compensatory, even if permitted under the laws of the State of Texas or any other applicable law. The arbitrator must issue his or her resolution of any dispute within thirty (30) days of the date the dispute is submitted for arbitration. The written decision of the arbitrator shall be final and binding and enforceable in any court having jurisdiction over the parties and the subject matter of the arbitration. Each party shall bear its own expenses, but the parties will share equally the expenses of the arbitrator. Notwithstanding the foregoing, this Section shall not preclude either party from seeking temporary, provisional, or injunctive relief from any court.
- 11.7. Severability; Waiver. If any provision of this MSA is held by a tribunal of competent jurisdiction to be contrary to the law, then the remaining provisions of this MSA will remain in full force and effect. The waiver of any breach or default of this MSA will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.
- 11.8. Assignment. Customer may not assign this MSA or its rights and obligations thereunder to any third party without the prior express written approval of Company. Company reserves the right to assign this MSA in whole or part as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets. Company may also delegate the performance of certain Services to third parties, including Company's wholly owned subsidiaries, provided Company controls the delivery of such Services to Customer and remains responsible to Customer for the delivery of such Services. This MSA will bind and inure to the benefit of each party's successors and permitted assigns.
- 11.9. Notice. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by email, confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party as listed on the SOW or at such other address as may hereafter be furnished in writing by either party to the other party. Such notice will be deemed to have been given as of the date it is delivered, mailed, emailed, faxed or sent, whichever is earlier.
- 11.10. Relationship of Parties. Company and Customer are independent contractors and this MSA will not establish any relationship of partnership, joint venture, employment, franchise or agency between Company and Customer. Except as specifically set forth in Section 2.1, neither Company nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. Company, in rendering performance under this MSA, shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership.
- 11.11. No Inference Against Author. No provision of this MSA shall be interpreted against any Party because such Party or its legal representative drafted such provision.
- 11.11. Entire MSA; Counterparts; Originals. This MSA, including all Appendices, Attachments, documents, Exhibits, and Schedules incorporated herein by reference, constitutes the complete and exclusive MSA between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and MSA's, written and oral, regarding such subject matter. Any additional or different terms in any purchase order or other response by Customer shall be deemed objected to by Company without need of further notice of objection, and shall be of no effect or in any way binding upon Company. This MSA may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. Once signed by both parties, any reproduction of this MSA made by reliable means (e.g., photocopy, facsimile) is considered an original. This MSA may be changed only by a written document signed by authorized representatives of Company and Customer in accordance with this Section 11.11.

## 12. Read and Understood

- 12.1. Customer and Company acknowledge that they each have read and understands this MSA and agrees to be bound by its terms and conditions.

