



## MASTER SERVICES AGREEMENT

This Master Services Agreement (“**Agreement**”) is between 3seventy Inc. (“**3seventy**”), whose principal place of business is 2224 Walsh Tarlton Lane, Suite 220, Austin, TX, 78746, and the Customer and shall be deemed effective upon the initial execution of an Order Form by Customer and 3seventy (the “**Effective Date**”). All capitalized terms shall have the meaning given to such terms as set forth at the end of this Agreement in the Section below entitled “Definitions.”

**1. Scope of the Agreement and Process.** Subject to the following terms and conditions, 3seventy shall use commercially reasonable efforts to provide the Services to Customer in accordance with each Order Form agreed to by the parties from time to time. The Order Form shall set forth the Services to be provided to Customer, the pricing for such Services, and such other terms as the parties may mutually agree. Upon signature of an Order Form by Customer and 3seventy, such Order Form shall automatically be deemed incorporated into and governed by the Terms of this Agreement. In the event of a conflict between the Terms contained in this Agreement and an Order Form, the terms and conditions in the Order Form will prevail. Words and expressions defined in this Agreement shall, unless the context requires otherwise, have the same meanings in the Order Form or any other document in which is incorporated in this Agreement. Changes in any Order Form shall become effective only upon the execution by authorized representatives of both parties of a “Change Order”, the form and substance of which shall be mutually agreed to by the parties.

### 2. Services.

#### 2.1 General Terms

**2.1.1 Mobile Marketing Association Guidelines.** The Services are subject to the applicable voluntary “U.S. Consumer Best Practices” provided by the Mobile Marketing Association (the “**User Guidelines**”). The latest document containing the User Guidelines can be found at <http://mmaglobal.com/files/bestpractices.pdf>. The User Guidelines may be updated from time to time and it is the Customer’s responsibility to review the then applicable User Guidelines prior to its use of the Services. Customer shall cooperate in all respects with 3seventy in order to ensure compliance with the User Guidelines, including without limitation any and all marketing materials published by Customer in connection with the Services. Customer’s failure to comply with the User Guidelines shall be deemed a material breach of this Agreement pursuant to Section 4.2(ii) and to the extent such breach is not cured as set forth in Section 4.2(ii), 3seventy reserves the right to suspend or terminate the Service to the extent necessary to comply with the User Guidelines or other applicable law. 3seventy’s account management Services are available to manage Customer’s compliance requirements with the User Guidelines as an optional value added Service that may be set forth in the Order Form.

**2.1.2 Reservation of Rights.** If a Network Operator changes the Network Operator Conditions and/or the technical standards for the delivery of Services, 3seventy reserves the right to modify the Terms of this Agreement (the “**Modified Terms**”) accordingly, and following such written notice to Customer notifying the Customer of such Modified Terms, this Agreement, as modified by the Modified Terms shall govern the Customer’s continued use of the Services.

**2.1.3 Short Codes.** Short Codes used to deliver the Services for a Project may be obtained by 3seventy for Customer, if requested by Customer pursuant to the applicable Order Form. If 3seventy agrees to provide Customer with access to a Short Code that is shared with other 3seventy customers, Customer acknowledges that there is a probability that multiple Subscribers could be receiving messages or opting-in to multiple keywords within that Short Code. Customer acknowledges that the shared Short Codes used to deliver Projects remain at all times the property of 3seventy and are subject to the applicable terms and conditions imposed by the entity authorized to administer such Short Codes.

#### 2.2 Access and Connectivity.

**2.2.1 No Privacy.** Customer acknowledges that Messages will be transmitted over the 3seventy Platform in an unencrypted format. To the extent permitted by law, 3seventy may intercept and disclose any Messages transmitted over the 3seventy Platform to the extent reasonably necessary to protect 3seventy’s rights or property, including without limitation, to protect the operation of the 3seventy’s Platform, or to comply with any legal, regulatory, governmental, or Network Operator inquiries or



requirements.

