



## End User Subscription Agreement

Marketo EMEA, Limited and Customer and hereby agree as follows:

### 1. Scope; Procurement and Provisioning by Affiliates; Subscription Services Users.

1.1 Scope. This End User Subscription Agreement applies to Customer's use of the online subscription services and related online training and packaged professional services (e.g., Launch Packs) offered by Marketo (collectively, the "Subscription Services") that are listed in one or more Marketo subscription-based ordering documents signed by the Parties (each an "Order"). This End User Subscription Agreement and all executed Orders, including any addenda and exhibits, are collectively referred to as the "Agreement." All capitalized terms not defined herein will have the meanings attributed to them in the Order.

1.2 Procurement and Provisioning by Affiliates. Customer may procure Subscription Services under this Agreement for its own account and on behalf of one or more Customer Affiliates (defined below). Customer is responsible for the acts and omissions of Customer Affiliates under any Order pursuant to which the Customer Affiliate receives the benefit of the Subscription Services but is not a signatory. Additionally, Customer Affiliates may procure Subscription Services directly under this Agreement pursuant to an Order executed by such Customer Affiliate and either Marketo or a Marketo Affiliate. Customer Affiliates who sign an Order will be deemed to be the Customer hereunder and solely responsible for its performance or non-performance thereunder. The Marketo Affiliate who signs an Order will be deemed to be Marketo hereunder and solely responsible for its performance or non-performance thereunder. "Affiliate" means any legal entity directly or indirectly controlling, controlled by or under common control with a Party, where control means the ownership of a majority share of the stock, equity or voting interests of such entity.

1.3 Subscription Services Users. During the Subscription Term set forth in each Order, Marketo will make the Subscription Services available to Customer and its authorized Affiliates, employees, agents or contractors ("Users"), for access and use by such Users solely for Customer's internal business purposes in accordance with the terms of the Agreement. Customer is responsible for use of the Subscription Services by Users and any party who accesses the Subscription Services with Customer's or a User's account credentials.

### 2. Restrictions; Marketo Use Policies; Usage Rights; Suspension.

2.1 Restrictions. Customer will not, and will ensure that its Users do not, directly or indirectly (i) make the Subscription Services available to anyone other than Users or use the Subscription Services for the benefit of any unrelated third party; (ii) sell, resell, assign, pledge, transfer, license, sublicense, distribute, rent or lease the Subscription Services; (iii) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Subscription Services or any software, documentation or data related to or provided with the Subscription Services; (iv) modify, translate or create derivative works based on the Subscription Services or remove any proprietary notices or labels from the Subscription Services; (v) use or access the Subscription Services to build or support, and/or assist a third party in building or supporting products or services competitive to the Subscription Services; or (vi) include the Subscription Services in a service bureau or outsourcing offering.

2.2 Marketo Use Policies. Customer will, and will ensure that its Users, use the Subscription Services only in compliance with the Marketo Use Policies available at <http://www.marketo.com/trust/legal/marketo-use-policy/>.

2.3 Usage Rights. Customer will, at all times, ensure that its use of the Subscription Services does not exceed the usage terms specified in the Order ("Usage Rights"). If Marketo determines that Customer is exceeding the Usage Rights, Marketo will notify Customer, and Customer will have 30 days from the date of notice in which to

bring its usage within the limits of such Usage Rights. If Customer fails to do so within 30 days, Marketo has the right to charge Customer, and Customer agrees to pay, for the applicable usage tier, which will be co-termed with the Subscription Term in the applicable Order.

2.4 Suspension. Marketo may immediately suspend Customer's account and access to the Subscription Services if (i) Customer fails to make payment due within 10 business days after Marketo has provided Customer with written notice of such failure; or (ii) Customer violates Section 2.1 (Restrictions), Section 2.2 (Marketo Use Policies) or Section 9 (Confidential Information). Any suspension by Marketo of the Subscription Services under the preceding sentence will not relieve Customer of its payment obligations hereunder.

### **3. Ownership: Subscription Services; Customer Data; Statistical Information.**

3.1 Subscription Services. Customer acknowledges that the Subscription Services are offered online on a subscription basis. Marketo reserves all rights, title and interest in and to the Subscription Services, including any software or documents related to or provided with the Subscription Services and all intellectual property rights and derivatives, modifications, refinements or improvements thereto. From time to time, Customer or its Users may submit to Marketo comments, questions, enhancement requests, suggestions, ideas, process descriptions or other information related to the Subscription Services ("Feedback"). Customer agrees that Marketo has all rights to use and incorporate Feedback into the Subscription Services without restriction or payment to Customer. No rights are granted to Customer other than as expressly set forth herein.

