



Marketbright Hosted Services Agreement

(May 28, 2007)

1 – Agreement and Acceptance

This Marketbright Hosted Services Agreement (“Agreement”) is entered into as of the Effective Date (as defined below) by and between Marketbright, Inc., a Delaware corporation (“Marketbright”), and _____, (“Customer”), to provide the terms and conditions under which Marketbright will provide Customer with certain hosted services (the “Service”) for use by Customer in its marketing activities, as further described in the Project Agreement attached to and incorporated into this Agreement as its Exhibit A (“Statement of Work”).

2 – Use of Services

Subject to the terms of this Agreement, and upon acceptance as described above, Marketbright grants to Customer the nontransferable, nonexclusive worldwide right to permit those individuals authorized by Customer or on Customer’s behalf as further provided in clause (v) below (“Users”) to use the Customer Site and Service and any materials provided or disclosed to Customer by Marketbright in the course of providing the Service (“Marketbright Materials”) solely in connection with the Service, all solely for Customer’s own internal business operations.

The rights granted to Customer in this Agreement are subject to all of the following agreements and restrictions:

- i) Customer shall not license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, use on a timesharing basis, disclose or otherwise commercially exploit or make the Customer Site or Service available to any third party other than a User.
- ii) Customer shall not, nor shall it attempt or permit any third party to, modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Service, Customer Site, Marketbright Materials or Marketbright’s computer hardware, software, or system through which Marketbright provides the Service (“Host System”), or access or use the Service, Customer Site, Marketbright Materials or Host System in order to build a similar or competitive product or service.
- iii) Other than Customer Data and Customer Trademarks (each as defined below), or as otherwise expressly stated herein, no part of the Service, Customer Site, Marketbright Materials or Host System may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means.
- iv) To the fullest extent permitted by applicable law, Customer shall not disclose any review of the Service, including but not limited to the results of any performance tests, to any third party without Marketbright’s prior written approval.
- v) Customer will ensure that any use of the Service by Customer’s Users is in accordance with the terms of this Agreement. Further, Customer and its Users shall maintain the security of all User names and passwords (collectively, “User Codes”) [issued by Marketbright and] used to access the Service. Customer may designate as Users only (a) Customer’s employees and (b) Customer’s independent contractors with whom Customer has entered into written agreements with respect to such contractors’ use of the Service with terms no less restrictive or protective of Marketbright’s rights than the terms of this Agreement. Customer acknowledges and agrees that Customer is responsible for all access to and use of the Service by Users or by means of the User Codes. Customer further agrees to make every reasonable effort to prevent unauthorized third parties, including Customer employees who are not Users, from accessing or using the Service, the Marketbright Materials or the Host System.
- vi) Customer is solely responsible for obtaining and maintaining the necessary software, hardware, Internet connection, and other systems in order to access and use the Service.
- vii) Customer may not disseminate or transmit any material that is unlawful, harassing, libelous, defamatory, abusive, threatening, harmful, vulgar, obscene, invasive of another’s privacy, hateful, or racially, ethnically or otherwise objectionable, or harms minors in any way;

- viii) Customer may not disseminate or transmit any material that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, or proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
- ix) Customer may not disseminate or transmit any material that infringes any patent, trademark, trade secret, copyright, right of publicity, or other proprietary right of any party;
- x) Customer may not disseminate or transmit any material that constitutes unsolicited or unauthorized advertising, promotional materials, surveys, contests, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
- xi) Customer may not disseminate or transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; or
- xii) Customer may not disseminate or transmit any material that otherwise may: (i) constitute a criminal offense; (ii) give rise to civil liability; or (iii) violate applicable law, rule or regulation.

3 – Certain Marketbright Rights

Customer acknowledges and agrees that (i) as between the parties, Marketbright owns all right, title and interest, including all intellectual property and other proprietary rights, in and to the Service, the Marketbright Materials and the Host System and (excluding the Customer Data) the Customer Site, including all derivatives, modifications and improvements of any of these (collectively, the "Marketbright IP"); and (ii) if Customer provides to Marketbright any suggestions, enhancement requests, feedback, recommendations or other information relating to the Service ("Feedback"), Marketbright is free to use and incorporate, as its discretion, the Feedback into the Service without compensation or liability of any kind to Customer or any third party.

