



SERVICE LEVEL AGREEMENTS

Services

Service Level Agreement

This Service Level Agreement ("SLA") shall apply to all Services and shall be effective between Opus Interactive, Inc. ("Opus") and the Customer identified in the Master Customer Agreement to which this SLA is attached. This SLA shall be subject to the terms and conditions of the Master Customer Agreement, to which this SLA is attached as an Exhibit and is hereto expressly incorporated by reference. All capitalized terms shall have the meaning set forth in the Master Customer Agreement unless separately defined in this SLA. The Master Customer Agreement, together with this Exhibit and all other Exhibits attached thereto, constitutes the "Agreement."

- 1 Services.** Opus warrants to the Customer that it will provide the Services according to the service guarantees in this SLA which are applicable to the specific Service.
 - 1.1 Opus agrees to provide to Customer the managed data center hosting services ("Services") described on Exhibit A to the Master Customer Agreement.
 - 1.2 The fees for Services shall be as set forth on Exhibit A to the Master Customer Agreement. Fees shall be firm only if stated to be firm for a given period in Exhibit A to the Master Customer Agreement. Thereafter, Customer will pay Opus's standard fees for Services, which fees shall be subject to change by Opus upon thirty (30) days written notice; provided, that Opus shall have no right, without Customer's approval, to increase fees to Customer for Services in excess of fifteen percent (15%) during any twelve month period through the initial term of this SLA.
 - 1.3 The Services and the manner in which Opus provides such Services are further described in Opus's description for Services provided in Exhibit A to the Master Customer Agreement. Opus will provide the Services substantially as set forth in the Exhibit A to the Master Customer Agreement, as modified from time to time. The Services description will be subject to the Agreement, but Opus retains the unilateral right to update and modify the Service description as it deems appropriate. Opus will notify Customer in the event that the Service description is changed or updated materially.
- 2 Accessibility Service Level Warranty.**
 - 2.1 **Service Level Warranty.** Opus warrants to Customer that it will be able to access Customer's Managed Data (defined below) at all hours and on all days during the term of this SLA on a 24 x 7 basis with an uptime guarantee of 100%, excluding outages resulting from: (i) interruption due to scheduled maintenance, alteration, or implementation; (ii) negligence or other conduct of Customer or its agents, including a

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failure or malfunction resulting from applications or services provided by Customer or its agents; (iii) a shut down due to circumstances reasonably believed by Opus to be a significant threat to the normal operation of the Services, the Opus facility, or access to or integrity of customer data (e.g., hacker or virus attack); (iv) failure or malfunction of any equipment or services not provided by Opus; (v) failure of Customer to purchase minimum redundant systems necessary to support this warranty; or (vi) other circumstances beyond the control of Opus; (Sections 2.1(i) to (vi) together defined as "Other Outages" for purposes of this SLA).

- 2.2 **Definition of Managed Data.** Managed Data shall mean non-corrupt and properly formatted data hosted by Opus on a fully managed server and accessed by Customer using Opus's standard access tool via an Opus managed network, where the server, tool, and network are provided as part of Opus's Services and Customer's configuration includes minimum redundant systems recommended by Opus as well as sufficient base or burst capacity to support Customer's actual traffic flow.
- 2.3 **Definition of Service Outage.** A Service Outage under this SLA shall be deemed to have occurred whenever the Customer's solution environment: (i) fails to respond to an ICMP ping; (ii) fails to respond to HTTP or database requests; (iii) cannot be accessed through the Customer's remote access administration interface; and (iv) Opus is unable to transmit to or receive information from the data center for more than 4.3 consecutive minutes because Opus failed to provide access to the Managed Data. This is our Opus Interactive 100% uptime guarantee.
- 2.4 **Credit for Service Outages.** In the event Customer experiences a Service Outage and Opus determines in its reasonable judgment that such Service Outage was caused by Opus's failure to provide the Services and was not due to Other Outages, Opus shall, subject to the remaining terms of this SLA, credit Customer's account the pro-rata hosting fees of 5% of the monthly recurring charge for each Service Outage in a billing period; provided, however, that the maximum total credit will not exceed more than one-half of the Customer's total invoice for any given billing period. Credits will be applied only to the month in which the applicable outage event or service incident occurred, and Customers will not be eligible to receive credits for any service components provided free of charge during the billing period or if Customer's account is more than thirty (30) days past due at the time of the Service Outage.
- 2.5 **Scheduled Maintenance.**

No outage credit shall be given for outages resulting from Opus scheduled maintenance activities.

