

# Rainmaker Mobile Marketing, LLC

## MASTER LICENSE AGREEMENT

### Terms and Conditions

This Agreement (the “**Agreement**”) is entered into by and between Rainmaker Mobile Marketing, LLC and (“**Customer**”), and shall be effective as of this date.

**1. SERVICES.** Rainmaker Mobile Marketing, LLC will provide the services set forth in this Agreement. Rainmaker Mobile Marketing, LLC will use commercially reasonable efforts to provide a secure transmission of customer data to and from the Rainmaker Mobile Marketing, LLC database located on Rainmaker Mobile Marketing, LLC Internet computer network. The services and all related software and intellectual property are hereinafter referred to as the “**Services**.”

**2. FEES.** Customer shall pay the fees set forth during the Term of this Agreement. Customer agrees to pre-pay for every month of service in either monthly (6 month minimum term) or quarterly installments (annual term). Customer shall pre-pay all fees via PayPal or major credit card as provided on the Rainmaker Mobile Marketing, LLC website (<http://rainmakermobilemarketing.com/#!copy-of-plans--pricing/c1p4l>). There will be an additional one-time Technology Set-up Fee billed with the first month of service. Customer acknowledges that all text message overages are charged in arrears at the rate designated in their existing monthly plan. All charges and fees hereunder are exclusive of federal, state and local excise, sales, use and other taxes now or hereafter levied or imposed for the provision of Services hereunder. Except for taxes on Rainmaker Mobile Marketing, LLC's net income, Customer shall be liable for and pay all such taxes and other levies, regardless of whether included on any invoice. Rainmaker Mobile Marketing, LLC is prohibited from changing the amount, structure, method and/or basis of the fee at any time during the term of this Agreement. Customer has the exclusive right to upgrade or downgrade their service plan at any time with 15 days' notice in writing to Rainmaker Mobile Marketing, LLC.

**3. GUARANTY.** If Customer has been unable to utilize the services provided by Rainmaker Mobile Marketing, LLC for any reason that is the fault of Rainmaker Mobile Marketing, LLC, Customer shall have the right to cancel all services provided by Rainmaker Mobile Marketing, LLC, and Rainmaker Mobile Marketing, LLC will provide to Customer a full refund of all monies previously paid to Rainmaker Mobile Marketing, LLC from Customer for the period that services were not provided. Should Customer choose to cancel service and seek a refund, Customer must provide written notice to Rainmaker Mobile Marketing, LLC within fifteen (15) days prior to the completion of the three month of service. Said notice must include a detailed basis for the cancellation

**4. LICENSE; RESTRICTIONS.** a) Rainmaker Mobile Marketing, LLC hereby grants Customer a non-exclusive, non-transferable license to access and use the Services at Customer's place of business. Customer is prohibited from reselling, loaning or otherwise sharing the Services or divulging any related confidential information including, but not limited to passwords or instructional manuals. Except as expressly permitted in this Section, Customer may not use, reproduce, transfer, share, sublicense or transmit the Services in any form or by any means without the prior written consent of Rainmaker Mobile Marketing, LLC. Customer further agrees not to modify, translate, transform, decompile, reverse engineer, disassemble, or otherwise determine or attempt to determine source code from the Services or related software, or to permit or authorize a third party to do so. Title to the Services, and all related software, technical know-how, and intellectual property rights therein are and shall remain the exclusive property of Rainmaker Mobile Marketing, LLC. Customer shall not take any action to jeopardize, limit or interfere in any manner with Rainmaker Mobile Marketing, LLC's ownership of, and rights with respect to any licensed software and/or Services. b) **COMPLIANCE.** Customer acknowledges and agrees that, as between Customer and Rainmaker Mobile Marketing, LLC, Customer is responsible for compliance with all federal, state or other applicable laws governing the use of the Services, including but not limited to laws applicable to direct marketing and privacy. Customer further acknowledges and agrees that Rainmaker Mobile Marketing, LLC merely provides a routine conveyance,” as that term is defined in 15 U.S.C. § 7702 (CAN SPAM Act), in connection with the transmission of any electronic mail messages on behalf of Customer in connection with the Services. Customer also agrees to comply with Rainmaker Mobile Marketing, LLC's policies and rules for use of the Services, including its e-mail transmission services, as made available to Customer and as amended by Rainmaker Mobile Marketing, LLC from time to time in its sole discretion.