The technology, process and methodologies used to provide services are Marketbright's IP service and as such all rights to any copyrights, patents or other intellectual property are the properties of Marketbright. Marketbright may develop and license any products or services similar to this project without any restrictions. CUSTOMER maintains all rights to any data in the systems related to this project, the website or the systems. This data is available for download or transfer at any time. See the Marketbright Service License Agreement for full details.

Marketbright reserves the right, from time to time and at its discretion, to update, enhance, and otherwise modify the Marketbright IP[, provided that Marketbright will use commercially reasonable efforts to provide Customer no less than thirty (30) days prior notice (which may be by notice displayed on the Service) of any change that Marketbright believe would materially affect Customer's use of the Service].

By agreeing to this agreement, you also agree that Marketbright can display non-confidential information about you and your use of the Service on the Marketbright website for Sales and Marketing purposes. This may include testimonials, case studies, announcements, screenshots and logo displays on materials including but not limited to press releases, brochures, websites, service slicks, and public display items.

4 – Licenses from Customer

Customer grants to Marketbright the non-exclusive, worldwide right to use, copy, transmit and display:

- i) Any data, information or other materials, provided to Marketbright by Customer in the course of using the Service ("Customer Data") solely to the extent necessary to provide the Service to Customer ; and
- ii) Any trademarks that Customer provides Marketbright for the purpose of including them in Customer's user interface of the Service ("Customer Trademarks") to be developed by Marketbright pursuant to the Project Terms.

Customer acknowledges and agrees that Customer Data may be transferred outside of the country or other jurisdiction where Customer and Customer's Users are located. In addition, Customer acknowledges and agrees that it is Customer's obligation to inform third parties of the processing of Customer Data and to ensure that such third parties have given any required consent to such processing as required by all applicable data protection legislation. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of use on the Service of all Customer Data.

Marketbright may identify Customer as a Customer in its marketing and advertising materials, and announce that Customer is a Customer of the Service, and reproduce Customer's company name, logo, trademark, trade name, service mark, or other commercial designations in connection therewith.

5 - Billing and Payment

The fees for the Services are described at time of purchase. Customer agrees to pay in advance all monthly fees for Customer use of the Service ("Monthly Fees"), and any other fees shall be payable as described at the setup of the Service. The Customer shall pay all fees or charges for your account at the time a fee or charge is due and payable. The charges will be equal to the amount of the license fee currently in effect. Payments may be made annually, monthly, or quarterly, consistent with the Initial Term, or as otherwise mutually agreed upon. Following the Initial Term, charges shall be due and payable on a monthly basis.

The Customer must provide Marketbright with valid credit card or approved purchase order information as a condition to signing up for the Service. Services added in the middle of a billing month will be charged in full for that billing month. Marketbright reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to you, which notice may be provided by e-mail. All pricing terms are confidential, and you agree not to disclose them to any third party.

All amounts are payable in U.S. dollars and are exclusive of all taxes, levies, or duties imposed by taxing authorities (other than taxes imposed on Marketbright's net income), and Customer shall be responsible for payment of all such taxes, levies, or duties, even if such amounts are not listed on the Project Terms. Customer will provide Marketbright with valid and approved purchase order information and complete and accurate billing and contact information. Customer acknowledges and agrees that all sales are final and that prepaid Services are not subject to any refund.

The Customer understands that Marketbright does not hold or store any Customer credit card information; this is managed by a third party. Marketbright is not liable for any fraud or misuse of Customer credit cards or Customer payment information.

6 – Non-Payment and Suspension

In addition to any other rights granted to Marketbright herein, Marketbright reserves the right to suspend or terminate this Agreement and your access to the Service if your account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to interest of 5.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. You will continue to be charged for User licenses during any period of suspension. If you or Marketbright initiates termination of this Agreement, you will be obligated to pay the balance due on your account computed in accordance with the Charges and Payment of Fees section above. You agree that Marketbright may charge such unpaid fees to your credit card or otherwise bill you for such unpaid fees.

Marketbright reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the Service. You agree and acknowledge that Marketbright has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if your account is 30 days or more delinquent.

7 - Term and Termination

This Agreement is effective upon the Effective Date and will remain in effect during the Initial Term. Customer's subscription to the Service will renew upon Customer's payment of the applicable renewal Monthly Fees as described in Section 5 above.

