# MASTER SERVICES AGREEMENT

This Marketing Services Agreement (the "Agreement") is made by and between Bobber Marketing LLC ("Contractor") and ("Client") as Referenced in "Scope of Work" and enter into this Agreement under which Contractor will provide services ("Services") as described herein to the Client for a fee

The Contractor and Client agree as follows:

**TERMS OF SERVICE**

**1. Scope of Agreement.**
This Agreement serves as a Marketing services contract between Contractor and Client (and its affiliates) for marketing services and the creation of an email automation program (as defined in the SOW) (the "Services") to be created and implemented by Contractor in accordance with the terms of this Agreement. For purposes of this Agreement, "Affiliate" means any entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or under common control with Client. Attached to this Agreement and incorporated herein as Exhibit "A", is the initial Scope of Work ("SOW") for the Services requested by Client and agreed to be furnished by Contractor. If at any time during the term of this Agreement Client, either verbally or through one or more written work orders, delivery tickets, or other instruments, requests Contractor to perform additional or different Services (other than those specifically set forth on Exhibit "A"), and Contractor agrees to perform such additional Services, each such additional request for Services shall be set forth in a separate SOW, agreed to in writing by the parties hereto, and governed by and subject to the terms and conditions of this Agreement. Agreements or stipulations in any SOW that are contrary to any term of this Agreement shall be void, unless Contractor and Client have expressly agreed in writing that such agreement or stipulation shall supersede the terms of this Agreement. Upon receipt of a mutually agreeable SOW, Contractor shall begin furnishing the Services according to the specifications and requirements of this Agreement and the SOW.

**2. Term and Termination.**
This Agreement commences upon the Effective Date and will continue until the SOW is cancelled in accordance with this Agreement. The term of this Agreement is twelve (12) months from the Effective Date. Provided that neither party has cancelled this Agreement pursuant the terms herein, this Agreement shall automatically renew each subsequent year for a one year term. Client shall only be permitted to terminate this Agreement and/or the services under the SOW without liability for any future charges that have not yet accrued or become due and payable with thirty (30) days prior written notice advising of Client's desire to so terminate. If such written notice of termination is not given in accordance with the 30-day time period specified above, then Client (and its Affiliates) shall be jointly and severally

liable (as applicable) for the amount of any and all recurring monthly charges (including the Fees and Additional costs defined below) under the SOW for a period of 30 days after Contractor's receipt of Clients's written notice of termination. Contractor may terminate this Agreement and/or the SOW if Client fails to pay any amounts due (including the Fees and Additional Costs) in connection with such SOW within forty five (45) after the due date (as defined in the SOW); and/or (b) if Client commits any material breach of this Agreement and fails to cure such breach within twenty (20) days after Contractor gives Client written notice of such breach. Notwithstanding the foregoing, Contractor can cancel this Agreement and the SOW at any time and for any reason with thirty (30) days written notice to Client. Notwithstanding anything contained herein to the contrary, Client agrees to promptly pay Contractor all amounts and charges due and/or accrued under this Agreement and the applicable SOW through any such date of termination (regardless of which party elects such termination) and (if required pursuant to the foregoing) all future recurring charges.

**3. Payment and Delivery.**

Client will pay Contractor all fees and charges due upon receipt of an invoice specifying such amounts due and payable ("Fees"). All Fees payable under this Agreement are exclusive of sales, use, VAT, customs duties, excise, and any other applicable transaction taxes (excluding only taxes based upon the net income of Contractor), which Client will pay to Contractor within fifteen (15) days of receipt of an invoice therefor ("Additional Amounts"). If any payment and amount due is not received when due, interest shall begin to accrue and be payable at the lesser of the maximum rate permitted under applicable law or at the rate of three percent (3%) of such unpaid amount from the date due until paid in full. Client shall pay all expenses, including reasonable attorneys' fees and other costs of collection, incurred by Contractor in enforcing its rights under this Agreement. Client's obligation to pay amounts due for Services (including the Fees and Additional Costs and costs of collection and attorney's fees) and Contractor's right to all such amounts and fees are absolute and unconditional. Client is not entitled to set off or offset any such amounts. The Fees due will be detailed in a SOW. Unless otherwise stated in a SOW, Client will pay or reimburse Contractor for all other third-party reasonable expenses incurred in the performance any SOW. Contractor will submit invoices to Client for such third party fees and expenses either upon completion of the Services, or at stated intervals, at Contractor's election and otherwise in accordance with the SOW pertaining to such fees.

**4. Confidentiality.**

Contractor and Client shall hold the terms of this Agreement and any SOW hereunder confidential. This Section sets out the terms for identification of information which is considered confidential and proprietary by a party (the "Discloser"), and restrictions against use and disclosure of such Confidential Information (defined below) after disclosure to the other party (the "Recipient").