3.2 Customer Data. Customer owns any data, information or material originated by Customer or that Customer provides in the course of using the Subscription Services, including information regarding Customer's social networking connections, followers or other contacts activated through use of the Subscription Services ("Customer Data"). Customer will be solely responsible for (i) the accuracy, quality, content, legality and use of Customer Data, including the means by which Customer Data is acquired and transferred by Customer or its Users outside of the Subscription Services; and (ii) all applicable social networking terms and conditions related to procurement and use of Customer Data. Customer Data is Customer's Confidential Information.

3.3 Statistical Information. Marketo may monitor Customer's use of the Subscription Services and compile Customer Data with other data in an aggregate and anonymous manner to derive statistical and performance information related to the provision and operation of the Subscription Services and may make such information publicly available, provided that such information does not include any data that would enable the identification of Customer or Customer Data, or the disclosure of Customer Confidential Information. Marketo retains all rights, title and interest in and to such statistical and performance information.

### **4. Fees; Taxes and Currency; Invoices.**

4.1 Fees. Customer will pay all fees set forth in the Orders and any fees invoiced pursuant to this Agreement. All fees are noncancelable and non-refundable, except as expressly specified in the Agreement. Any fees paid pursuant to an Order will not offset any fees due under any other Order.

4.2 Taxes and Currency. All fees are exclusive of, and Customer will be responsible for payment of, taxes, levies, duties or similar local, state, provincial, federal or foreign jurisdiction governmental assessments on the Subscription Services. Customer is not responsible for any taxes based on Marketo's net income or property. For the avoidance of doubt, all sums or other consideration set out in this Agreement or otherwise payable or provided by a Party to another Party pursuant to this Agreement, shall be deemed to be exclusive of any VAT which is chargeable on the supply or supplies for which such sums or other consideration (or any part thereof) are the whole or part of the consideration for VAT purposes. An amount equal to such VAT shall in each case be paid by the Party making such payment on receipt of a valid VAT invoice. By entering into this Agreement, Customer represents and warrants that it is receiving any Subscription Services supplied by Marketo for its own business purposes and

where Customer is located in a member state of the European Union, Customer further represents that it is registered for VAT purposes in such member state. In addition, Customer undertakes to provide the VAT registration number under which it is registered in such member state to Marketo. Except as otherwise specified in an Order, all fees due hereunder will be paid in Euros.

4.3 Invoices. All amounts are due and payable as specified in the Order. If no payment terms are specified in the applicable Order, payment terms are net 30 days from receipt of invoice. Unpaid invoices 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. Agreement Term; Termination for Cause, Effect of Termination; Survival.**

5.1 Agreement Term. The Agreement will commence on the Effective Date and will remain in effect until the Subscription Term in all Orders has expired or has otherwise been terminated (the "Agreement Term"). Notwithstanding the foregoing, if immediately following the expiration of the Subscription Term in any Order, the Parties are negotiating a renewal of such Order, the Agreement Term will remain in effect for a reasonable period of time to allow the parties to effect such renewal. Nothing contained herein will extend the Subscription Term set forth in any Order.

5.2 Termination for Cause. In the event of a material breach by either Party, the non-breaching Party will have the right to terminate the applicable Order for cause if such breach has not been cured within 30 days after written notice from the non-breaching Party specifying the breach.

5.3 Effect of Termination. If Marketo terminates an Order for Customer's uncured material breach (i) all fees set forth in the terminated Order will be immediately due and payable; (ii) all rights granted thereunder will immediately terminate; and (iii) if such terminated Order includes fees for usage of the Subscription Services in excess of the Usage Rights, such fees are also immediately due and payable. If Customer terminates an Order for Marketo's uncured material breach, Customer will be entitled to a pro-rata refund for prepaid fees for the Subscription Services not performed as of the date of termination. Upon completion of the Agreement Term, all rights to access and use the Subscription Services will terminate and Marketo will irretrievably delete and destroy Customer Data and, if requested in writing, Marketo will certify to such destruction in writing.

5.4 Survival. The following Sections of the Agreement will survive termination of the Agreement: Section 2.1 (Restrictions), Section 3 (Ownership: Subscription Services; Customer Data; Statistical Information), Section 4 (Fees; Taxes and Currency; Invoices), Section 6.4 (Warranties Disclaimer), Section 8 (Limitation of Liability), Section 9 (Confidential Information) and Section 11 (General Terms).

## **6. Warranties; Warranty Remedies; Warranties Disclaimer.**

6.1 General Warranty. Each Party represents and warrants to the other Party that it has the power and authority to enter into the Agreement.