Notwithstanding the above, in the event of any breach of this Agreement by Customer, Marketbright shall have the right to immediately terminate this Agreement for cause.

At Customer's request, within 30 days of termination of this Agreement, Marketbright will make available to Customer a complete set of files of all Customer Data then in its possession. Customer agrees and acknowledges that Marketbright has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted after 30 days following the termination of this Agreement or if Customer's account is 30 days or more past due. The

following provisions shall survive any termination of this Agreement: Section 3, 5, 7, 10, 11, 12, 14, and 16.

8 - Third Party Web Sites

If Customer enters into correspondence with, purchases goods or services from, or participates in promotions of advertisers or sponsors other than Marketbright through the Customer Site or the Service, any such activity, and any terms, conditions, warranties or representations associated with such activity, is governed solely by the terms between Customer and the applicable third party. Marketbright shall have no liability or obligation for, and does not endorse or accept any responsibility for, the contents or use of third party web sites or any transactions completed with third parties. Marketbright may provide such links only as a convenience, and the inclusion of any link does not imply endorsement by Marketbright of the linked web site, notwithstanding the inclusion on such site of the trademarks of Marketbright.

9 - Representations and Warranties

Each party represents and warrants that it has the power and authority to enter into this Agreement.

Marketbright warrants that (a) it will provide the Service and the Set-Up Services in a manner consistent with generally accepted industry standards, and (b) the Service will perform substantially in accordance with its online documentation under normal use.

10 - Disclaimer of Warranties

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 8 ABOVE, ALL MARKETPLACE IP IS PROVIDED UNDER THIS AGREEMENT "AS IS" AND MARKETBRIGHT HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES, GUARANTIES, AND CONDITIONS WITH REGARD TO THE MARKETBRIGHT IP AND ALL SERVICES UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED REPRESENTATIONS, WARRANTIES, GUARANTIES, AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND QUALITY OF SERVICE. Marketbright makes no representations or warranties regarding the reliability, availability, timeliness, quality, suitability, truth, accuracy or completeness of the Marketbright IP or the services provided by Marketbright or the results Customer may obtain by using the Marketbright IP.

Without limiting the generality of the foregoing, Marketbright does not represent or warrant that (a) the operation or use of the Service will be timely, secure, uninterrupted or error-free; (b) the quality of any products, services, or information obtained through the Service will meet Customer's requirements; or (c) the Service or the Host Systems that make the service available are free of viruses or other harmful components. Customer acknowledges that neither Marketbright controls the transfer of data over communications facilities, including the Internet, and that the service may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. Marketbright is not responsible for any delays, delivery failures, or other damage resulting from such problems.

11 - Limitation of Liability

In no event shall the aggregate liability of either party exceed the total amounts actually paid by and/or due from Customer in the twelve (12) month period immediately preceding the event giving rise to such claim. In no event shall either party be liable to anyone for any indirect, punitive, special, exemplary, incidental, or consequential damages, or for any damages for loss of data, revenue, profits, use or other economic advantage, arising out of, or in any way connected with this Agreement, including but not limited to the use or inability to use the Service, regardless of cause, whether in an action in contract or negligence or other tortious action, even if the party from which damages are being sought has been previously advised of the possibility of such damages. The limitation of liability set forth in this Section 11 shall not apply in the event of Customer's breach of Section 2 or Section 5, to either party's indemnity obligations set forth in Section 12 below, or in the event of either party's breach of Section 14 below. Customer acknowledges and agrees that Marketbright's suppliers and licensors shall not have any liability under this Agreement.

12 – Mutual Indemnification

Customer shall defend Marketbright, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, demands, assertions, losses, liabilities and expenses (including attorneys' fees and costs) and suits ("Claims") brought against Marketbright by a third party (i) alleging that the Customer Data or the Customer Trademarks, or any use there, infringes, misappropriates or violates any copyright, trade secret, U.S. patent, trademark or privacy right of, or has caused harm to, a third party, or (ii) arising out of Customer's breach of this Agreement, and Customer will pay all costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) finally awarded against Marketbright by a court of competent jurisdiction with respect to, or agreed to in settlement of, all such Claims.

