

Consulting Services Agreement

Marketo EMEA, Limited (“Marketo”) and Customer agree as follows:

1. Scope; Procurement and Provisioning by Affiliates.

1.1 Scope. This Consulting Services Agreement applies to the Marketo consulting services (“Consulting Services”) identified in one or more Statements of Work substantially in the form attached hereto, including any exhibits thereto (“SOW”). This Consulting Services Agreement and all SOWs hereunder are collectively referred to as the “Agreement.” The Consulting Services provided under the Agreement are in support of Customer’s use of Marketo’s subscription services provided under a separate agreement (the “Subscription Agreement”). The Subscription Agreement shall govern all use by Customer of such subscription services. Customer agrees that its purchase of Consulting Services under the Agreement is not contingent on the delivery of any future functionality or features in the subscription services.

1.2 Procurement and Provisioning by Affiliates. Customer may procure Consulting Services under the 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 SOW pursuant to which the Customer Affiliate receives the benefit of the Consulting Services but is not a signatory. Additionally, Customer Affiliates may procure Consulting Services directly under the Agreement pursuant to a SOW executed by such Customer Affiliate and either Marketo or a Marketo Affiliate. Customer Affiliates who sign a SOW will be deemed to be the Customer hereunder and solely responsible for its performance or non-performance thereunder. The Marketo Affiliate who signs a SOW 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.

2. Fees; Taxes and Currency; Invoices; GST; SOW Expenses.

2.1 Fees. Customer will pay all fees set forth in a SOW. Consulting Services will be provided on a time and materials (“T&M”) basis unless otherwise set forth in the SOW. If an estimated total amount is stated in the SOW, that amount is a good faith estimate and not a guarantee the Consulting Services will be completed for that amount. If the estimated amount is expended, Marketo will continue to provide Consulting Services on a T&M basis at the same rates and terms. Any fees paid pursuant to one SOW will not offset any fees due under any other SOW.

2.2 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 Consulting Services. If Customer is required to make a deduction or withholding in respect of any tax assessed, levied, imposed or collected by a government agency of the Commonwealth of Australia (or any other jurisdiction in which it is domiciled or resident or to whose taxing authority it is subject), the Customer must pay the amount deducted or withheld as required by law and pay to Marketo such additional amount as may be necessary to ensure that Marketo receives, when due, a net amount (after any deduction or withholding of any tax in respect of each additional amount payable) equal to the full amount it would have received if the deduction or withholding had not been made. Customer is not responsible for any taxes based on Marketo’s net income or property. Except as otherwise specified in a SOW, all fees due hereunder will be paid in Australian Dollars.

2.3 GST. In this clause 2.3, “GST Law” has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth), and terms used which are not defined in this Agreement, but which are defined in the GST Law, have the meanings given in the GST Law. Unless stated otherwise, all fees and other amounts payable in relation to this Agreement or an Order are exclusive of GST. If GST is payable by Marketo, Customer must, upon receipt of a tax invoice from Marketo, pay Marketo an additional amount equal to the GST payable on that supply.

2.4 Invoices. All amounts are due and payable as specified in a SOW. If no payment terms are specified

in a SOW, 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.

2.5 SOW Expenses. Customer will be responsible for all reasonable travel expenses, hotel accommodations and any other reasonable out-of-pocket expenses incurred by Marketo in connection with the Consulting Services. Such expenses will be charged at cost and will be included on the relevant invoice for the Consulting Services.

3. Agreement Term; Termination for Cause; SOW Termination; Effect of Termination; Survival.

3.1 Agreement Term. The Agreement will commence upon the last date of signature of the very first SOW created hereunder (the "Effective Date") and will remain in effect until the completion or termination of the Consulting Services set forth in any SOW ("Agreement Term"). Notwithstanding the foregoing, if immediately following the expiration of any SOW, the Parties are negotiating a new SOW, the Agreement Term will remain in effect for a reasonable period of time to allow the Parties to effect such new SOW. Nothing contained herein will extend the term of any SOW.

3.2 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 SOW for cause if such breach has not been cured within 15 days after written notice from the non-breaching Party specifying the breach.

