

Marketo End User Services Agreement

PLEASE READ THIS MARKETEO END USER SERVICES AGREEMENT (THIS "AGREEMENT") CAREFULLY BEFORE USING THE PROPRIETARY SOFTWARE APPLICATION AND OTHER TECHNOLOGY (INCLUDING WEB ANALYTICS TRACKING CODES) AVAILABLE AT WWW.MARKETO.COM ("APPLICATION"), ALL LINKED PAGES, CONTENT AND OFFLINE COMPONENTS (COLLECTIVELY, THE "SERVICES") PROVIDED BY MARKETEO, INC. ("MARKETO") TO THE COMPANY ("CUSTOMER") REFERENCED IN AN ORDERING DOCUMENT/FORM THAT INCORPORATES THIS AGREEMENT (THE "ORDERING DOCUMENT"). BY ACCEPTING THIS AGREEMENT THROUGH THE PROCESS OF ACCEPTING AN ORDERING DOCUMENT, CUSTOMER AGREES TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THE AGREEMENT.

This Agreement is between Customer and Marketo, and is made effective as of the date Customer accepts the Ordering Document. The terms of this Agreement shall apply to use of the subscription services identified in the Ordering Document as well as all other services provided by Marketo that are set forth in such Ordering Document (including, any exhibits and/or statements of work thereunder). The terms of the Agreement 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. The terms of the Ordering Document between Customer and Marketo shall control over any conflicting terms in this Agreement.

If Customer is obtaining or has obtained the Services from a third party authorized by Marketo ("Partner"), then: (a) the terms of this Agreement shall apply to the Services that are being obtained or were obtained by Customer from Partner; (b) this Agreement is between Marketo and Customer, however, the terms of the agreement by which Customer orders from Partner the Services and any related products or services provided by the Partner (which shall be referred to herein as the "Partner Order") is between Customer and the Partner who has executed the Partner Order with Customer; (c) for purposes of interpreting this Agreement, the Partner Order shall be deemed to be the "Ordering Document", and collectively with this Agreement, the "Agreement"; and (d) notwithstanding the last sentence of the preceding paragraph, the Partner Order shall not amend or modify any terms of this Agreement, and the terms of this Agreement shall control over any conflicting terms in the Partner Order.

- 1. Right to Use the Services.** Marketo grants to Customer, during the Subscription Term (as defined in Section 7) of the applicable Ordering Document, the 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 use the Services, all solely for Customer's own internal business operations and subject to the terms of the Agreement. The Services are provided by Marketo from a data center facility to which Customer's Users have remote access. The maximum number of Users that Customer authorizes to access the Services shall not exceed the number of User licenses (also referred to as "subscriptions") Customer has purchased, as evidenced in the Ordering Document. User licenses cannot be shared or used by more than one individual User

(unless it is reassigned in its entirety to another authorized User, in which case the prior authorized User shall no longer have any right to access or use such license). Customer acknowledges and agrees that Marketo shall own all right, title and interest in and to all intellectual property rights in the Services (including all derivatives or improvements thereof), and any suggestions, enhancement requests, feedback, recommendations or other information provided by Customer or any other party relating to the Services. Customer hereby does and shall make all assignments and take all reasonable acts necessary to accomplish the foregoing ownership. The rights granted to Customer in the Agreement are subject to all of the Usage Restrictions described in Section 2. Any rights not expressly granted herein are reserved by Marketo.