Subject to the foregoing, Marketbright shall defend Customer against any and all Claims brought against Customer by a third party alleging that the Service infringes, misappropriates or violates any copyright, trade secret, U.S. patent or trademark of a third party, and Marketbright will pay any all costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) finally awarded against Customer by a court of competent jurisdiction arising out of or in connection with all such Claims. Marketbright shall have no indemnification obligation or other liability for any claim of infringement arising from (a) use of the Service other than in accordance with this Agreement; (b) the combination of the Service with any other products, services, or materials; (c) Marketbright's compliance with Customer's instructions, specifications or requirements; or (d) any third party products, services, or materials. If the Service is held to infringe or may be infringing, Marketbright shall have the option, at its expense, to (i) replace or modify the Service to be non-infringing, (ii) obtain a license for Customer to continue using the Service or (iii) terminate the Service or this Agreement and refund any prepaid unused fees applicable to the terminated Service. This Section 11 states Marketbright's entire liability and Customer's exclusive remedy for any claim of infringement.

The foregoing indemnities are conditioned on the indemnified party (i) promptly giving written notice of the claim to the indemnifying party; (ii) giving the indemnifying party sole control of the defense and related settlement negotiations; (iii) providing to the indemnifying party, at such party's request and expense, all reasonable information and assistance necessary to perform its obligations under this Section 11.

13 – International Users

Marketbright makes no claims that information on the Site or provided through the Services is appropriate or may be downloaded outside of the United States. Access to the Site may not be legal in certain countries or for certain persons. If you access the Site or use the Services from outside of the United States, you do so at your own risk and are responsible for compliance with the laws of your jurisdiction regarding online conduct and acceptable content. Personal information that is submitted to this Site will be collected, processed, stored, disclosed and disposed of in accordance with applicable U.S. law and our Privacy Policy.

If you are a non-U.S. user, you acknowledge and agree that Marketbright may collect and use your personal information and disclose it to other entities outside your resident jurisdiction. In addition, such personal information may be stored on servers located outside your resident jurisdiction. U.S. law may not provide the degree of protection for personal information that is available in other countries. By providing us with your personal information, you acknowledge that you consent to the transfer of such personal information outside your resident jurisdiction as detailed in our Privacy Policy. If you do not consent to such transfer, you may not use this Site or the Services.

14 - Confidential Information

The Customer may have access to information that is confidential to the other party ("Confidential Information"). Confidential Information of Customer shall include Customer Data, and Confidential Information of Marketbright shall include the Service and the Marketplace Materials. In addition, as to either party, Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential, as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential. 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 in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party
- iii) Is lawfully disclosed to the other party by a third party without restriction on disclosure or
- 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 disclosure of the other party's Confidential Information to any third party and not use the other Party's Confidential Information except as necessary to perform its obligations under this Agreement.

15 - Customer's Responsibilities

Customer will comply with all applicable local, state, national and foreign laws, treaties, regulations and conventions in connection with its use of the Service and other portions of the Marketbright IP, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data from locations other than the location from which Marketbright controls and operates the Service or to foreign nationals of embargoes or restricted countries under U.S. export control laws.

You shall: (i) notify Marketbright immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Marketbright immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another Marketbright user or provide false identity information to gain access to or use the Service.

16 – Agreement to Arbitrate

The parties hereto agree that, except as noted below, any controversy, claim or dispute arising out of, concerning or relating in any way to the Services or this Agreement with Marketbright, whether arising in tort, contract or pursuant to a statute, regulation or ordinance now in existence or which may in the future be enacted or recognized (the "Claims") shall be submitted exclusively to final and binding arbitration. The parties hereto understand and agree that by entering into this Agreement they are waiving their respective right to bring such Claims to court, including any right to a jury trial.

All Claims shall be resolved by final and binding arbitration in Burlingame, California conducted in accordance with the Arbitration Rules of the International Chamber of Commerce ("ICC"). There shall be three arbitrators, each of whom shall be neutral, independent and impartial, appointed in accordance of such Rules. The language of the arbitration shall be English. The award shall be in writing and reasoned. Judgment on an arbitral award may be entered by any court of competent jurisdiction, or application may be made to such a court for judicial acceptance of the award and any appropriate order including enforcement. The parties acknowledge and agree that any breach of the provisions of Sections 2, 3 and 14 will result in irreparable injury to the affected party for which that party will not have an adequate remedy at law. Accordingly, the affected party may, in addition to any other remedies available to it under this Agreement, bring an action in any court of competent jurisdiction for injunctive relief pending settlement or arbitration of the dispute and may have entered an appropriate temporary restraining order or preliminary injunction. The inclusion of this provision shall not be construed to deny appropriate equitable relief in arbitration in any other situation in which the circumstances justify such relief, nor shall the seeking of such relief from a court constitute or be deemed a waiver of any right to arbitrate.