**2.2.2 Subscriber Opt-In/Opt-Out Requirements.** Customer will send Messages only to Subscribers who have consented or “opted-in” to receiving the quantity, frequency and types of Messages specified in the applicable Order Form and who have been informed of their rights to and the process for cancelling receipt or “opting-out” of receiving future Messages. Customer will use the proper opt-in language as stated in the User Guidelines on all of its marketing materials and any location in which the Subscriber can opt-in by providing their cell phone number through a web form and/or by texting a Short Code.

**2.2.3 Customer Content.** Customer agrees that 3seventy exercises no control whatsoever over the Content and Messages and is a passive conduit in transmitting and handling Content and Messages. The Customer shall bear sole responsibility for (i) the Content transmitted using the Services; and (ii) the acts, omissions or breaches of Subscribers with respect to the use of the Services, Projects and the Messages, including but not limited to the Content. Customer will not use the Services or permit the Services to be used to transmit “**Inappropriate Content**” as defined and set forth in the User Guidelines.

**2.2.4 Compliance Audit.** Customer will provide such information as 3seventy may request, within 24 hours of such request: (i) to confirm Customer’s compliance with its obligations under this Agreement or an Order Form or (ii) in response to any request made by any legal, regulatory, governmental authority, the Network Operator and/or the CTIA.

### **3. Financial Terms.**

**3.1 Fees and Payment Terms.** Customer will pay 3seventy the monthly fees set forth in the applicable Order Form within 15 days of receiving an invoice from 3seventy. All payments will be made in U.S. dollars. Overdue payments will accrue interest at a rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum allowed under applicable law. To the extent a Network Operator and or an aggregator levies unforeseen charges or tariffs on 3seventy or the Services, then upon 30 days written notice to Customer, 3seventy may modify the fees set forth in an Order Form affected by such change to account for such new charges.

**3.2 Taxes.** Customer is responsible for any legally required sales, value-added, use, or other tax on goods or services provided pursuant to this Agreement or any Order Form, even if no such taxes are specified in the Order Form, provided that 3seventy shall be responsible for taxes based on its net income.

**3.3 Expenses.** Customer-requested travel will be billed at actual expenses. 3seventy will utilize its best judgment in booking economical travel arrangements. Travel receipts will be attached to travel invoices submitted to Customer.

### **4. Term, Suspension and Termination.**

**4.1 Term.** The Agreement will commence on the Effective Date and will continue for as long as an Order Form is in effect.

**4.2 Termination for Cause.** Either party may terminate this Agreement or an Order Form immediately upon written notice if the other party (i) becomes insolvent, ceases doing business in the regular course, files a petition for bankruptcy or is subject to the filing of an involuntary petition for bankruptcy which is not rescinded or dismissed within a period of sixty (60) days; or (ii) fails to cure a material breach of any Term of this Agreement or an Order Form within fifteen (15) days of written notice specifying such breach. 3seventy may terminate in whole or in part this Agreement or an Order Form immediately on written notice at any time (i) upon any termination of a Network Operator, third-party subcontractor, vendor, or interconnected carrier relationship that is not within 3seventy’s control or (ii) upon any legal, regulatory, governmental, or Network Operator prohibition or limitation affecting the Services.

**4.3 Effect of Termination.** Upon the termination of this Agreement or an Order Form, (i) 3seventy will halt the Customer’s access to the 3seventy Platform, but if such termination relates only to a specific Order Form, then access shall be terminated only with respect to such terminated Order Form (it being acknowledged that access to the 3seventy Platform shall continue to the extent there is another Order Form outstanding); and (ii) all rights granted under this Agreement will terminate immediately,



