

SERVICES & TECHNOLOGY AGREEMENT

THIS SERVICES & TECHNOLOGY AGREEMENT (the “Agreement”) is dated _____, 200_ (the “Effective Date”) between **Jacob, Inc.**, located at 1103 W. Wisconsin Avenue, Milwaukee, WI 53233 (“Jacob”), and _____, located at _____ (“Client”).

1. SERVICES.

1.1 Service Orders. Jacob and Client may agree to one or more written statements of work, work orders or other order forms (each, an “Order,” and collectively, the “Orders”) whereby Client orders services from Jacob and access to Jacob’s technology. Orders are not effective until signed by both Client and Jacob. Collectively, the services and access to technology described in the Orders are the “Services.” Each Order automatically incorporates this Agreement’s terms and becomes part of the “Agreement.” If an Order conflicts with this Agreement, the Order shall control; and if Orders conflict, the later-executed Order shall control.

1.2 Client Deliverables. An Order may specify that the Client shall deliver materials (such as Client or third party logos, content, creative, promotions or user data) (the “Client Deliverables”) to Jacob, which materials shall conform to Jacob’s specifications. Should Client Deliverables be delayed or non-conforming, Jacob’s obligations adjust accordingly. Jacob may use the Client Deliverables to perform the Services. If Jacob prepares materials for Client, Jacob hereby grants to Client a non-exclusive license to exercise any copyrights that Jacob creates and incorporates into such materials. Client shall retain ownership of all Client Deliverables and any other materials designated for Client’s ownership in an Order.

1.3 Campaign Performance. Notwithstanding anything herein, Jacob may take any action (including, without limitation, filtering email addresses or suspending performance) that it believes necessary or appropriate to comply with applicable law, minimize possible legal liability, maintain third party relationships or otherwise protect Jacob’s interests. If Jacob takes such an action, Jacob shall promptly notify Client. If a marketing campaign is not implemented according to an Order’s terms, Client’s sole and exclusive remedy shall be to have Jacob reperform the campaign pursuant to a new Order.

2. PAYMENT. Client shall pay Jacob as specified in each Order. All invoiced amounts are due on invoicing and overdue 30 days thereafter. Overdue payments accrue interest (at the lesser of 1½% per month or the maximum legal rate) from due date until paid, and Client shall pay Jacob’s collection costs and reasonable attorneys’ fees. This transaction isn’t expected to create sales/use (or similar) tax obligations; if it does, then to the extent required by law, Jacob shall add applicable taxes to its invoices, and Client shall pay such amounts.

3. TERM/TERMINATION. This Agreement commences on the Effective Date and continues indefinitely. By providing written notice, a party may (a) immediately terminate this Agreement (or, alternatively, an applicable Order) if the other party materially breaches this Agreement and fails to cure within 30 days after written notice, or (b) immediately terminate this Agreement for convenience if no Orders are active. Sections 4-8, and any accrued but unpaid payment obligations, survive termination.

4. NO WARRANTY. EACH PARTY PROVIDES ALL GOODS, SERVICES, INFORMATION AND ACCESS TO TECHNOLOGY “AS IS” AND DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF ACCURACY, TITLE, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER PARTY PROMISES CONTINUOUS, UNINTERRUPTED OR SECURE INTERNET OPERATIONS. Neither party has relied upon any warranty or representation not contained in this Agreement. Each party waives any UCC Article 2 inspection, acceptance and acceptance revocation rights.

5. INDEMNITY. Jacob shall defend (or at its option settle) any third party claims against Client attributable to the Services (excluding claims covered by the next paragraph). Jacob shall pay all losses, costs, damages and expenses (including reasonable attorney’s fees) that Client must pay to third parties due to such claims.

Client shall defend (or at its option settle) any third party claims against Jacob attributable to the Client Deliverables, any goods/services promoted thereby and any Client-disseminated coupons. Client shall pay all losses, costs, damages and expenses (including reasonable attorney’s fees) that Jacob must pay to third parties due to such claims.

The foregoing obligations are conditioned upon the party seeking defense (the “Claiming Party”) (1) promptly tendering and giving control of the claim to the other party (the “Defending Party”), but any settlement affecting the Claiming Party’s rights requires the Claiming Party’s written approval, and (2) cooperating (at its expense) with the Defending Party in the defense. The Claiming Party may participate in the defense at its expense.

6. LIABILITY LIMITS. EXCEPT FOR CLIENT’S FAILURE TO PAY UNDER SECTION 2, NEITHER PARTY SHALL BE LIABLE FOR (A) LOST PROFITS OR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (HOWEVER ARISING, INCLUDING NEGLIGENCE), EVEN IF SUCH DAMAGES WERE FORESEEABLE OR KNOWN, OR (B) MORE THAN THE AMOUNT CLIENT ACTUALLY PAYS TO JACOB PURSUANT TO SECTION 2 IN THE 12 MONTHS PRECEDING THE FIRST COMPLAINT FILING. ANY CAUSE OF ACTION RELATED TO THIS AGREEMENT MAY NOT BE BROUGHT MORE THAN 12 MONTHS AFTER THE ACTIONABLE BEHAVIOR WAS FIRST TAKEN.

7. CONFIDENTIALITY. “Confidential Information” is information one party (the “Disclosing Party”) discloses to the other (the “Receiving Party”) and designates as confidential when disclosed. The Receiving Party may use Confidential Information only to further this Agreement and shall not disclose Confidential Information to third parties except as required by law, excluding Confidential Information that: (1) is or becomes generally known (other than by the Receiving Party’s actions); (2) the Receiving Party knows when disclosed; (3) a third party legitimately discloses to the Receiving Party; or (4) the Receiving Party independently develops without using the other party’s Confidential Information.

8. GENERAL.

8.1 Governing Law. This Agreement is governed by Maryland law as such laws apply to agreements entered into and to be performed entirely within Maryland between Maryland residents, except that Maryland's implementation of UCC Articles 1 and 2 applies instead of UCITA. The parties accept personal jurisdiction in Maryland, and any cause of action relating to this Agreement may be brought only in a Montgomery County, Maryland court.

8.2 Force Majeure. A party's performance (other than payment) is excused to the extent affected by a factor outside the party's reasonable control (including, without limitation, any systemic issue affecting the Internet generally).

8.3 Independent Contractors. The parties are independent contractors. No agency, partnership, franchise, joint venture or employment relationship is intended or created. Neither party shall make any warranties or representations on the other's behalf.

8.4 Notice. Any notices regarding this Agreement are effective only when: (a) made in writing, (b) sent to the address in the Preamble (or a different address specified by proper notice); and (c) delivered via personal delivery (effective when delivered) or overnight courier (effective 1 day after deposit), or recipient acknowledges receipt.

8.5 Interpretation. Invalid or unenforceable provisions shall not affect other provisions. Headings should not affect Agreement interpretation. A party's waiver of a breach does not waive any other or subsequent breach.

8.6 Entire Agreement. This Agreement is the parties' final and entire agreement, and supersedes any other agreements or understandings between the parties, regarding its subject matter. The parties may change this Agreement only via a mutually-signed writing. This Agreement has no third party beneficiaries.

Jacob, Inc.

Client

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____