Both the Customer and Marketbright have the right to be represented by counsel of their choice. Each party shall be responsible for his/her/its own attorneys' fees, except as provided by law. Each party shall be responsible for all costs associated with the arbitrator's fee for the proceeding, as well as any administrative, room or other charges required by ICC and discovery which that party initiates, e.g., depositions, except that a party or third-party witness being deposed shall be responsible for the cost of a copy of the transcript if he or she chooses to order a copy.

The prevailing party in any controversy arising out of this Agreement shall be entitled to recover its reasonable attorney and expert fees and costs, in addition to any other relief to which it may be entitled.

This is the complete agreement between the Customer and Marketbright on the subject of the arbitration of disputes. This Agreement supersedes any prior or contemporaneous oral or written understanding on the subject. This Agreement shall be governed by and shall be interpreted in accordance with the laws of the State of California. The

terms of this Agreement may not be orally modified. The parties hereto further agree that this Agreement shall survive the termination of this Agreement.

17 – Privacy

Marketbright's privacy and security policies may be viewed at <http://www.marketbright.com/privacy/>. Marketbright reserves the right to modify its privacy and security policies in its reasonable discretion from time to time. Individual users, when they initially log in, will be asked whether or not they wish to receive marketing and other non-critical Service-related communications from Marketbright from time to time. They may opt out of receiving such communications at that time or at any subsequent time by changing their preference under My Account. Note that because the Service is a hosted, online application, Marketbright occasionally may need to notify all users of the Service (whether or not they have opted out as described above) of important announcements regarding the operation of the Service.

18 – SPAM

The Customer may use the Service only for your internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks. You agree to abide by all applicable laws when using these functions, including without limitation the requirements of the federal CAN SPAM Act.

19 – Registration Data

The Customer agrees to keep secure and maintain the confidentiality of any information you obtain about any Registrant to one of your campaigns. The Customer is responsible to the safeguarding of any registrant information provided to the Customer. The Customer is responsible for handling registrant information in a manner that is consistent with your company privacy practices. Except for activities that result from Marketbright's gross or willful negligence, you agree to defend, indemnify and hold harmless Marketbright for all liabilities, claims and expenses (including attorneys' fees) that arise from or are related to the abuse or misuse of registrant information stored in your account, whether such abuse is committed by your employees, vendors or anyone else who is provided with, or gains access to registrant information stored in your account.

20 – Internet Delays

MARKETBRIGHT'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. MARKETBRIGHT IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

21 – Account Information and Data

Marketbright does not own any data, information or material that you submit to the Service in the course of using the Service ("Customer Data"). The Customer, not Marketbright, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and Marketbright shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. In the event this Agreement is terminated (other than by reason of your breach), Marketbright will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. Marketbright reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use Customer Data immediately ceases, and Marketbright shall have no obligation to maintain or forward any Customer Data.

22 – Amendments and Modifications of Terms

Marketbright reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on the Service. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes.

23 – Technical Support

During the term of this Agreement, Marketbright will provide the Customer with technical support relating to the use of the Services via the Site, for an appropriate Support fee. This support is available via email and telephone between the hours of 8am and 6pm PST, Monday-Friday. You acknowledge and agree that Marketbright is not responsible for providing any technical support with respect to the Services or the Site to your Registrants.

24 – Relationship of the Parties

This Agreement does not constitute either party the agent of the other, or create a partnership, joint venture or similar relationship between the parties, and neither party will have the power to obligate the other in any manner whatsoever.