**5. INTELLECTUAL PROPERTY RIGHTS.** It is the intent of the parties that Rainmaker Mobile Marketing, LLC shall own the Services, as well as all patents, copyrights, trademarks, trade secrets and other intellectual property rights associated with or appurtenant to the Services. Neither Customer, nor its subsidiaries, affiliates, agents, or employees shall have any right to use the Services other than for the purposes set forth herein. In all cases, the Services are and shall remain the sole and exclusive property of Rainmaker Mobile Marketing, LLC. Customer covenants to take no action nor commit any omission that would be adverse to Rainmaker Mobile Marketing, LLC's sole and exclusive ownership of the Services. If Customer, its subsidiaries, affiliates, employees or any third parties obtain any rights of ownership in or use of the Services through operation of applicable law or otherwise, Customer agrees to and hereby transfers, grants, conveys, assigns and relinquishes exclusively to Rainmaker Mobile Marketing, LLC any and all right, title and interest it has or may acquire in the Services under patent, copyright, trade secret, trademark or other law relating to intellectual property in perpetuity or for the longest period otherwise permitted by law.

**6. CONFIDENTIALITY.** a) Customer acknowledges that the Services are the trade secrets of Rainmaker Mobile Marketing, LLC. b) Each party agrees to use good faith efforts and at least the same care that it uses to protect its own confidential information of like importance, but in no event less than reasonable care, to prevent unauthorized dissemination or disclosure of the other party's confidential information both during and after the Term of this Agreement (including without limitation, the Services). In addition, each party shall use the other party's confidential information solely as necessary for the performance of this Agreement. Confidential information will include, but is not necessarily limited to (i) non-public financial information concerning either party; (ii) information concerning either party's product line (both current and planned), research, development, customers, and pricing and marketing plans, unless and until publicly announced; and (iii) any information designated as confidential in writing at or prior to disclosure. c) Except as required by law, Rainmaker Mobile Marketing, LLC will not disclose to any non-affiliated third party any non-public individually identifiable customer data received from Customer without Customer's prior approval. Rainmaker Mobile Marketing, LLC shall maintain at all times during the Term appropriate and reasonable safeguards to protect such individually identifiable customer data using measures no less rigorous than those used to protect Rainmaker Mobile Marketing, LLC's own customers' individually identifiable data. d) The restrictions in this Section 5 *Confidential Information* shall not apply to information which: (i) has become publicly known without breach of this Agreement or any other confidentiality obligation by the receiving party; (ii) has been given to the receiving party by a third party with a legal right to so disclose; (iii) was known to the receiving party at the time of disclosure as evidenced by its written records; (iv) was independently developed by the receiving party without reference to the other party's confidential information; or (v) is necessary to establish the rights of either party under this Agreement; or must be disclosed by the receiving party to comply with any requirement of law or order of a court or administrative body (provided that the receiving party will endeavor to notify the disclosing party of the issuance of such order and reasonably cooperate, at disclosing party's expense, in its efforts to convince the court or administrative body to restrict disclosure).

**7. LIMITED WARRANTY; LIMITATION OF LIABILITY.** a) RAINMAKER MOBILE MARKETING, LLC PROVIDES THE SERVICES AND SOFTWARE "AS IS" AND MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, ORAL, IMPLIED OR STATUTORY AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY, INCLUDING, BUT NOT LIMITED TO, THE QUALITY, COMPLETENESS, PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. b) RAINMAKER MOBILE MARKETING, LLC SHALL NOT BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR INJURY TO ANY PERSON OR PROPERTY WHATSOEVER RESULTING FROM THE USE OF OR INABILITY TO USE THE SERVICES OR SOFTWARE OR FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY, OR OTHER DAMAGES OR EXPENSES OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF OR RELATING TO THE SERVICE FOR SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. SPECIFICALLY, RAINMAKER MOBILE MARKETING, LLC SHALL NOT BE RESPONSIBLE FOR ANY LOST PROFITS OR REVENUE, OR COSTS, INCLUDING, BUT NOT LIMITED TO, THOSE INCURRED AS A RESULT OF LOSS OF USE OF THE SERVICES OR SOFTWARE, LOSS OF DATA, BUSINESS INTERRUPTION. COST OF RECOVERING SOFTWARE OR DATA, COST OF SUBSTITUTE SOFTWARE OR DATA. OR OTHER SIMILAR COSTS. IN NO EVENT SHALL RAINMAKER MOBILE MARKETING, LLC'S TOTAL LIABILITY OF ANY KIND, REGARDLESS OF THE FORM IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT,

EXCEED THE TOTAL AMOUNT PAID TO RAINMAKER MOBILE MARKETING, LLC UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE CLAIM.