unless only an Order Form is being terminated, and in such case, this Agreement shall survive with respect to any other outstanding Order Forms. Termination shall not relieve Customer's obligation to pay all fees owed under any Order Form that has been terminated. 3seventy will not be liable to Customer or any third party for any damages, expenses or losses incurred as a consequence of termination of this Agreement or an Order Form by 3seventy as provided in this Section 4. The provisions of Sections 2.2.2 ("Subscriber Opt-in/Opt-out Requirements"), 2.2.4 ("Compliance Audit"), 3 ("Financial Terms"), 4 ("Term, Suspension and Termination"), 5 ("Ownership"), 7.2 ("Disclaimer"), 8 ("Limitation of Liability"), 9 ("Indemnification"), 10 ("Confidentiality"), 12 ("Miscellaneous") and 13 ("Definitions") will survive termination of this Agreement. Upon termination of this Agreement and all Order Forms, Customer shall cease using, and shall return or destroy within ten (10) days, all Confidential Information of 3seventy.

**4.4 Suspension of Services.** 3seventy may suspend, in whole or part, with or without notice, the Services or any Project (including the right to suspend a Customer's account from sending or receiving messages) if: (i) Customer uses the Services in contravention of the Terms; (ii) such action is necessary to address emergency network repairs or threats or actual breach of network security; (iii) upon termination of a Network Operator, third-party subcontractor, vendor, or interconnected carrier relationship with 3seventy; (iv) upon any legal, regulatory, governmental or Network Operator prohibition or limitation affecting the Services; or (v) any payment due to 3seventy is outstanding for ten days after the due date for payment. 3seventy will provide written notice as soon as reasonably practicable of any such suspension. 3seventy will not be liable to Customer or any third party for any damages, expenses or losses incurred as a consequence of any such suspension. 3seventy will promptly restore the suspended Services and/or Project after the condition producing the suspension has been rectified to 3seventy's reasonable satisfaction.

**5. Ownership.** The intellectual property rights in all software, information, technology or data whatsoever supplied or made available by either party to the other party under this Agreement will remain the property of the supplying party. Except as expressly set forth in this Agreement, neither party grants to the other any license, sublicense or other right in or to such intellectual property rights.

**6. Limited Use of Data.** In performance of the Services, 3seventy may obtain, receive, store and collect data or information, including device-specific data (collectively, the "Data"). Customer hereby grants 3seventy a license to aggregate the Data for use in an anonymous manner solely in support of 3seventy's validation and verification activities and as required to be disclosed to aggregators and mobile carriers.

## **7. Warranties; Disclaimer of Warranty.**

**7.1 Legal and Regulatory Compliance.** Customer warrants and undertakes that it will (i) use the Services for lawful purposes and comply with the User Guidelines and all legal, regulatory, governmental and/or Network Operator requirements relating to the Content, Projects, Messages or Services; (ii) provide promptly any information relating to the Content, Projects, Messages or Services reasonably requested by 3seventy, any Network Operator, and/or any legal, regulatory, governmental, or statutory authority; and (iii) immediately comply with requirements as may be issued from time to time by any applicable Network Operator and/or legal, regulatory, governmental or statutory authority in relation to the Content, Projects, Messages or Services and will fully cooperate with 3seventy's request for assistance in conforming the Services and Projects to any new requirements. Customer will immediately inform 3seventy if any third party makes or threatens any claim or action against Customer, or 3seventy, or any other party relating to any Content, Project, Message or Services.

**7.2 DISCLAIMER.** THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. 3SEVENTY DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. 3SEVENTY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.