All scheduled maintenance activities that could impact multiple customers simultaneously will be performed on Thursdays from 12:01am until 3:00am and Sundays from 12:01am until 3:00am (all times in Pacific Time). Opus will provide the Customer

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with advanced notification of the maintenance activity. If unscheduled maintenance is required due to an emergency situation such as DOS attack or security breach, Opus may perform maintenance without prior announcement. If possible, an email will be sent to Customers at least twenty-four (24) hours in advance to indicate such emergency maintenance is required. It is Customer's responsibility to keep such contact information and email addresses current.

- 2.6 **Request for Outage Credit.** To receive the credit described above, Customer must notify Opus within five (5) business days of the Service Outage for which Customer reasonably believes it is eligible to receive a credit. Failure to comply with this requirement will forfeit Customer's right to receive a credit.

3 Escalation Procedures

Escalation procedures to notify Opus of an Outage and minimize the length of such outage are provided in Attachment 1 to Exhibit B – Escalation Procedure.

4 Warranty Limitations.

- 4.1 **Disclaimer of Actions Caused by and/or Under the Control of Third Parties.** OPUS MAKES NO REPRESENTATIONS AND DISCLAIMS ALL WARRANTIES AND LIABILITY REGARDING THE DATA, PRODUCTS, OR SERVICES OF ANY THIRD PARTY, INCLUDING THE PROVIDERS OF ELECTRICAL OR TELECOMMUNICATIONS PRODUCTS OR SERVICES. CUSTOMER ACKNOWLEDGES THAT AN INTERRUPTION IN THE MANAGED HOSTING SERVICES DUE TO CIRCUMSTANCES BEYOND THE CONTROL OF OPUS, SUCH AS A FAILURE OF ELECTRICAL OR TELECOMMUNICATIONS SYSTEMS, SHALL NOT BE CONSIDERED A SERVICE OUTAGE FOR PURPOSES OF ANY WARRANTY PROVIDED IN THIS SLA.
- 4.2 **Sole Remedies.** CUSTOMER'S SOLE REMEDY IN THE EVENT OF ANY SERVICE OUTAGE, INTERRUPTION OF SERVICES DUE TO OUTAGES, OR OTHER BREACH OF WARRANTY SHALL BE THE OUTAGE CREDIT PROVIDED IN THIS SLA. OPUS AND ITS SUPPLIERS DISCLAIM ANY AND ALL OTHER LIABILITIES OR REMEDIES FOR SUCH OUTAGES, INTERRUPTIONS, OR BREACH OF WARRANTY. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE LIABILITY OF OPUS AND ITS SUPPLIERS ARISING FROM ANY SUCH OUTAGE, INTERRUPTION, OR BREACH OF WARRANTY SHALL BE EXPRESSLY LIMITED AS SET FORTH IN THIS SLA.

5 Term and Termination.

- 5.1 The term of this SLA shall commence on the SLA Effective Date and shall terminate according to the Agreement.
- 5.2 This SLA may be terminated by either party in the event that such party has the right to terminate the Agreement.

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- 5.3 Upon termination of this SLA, Customer shall relinquish use of the internet protocol addresses or address blocks assigned to it by Opus in connection with the Services.
- 6 **Effect of this SLA.** The Services described in this SLA shall be considered Services as defined in the Agreement. This SLA shall be attached to the Master Customer Agreement and shall be subject to all terms and conditions of the Master Customer Agreement; provided, that notwithstanding anything to the contrary in the Master Customer Agreement, in the event of a conflict between the terms of this SLA and the Master Customer Agreement, the terms of this Master Customer Agreement shall prevail.

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