

OMNITURE SERVICE ORDER MASTER TERMS (2006 v1)

These Service Order Master Terms (2006 v.1) are entered into by and between **Omniture, Inc.**, a Delaware corporation with a principal place of business at 550 East Timpanogos Circle, Orem, Utah 84097 (“Omniture”), and the entity (“Customer”) identified in the Service Order (as defined below) which expressly incorporates these Service Order Master Terms (2006 v.1) (hereinafter the “Service Order Master Terms” or the “Agreement”). The terms of this Agreement will apply to the Measurement Services (as defined below) and any other services provided by Omniture under this Agreement. The Service Order shall control over any conflicting terms in this Agreement.

1. Definitions. The capitalized terms will have the meanings set forth below.

“Affiliate” means any entity in which Customer owns or controls, directly or indirectly, a majority of the outstanding shares, securities or interests of such entity, and any parent company that owns or controls a majority of the outstanding shares, securities, or interests of Customer.

“Code” means HTML tags or other source code provided by Omniture to Customer, upon the terms and conditions of this Agreement, to enable Customer to tag the Customer Site(s) for use in connection with the Measurement Services.

“Customer Data” means any and all data and information collected by Omniture from the Customer Site(s), or from Customer’s search engine providers, in the course of providing the Measurement Services, including any and all data about traffic to the Customer Sites contained in the Reports(s).

“Customer Site(s)” mean(s) the current and future website(s) owned and operated by Customer, any and all web pages of such Customer Site(s), and any and all web pages that may be hosted or operated by a third party that contain Customer’s brand or logo, and have a look and feel that is consistent with Customer’s web pages and appear to be owned and operated by Customer or on behalf of Customer. Customer Site(s) shall also include any internet services applications that contain the Code for purposes of receiving the Measurement Services.

“Effective Date” means the applicable date(s), as set forth in the Service Order(s), upon which the Parties agree that this Agreement and the applicable Service Order(s) are effective.

“Fees” shall have the meaning ascribed to them in Section 4.

“Implementation Commencement Date” means the date on which Omniture begins performance of the Implementation Services.

“Implementation Period” means the period of time between the Implementation Commencement Date and the Service Commencement Date, during which Implementation Services are provided to Customer.

“Implementation Services” means performance of services in support of implementing the Code on the Customer Site(s), as further described on the Service Order.

“Measurement Services” means the website tracking, recording, reporting, or keyword bid management services provided by Omniture as part of Omniture’s enterprise solution as further described in the Services Description available at www.omniture.com/terms/customer/services_description.pdf. The Measurement Services purchased by Customer pursuant to this Agreement are listed on the applicable Service Order(s).

“Omniture University Services” means any additional training services provided to Customer, as described in the applicable Service Order and in accordance with the price terms contained therein.

“Party” or “Parties” mean(s) either Omniture or Customer, or both, as appropriate.

“Professional Services” means any additional services provided to Customer, as described in an applicable Professional Services Request (“PSR”) or statement of work (“SOW”) and in accordance with the price terms contained therein.

“PSR Deliverables” means all data and information collected by Omniture from the Customer Site(s) or Customer’s search providers in the course of performing the Professional Services, including any and all data about traffic to the Customer Sites contained within the Reports (“PSR Deliverables”).

“Report(s)” means all graphical or numerical displays of Customer Data generated that contain Omniture’s proprietary design, look, and feel.

“Service Commencement Date” means the applicable date, as set forth in the Service Order, upon which the Implementation Period is complete, and upon which the Fees, as described in the Services Order(s), shall begin to accrue.

“Service Order” means the service order form(s) describing the Fees to be paid by Customer or its Affiliates for receipt of the Measurement Services, the Implementation Services, Omniture University Services, or the Professional Services.

“User” means only employees of Customer or its Affiliates who are authorized and designated by Customer to access the Reports using a unique password and login ID, as provided exclusively by Omniture.

2. Services.

2.1 Measurement Services. A description of the features and functionalities of the various Measurement Services that Customer may purchase can be found at www.omniture.com/terms/customer/services_description.pdf. It is specifically acknowledged and agreed by the Parties that any and all costs for implementation and use of the Measurement Services are identified in their entirety within the applicable Service Order. No additional Implementation Services, Professional Services or related technical services that may be requested by Customer shall be performed by Omniture without executing a PSR or SOW as outlined under Section 2.2 below.