25 – Confidentiality

Each party acknowledges that the other party claims that its Confidential Information is a valuable and unique asset and agrees to the following:

- (a) For a period of 5 years from first disclosure of or access to Confidential Information, the receiving party: (i) will not disclose the Confidential Information to any third party; (ii) will not disclose the Confidential Information to its employees unless the employees have a need to know the Confidential Information for the Purpose; and (iii) will use the Confidential Information only for the Purpose and will not use it for any third party's benefit. The receiving party will use the same degree of care to protect the Confidential Information from unauthorized use or disclosure as it would use to protect its own information of a similar nature, but in no event with less than reasonable care.
- (b) The receiving party's obligations under this Agreement with respect to particular information do not apply to the extent that: (i) the disclosing party authorizes the receiving party in writing to disclose such information; (ii) the receiving party knows such information at the time of disclosure by the disclosing party, free of any obligation to keep it confidential, as evidenced by written records; (iii) such information is or becomes generally known in the relevant industry without fault of the receiving party; (iv) the receiving party independently develops such information without access to or use of the Confidential Information, as evidenced by written records; or (v) the receiving party rightfully obtains such information from a third party who has the right to disclose it without violation of any confidentiality obligations. However, even if certain information is already known, the disclosing party's use of it (including the fact of the party's use and the manner and results of use) may not be and thus would be considered to be Confidential Information. Confidential Information disclosed hereunder shall not be deemed to be within the foregoing exceptions merely because such Confidential Information is embraced by more general knowledge in the public domain or in the receiving party's possession. In addition, no combination of features shall be deemed to be within the foregoing exceptions merely because individual features are in the public domain or in the receiving party's possession, unless the combination itself and its principle of operations are in the public domain or in the receiving party's possession.
- (c) If the receiving party is subject to judicial or governmental proceedings requiring disclosure of particular Confidential Information, then, prior to any such disclosure, the receiving party will provide the disclosing party with reasonable prior notice and will obtain, or provide the disclosing party with an opportunity to obtain, a protective order or confidential treatment of the Confidential Information.

26 - Notices

Any notice required under this Agreement must be in writing and sent to each party's representatives at the respective addresses identified below. Notices will be delivered in person or by means evidenced by a delivery receipt or acknowledgment (certified or registered mail (postage prepaid and return receipt requested), or via overnight courier). Notices will be effective upon receipt.

27 – Severability

If any provision of this Agreement is held unenforceable or invalid under any applicable law or is so held by applicable court decision, such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole, and such provision will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or the applicable court decision.

28 – Force Majeure

Force Majeure. If either party is unable to perform any of its obligations under this Agreement because of natural disaster, actions or decrees of governmental bodies, communications line failure not the fault of the affected party, or other event beyond the reasonable control of the affected party (a "Force Majeure Event"), all obligations under this Agreement will be immediately suspended for the duration of the Force Majeure Event.

29 – Waiver

Any waiver by Marketbright of a breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Agreement. Any waiver must be in writing. Failure by Marketbright to insist upon strict adherence to any term of this Agreement on one or more occasions shall not be considered a waiver or deprive Marketbright of the right to insist upon strict adherence to that term or any other term of this Agreement.

30 – Entire Agreement

This Agreement constitutes the complete and exclusive statement of the agreement between the parties, which supersedes all prior and concurrent proposals and understandings, whether oral or written, and all other communications between the parties relating to the subject matter of this Agreement

31 - General Provisions

Any action related to this Agreement will be governed by California law and controlling U.S. federal law. No choice of law rules of any jurisdiction will apply. Any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state and federal courts located in California. This Agreement, together with the applicable Project Terms, represents the parties' entire understanding relating to the use of the Service and supersedes any prior or contemporaneous, conflicting or additional, communications. In the event of a conflict between these terms and conditions, and the Project Terms, these terms and conditions shall control. Marketbright reserves the right to change the terms and conditions of this Agreement or its policies relating to the Service at any time, and such changes will be effective upon notice to Customer. Customer has the right to review such changes and terminate this Agreement with a full refund for Monthly Fees paid for the period after the termination date. Customer's continued use of the Service after any such changes shall constitute Customer's consent to such changes. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between Marketbright and Customer as a result

of this Agreement or use of the Service. Marketbright reserves the right to use third party providers in the provision of the Service or Services hereunder. The failure of either party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by such party in writing. In the event of any litigation of any controversy or dispute arising out of or in connection with this Agreement, its interpretation, its performance, or the like, the prevailing party shall be awarded reasonable attorneys' fees and expenses, court costs, and reasonable costs for expert and other witnesses attributable to the prosecution or defense of that controversy or dispute. Any rights not expressly granted herein are reserved by Marketbright.