**8. INDEMNIFICATION.** **a)** Customer assumes sole responsibility for all use of the Services and agrees to indemnify, defend and hold Rainmaker Mobile Marketing, LLC and its affiliates, and its and their respective officers, directors, employees, agents and representatives harmless from and against any and all claims, causes of action, suits, proceedings, demands, damages, costs, expenses and liabilities of any kind whatsoever, including (without limitation) legal expenses and reasonable attorneys' fees, from third parties ("Claims"), arising out of or in any way related to **(i)** Customer's use of the Services, including without limitation the use or inability to use the same, or any errors or omissions in the same, or **(ii)** any breach by Customer of this Agreement. **b)** If a preliminary or final judgment shall be obtained against Customer's use of the Services by reason of a Claim that the Services infringe or misappropriate the intellectual property rights of a third party or if the Services are likely to become the subject of such a Claim, Rainmaker Mobile Marketing, LLC shall at its option and expense either procure for Customer the right to continue to use the Services as provided in this Agreement, or replace or modify the Services with a version of Services that is non-infringing, but performing substantially similar functions. In the event that neither of the foregoing options is commercially reasonable in Rainmaker Mobile Marketing, LLC's sole judgment, Rainmaker Mobile Marketing, LLC shall cease providing the Services to Customer and refund to Customer any pre-paid license fees paid by Customer for the remainder of the Term. THE RIGHTS AND OBLIGATIONS IN THIS SECTION 7(b) ARE RAINMAKER MOBILE MARKETING, LLC'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO ANY INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION.

**9. TERMS AND TERMINATION** **a)** The term of this Agreement shall commence upon acceptance herein and continue for a period of 1 (one) years. Thereafter, this Agreement shall automatically renew on a month-to-month term unless either party provides written notice to the other party that it will not renew, such notice to be given at least thirty (30) days prior to the expiration of the then-existing Term. **b)** Either party may terminate this Agreement immediately for any breach of this Agreement by the other party that is not cured within thirty (30) days after receipt of written notice of the breach from the non-breaching party; provided however, such cure period shall not apply if Customer is in breach of Section 3 *License; Restrictions* of this Agreement, or if either party is in breach of Section 5 *Confidentiality*, and further provided, however, that the cure period for the breach of an obligation to pay fees when due shall be ten (10) days. Rainmaker Mobile Marketing, LLC may terminate this Agreement at any time without cause upon thirty (30) days written notice to Customer. Page 2 VOID IF ALTERED - Rev: 01/21/09 **c)** This Agreement shall be immediately terminated upon the dissolution or bankruptcy of Customer, the filing of a bankruptcy petition by or against Customer or a general arrangement or assignment by Customer for the benefit of creditors. **d)** Following expiration or termination of this Agreement for any reason, all rights and licenses granted herein shall terminate and Customer shall immediately cease use of and certify to Rainmaker Mobile Marketing, LLC that it has destroyed all copies of the Services and related software. **e)** Termination or expiration of this Agreement for any reason shall not release any party from any liabilities or obligations set forth in this Agreement that by their nature would be intended to be applicable following any such termination or expiration. **f)** Rainmaker Mobile Marketing, LLC reserves the right to suspend the Services or terminate this Agreement in the event that a payment due remains unpaid three (3) business days after Customer has been notified of such non-payment.

**10. INJUNCTIVE RELIEF.** Each party acknowledges that the Services are unique property, and that the unauthorized use or disclosure thereof shall cause Rainmaker Mobile Marketing, LLC irreparable harm that could not be adequately compensated by monetary damages. Accordingly, in addition to any other remedies available to it at law or in equity, Rainmaker Mobile Marketing, LLC will be entitled to injunctive relief to enforce the terms of this Agreement, including to prevent any actual or threatened unauthorized use or disclosure of confidential information or the Services.

**11. GOVERNING LAW; DISPUTE RESOLUTION.** **a)** This Agreement will be construed in accordance with and governed by the laws of the State of Florida, without regard to principles of conflicts of law. Any disputes under this Agreement shall be brought in Pinellas County, Florida. In the event that the Dispute Resolution section is invalidated, the parties hereto consent to the jurisdiction of any local, state or federal court in which an action is commenced and located in accordance with the terms of this Section and that is located in Pinellas County, Florida. The parties further agree not to disturb such choice of forum, and if not resident in such state, waive the personal service of any and all process upon them, and consent that such service of process may be made by certified or

registered mail, return receipt requested, addressed to the parties as set forth herein. **b)** Any dispute or claim arising hereunder shall be submitted to binding arbitration in Pinellas County, Florida, and conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA), and the parties expressly waive any right they may otherwise have to cause any such action or proceeding to be brought or tried elsewhere. The parties hereunder further agree that: **(i)** any request for arbitration shall be made in writing and must be made within a reasonable time after the claim, dispute or other matter in question has arisen; provided however, that in no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute, or other matter would be barred by the applicable statutes of limitations; **(ii)** the appointed arbitrator must be a former or retired judge or attorney at law with at least ten (10) years' experience in the substantive area of this Agreement; **(iii)** the award or decision of the arbitrator, which may include equitable relief, shall be final and judgment may be entered on such award in accordance with applicable law in any court having jurisdiction over the matter. **c)** In any action, arbitration, or other proceeding by which one party either seeks to enforce its rights under the Agreement, or seeks a declaration of any rights or obligations under the Agreement, the prevailing party will be entitled to reasonable attorney's fees and reasonable costs and expenses incurred to resolve such dispute and to enforce any final judgment. In addition, if Customer or Customer's account is referred to an attorney or collection agency for collection, Customer will pay for all collection fees, costs and expenses incurred by Rainmaker Mobile Marketing, LLC, including attorneys' fees and fees of collection agencies.