2.2 Professional Services. Customer may propose changes to the scope of the Measurement Services or to the specific system requirements related to Customer’s use of the Measurement Services by submitting a written PSR or SOW to Omniture. In response, Omniture will provide Customer with an estimate of the anticipated costs and delivery schedule necessary to achieve the requested

changes or customizations. The PSR or SOW will not be final and binding until signed by both Parties.

2.3 Telecommunications Requirements. Customer shall be responsible for maintaining at least the minimum required Internet requirements in order to access and use the Measurement Services, as described at www.omniture.com/terms/customer/browser.pdf.

2.4 Implementation Services, Updated Code. Any unused hours of Implementation Services shall expire as of the Service Commencement Date, and shall not carry over, or be valid for any other purpose, past the Service Commencement Date. In order to improve the Measurement Services or as otherwise required by its third party vendors, Omniture may provide updated Code to Customer, which Customer agrees to install within thirty (30) days of its receipt of such Code.

3. License.

3.1 Grant. Subject to the terms of this Agreement, Omniture grants to Customer, during the Initial Term and any Renewal Term, the nontransferable, nonexclusive, worldwide right to permit Users to (i) use the Code solely on the Customer Sites for purposes of receiving the Measurement Services; (ii) use and access the Measurement Services solely to track and analyze traffic on the Customer Sites or to support management of Bid Reviews, as applicable; (iii) use any materials provided or disclosed to Customer by Omniture in the course of performing the Measurement Services or other services provided by Omniture (the "Omniture Materials") and (iv) subject to Section 5, access the Reports. The license grant in this section is provided solely in connection with the Measurement Services and for Customer's own internal business operations.

3.2 Restrictions. Customer agrees not to (i) sell, rent, lease, host, sublicense, assign, transfer, or outsource access to the Measurement Services, the Code, Omniture Materials, or Reports; (ii) make the Measurement Services, the Code, Reports, or the Omniture Materials available to any third party other than a User; (iii) remove, obscure or alter any proprietary notices associated with the Measurement Services, Code, Reports, or Omniture Materials; (iv) use the Measurement Services, Code, Reports, or Omniture Materials, or allow them to be used, in any manner or for any purpose other than as expressly permitted herein; (v) disassemble, decompile, or reverse engineer the Code or Reports or any other technology supporting the Measurement Services; (vi) exceed the maximum number of Users licenses, if applicable to a particular Measurement Service, that Customer has purchased for that particular Measurement Service, as evidenced in Service Order(s); (vii) use the Measurement Services, Code, or Reports in connection with measurement or monitoring of unsolicited email (i.e., SPAM); or (viii) copy, use, reproduce, distribute, republish, download, display, post or transmit in any form or by any means the Measurement Service, Code, Omniture Materials or Reports, except as expressly stated herein. Omniture reserves all rights not expressly granted to Customer herein and Customer shall not limit Omniture in any way from developing, using, licensing, distributing, modifying, or otherwise freely exploiting the Code, Measurement Services, or Omniture Materials, or any modifications, enhancements, improvements or derivative works thereof, or permitting third parties from so doing.

3.3 Licenses from Customer. Customer grants to Omniture the non-exclusive, worldwide right to use, copy, transmit and display Customer Data or the PSR Deliverables solely to the extent necessary to provide the Measurement Services, Professional Services, and Reports to Customer.

4. Payment.

4.1 Fees and Expenses. Customer will pay all fees described in the Service Order(s) which reference this Agreement, in accordance with the payment terms found therein ("Fees"). If Customer has a good faith belief that it has been incorrectly billed by Omniture, Customer must contact Omniture in writing, within thirty (30) days of the applicable invoice, specifying the amount of the adjustment or credit requested. Unless Customer has notified Omniture of such dispute about the Fees owed, payments not received by Omniture by the due date shall bear interest at the lesser of a monthly rate of one and one half percent (1.5%) or the maximum rate allowable by law. Customer will reimburse Omniture for all reasonable costs and expenses incurred (including reasonable attorneys' fees) in collecting any overdue amounts. Customer will reimburse Omniture for any reasonable and documented expenses incurred by Omniture in performance of Omniture University Services or Professional Services (as may be requested in a writing signed by the Customer). Unless otherwise agreed to in writing, all such expenses incurred by Omniture, will be billed to Customer at actual cost.

4.2 Taxes. All Fees payable under this Agreement are net amounts and are payable in full, without any deduction for taxes or duties of any kind. Customer shall pay any and all national, state, or local excise, sales, use, value-added, or other taxes or duties imposed in respect of the rights granted under this Agreement.