32 - Support and Other Services

Marketbright will provide system and technical support to CUSTOMER users to ensure the smooth running of the system. The following types of support are available:

Standard Support:

- Standard Support is included as part of the monthly service fee.
- Direct phone support for each contracted CUSTOMER employees during US business hours (10am-6pm PST). This provides immediate access to support personnel for any critical issue and a turnaround of typical requests in less than one business day. Critical issues are any issue that causes a disruption in the Marketbright service such as a server being unavailable or the application not responding properly.
- Online and email support to all contracted users during US business hours (9am-5pm PST). This provides for a turnaround time of less than 2 hours on any critical issue; and within one business day for non-critical issues.
- Up to 10 non-systems related support requests are included per month. Additional non-systems related support requests are charged at \$25 per incident (or \$75 per hour, after 1st ½ hr). During the first month of operation, all support requests are included and unlimited.
- Any critical issues or requests outside US business hours (9am-5pm PST) that are not system related, (ie. are campaign or website related), will be charged at \$97 per hour.
- Many of Marketbright clients have users in Europe, however we do not provide European business hour support. The application interface is only available in English but supports international web content.
- Marketbright can pass XLS, CSV, XML, and raw Oracle database dumps. The CSV and XLS are self-service. The others require a service request.

NOTE: Support does not include marketing consulting and it is at Marketbright's discretion to assist with support outside the scope of system related issues.

Online Help and User Training:

Marketbright will also provide the following user help and training:

- Each component of the Marketbright system has available a set of online help pages, FAQs (Frequently Asked Questions) and a glossary of terms. These include basic descriptions of common tasks and user flows with tips and tricks to help a user get the task completed.
- Marketbright will also provide up to 3 conference call training sessions and 3 Bay Area onsite training sessions (1 hour in length) to ensure all the super-users are properly trained and setup.
- Any additional training on the system that is outside the scope of this agreement can be further developed for an additional fee or at an hourly rate of \$200 per hour.
- Rates are subject to change with 30 day written notice.

33 - Hosting Infrastructure and Service Levels

Marketbright is committed to providing the most secure, high performance and highly available hosted infrastructure possible. The Marketbright system will be supported by a high performance Apache web server and a powerful Oracle database, located in a secure, professional managed data center. The systems are monitored around the clock, 365 days of the year. They are monitored both internally and externally (around the Internet) with notification and alerts to our support team to ensure both availability and performance around the globe. They also have firewall protection against Internet attacks and virus and anti-spyware protection.

System Performance

Historically, typical performance and response time for any application screen is between 0.06 to 0.23 seconds (plus any Internet network latency outside of Marketbright's control). If any screen shows bad performance with a response time worse than 0.5 seconds our support team is notified so any persistent performance issue can be addressed.

Backups and Archives

Incremental backups are taken throughout the day, with daily full backups that are stored at another physical location. Complete downloads of the Marketbright system will also be available at anytime.

System Availability

Marketbright aims to provide in excess of 99.9% availability or less than 8 hours per year downtime. From time to time (once or twice a year), scheduled system maintenance may be required. This would take place over a weekend and last not more than 1-2 hours. This would be planned and coordinated with CUSTOMER to minimize the impact to the business.

Marketbright is not responsible for other infrastructure issues that do not directly affect availability of the system, but that prohibit CUSTOMER users from using the Marketbright system (like an outage of CUSTOMER corporate network).

System Updates

In addition, Marketbright seeks to continually improve the system with new capabilities or features and any applicable bug fixes. Because of Marketbright's flexible infrastructure, these updates do not typically require system downtime or cause any impact to users. However, to minimize any impact to users, any changes would be scheduled and arranged with the project team and occur outside of normal peak hours.

Infrastructure Requirements

Due to the nature of computer systems and physical hardware, unexpected failures can occur. Depending on the mission-critical level of support required for this project, it is possible to mitigate some of the downtime risk by removing single points of failure with hardware upgrades. If CUSTOMER has any special availability, performance, or infrastructure requirements beyond those discussed above, these should be specified during the project definition and could incur additional setup costs and monthly services fees.

Data Retention

Marketbright will keep up to the latest three versions of any file for up to six months. Marketbright keeps raw web logs for three months and maintains summary data for the term of the contract.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

Effective Date: _____

For Customer :

Accepted by _____ Date _____

Name _____ Title _____

For Marketbright:

Accepted by _____ Date _____

Name _____ Title _____