

Terms and Conditions

Customer and Marketo hereby agree as follows:

1. **Scope.** These Terms and Conditions shall apply to Customer's use of Marketo's subscription services, packaged professional services, all linked pages, content, products and offline components ("Service" or "Services") identified in one or more ordering documents signed by the parties, including any exhibits thereto ("Order" or "Orders"). These Terms and Conditions and all Orders (collectively referred to as the "Agreement") represent the parties' entire understanding regarding the Services and shall control over any different or additional terms of any purchase order or other non-Marketo ordering document, and no terms included in any such purchase order or other non-Marketo ordering document shall apply to the Services. In the event of a conflict between these Terms and Conditions and an Order, the terms of the Order shall control. All capitalized terms not defined herein shall have the meanings attributed in the Order.
2. **Right to Use the Services.**
 - 2.1 During the Subscription Term set forth in an Order. Marketo grants to Customer a nontransferable, nonexclusive, worldwide right to permit those individuals authorized by Customer or on Customer's behalf, and who are Customer's employees, agents or contractors ("Users"), to access and use the Services subject to the terms of the Agreement.
 - 2.2 The Services are provided by Marketo from a data center facility to which Users have remote access via the Internet in conjunction with certain offline components provided by Marketo hereunder. Each Order defines specific usage rights ("Usage Rights"), and Customer shall at all times ensure that its use does not exceed its Usage Rights.
 - 2.3 Customer shall be solely responsible for obtaining and maintaining appropriate equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, computers, computer operating system and web browser (collectively, "Equipment"). Customer shall ensure that Equipment complies with all configurations and specifications set forth in Marketo's published documentation.
3. **Usage Restrictions and Representations.**
 - 3.1 Customer shall not, directly or indirectly: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services or any software, documentation or data related to or provided with the Services ("Software"); (ii) modify, translate, or create derivative works based on the Services or Software; or copy (except for archival purposes), rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services or Software; (iii) use or access the Services to build or support, and/or assist a third party in building or supporting, products or services competitive to Marketo; or (iv) remove any proprietary notices or labels from the Services or Software. Customer shall use the Services and Software only for its own internal business operations, and not for the operation of a service bureau or timesharing service.
 - 3.2 Customer shall not knowingly or willfully use the Services in any manner that could damage, disable, overburden, impair or otherwise interfere with Marketo's provision of the Services. Customer shall be responsible for maintaining the security of the Equipment and Customer's account access passwords. Customer and Marketo agree to make every reasonable effort to prevent unauthorized third parties from accessing the Services. Customer shall be liable for all acts and omissions of its Users.
 - 3.3 Customer represents and warrants that Customer will use the Services only in compliance with Marketo's Use Policies attached as Exhibit A (as may be amended from time to time upon written notice to Customer), and all applicable (i) social networking sites' terms and conditions associated with its procurement and use of Customer Data; and (ii) laws and regulations, including those related to spamming, privacy, data protection, intellectual property, consumer and child protection, pornography, obscenity or defamation.
 - 3.4 Marketo may immediately suspend Customer's password, account, and access to the Services if (i) Customer fails to make payment due within ten business days after Marketo has provided Customer with notice of such failure; or (ii) Customer violates Section 2.1, 3, or 9 of these Terms and Conditions. Any suspension by Marketo of the Services under the preceding sentence shall not relieve Customer of its payment obligations under the Agreement.
4. **Ownership.**
 - 4.1 Marketo owns or has rights to all intellectual property rights in and to the Services and Software (including all derivatives or improvements thereof). All suggestions, enhancements requests, feedback, recommendations or other input provided by Customer or any other party relating to the Services or Software shall be owned by Marketo, and Customer hereby does and shall make all assignments and take all reasonable acts necessary to accomplish the foregoing ownership. Any rights not expressly granted herein are reserved by Marketo.

- 4.2 Customer owns any data, information or material originated by Customer that Customer submits, collects or provides in the course of using the Services, including information regarding Customer's social networking "connections" "followers" or other contacts activated through use of the Services ("Customer Data"). Marketo has no ownership rights in or to Customer Data. Customer shall be solely responsible for the accuracy, quality, content and legality of Customer Data, the means by which Customer Data is acquired and the transfer of Customer Data outside of the Marketo Services. Customer Data shall be deemed to be Customer Confidential Information pursuant to Section 9 below.

5. Billing and Payment.

- 5.1 Customer shall pay all fees set forth in an Order. All fees are non-cancelable and nonrefundable, except as expressly specified in Section 7.2. All fees are exclusive of taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties (excluding taxes based on Marketo's income), even if such amounts are not listed on an Order. Customer shall pay all fees in U.S. Dollars or in such other currency as agreed to in writing by the parties.
- 5.2 All amounts invoiced hereunder are due and payable as specified in the Order. Unpaid invoices that are not the subject of a written good faith dispute are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all reasonable expenses of collection.
- 5.3 If at any time Marketo determines that Customer is exceeding the Usage Rights, Marketo shall notify Customer and Customer shall bring its usage within the limits of such Usage Rights. If Customer fails to do so within 30 days of receipt of Marketo's notice, Marketo reserves the right to charge and Customer agrees to pay Marketo's then-current usage fees for such overage.