5. Ownership. Customer owns all right, title and interest in and to (i) all Customer Data, and (ii) PSR Deliverables, subject only to Omniture's underlying intellectual property rights in, and to, any graphical design and look and feel contained in the Reports. Nothing in this Section 5 shall be considered a grant to Customer of any right, title or interest in or to Omniture's underlying rights in the Omniture Materials, the Code, the Measurement Services, such as, but not limited to, the functionality expressed in the Reports, data collection functionalities, supporting software, systems architecture and any and all related technologies, and any graphical design and look and feel contained in the Reports. Omniture and its third party suppliers retain all right, title and interest in and to all improvements, modifications, suggestions, enhancement requests, feedback, recommendations or derivative works thereof and any intellectual property rights therein.

6. Confidentiality; Publicity; Privacy.

6.1 Confidential Information. Each party may have access to information that is confidential to the other party ("Confidential Information"). Confidential Information means any information that is clearly identified in writing as confidential at the time of disclosure, and any written or oral information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential. Such Confidential Information includes, but is not limited to, Customer Data, PSR Deliverables, product proposals, technological processes, product forecasts, trade secrets, pre-publication patent applications, product designs, pricing information and rate cards, software designs, hardware or system designs, technology specifications, source code, object code, graphic designs, report templates, proprietary financial information, systems architecture, and systems functionalities. Confidential Information also includes all copies, summaries and extracts of any Confidential Information.

A party's Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was rightfully in the other party's possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is rightfully disclosed to the other party by a third party

without restriction on disclosure; (iv) is independently developed by the other party without use of or reference to the other party's Confidential Information.

The parties agree to use all reasonable care to prevent the disclosure of the other party's Confidential Information to any third party. Notwithstanding the foregoing, Customer may disclose Omniture's Confidential Information to a User or an Affiliate who is not a direct competitor of Omniture, and Omniture may disclose Customer's Confidential Information to its third party suppliers solely to the extent necessary to perform Omniture's obligations under this Agreement; provided that in either case, the disclosing party is required to have a non-disclosure agreement in place with such third parties that protects Confidential Information against disclosure in a manner no less protective than this Agreement.

This Section 6.1 will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; provided, however, that a party who has been subpoenaed or otherwise compelled by a valid law or court order to disclose Confidential Information (the "responding party") shall first have given sufficient and prompt written notice to the other party of the receipt of any subpoena or other request for such disclosure; and shall have made a reasonable effort to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued. Notwithstanding the foregoing obligation of the responding party, nothing in this Section 6.1 shall limit or restrict the ability of the other party to act on its own behalf and at its own expense to prevent or limit the required disclosure of Confidential Information.

6.2 Publicity. With Customer's prior consent, Omniture may identify Customer on Omniture's customer lists and in its marketing and advertising materials, and announce that Customer is a customer of the Measurement Services, and reproduce Customer's company name, logo, trademark, trade name, service mark, or other commercial designations in connection therewith. With Customer's prior consent, Omniture may develop and publish a case study based upon Customer's use of the Measurement Services. Such prior consent shall not be required for Omniture to disclose Customer's name and the value of this Agreement in connection with any filings or disclosures required by Omniture under applicable state or federal securities laws.

6.3 Privacy.

6.3 (i) The parties hereby agree that they shall comply with all applicable federal and state consumer privacy laws, rules, and regulations. Customer acknowledges and agrees that Omniture is processing the Customer Data on behalf of Customer and that, if required by applicable data protection legislation, Customer will inform third parties of the processing of Customer Data and ensure that any required third parties have given their consent to such processing.

6.3 (ii) Customer hereby agrees that the Customer Site(s), and any other application containing the Code, will feature a privacy policy, linked conspicuously from the Customer Site(s)' home page, that (A) discloses Customer's privacy practices, (B) identifies the collection (via cookies and web beacons) and use of information gathered in connection with third party services, such as Omniture's Measurement Services; and (C) if Customer collects, or plans to collect, personally identifiable information on the Customer Site(s) and transmits, or plans to transmit, such information to Omniture, contains a statement specifically disclosing such practices (including transmission to a third party service provider) and offers site visitors

an opportunity to opt out of (or opt-in, if applicable law requires) such use by third parties, such as Omniture.