**12. GENERAL.** **a) Press Releases.** Rainmaker Mobile Marketing, LLC may issue press releases and other marketing and promotional material describing the relationship created by this Agreement. Customer shall have final authority to authorize such release. Rainmaker Mobile Marketing, LLC may use specific information previously reviewed for public release by Customer, without further approval. **b) Notices.** All notices and other communications to each party must be in writing and sent to the party at the address specified in this Agreement or to such alternative address as either party may furnish in writing to the other from time to time. If to Rainmaker Mobile Marketing, LLC, Attention: Legal Department. Unless otherwise agreed, notice shall be deemed given **(i)** upon receipt when delivered personally, **(ii)** upon written verification of receipt from overnight courier, **(iii)** upon verification of receipt of registered or certified mail, or **(iv)** upon verification of receipt via facsimile. **c) Force Majeure.** Neither party shall be liable or deemed to be in default for any delays or failure in performance resulting directly or indirectly from any cause or circumstances beyond its reasonable control, including but not limited to acts of God, war or warlike conditions, terrorism, riot, embargoes, acts of civil or military authority, fire, flood, accidents, strikes or labor shortages, sabotage, Internet failure, transportation facilities shortages, fuel or materials or for failures of equipment, telecommunications facilities or third party software programs. **d) Severability.** If any term or condition hereof is found by a court or administrative agency to be invalid or unenforceable, the remaining terms and conditions hereof shall remain in full force and effect and shall be enforceable to the maximum extent permitted by law. **e) Waiver.** The failure of either party to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce it at a later time. A party's remedies set forth herein are not exclusive and are in addition to any and all other remedies available at law or in equity, none of which shall be deemed as waived by virtue of a party's exercise of any other remedy. **f) Entire Agreement.** This Agreement and related exhibits and attachments represent the entire Agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior agreements and understandings. There are no representations, warranties, promises, covenants or undertakings, except as described herein. **g) Service Enhancements.** Rainmaker Mobile Marketing, LLC reserves the right to add or delete programs or services as part of our continued enhancement of the Services. Rainmaker Mobile Marketing, LLC will give Customer thirty (30) days' notice of any such changes and any fee increases or decreases related thereto. **h) Amendment.** Except where otherwise provided herein, this Agreement may not be amended or otherwise modified except by an Addendum signed by the parties hereto. **i) Assignment.** Customer may not sell, mortgage, assign or otherwise transfer this Agreement or any of its rights or obligations hereunder to any other person or entity, without the express written consent of Rainmaker Mobile Marketing, LLC. Page 3 VOID IF ALTERED - Rev: 01/21/09 **j) Aggregate Reports.** Notwithstanding anything to the contrary contained in this Agreement, Rainmaker Mobile Marketing, LLC may track, analyze, and/or create reports related to aggregate activity in connection with Customer's use of the Services and share such information with its affiliated companies. Rainmaker Mobile Marketing, LLC and such companies may utilize such information to create, market, and sell products and services. Customer has the right to grant Rainmaker Mobile Marketing, LLC and such companies the foregoing rights. **k) Independent Contractors.** The relationship of the parties will be that of independent contractors. Neither of the parties will have, and will not represent that it has, any power to bind the other or to create any obligation on behalf of the other. Nothing stated in this Agreement shall be construed as constituting or as creating the relationships of employer/employee, fiduciary,

principal/agent, partnership, joint venture or representative of the other. **l) Third Party Beneficiaries.** This Agreement is not intended to benefit any third party and the parties do not intend to create any third party beneficiary rights under this Agreement. **m) Precedent.** The preprinted terms and conditions of any purchase order or other document issued by Customer in connection with this Agreement shall not be binding on Rainmaker Mobile Marketing, LLC and shall not be deemed to modify this Agreement. **n) Ownership of Data:** Databases collected via text, web, or paper are the sole and exclusive property of Customer. This data can be downloaded and used by Customer only, and cannot be sold, transferred, used, or disseminated by any other party without the express written permission from Customer.

**13. NOTICES. a)** Do not accept this contract before you read it IN WITNESS WHEREOF, the parties have caused this Agreement to be accepted by their duly authorized representative.