6. Term and Termination.

- 6.1 The Agreement shall commence as of the date set forth in the first Order and, unless earlier terminated as set forth below, shall remain in effect through the end of the Subscription Term in any current Order. All sections of the Agreement which by their nature should survive termination will survive, including without limitation, accrued rights to payment, use restrictions and indemnity obligations, confidentiality obligations, warranty disclaimers, and limitations of liability.
- 6.2 In the event of a material breach by either party, the non-breaching party shall have the right to terminate the applicable Order for cause if such breach has not been cured within 30 days of written notice from the non-breaching party specifying the breach in detail. If Marketo terminates an Order for Customer's material breach, all fees set forth on such Order are immediately due and payable.
- 6.3 Upon any termination or expiration of an Order, Customer's right to access and use the Services covered by that Order shall terminate. Notwithstanding the foregoing, at Customer's request if received within 30 days of termination of the Order, Marketo will permit Customer to access the Services solely to the extent necessary for Customer to retrieve a file of Customer Data then in Marketo's possession. Customer acknowledges and agrees that Marketo has no obligation to retain Customer Data and that Marketo will irretrievably delete and destroy Customer Data after 30 days following the termination of the Agreement.

7. Representations, Disclaimer of Warranties, Indemnities.

- 7.1 Each party represents and warrants to the other party that it has the power and authority to enter into the Agreement. Marketo warrants to Customer that it will use best efforts to (a) perform the Services substantially in accordance with its documentation under normal use; and (b) provide the Services in a manner consistent with generally accepted industry standards. Customer must notify Marketo of any warranty deficiencies within 30 days from performance of the relevant Services in order to receive warranty remedies.
- 7.2 For breach of the express warranty set forth above, Customer's exclusive remedy shall be the re-performance of the deficient Services. If Marketo cannot re-perform such deficient Services as warranted, Customer shall be entitled to recover a pro-rata portion of the fees paid to Marketo for such deficient Services, and such refund shall be Marketo's entire liability.
- 7.3 The Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, or because of other causes beyond Marketo's reasonable control, but Marketo shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled unavailability of the Services.
- 7.4 Marketo shall defend, indemnify and hold Customer harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("Claims") made or brought against Customer by a third party alleging that the use of the Service as contemplated hereunder infringes the intellectual property rights of a third party; provided, that Customer (a) promptly gives written notice of the Claim to Marketo; (b) gives Marketo sole control of the defense and settlement of the Claim (provided that Marketo may not settle or defend any Claim unless it unconditionally releases Customer of all liability); and (c) provides to Marketo, at Marketo's cost, all reasonable assistance. Customer shall defend, indemnify and hold Marketo harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with Claims made or brought against Marketo by a third party alleging that Customer

Data, or Customer's use of the Services in violation of the Agreement, infringes the intellectual property rights of, or has otherwise harmed, a third party or violates any law or regulation; provided, that Marketo (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases Marketo of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance.

- 7.5 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, MARKETO AND ITS THIRD PARTY PROVIDERS HEREBY DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND QUALITY. MARKETO AND ITS THIRD PARTY PROVIDERS MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE RELIABILITY, AVAILABILITY, TIMELINESS, SUITABILITY, ACCURACY OR COMPLETENESS OF THE SERVICES OR THE RESULTS CUSTOMER MAY OBTAIN BY USING THE SERVICES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MARKETO AND ITS THIRD PARTY PROVIDERS DO NOT REPRESENT OR WARRANT THAT (A) THE OPERATION OR USE OF THE SERVICES WILL BE TIMELY, UNINTERRUPTED OR ERROR-FREE; OR (B) THE QUALITY OF THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS. CUSTOMER ACKNOWLEDGES THAT NEITHER MARKETO NOR ITS THIRD PARTY PROVIDERS CONTROLS THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. MARKETO IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. EXCEPT WHERE EXPRESSLY PROVIDED OTHERWISE BY MARKETO, THE SERVICES ARE PROVIDED TO CUSTOMER ON AN "AS IS" BASIS.