Omniture reserves the right to request a change in Customer's privacy disclosures as mandated by law (including industry self-regulation or practice), upon written notice to Customer, and Customer agrees to cooperate in posting such revised disclosure within fifteen (15) days following receipt of such notice, or in otherwise posting such other disclosure as may be mutually agreeable to the parties within fifteen (15) days following receipt of such notice. Omniture shall have the right to terminate this Agreement on five (5) days prior written notice to Customer if Customer breaches this 6.3 (ii) and fails to remedy such breach within said five (5) day period.

6.3 (iii) Customer shall be responsible for creating and maintaining the necessary P3P privacy policies (i.e., the privacy policy that is provided with the cookie) to enable Customer to use, and Omniture to provide, the Measurement Services, and for ensuring that P3P privacy policy is consistent Customer's privacy policy posted on the Customer Sites. Omniture shall not be liable in any way for any inaccuracies in such P3P policies or liability resulting therefrom. Further, if said P3P statement commits Customer to providing visitors to Customer Site(s) with an opt-out (or opt-in) mechanism, Customer will maintain such an opt-out (opt-in) mechanism for use in conjunction with the Customer Site(s).

7. Term and Termination.

7.1 Term. Unless otherwise terminated as provided in this Section 7.2, this Agreement will commence on the Effective Date and will continue for the duration of the initial term described in the Service Order (the "Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew for successive periods of twelve (12) months (each a "Renewal Term"), unless Customer provides written notice to Omniture of its intent not to renew at least thirty (30) days prior to expiration of the Initial Term or any then current Renewal Term.

7.2 Termination or Suspension.

7.2 (i) If either Party breaches Section 6 of this Agreement, the non-breaching Party may terminate this Agreement immediately upon written notice to the breaching Party.

7.2 (ii) If either Party breaches any other material obligation under this Agreement, the non-breaching party may provide written notice to the breaching party indicating (A) the nature and basis of such breach, with reference to the applicable provisions of this Agreement; and (B) the non-breaching Party's intention to terminate this Agreement. If the breach described in the previous sentence is not cured within thirty (30) days after written notice thereof, the non-breaching Party may terminate this Agreement immediately upon written notice to the breaching party.

7.2 (iii) Subject to Customer's good faith dispute of Fees billed under Section 4.1, Omniture shall have the right to (i) suspend access to the online user reporting interface to the Measurement Services to Customer if Customer fails to pay fees invoiced by Omniture within five (5) days following the payment due date and (ii) suspend performance of the Measurement Services to Customer if Customer fails to pay fees invoiced by Omniture within thirty (30) days following the payment due date. If Customer breaches Section 3 of this Agreement, Omniture may immediately suspend the Measurement Services and terminate this Agreement at its discretion within five (5) days of such uncured breach.

7.3 Effect of Termination; Survival. Upon any termination or expiration of this Agreement, (i) the rights and licenses granted to Customer under this Agreement will automatically terminate; (ii) all amounts due to Omniture under this Agreement will become immediately payable; and (iii) Customer will, at its expense, delete all copies of the Code from the Customer Sites (including any handheld or offline applications) and remove all references and links to the Measurement Services from the Customer Site(s). Upon expiration or earlier termination of this Agreement, pursuant to Section 7 herein, and for a period of ten (10) days thereafter, Omniture will make available to Customer, upon Customer's written request, the Customer Data in the form and format then available within Omniture's online reporting interface (available at www.omniture.com). Any continued use of the Code and/or Measurement Services after termination or expiration shall be charged at the lesser of the stated overusage rate or Omniture's then current list overusage rate. Further, if Customer does not remove the Code and references and/or links to the Measurement Services in accordance with this Section 7 within thirty (30) days of termination or expiration of this Agreement, Customer will be liable for any reasonable associated legal fees and collection expenses incurred by Omniture in recovering amounts due. Only Sections 1, 4, 5, 6, 7.3, 8, 9, 10 and 11 will survive termination or expiration of this Agreement.

8. Warranties; Disclaimers.

8.1 Warranties. Omniture warrants that (i) the Code and Measurement Services will operate in substantial conformance with Services Description available at www.omniture.com/terms/customer/services_description.pdf and (ii) the Measurement Services provided under this Agreement (including, without limitation, all Professional Services) will be performed in a professional and workman-like manner.