6.2 Subscription Services Warranty. Marketo warrants the Subscription Services, under normal use, will (i) perform materially in accordance with the applicable documentation provided by Marketo; and (ii) be provided in a manner consistent with generally accepted industry standards.

6.3 Warranty Remedies. Customer will notify Marketo of any warranty deficiencies under Section 6.2 within 30 days of the performance of the relevant Subscription Services, and Customer's exclusive remedy will be the re-performance of the deficient Subscription Services. If Marketo cannot re-perform such deficient Subscription Services as warranted, Customer will be entitled to terminate the deficient Subscription Services under Section 5.2 above and recover a pro-rata portion of the fees paid to Marketo for such deficient Subscription Services, and such

refund will be Marketo's entire liability.

6.4 **WARRANTIES DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, MARKETO AND ITS THIRD PARTY PROVIDERS DISCLAIM ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. MARKETO DOES NOT WARRANT THE RELIABILITY, TIMELINESS, SUITABILITY, OR ACCURACY OF THE SUBSCRIPTION SERVICES OR THE RESULTS CUSTOMER MAY OBTAIN BY USING THE SUBSCRIPTION SERVICES. MARKETO DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE SUBSCRIPTION SERVICES OR THAT MARKETO WILL CORRECT ALL DEFECTS OR PREVENT THIRD PARTY DISRUPTIONS OR UNAUTHORISED THIRD PARTY ACCESS. MARKETO DISCLAIMS ALL FAILURES, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET.

## 7. Indemnification.

7.1 **Marketo.** Marketo will defend Customer against any claim brought against Customer by a third party alleging the Subscription Services as provided by Marketo directly infringe the intellectual property rights of the claimant and will pay Customer for finally-awarded damages and costs and Marketo-approved settlements of the claim. Marketo's obligations to defend or indemnify will not apply to the extent that a claim is based on (i) Customer Data, Customer's or a third party's technology, software, materials, data or business processes; (ii) a combination of the Subscription Services with non-Marketo products or services; or (iii) any use of the Subscription Services not in compliance with this Agreement. Marketo may, in its discretion and at no cost to Customer, (a) modify the Subscription Services to avoid infringement; or (b) terminate Customer's subscriptions for the affected Subscription Services and refund Customer any related prepaid fees for the remainder of the Subscription Term.

7.2 **Customer.** Customer will defend Marketo against any claim brought against Marketo by a third party alleging (i) Customer Data infringes the intellectual property, privacy or other rights of the claimant; or (ii) Customer's use of the Subscription Services, other than as authorised in this Agreement, violates applicable law or regulations, or infringes the claimant's intellectual property rights, and will pay Marketo for finally-awarded damages and costs and Customer-approved settlements of the claim.

7.3 **Procedure.** As a condition to the indemnifying Party's obligations under this Section 7, the Party seeking indemnification must (i) promptly give written notice of the claim to the indemnifying Party; (ii) give the indemnifying Party sole control of the defence and settlement of the claim (provided that the indemnifying Party may not settle any claim unless it unconditionally releases the indemnified Party of all liability); and (iii) provide the indemnifying Party, at the indemnifying Party's cost, all reasonable assistance. THIS SECTION STATES THE INDEMNIFIED PARTY'S SOLE REMEDY, TO THE EXCLUSION OF ALL OTHER REMEDIES (IN CONTRACT, TORT OR OTHERWISE), AND THE INDEMNIFYING PARTY'S TOTAL LIABILITY, REGARDING THE CLAIMS AND LIABILITIES ADDRESSED BY THIS SECTION 7.

8. **Limitation of Liability.** NO PARTY WILL BE LIABLE UNDER ANY CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY (i) FOR ERROR OR INTERRUPTION OF USE, INACCURACY OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICE OR TECHNOLOGY, OR LOSS OF BUSINESS OR DATA; (ii) FOR ANY INDIRECT, EXEMPLARY, LOST PROFITS, LOST REVENUE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (iii) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; OR (iv) EXCEPT FOR CUSTOMER PAYMENT OBLIGATIONS, FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE CUMULATIVE FEES INVOICED TO CUSTOMER UNDER THE AGREEMENT IN THE 12 MONTHS PRECEDING THE DATE THE CLAIM AROSE. THE FOREGOING LIMITATION WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