4.1 Definition. The term “Confidential Information” means all proprietary or confidential information that is disclosed to the Recipient by the Discloser, and includes, among other things: (a) any and all information relating to products or services provided by a Discloser, its Client-related and financial information, development and marketing plans, strategies, forecasts, and sales and marketing materials; (b) the Services; and (c) the terms of this Agreement and the SOW. Confidential Information does not include information that Recipient can show: (i) was rightfully in Recipient’s possession without any obligation of confidentiality before receipt from the Discloser; (ii) is or becomes a matter of public knowledge through no fault of Recipient; (iii) is rightfully received by Recipient from a third party without violation of a duty of confidentiality; or (iv) is or was independently developed by or for Recipient.

4.2 Disclosure Restrictions. Recipient may not disclose Confidential Information of Discloser to any third party without the prior written consent of Discloser or as required by law.

**5. Allocation of Risk.**

5.1 Disclaimer of Damages. EXCEPT FOR VIOLATIONS OF SECTION 4, NEITHER PARTY, NOR ITS AFFILIATES, PARTNERS, AGENTS, EMPLOYEES, CONTRACTORS AND/OR LICENSORS, ARE LIABLE TO THE OTHER PARTY, OR ITS AFFILIATES, PARTNERS, AGENTS, EMPLOYEES, CONTRACTORS AND/OR LICENSORS, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES (INCLUDING WITHOUT LIMITATION LOST PROFITS, AND DAMAGE OR LOSS OF USE OF DATA), EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND IRRESPECTIVE OF THE NEGLIGENCE OF EITHER PARTY OR WHETHER SUCH DAMAGES RESULT FROM A CLAIM ARISING UNDER TORT OR CONTRACT LAW.

5.2 Limitation of Liability. EXCEPT FOR violations of SECTION 4, Contractor's LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SOW IS LIMITED TO the GREATER OF THE amount PAID OR PAYABLE by Client for THE APPLICABLE SERVICES. TO THE EXTENT ALLOWED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, COSTS OF DELAY OR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CUSTOMER ACKNOWLEDGES AND AGREES THAT BOBBER MARKETING LLC IS NOT LIABLE FOR CUSTOMERS USE OF OR RELIANCE ON ANY RESULTS OR INFORMATION OBTAINED THROUGH THE SERVICE.

5.3 Indemnity. Client agrees to protect, defend, indemnify and hold harmless Contractor, its officers, directors, partners, employees, contractors, agents, affiliates and/or their respective invitees, and any working interest owner or non-Client for whom Contractor is obligated to perform services, from and against all claims, demands, and causes of action of every kind and character without limit arising out of Client's or Contractors' performance or non-performance under this Agreement or any SOW, EVEN IF CAUSED BY THE NEGLIGENCE OF CONTRACTOR, ITS AGENTS OR EMPLOYEES.

**6. Service-Specific Terms.**

6.1 Limited Warranty. Contractor warrants that the Services performed will be of a quality conforming to generally accepted practices that are standard within the marketing services industry. During the course of providing its Services, Contractor shall rely on the information provided by Client and any discrepancy, miscalculation, or imputation of information based on inaccurate information provided by Client shall not subject Contractor to any liability and shall not allow Client to any remedy therefor. In any event, Client's exclusive remedy and Contractor's entire liability under this limited warranty (other than if due to misinformation or inaccurate information provided by Client or its Affiliate) will be for Contractor to re-perform any non-conforming portion of the Services within a reasonable period of time, or if Contractor cannot remedy the non-conforming portion of the Services during such time period then Contractor shall refund to Client the portion of any fees directly and solely attributable to such non-conforming portion of the Services. This warranty will not apply to the extent Client or its employees or agents have modified any SOW, unless otherwise authorized by Contractor in writing. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6.2 Independent Contractor. Nothing in this Agreement will be constructed to make either party an employer, employee, agent or partner of the other, and this Agreement will not be constructed to create rights, express or implied, on behalf of or for the use of any party other than Contractor and Client. All of the Services performed by Contractor will be performed as an independent contractor. Contractor will perform such Services under the general direction of Client, but Contractor will have sole discretion to determine the manner, method and means of performing such Services subject to the provisions of this Agreement and applicable SOW. Neither party will have any authority to make any contract in the name of or otherwise to bind the other party. Contractor will be responsible for and will pay all unemployment, social security and other payroll taxes, and worker's compensation insurance premiums with respect to Contractor's employees. Client agrees to pay all taxes, licenses, and fees levied or assessed on Client incident to the performance of this Agreement by any governmental agency and unemployment compensation insurance, old age benefits, social security, or any other taxes upon the wages of Client, its agents, employees, and representatives. The Contractors services are not

intended to be exclusive to the Client, and are, in fact, non-exclusive.

6.3 Non-Solicitation. During the term of this Agreement, and for a period of twenty-four (24) months thereafter, Client will not solicit any of Contractor's staff, agents, contractors and/or employees introduced to Client during the term of this Agreement who: (a) performed services under this Agreement, (b) had substantial contact with Client in relation to this Agreement, or (c) Client became aware of due to, or derived from information learned through the performance of, this Agreement.