8. LIMITATION OF LIABILITY. EXCEPT FOR THE SPECIFIC REMEDIES EXPRESSLY IDENTIFIED IN THIS AGREEMENT, 3SEVENTY'S SOLE LIABILITY (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY IN TORT OR BY STATUTE OR OTHERWISE) FOR ANY CLAIM IN ANY MANNER RELATED TO THIS AGREEMENT OR ANY ORDER FORM, SHALL BE THE PAYMENT OF DIRECT DAMAGES AND SUCH DAMAGES SHALL IN NO EVENT IN THE AGGREGATE EXCEED THE LESSER OF (X) \$20,000 OR (Y) THE FEES RECEIVED BY 3SEVENTY FROM CUSTOMER (I) WITH RESPECT TO THE WORK INVOLVED UNDER THE APPLICABLE ORDER FORM RELATED TO SUCH CLAIM AND (II) IN THE 12 MONTH PERIOD PRIOR TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PROFITS, LOST BUSINESS OR LOST SAVINGS, ANTICIPATED OR OTHERWISE (EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE).

### 9. Indemnification.

**9.1 By 3seventy.** -If Customer promptly notifies 3seventy in writing of a third party claim against Customer that any of the Services infringe such third party's patent, 3seventy will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Customer. 3seventy will not indemnify Customer, however, if the claim of infringement is caused by (1) Customer's misuse or modification of the Services; (2) Customer's failure to use corrections or enhancements made available by 3seventy; (3) Customer's use of the Services in combination with any product or information not owned or developed by 3seventy; (4) Customer's distribution, marketing or use for the benefit of third parties of the Services; or (5) information, direction, specification or materials provided by Customer or any third party not under 3seventy's direction. If any Service is, or in 3seventy's opinion is likely to be, held to be infringing, 3seventy shall at its expense and option either (a) procure the right for Customer to continue using the Service, (b) replace it with a non-infringing equivalent, (c) modify it to make it non-infringing, or (d) direct the cessation of Services and refund to Customer the fees paid for such Services less a reasonable amount for Customer's use of the Services up to the time of the refund. The foregoing remedies constitute Customer's sole and exclusive remedies and 3seventy's entire liability with respect to infringement

**9.2 By Customer.** Customer shall, at its own expense, indemnify, defend and hold harmless 3seventy from any and all claims and damages arising from Customer's gross negligence or willful misconduct, from Customer's failure to comply with the User Guidelines, or from actions taken by 3seventy at the direction of Customer.

**9.3 Conditions.** To receive the foregoing indemnities, the party seeking indemnification must promptly notify the other in writing of a claim or suit and provide (i) reasonable cooperation (at the indemnifying party's expense) and (ii) full authority to defend or settle the claim or suit; provided however the indemnifying party shall not settle the claim without the indemnified party's written consent to the extent such settlement requires the indemnified party to admit liability or subjects the indemnified party to a monetary or equitable remedy. The indemnifying party shall have no obligation to indemnify the indemnified party under any settlement made by the indemnified party with respect to such claim being indemnified without the indemnifying party's written consent.

**10. Confidentiality.** During the term of this Agreement, the parties may provide Confidential Information to each other to further the business objectives of this Agreement. A party receiving Confidential Information (the "Recipient") shall hold the Confidential Information in strict confidence, provided that the Confidential Information may be disclosed to such of Recipient's employees and independent contractors who have a need to know for the purpose of fulfilling Recipient's obligations under this Agreement. Without prior written consent from the party disclosing the Confidential Information (the "Discloser"), Recipient shall not, and shall direct such individuals not to, use the Confidential Information other than to perform Recipient's obligations hereunder, or disclose the Confidential Information in whole or in part, except to the extent compelled by law. Recipient shall employ all reasonable steps to protect the Confidential Information from unauthorized or inadvertent disclosure or use, including, without limitation, all steps that Recipient takes to protect Recipient's own confidential information. It is further understood and agreed that money damages would not be a sufficient remedy for any breach by Recipient of Recipient's obligations under this Section and that Discloser shall be entitled to specific injunctive relief as a remedy for any such breach.