8.2 Disclaimer of Warranty. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 8.1, ALL CODE, MATERIALS AND SERVICES ARE PROVIDED AS-IS AND OMNITURE AND ITS THIRD PARTY SUPPLIERS HEREBY DISCLAIM AND MAKE NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO REPRESENTATIONS, GUARANTEES, OR WARRANTIES OF MERCHANTABILITY, ACCURACY, QUALITY OF SERVICE OR RESULTS, AVAILABILITY, QUIET ENJOYMENT, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES OF ITS THIRD PARTY PROVIDERS. OMNITURE IS NOT RESPONSIBLE FOR ANY DAMAGE, LOSS, USE OR MISUSE OF CUSTOMER'S LOGIN ID'S OR UNAUTHORIZED ACCESS TO PASSWORDS. CUSTOMER ACKNOWLEDGES THAT NEITHER OMNITURE NOR ITS THIRD PARTY PROVIDERS CONTROLS THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE MEASUREMENT SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES, INCLUDING SEARCH ENGINES. OMNITURE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

9. Indemnifications.

9.1 Omniture's Duty to Indemnify. Omniture shall indemnify Customer against all costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) ("Damages") awarded against Customer by a court of competent jurisdiction, or agreed to in a written settlement agreement signed by Omniture, arising out of a

claim or lawsuit by a third party (a "Claim") to the extent such Claim alleges that the Measurement Services or Code infringe any patent, copyright, or trademark or misappropriate a trade secret of a third party. Omniture shall have no indemnification obligation or other liability for any Claim of infringement arising from (a) use of the Measurement Services or Code other than in accordance with this Agreement; (b) the combination of the Measurement Services or Code with any other products, services, or materials if the Code or Measurement Services would not be infringing without such combination, or (c) any third party products, services, or materials.

If Customer's use of the Code or Measurement Services under the terms of this Agreement is enjoined or Omniture determines that such use may be enjoined, then Omniture may, at its sole option and expense, either (i) procure for Customer a license to continue using the Code or Measurement Services in accordance with the terms of this Agreement; (ii) replace or modify the allegedly infringing Code or Measurement Services to avoid the infringement; or (iii) terminate the Measurement Services or the Code, and refund any prepaid unused fees as of the date of termination.

9.2 Customer's Duty to Indemnify. Customer agrees to indemnify Omniture (and its directors, employees and agents) harmless from and against all Damages awarded against Omniture or agreed to in a written settlement agreement signed by Customer, arising out of a Claim that Customer's actions in connection with the Measurement Services violate Customer's privacy policy or any third party's rights of privacy, or violate any privacy laws.

9.3 General Indemnity. Each party (an "Indemnitor") shall defend and indemnify the other party and its employees, officers, directors and agents (the "Indemnitee") against all damages for bodily injury, death, or damage to real property or tangible physical equipment, proximately caused by the Indemnitor in the course of performing this Agreement.

9.4 Conditions to Indemnification. The obligations set forth in Section 9 shall apply only if (i) the indemnified party notifies the indemnifying party in writing of any potential or actual claim within thirty (30) days of learning of or receiving the same; (ii) the indemnified party provides the indemnifying party with reasonable assistance requested by the indemnifying party, at the indemnifying party's expense, for the defense and settlement, if applicable, of any claim; and (iii) the indemnified party provides the indemnifying party with the exclusive right to control and the authority to settle any claim.

9.5 Sole and Exclusive Remedies. THE RIGHTS AND OBLIGATIONS IN THIS SECTION 9 ARE THE INDEMNIFYING PARTY'S SOLE AND EXCLUSIVE OBLIGATIONS, AND THE INDEMNIFIED PARTY'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO ANY SUCH CLAIMS.

10. Limitation of Liability. OMNITURE WILL NOT BE RESPONSIBLE FOR ANY MALFUNCTIONS, ERRORS, INACCURACIES, OR IMPROPER RESULTS ATTRIBUTABLE TO CUSTOMER'S INCORRECT, UNAUTHORIZED, OR UNSUPPORTED USE OF ANY CODE OR MEASUREMENT SERVICES. EXCEPT IN CONNECTION WITH A BREACH OF SECTION 6.1, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES, OR FOR ANY COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES, ANY LOSS OF USE, DATA OR PROFITS, OR ANY INTERRUPTION OF BUSINESS DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED, AND WHETHER OR NOT IT HAS BEEN ADVISED

OF THE POSSIBILITY OF SUCH DAMAGE. THE AGGREGATE LIABILITY OF OMNITURE WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNTS PAID BY CUSTOMER (OR DUE FROM CUSTOMER) WITHIN THE TWELVE (12) MONTHS PRIOR TO SUCH CLAIM. THE FOREGOING LIMITATIONS AND EXCLUSIONS OF LIABILITY WILL APPLY REGARDLESS OF THE FORM, OR SOURCE, OF ACTION AND REGARDLESS OF ANY OBLIGATION STATED UNDER THIS AGREEMENT.