**7. Miscellaneous Provisions.**

7.1 Severability. Should any provision of this Agreement be invalid or unenforceable, the remainder of the provisions will remain in effect. In the event of a dispute, the prevailing party in any litigation or arbitration will be entitled to recover its attorneys' fees and costs from the other party.

7.2 Assignment. Client may not assign this Agreement or any rights granted in this Agreement to any third party, except with the prior written consent of Contractor.

7.3 No Waivers. Failure of a party to require performance by the other party under this Agreement will not affect the right of such party to require performance in the future. A waiver by a party of any breach of any term of this Agreement will not be constructed as a waiver of any continuing or succeeding breach.

7.4 Force Majeure. Any delay or failure of any party to perform any obligation under this Agreement caused by governmental restrictions, labor disputes, storms or natural disasters, emergency, acts of terrorism, or other causes beyond the reasonable control of the party, will not be deemed a breach of this Agreement and performance of obligations under this Agreement shall be suspended for such time as such Force Majeure event shall continue. This provision does not apply to the payment of monies under this Agreement or any breach of Section 4 or Section 5.

7.5 Entire Agreement. This Agreement, together with each SOW, constitutes the entire agreement between Client and Contractor, and supersedes any prior or contemporaneous negotiations or agreements, whether oral or written, concerning this subject matter. This Agreement, and each SOW, may be modified only in a mutually signed writing between Client and Contractor.

7.6 Dispute Resolution and Governing Law. ALL DISPUTES, CONTROVERSIES OR DIFFERENCES WHICH MAY ARISE OUT OF OR IN CONNECTION WITH OR IN RELATION TO THIS AGREEMENT OR WHICH CANNOT BE SETTLED AMICABLY, SHALL BE BROUGHT AND HELD IN CHICAGO, ILLINOIS, UNLESS MUTUALLY AGREED UPON BY THE PARTIES TO BE HELD ELSEWHERE. NOTHING CONTAINED IN THIS SECTION WILL LIMIT EITHER PARTY'S ABILITY TO SEEK INJUNCTIVE RELIEF IN ANY COURT. THIS AGREEMENT WILL BE GOVERNED BY THE SUBSTANTIVE LAWS OF THE STATE OF ILLINOIS. THE CHOICE OF LAW RULES OF

ANY JURISDICTION AND THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS WILL NOT APPLY. TO THE EXTENT ALLOWED BY LAW, THE PARTIES EACH WAIVE THEIR RIGHT TO A JURY TRIAL FOR ANY MATTER ARISING FROM OR RELATING TO THIS AGREEMENT.

7.7 Survival. Sections 2, 4, 5, 6 and 7 will survive the termination or expiration of this Agreement. The prevailing party in any litigation or arbitration proceeding is entitled to recover, from the other party, its reasonable attorneys' fees and necessary costs incurred in such proceeding.

7.8 Notices. All notices under this Agreement are to be given in writing and shall for all purposes be deemed to be given when delivered personally or deposited in the United States mail if sent by Certified Mail or Registered Mail, postage prepaid, to the respective parties at the addresses following their respective signature blocks at the end of this Agreement.

7.9 Compliance with Laws. Client and Contractor each agree to comply with all laws, rules, and regulations applicable to this Agreement or the performance of work hereunder. If either party is required to pay any fine or penalty resulting from the other party's violation of such laws, rules or regulations, the party who committed the direct violation shall immediately reimburse the other for any such payment.

7.10. Intellectual Property. Contractor retains all intellectual property rights in any property invented, created or composed in the course of or incident to the performance of Contractor's work required under this Agreement including but not limited to the Email Automation Program as defined below (the "Intellectual Property"). Client acquires no right or interest in any such Intellectual Property, by virtue of this Agreement or the work performed under this Agreement. As contemplated in this Agreement, Contractor is creating an Email Automation Program for the temporary use by Client. The Email Automation Program includes but is not limited to all of the components listed in the SOW under Email Automation Program Details and all email designs, automation workflows, website user's behavior data, CRM tagging, Google Analytics dashboard, and email collection forms, customer databases created by Contractor, and the active campaign account (the "Email Automation Program"). The parties herein understand and acknowledge that the Email Automation Program will be created with proprietary know-how and a unique personal analysis of marketing trends and information formulated exclusively by Contractor. Therefore, Contractor shall maintain ownership of the Email Automation Program throughout the lifetime of the agreement and after its termination. If Client wishes to continue operating the Email Automation Program after the termination of this Agreement, Contractor may, in Contractors sole discretion license the use of the Email Automation Program to Client at a, 'fair market value' price, as determined by Contractor, in its sole discretion. Contractor shall not by virtue of its ownership of the Intellectual Property be required to deliver any of the Intellectual Property to the customer at the conclusion of this Agreement.