2. Usage Restrictions.

- a. Whether or not any software associated with the Service will be hosted on Customer's computers, this is a contract for the provision of services and any software will be installed, accessed and maintained only by or for Marketo and no license is granted thereto.
- b. 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 Application or any software, documentation or data related to or provided with the Service ("Software"); (ii) modify, translate, or create derivative works based on the Service or any Software; or copy (except for archival purposes), rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Service or any Software; (iii) use the Service or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party (except as expressly allowed herein); (iv) access the Service for the purposes of monitoring its availability, performance or functionality, or for any other benchmarking purposes; (v) 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; (vi) remove any proprietary notices or labels from the Service; (vii) create Internet "links" to the Service or "frame" or "mirror" any content provided from the Service on any other server or wireless or Internet-based device.
- c. Customer shall not use the Service in any manner that could damage, disable, overburden, impair or otherwise interfere with Marketo's provision of the Service (e.g. Customer may not use the Service in an automated manner or for any form of scraping or data extraction or other means in order to access, query, or otherwise collect information from the Service in an unauthorized manner). Customer may not access the Service if Customer is a direct competitor of Marketo (as determined in Marketo's discretion), unless Customer obtains Marketo's prior written consent.
- d. Customer represents, covenants, and warrants that Customer will use the Service only in compliance with Marketo's standard policies then in effect and all applicable laws and regulations (including but not limited to policies and laws related to spamming, privacy (including but not limited to any European privacy laws), intellectual property, consumer and child protection, obscenity or defamation).

- 3. Customer's Data.** Marketo does not own any data, information or material that Customer submits to the Service in the course of using the Service ("Data"). Customer, not Marketo, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of Customer's Data. Marketo will protect any Data provided by Customer that resides in Customer's Services environment as confidential in accordance with Section 11. Customer acknowledges and agrees that its Data may be transferred or stored outside of the country or other jurisdiction where Customer and its Users are located, such as in connection with the provision of support services. In addition, Customer acknowledges and agrees that, although Marketo remains obligated to maintain the privacy of any personal information contained within the Data in accordance with Marketo's [Privacy Policy](#) and [Safe Harbor Statement](#), Customers must comply with all applicable data protection and privacy laws and regulations with respect to such Data, which may include informing third parties of the use, processing, or transfer of their personal information and obtaining their consent to such use, processing, and transfer.
- 4. Integration.** To enable Marketo to provide the Services, Customer acknowledges that Marketo must integrate confidential information from Customer's or certain third party media accounts, including, Salesforce.com, Google AdWords, and other Marketo supported platforms ("Account(s)") with the Service. Customer agrees to provide Marketo all applicable Account information required by Marketo to provide the Services. Marketo agrees to treat such information in accordance with the terms of Section 11 (Confidentiality) and Section 16 (Statistical Information) below.
- 5. Usage Requirements.** Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, server, software, operating system, networking, web servers, internet connectivity, long distance and local telephone service (collectively, "Equipment"). Customer shall be responsible for ensuring that such Equipment is compatible with the Service (and, to the extent applicable, the Software) and complies with all configurations and specifications set forth in Marketo's published policies then in effect. Marketo is not responsible for Customer's network connections or for conditions or problems arising from or related to Customer's network connections (e.g., bandwidth issues, excessive latency, network outages) or caused by the internet. Customer shall be responsible for maintaining the security of the Equipment and Customer's account information passwords (including but not limited to administrative and user passwords) and files. Customer agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Services.
- 6. Billing and Payment.** Customer agrees to pay for all products and services ordered under the Agreement as set forth in an Ordering Document. All fees due under the Agreement are non-cancelable and the sums paid nonrefundable, except as otherwise specified in Section 8 of the Agreement. Marketo's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties (excluding U.S. taxes based on Marketo's income), even if such amounts are not listed on an Ordering Document. Customer shall pay all charges in U.S. Dollars or in such other currency as agreed to in writing by the parties. If Customer exceeds the usage limits set forth in the Ordering Document, Marketo reserves

the right to charge Customer Marketo's then-current usage fees for such overage. Customer will provide Marketo with valid and updated credit card or approved purchase order information and complete and accurate billing and contact information. If Customer provides credit card information to Marketo, Customer authorizes Marketo to bill such credit card (a) at the time that Customer orders any products or services, for all products and services set forth in the Ordering Document, (b) for Customer's usage that exceeds the usage limits set forth in Customer's Ordering Document, and (c) at the time of any renewal, for the amount charged for any renewal Subscription Term(s) as set forth in Section 7. If Marketo, in its discretion, permits Customer to make payment using a method other than a credit card, Marketo will invoice Customer at the time of the initial Ordering Document and approximately one month in advance of the start of any renewal or subsequent billing period. All amounts invoiced hereunder that are not the subject of a written good faith dispute are due and payable within 30 days of the date of the invoice. 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.