11. General Provisions.

11.1 Assignment. Neither Party may assign this Agreement, except to assign all of its rights and obligations under this Agreement to an Affiliate or successor-in-interest as a result of a merger or consolidation, or in connection with the sale or transfer of all or substantially all of its business or assets to which this Agreement relates. Subject to the above restrictions on assignment, this Agreement shall inure to the benefit of and bind the successors and assigns of the Parties. Any attempted assignment in derogation of this Section 11.1 will be null and void.

11.2 Governing Law, Venue, Jury Trial. This Agreement will be governed by and construed in accordance with the laws of the state of Utah, without regard to or application of conflicts of law rules or principles. In the event that a dispute arises with respect to the terms of this Agreement, the Parties agree that the exclusive and sole venue for resolution shall be a court of competent jurisdiction within the state of Utah, and the Parties agree to submit to the jurisdiction of the same. The Parties specifically waive any right to trial by jury in any court with respect to any contractual, tortious, or statutory claim, counterclaim, or cross-claim against the other arising out of or connected in any way to this Agreement, because the Parties hereto, both of whom are represented by counsel, believe that the complex commercial and professional aspects of their dealings with one another make a jury determination neither desirable nor appropriate.

11.3 Force Majeure. Neither Party shall be liable for any default or delay in the performance of its obligations under this Agreement (except for any payment obligations) if such default or delay results from causes beyond its reasonable control, including but not limited to power outages or failures of third party service providers.

11.4 Injunctive Relief. Actual or threatened breach of Sections 3, 5 or 6 may cause immediate, irreparable harm that would be difficult to calculate and could not be remedied by the payment of damages alone. Accordingly, either Party will be entitled to seek preliminary and permanent injunctive relief and other equitable relief for any such breach.

11.5 Notice. Omniture may give notice applicable to Omniture's general Measurement Service customer base by means of a general notice on the interface for the Measurement Service and notices specific to Customer by electronic mail to Customer's e-mail address on record in Omniture's account information or by written communication sent by first class mail or pre-paid post to Customer's address on record in Omniture's account information. Customer may give notice to Omniture at any time by letter sent by confirmed facsimile to Omniture's Senior Vice President and Chief Legal Officer, fax number 801-722-0120 or by letter delivered by first class mail or pre-paid post to Omniture at the address set forth above.

11.6 Affiliates. Omniture agrees that Affiliates may place orders under this Agreement for the services provided hereunder by executing a mutually agreeable Service Order. Each Affiliate that signs a Service Order shall be considered Customer as that term is

used in this Agreement and such Service Order and this Agreement, insofar as it relates to any such Service Order, shall be deemed to be a two party agreement between Omniture and such Affiliate; provided, however, that Customer retains ultimate liability for any acts or omissions of such Affiliate.

11.7 Miscellaneous. The Parties expressly agree that they are independent contractors and do not intend for this Agreement to be interpreted as an employment, agency, joint venture or partnership relationship. Neither Party's waiver of the breach of any provision shall constitute a waiver of that provision in that or any other instance. This Agreement may not be modified nor any rights under it waived, in whole or in part, except in writing, signed by the Parties. The terms of this Agreement and any Service Order shall control over any different or additional terms of any purchase order submitted by Customer. Any terms and conditions in a purchase order are void and have no legal effect. This Agreement, including the exhibits and all applicable Service Order(s), contains the entire understanding of the Parties relating to the subject matter and supersedes all prior agreements and contemporaneous understandings, both written and oral, regarding such subject matter. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same Agreement. The Service Order comprises part of, and is subject to the terms and conditions of, this Agreement, as executed between the Parties. In the event that the terms and conditions of the Service Order and the terms of this Agreement are in conflict, the terms of the Service Order shall govern only with respect to the terms found therein. Any capitalized terms not defined in the Service Order shall have the meanings ascribed to them within this Agreement. If any term of this Agreement is held invalid or unenforceable for any reason, the remainder of the provision shall continue in full force and effect, and the Parties shall substitute a valid provision with the same intent and economic effect. This Agreement will be interpreted in accordance with its terms and without any strict construction in favor of or against either Party. This Agreement is made for the benefit of Omniture and Customer, and not for the benefit of any third parties.