9. **Confidential Information.** Each Party (the "Recipient") understands that the other Party (the "Discloser") may, during the Agreement Term and in connection with the Subscription Services, disclose non-public

information relating to the Discloser's business, that is designated as confidential or reasonably should be understood to be confidential given the nature of the information and circumstances of disclosure ("Confidential Information"). The Recipient agrees (i) to take reasonable precautions to protect such Confidential Information; and (ii) not to use or divulge to any third person any such Confidential Information, except as set forth herein and to those of its employees and contractors who need access for purposes consistent with this Agreement and who are bound to confidentiality terms with Recipient containing protections no less stringent than those herein. The Discloser agrees that the foregoing will not apply with respect to Confidential Information after 5 years following the termination of the Agreement or any Confidential Information the Recipient can document (a) is or becomes generally available to the public; (b) was in its possession or known by it prior to receipt from the Discloser; (c) was rightfully disclosed to it by a third party; or (d) was independently developed without use of any Confidential Information of the Discloser. If the Recipient is required by law or court order to disclose Confidential Information, it will give prior written notice to the Discloser (to the extent legally permitted) and reasonable assistance at the Discloser's cost to contest the disclosure.

**10. Data Security.** Marketo will comply with all applicable privacy and data security laws and regulations governing its processing and storage of Customer Data. During the Agreement Term, Marketo shall maintain and conform to a security program in accordance with industry standards that is designed to ensure the security of Customer Data and protect against unauthorised disclosure or access of Customer Data. Such security program shall include the implementation of appropriate administrative, technical and physical safeguards. If Customer's use of the Subscription Services involves transferring personal data (as defined in EU Data Protection Directive 95/46/EC) outside the European Economic Area or Switzerland to any country (i) not deemed by the European Commission as providing an adequate level of protection for personal data and (ii) not covered by a suitable framework deemed by the relevant authorities or courts as providing an adequate level of protection for personal data, the terms of the Data Processing Addendum (DPA) and the Standard Contractual Clauses incorporated therein shall apply to such personal data and be incorporated into the Agreement upon the execution and submission of the DPA to Marketo in accordance with its terms. Upon Customer's receipt of account credentials, the DPA may be accessed at <https://login.marketo.com/homepage/community>.

## **11. General Terms.**

**11.1 Notice.** Marketo may give general notices for Subscription Services applicable to all customers by means of a notice on the Subscription Services web portal. Specific notices applicable to Users of the Subscription Services, technical support, system security and other account notices will be given by electronic mail to Customer's e-mail address on record in Marketo's account information. All legal or dispute-related notices will be sent by first class mail or express delivery, if to Marketo, attention Managing Director, at Level 2, Red Oak North, South County Business Park, Leopardstown, Dublin 18, Ireland, and if to Customer, to Customer's account representative and address on record in Marketo's account information, or such other addresses as either Party may designate in writing from time to time.

**11.2 Force Majeure.** Neither Party will be responsible for failure or delay of performance if caused by: an act of nature, war, hostility or sabotage; an 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 Subscription Services upon written notice.

**11.3 Governing Law.** Unless specifically set forth in the applicable Order (i) any action, claim, or dispute between the Parties will be governed by the laws of Ireland, excluding its conflicts of law provisions and (ii) the Parties agree to the exclusive jurisdiction of and venue in the courts of Ireland. Except for actions for non-payment 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 2 years after the cause of action has accrued.

11.4 Entire Agreement. This Agreement represents the Parties' entire understanding relating to the Subscription Services and supersedes any prior or contemporaneous agreements or understandings regarding the Subscription Services. In the event of a conflict between this Agreement and a contemporaneous or later-dated Order, the terms of the contemporaneous or later-dated Order will control.

11.5 Standard Terms of Customer. No terms, provisions or conditions of any purchase order, acknowledgement or other business form Customer may use in connection with the acquisition of Subscription Services will affect the rights, duties or obligations of the Parties hereunder, or otherwise modify this Agreement, regardless of any failure of Marketo to object to such terms, provisions or conditions.

11.6 Amendment / No Waiver. The Agreement may be amended only by written agreement signed by 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) will be construed to reflect the intent of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. The failure of either Party to enforce any right or provision in the Agreement will not constitute a waiver of such right or provision unless acknowledged and agreed to by such Party in writing.

11.7 Assignment. No joint venture, partnership, employment, or agency relationship exists between Marketo and Customer as a result of the Agreement or use of the Subscription Services. This Agreement and any rights or obligations hereunder may not be assigned, sublicensed or otherwise transferred by the Parties without the prior written approval of the non-assigning Party, except that either Party may assign or transfer this Agreement in connection with a merger or acquisition of all or substantially all of the assets of the assigning company (other than to a direct competitor of the non-assigning Party and provided that the assignee agrees in writing to be bound by all terms and conditions of this Agreement) by providing the non-assigning Party with prompt written notice of assignment. Any purported assignment in violation of this section will be void.

11.8 Compliance with Laws. Each Party agrees to abide by all applicable laws and regulations in the performance of this Agreement.