Such remedy shall not be deemed to be the exclusive remedy for the breach of obligations under this Section, but shall be in addition to all other available legal or equitable remedies. For purposes of this Agreement, "Confidential Information" shall mean all non-public information, whether oral, written or other tangible form that Discloser designates as being confidential or which, under the circumstances surrounding disclosure, the Recipient knows or has reason to know should be treated as confidential. Confidential Information does not include information (a) which is independently developed by the Recipient or its affiliated company or lawfully received free of restriction from another source having the right to so furnish such information; or (b) after it has become generally available to the public without breach of the Agreement by the Recipient or its affiliates; or (c) which at the time of disclosure to the Recipient was known to such party or its affiliates free of restriction as evidenced by documentation in such party's possession; or (d) which the Discloser agrees in writing is free of such restrictions; or (e) which is required pursuant to order of any court or by regulatory demand, provided that the Recipient shall advise the Discloser of the request for disclosure and shall take reasonable steps to attempt to preserve the confidentiality of the information.

**11. Marketing.** Customer shall, following the Effective Date, permit 3seventy to use Customer's logo in 3seventy customer listings (including on its website).

**12. Miscellaneous. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas excluding application of its conflicts of law principles.** If any action is brought on account of any breach of or to enforce or interpret any of the terms or conditions of this Agreement, the prevailing party will be entitled to recover from the other, as part of the prevailing party's costs, reasonable attorneys' fees. Customer may not assign or otherwise transfer this Agreement to any person or entity without the 3seventy's prior written consent; provided however Customer may assign all or any of its rights under this Agreement without 3seventy's consent in the case of merger, acquisition or sale of assets. All notices, including notices of address change, required to be sent hereunder will be in writing and will be deemed to have been given when mailed by first class mail to the applicable address listed in the relevant Service Order Form (or, with respect to the Company, to the address set forth in the introductory provision). If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force. This Agreement, including all applicable Order Forms, constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party.

**13. Definitions.** Words and expressions used in this Agreement will have the meanings defined below.

**"Customer"** means the entity executing an Order Form, including any person 3seventy reasonably believes to act with the Customer's authority;

**"Message"** means a digital message comprising numerals, text, images, music, games and/or applications in a form for delivery via Short Message Service (SMS), Wireless Application Protocol (WAP), Multimedia Messaging Service (MMS) technology, or other technology, protocols or standards used to transmit mobile digital content or information;

**"Network Operator"** means an organization that provides carrier services (network services) in the wired or wireless arena;

**"Network Operator Conditions"** means the terms and conditions governing the use of a Network Operator's carrier services;

**"Order Form"** means a document which contains a description of, and pricing for, the Services (including any special terms) executed by both parties (it being acknowledged that for purposes of this Agreement, a Statement of Work entered into by the Customer and 3seventy is synonymous with the term Order Form as used in this Agreement);

**"Premium Message"** means a Message or other transaction for which the Subscriber is billed a surcharge over the normal rate for sending or receiving a Message;

**"Professional Services"** means any professional services set forth in an Order Form. By way of example, Professional Services may include mobile strategy work, creative and customization work, development work related to mobile websites landing pages and applications;

**"Project"** means marketing, advertising, promotional or informational program or initiative, or other project, conducted by Customer utilizing the Services;

**"Service(s)"** means the delivery of Messages and related services (including any Professional Services) as may be more



particularly described in the applicable Order Forms;

**“Short Code”** means a set of digits, generally five or six digits long, used to enable Subscribers to send text messages, to access various Services and/or to participate in a Project;

**“Subscriber”** means a person who has entered into an agreement with a Network Operator that allows such subscriber to access one of the systems or networks operated by such Network Operator;

**“Territory”** means the countries where Customer is authorized to provide Projects to Subscribers and that the parties mutually designate in an Order Form;

**“Terms”** means the terms and conditions of this Agreement as revised from time to time in accordance with Section 2.1.2 (“Reservation of Rights”);

**“3seventy Platform”** means the digital wireless networks, server(s), hardware, software and/or any other equipment that 3seventy uses, at its sole discretion, in connection with the provision of the Services.