7. **Term and Termination.** This Agreement is valid for the Ordering Document in which this Agreement is incorporated by reference. The term of the Services set forth in the Ordering Document hereunder shall commence upon the date of enablement of the Services, or as otherwise set forth in such Ordering Document, and shall continue for the period of time set forth in such Ordering Document (the "Subscription Term"). Except as otherwise provided in an Ordering Document issued by Marketo, Services subscriptions may be renewed under Marketo's then-current applicable policies and terms, subject to Marketo's acceptance and Customer's payment of fees for such Services. In the event of any material breach of the Agreement by either party, the non-breaching party shall have the right to terminate the applicable Ordering Document 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. Marketo may immediately suspend Customer's password, account, and access to the Services during such cure period if (i) Customer fails to make payment due to Marketo under the Agreement and do not cure such non-payment within ten business days after Marketo has provided Customer with notice of such failure, or (ii) Customer violates any provision within Sections 1, 2, or 11 of this Agreement. Any suspension by Marketo of the Services under the preceding sentence shall not excuse Customer from its obligation to make payment(s) under the Agreement. Upon any termination of the Ordering Document, Customer's right to access and use the Services specified in the Ordering Document shall terminate. If Marketo terminates the Ordering Document for Customer's material breach hereunder, Customer must pay within 30 days all amounts which have accrued prior to such termination, as well as all sums remaining unpaid for services for the remainder of the then-current term (even if earlier terminated) under the Ordering Document plus related taxes. At Customer's request, within 30 days of termination of the Ordering Document, Marketo will permit Customer to access the Services solely to the extent necessary for Customer to retrieve a file of its Data then in Marketo's possession. Customer agrees and acknowledges that Marketo has no obligation to retain Data and that Data may be irretrievably deleted after 30 days following the termination of the Ordering Document or if Customer's account is 30 days or more past due. All sections of this Agreement which by their nature should survive termination will survive termination,

including, without limitation, accrued rights to payment, use restrictions and indemnity obligations, confidentiality obligations, warranty disclaimers, and limitations of liability.

- 8. Representations, Warranties, Indemnities & Exclusive Remedies.** 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 commercially reasonable efforts to (a) perform the Services substantially in accordance with its online documentation under normal use, and (b) provide Customer 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. For any breach of the express warranty as set forth above, Customer's exclusive remedy shall be the reperformance of the deficient Services, as applicable, and if Marketo determines that it is unable to reperform 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 (depreciated on a straight line basis over the applicable term), and such refund shall be Marketo's entire liability. 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 disruption to the Services. Subject to this Agreement, 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. Subject to this Agreement, 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 the Customer Data, or Customer's use of the Service in violation of this Agreement, infringes the intellectual property rights of, or has otherwise harmed, a third party; 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.
- 9. Disclaimer of Warranties.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 8 ABOVE, MARKETO AND ITS THIRD PARTY PROVIDERS HEREBY DISCLAIM ALL EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES, GUARANTIES, AND CONDITIONS WITH REGARD TO THE SERVICES, 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. MARKETO AND ITS THIRD PARTY PROVIDERS MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE RELIABILITY, AVAILABILITY, TIMELINESS, QUALITY, SUITABILITY, ACCURACY OR COMPLETENESS OF THE SERVICES OR THE RESULTS CUSTOMER