8. **Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE, INACCURACY OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICE OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND IT'S REASONABLE CONTROL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE LESSER OF \$500,000 OR THE FEES PAID BY CUSTOMER IN THE PRECEEDING 12 MONTHS.
9. **Confidential Information.** Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's business (hereinafter referred to as "Confidential Information" of the Disclosing Party). Such information includes, without limitation, Customer Data, information related to Customer's login identifiers and credentials for Accounts and the nature and performance of Customer's marketing programs. The Receiving Party agrees: (i) to take reasonable precautions to protect such Confidential Information; and (ii) not to use (except as expressly permitted in Section 10 below) or divulge to any third person any such Confidential Information. The Disclosing Party agrees that the foregoing shall not apply with respect to Confidential Information after five years following the termination of the Agreement or any Confidential Information that the Receiving Party can document (a) is or becomes generally available to the public; or (b) was in its possession or known by it prior to receipt from the Disclosing Party; or (c) was rightfully disclosed to it by a third party; or (d) was independently developed without use of any Confidential Information of the Disclosing Party; or (e) is required by law. Customer Data will be destroyed as set forth in Section 6.3, and, upon Customer's request, Marketo shall certify to such destruction in writing.
10. **Statistical Information.** Notwithstanding anything else in the Agreement or otherwise, Marketo may monitor Customer's use of the Services and use Customer Data in an aggregate and anonymous manner, compile statistical and performance information related to the provision and operation of the Services, and may make such information publicly available, provided that such information does not incorporate Customer Data and/or identify Customer's Confidential Information. Marketo retains all intellectual property rights in such information.
11. **Notices.** Marketo may give notice applicable to Marketo's general Services customer base by means of a general notice on the Services portal, and notices specific to Customer by electronic mail to Customer's e-mail address on record in Marketo's account information or by written communication sent by first class mail or pre-paid post to Customer's address on record in Marketo's account information. If Customer has a dispute with Marketo, wishes to provide a notice under the Agreement, or becomes subject to insolvency or other similar legal proceedings, Customer shall promptly send written notice to Marketo at 901 Mariners Island Blvd., Suite 200, San Mateo, California 94404, U.S.A.
12. **Force Majeure.** Neither party shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 20 days, either party may cancel unperformed Services upon written notice. This section does not excuse either party of its obligations to take reasonable steps to follow its normal disaster recovery procedures or Customer's obligation to pay for the Services provided.

13. General provisions.

- 13.1 Any action, Claim, or dispute related to the Agreement will be governed by California law, excluding its conflicts of law provisions, and controlling U.S. federal law. The Uniform Computer Information Transactions Act will not apply to the Agreement. In any action or proceeding to enforce rights under the Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. The failure of either party to enforce any right or provision in the Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by such party in writing. Except for actions for nonpayment or breach of either party's proprietary rights, no action, regardless of form, arising out of or relating to the Agreement may be brought by either party more than two years after the cause of action has accrued.
- 13.2 The Agreement and all Order(s), represent the parties' entire understanding relating to the Services, and supersede any prior or contemporaneous, conflicting or additional communications. The exchange of a fully executed Order by fax or electronic signature shall be sufficient to bind the parties to the Terms and Conditions of the Agreement and such Order. The Agreement may be amended only by written agreement signed by t the parties. If any provision of the 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.
- 13.3 No joint venture, partnership, employment, or agency relationship exists between Marketo and Customer as a result of the Agreement or use of the Services. Neither party may assign the Agreement without the prior written approval of the other, such approval not to be unreasonably withheld or delayed, provided that such approval shall not be required in connection with a merger or acquisition of all or substantially all of the assets of the assigning company. Any purported assignment in violation of this Section shall be void.

Exhibit A **Marketo Use Policies**

Email Use and Anti-Spam Policy

This policy is incorporated by reference into Marketo's End User Services Agreement, and all users of the Marketo Service must comply with this policy at all times.

Marketo has a zero tolerance policy regarding the sending of Unsolicited Commercial Email ("UCE", or "spam") using the Marketo Service. Any Customer or User account found to be in violation of this policy is subject to immediate suspension, and will not be allowed to send any additional emails using the Marketo Service.

Recipients of email messages sent using the Marketo Service are encouraged to report suspected violation of this policy by forwarding a copy of the received email to abuse@marketo.com. It is Marketo's policy to catalog, investigate, and take appropriate action on all reports of abuse.

Acceptable Use and Requirements for Bulk or Commercial Email

Customers and Users shall comply with all laws and regulations applicable to bulk or commercial email when using the Marketo Service, including without limitation all local or national laws applicable to the regions where Customers and Users have business operations or where their email recipients are located, e.g., the United States CAN-SPAM Act of 2003.

In addition, Customers and Users may not send any Unsolicited Email by use or means of the Marketo Service. "Unsolicited Email" is defined as email sent to persons other than: (i) persons with whom Customer has an existing business relationship, OR (ii) persons who have consented to the receipt of such email, including publishing or providing their email address in a manner from which consent to receive email of the type transmitted may be reasonably implied.

All Bulk or Commercial Email sent using the Marketo Services must include provision for recipients to revoke consent, i.e., to "opt out", of receiving future email contacts from the sender. Customer shall either use the Unsubscribe tools supplied by default with the Marketo Service; or, if Customers choose to override the Marketo default tools, Customer shall have procedures in place to allow an email recipient to easily opt-out, such as an unsubscribe link in the body of the e-mail, or instructions to reply with the word "Remove"

in the subject line. Customer shall honor any and all such revocations of consent within 72 hours.

Privacy and Data Protection

Customer shall be knowledgeable about and at all times compliant with all privacy and data protection laws applicable to its location and operations, such as, by way of example, the European Union Data Protection Directive and member state implementations thereof.