*<Remainder of page left blank>*

**APPENDIX A**  
**DEFINITIONS**

1. **DIVE™** means Company's Dynamic Interactive Video Experience, a fully-interactive universal rich multimedia and application delivery platform. DIVE employs the most innovative video transport and compression technology designed to electronically transform, publish, and manage existing content into rich multimedia and deliver it seamlessly and securely online.
2. **Business Optimization Solution** means combination of professional services bundled into one turnkey solution designed to enhance online presence. This typically includes Strategic Planning, Search Engine Optimization (SEO), Creative Designs, Social Media Marketing, Email Marketing, Video Production, Public Relations, and other services.
3. **AUP** means Company's acceptable use policy as found at [http://inteveo.com/page\\_termsofuse.html](http://inteveo.com/page_termsofuse.html) governing Customer's use of Services, including, but not limited to, online conduct, and the obligations of Customer and any subordinated users.
4. **Content Delivery Network** means the Company's telecommunications infrastructure network partner that provides a distributed content provisioning model to accommodate very high levels of content access, or access throughout the world.
5. **Company Point of Presence, Company POP, or POP** means a single defined location within the Content Delivery Network used in the provision of the Services.
6. **Company Supplied Equipment** means the hardware, software and other tangible equipment and intangible computer code contained therein provided by Company for use by Customer as per the terms of this MSA.
7. **Company Technology** means Company's proprietary technology, including the Services, tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, trade secrets and any related intellectual property rights throughout the world (whether owned by Company or licensed to Company from a third party) and also including any derivatives, improvements, enhancements or extensions of Company Technology conceived, reduced to practice, or developed during the term of this MSA by either party that are not uniquely applicable to Customer.
8. **Content Distribution Centers** means any of the facilities within the Content Delivery Network used by Company to provide the Distribution Services to Customer.
9. **Customer Equipment** means the Customer's computer hardware, not including stored data, and other tangible equipment.
10. **Customer Location** means the physical location designated by the Customer.
11. **Customer Technology** means Customer's proprietary technology, including Customer's Internet operations design, content, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), trade secrets and any related intellectual property rights throughout the world (whether owned by Customer or licensed to Customer from a third party) and also including any derivatives, improvements, enhancements or extensions of Customer Technology conceived, reduced to practice, or developed, during the term of this MSA solely by Customer.
12. **Eligible Customer** means any Customer which has purchased Services from the Company.
13. **Initial Term** means the minimum term for which Company will provide the Service to Customer, as indicated on the SOW(s).
14. **Services** means any services performed by Company, or it's Assigned Affiliates, Partners and Subcontractors, including without limitation, designing, programming, developing, encoding, streaming, customizing, hosting, maintenance and technical support. The specific services provided by Company for Customer are described on the applicable SOW.
15. **Service Activation Date** means the later of: (i) the date on which the Company delivers the Services ready for use; or (ii) the date upon which the Customer has requested activation of the Services as specified within the applicable SOW(s).
16. **Service Charge** means the monthly Service fees charged by the Company for any Services excluding any one-time fees.
17. **Bandwidth Fees** means the monthly fees for any Content Delivery Network services and other Internet telecommunications charges that provide Internet delivery of Customer content utilizing the DIVE content delivery platform.
18. **Added Value**
19. **End User** is the final purchaser or licensee that: (i) has acquired Product and/or Company Services for its own Internal Use and not for resale, remarketing or distribution.
20. **Non-Genuine Products** are any and all products: (i) to which a Mark or other Company trademark or service mark has been affixed without Company's consent; (ii) that do not originate from Company or are produced without the approval of Company; and (iii) are generally produced with the intent to counterfeit or imitate a genuine Inteveo Product or Service.
21. **Encode** shall mean to format electronic data (text, images, video, etc.) according to Company standards for universal media player use or Inteveo DIVE platform.
22. **Streaming Media** means a steady flow, succession, or production of digital media through broadband connection. Media that is consumed (heard or viewed) while it is being delivered, a property of the delivery system rather than the media itself. The distinction is usually applied to media that are distributed and consumed real-time over computer networks
23. **Player** means the Inteveo DIVE multimedia player.
24. **E-Learning** is any electronic format of education or training at any level that can be streamed with the use of Company Products or Services.
25. **Licensing Fee** is the cost associated with the delivery of any module of the Inteveo DIVE platform to an End User. Licensing fees are assessed upon activation of service and additionally on an annual cycle following the activation date.
27. **Standard Video** is a video format that is encoded by Company and plays through a DIVE player without interruption by the End User.
28. **Interactive Video** is a video format that is encoded by Company and plays through a DIVE player, in which the End User can manipulate the timing of the video by use of forward and reverse controls on the player.
29. **Revenue Share** shall mean the agreed upon percentage share of gross revenues that are paid to Company in lieu of up-front service fees.
30. **Gross Revenues** are those revenues received by Customer that are directly related to the DIVE-encoded Content, including but not limited to, Pay Per View Fees, monthly user subscription fees, advertising fees associated with Content utilization, revenues from integrated DIVE e-commerce module, etc.
31. **Customized Services** shall mean any work effort commissioned to Company by Customer that does not fall into the scope of contracted Services including but not limited to design, content creation, programming, development, customization, application, database, player, API, website design; mobile application, consultation, DRM services, e-commerce integration, video search, e-learning development, scripting, video production, post-production, and any other newly added services.
32. **Services Request Document** is a document provided by Customer outlining all scope, specifications, interfaces, integration requirements, deliverables, timeframes, and other expectations so that Company can clearly understand desired outcome of requested Customized Services.

**ATTACHMENT A**  
**STATEMENT OF WORK (SOW)**