MAY OBTAIN BY USING THE SERVICES, INCLUDING, WITHOUT LIMITATION, ESTIMATES AND OPTIMIZATION OF THIRD PARTY ADVERTISING (E.G. POSITION, LEVELS, QUALITY, OR TIMING OF COST PER CLICK, CLICK THROUGH RATES, AVAILABILITY AND DELIVERABILITY OF IMPRESSIONS, CLICKS, CONVERSIONS, THE ACCURACY OF DATA, AND THE ADJACENCY OF ADS) . 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, SECURE, UNINTERRUPTED OR ERROR-FREE; OR (B) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL CUSTOMER PURCHASES OR OBTAINS THROUGH 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.

10. **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OR DEATH OF A PERSON, MARKETO AND ITS THIRD PARTY LICENSORS SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA 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 MARKETO'S REASONABLE CONTROL, EVEN IF MARKETO 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 SUBSCRIBER TO MARKETO FOR THE SERVICE UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY. Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages, so the exclusions set forth above may not apply.
11. **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, information related to Customer's login identifiers and credentials for Accounts and the 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 herein) or divulge to any third person any such Confidential Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five years following the disclosure thereof or any 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. Notwithstanding the foregoing, Marketo may use Customer's Data in an aggregate and anonymous manner, and Marketo may also collect other data with respect to Customer's use of the Services and report on such usage in an aggregate and anonymous manner, including, without limitation, response rates and other measures of usage performance for the Services.

12. **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 or Customer wishes to provide a notice under the Agreement, or if Customer becomes subject to insolvency or other similar legal proceedings, Customer will promptly send written notice to: Marketo, Inc. 901 Mariners Island Boulevard, Suite 200, San Mateo, CA 94404.
13. **Verification.** At Marketo's written request, but not more frequently than annually, Customer shall furnish Marketo with a document signed by Customer's authorized representative verifying that the Services are being used pursuant to the provisions of this Agreement and the applicable Ordering Document. Customer agrees to provide such information and documents reasonably requested by Marketo with respect to Customer's use of, and payment of fees for, the Services. If the verification described in this section reveals that Customer has underpaid fees to Marketo, Customer shall promptly pay to Marketo such fees at the prices set forth in the applicable Ordering Document. Customer is responsible for implementing reasonable means to monitor Customer's compliance with the terms of the Agreement.
14. **Export.** Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Services. Customer agrees that such export control laws govern Customer's use of the Services and Customer agrees to comply with all export laws and regulations (including "deemed export" and "deemed re-export" regulations). Customer agrees that no data, information, software programs and/or materials resulting from Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.
15. **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 30 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.

16. **Statistical Information.** Notwithstanding anything else in this Agreement or otherwise, Marketo may compile statistical and performance information related to the provision of the Services, and may make such information publicly available, provided that such information does not incorporate Customer's Data and/or identify Customer's Confidential Information. Marketo retains all intellectual property rights in such information.
17. **General provisions.** Any action related to the Agreement will be governed by California law and controlling U.S. federal law. The Uniform Computer Information Transactions Act, the United Nations Convention on the International Sale of Goods, and choice of law rules of any jurisdiction, will not apply to the Agreement. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. Any disputes, actions, claims or causes of action arising out of or in connection with the Agreement shall be subject to the exclusive jurisdiction of the state courts of California, and the federal courts of the Northern District of California. This Agreement and the information which is incorporated into this Agreement by written reference (including reference to information contained in a URL or referenced policy), together with the Ordering Document, represents the parties' entire understanding relating to the Services, and supersedes any prior or contemporaneous, conflicting or additional, communications. The exchange of a fully executed Ordering Document by fax or electronic signature service shall be sufficient to bind the parties to the terms and conditions of this Agreement and Ordering Document. The terms and conditions of the Agreement may be amended only by written agreement of 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. 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. Marketo reserves the right to provide some or all of the Services from locations, and/or through use of third party providers, worldwide. 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 Marketo'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.