3.3 SOW Termination. Marketo may terminate a SOW upon thirty (30) days written notice to Customer if Customer's performance, as reasonably determined by Marketo, unduly delays or prevents Marketo from performing its obligations in a timely or effective manner.

3.4 Effect of Termination. If either Party terminates a SOW, Customer is responsible for all outstanding fees and expenses incurred under such SOW prior to the date of termination. Any termination right under this Agreement has no impact on the Subscription Agreement.

3.5 Survival. The following sections of this Agreement will survive the termination of the Agreement: Section 2 (Fees; Taxes and Currency; GST; Invoices; SOW Expenses), Section 3 (Agreement Term; Termination for Cause; SOW Termination; Effect of Termination; Survival), Section 4.4 (Warranties Disclaimer), Section 5 (Limitation of Liability), Section 6 (Confidential Information), Section 8 (SOW Results), Section 9 (Indemnification) and Section 11 (General Terms).

4. Warranties; Warranty Remedies; Warranties Disclaimer; Use of Subcontractors.

4.1 General Warranty. Each Party represents and warrants to the other Party that it has the power and authority to enter into the Agreement. Where a mandatory term is implied by law or a mandatory consumer guarantee applies to goods or services provided in connection with this Agreement, the mandatory term or mandatory consumer guarantee shall be deemed to be included in this Agreement.

4.2 Consulting Services Warranty. Marketo warrants the Consulting Services will be performed in a professional and workmanlike manner, in accordance with generally accepted industry standards.

4.3 Warranty Remedies. Customer will notify Marketo of any Consulting Services warranty deficiencies under Section 4.2 within 30 days of the performance of the relevant Consulting Services, and Customer's exclusive remedy will be the re-performance of the deficient Consulting Services. If Marketo cannot re-perform such deficient Consulting Services as warranted, Customer will be entitled to terminate the applicable SOW under Section 3.2 above and recover a pro-rata portion of the fees paid to Marketo for such deficient Consulting Services, and such refund will be Marketo's entire liability.

4.4 WARRANTIES DISCLAIMER. THE ABOVE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4.5 Use of Subcontractors. Customer agrees Marketo may use subcontractors in the performance of the Consulting Services. Where Marketo subcontracts any of its obligations concerning the Consulting Services, Marketo will not be relieved of its obligations to Customer under this Agreement.

5. Limitation of Liability. EXCEPT TO THE EXTENT PROHIBITED BY LAW, NEITHER PARTY WILL BE LIABLE UNDER ANY CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (i) FOR ANY INDIRECT, EXEMPLARY, LOST PROFITS, LOST REVENUE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (ii) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; OR (iii) EXCEPT FOR CUSTOMER PAYMENT OBLIGATIONS, FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE CUMULATIVE FEES INVOICED UNDER THE AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE DATE THE CLAIM AROSE.

6. Confidential Information. Each Party (the "Recipient") understands that the other Party (the "Discloser") may during the Agreement Term and in connection with the Consulting 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.

7. Data Processing; Privacy Law.

7.1 Data Processing. To the extent that Marketo processes any personal information on behalf of Customer, Marketo shall process such personal information strictly in accordance with the terms of this Agreement and Customer's instructions from time to time. Marketo shall put in place appropriate technical and organizational measures against accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to such personal information. For the purposes of this Agreement, personal information shall have the meaning ascribed to it in the Privacy Act 1988 (Cth) taking into account Privacy Amendment (enhancing Privacy Protection) Act 2012 (Cth) and Privacy Regulation 2013. Marketo shall not access personal information of Customer except on Customer's instruction or request.

7.2 Privacy Law. In exercising its rights and performing its obligations under the Agreement, Customer shall at all times comply with its obligations under Privacy Law. "Privacy Law" means a law relating to the protection of Personal Information in Australia, including Commonwealth, State and Territory laws. "Personal Information" means information relating to the protection of information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained from the information or opinion. Without limiting this requirement, Customer shall not collect, use, disclose or handle Personal Information obtained, accessed or provided in connection with the Subscription Services except in accordance with Privacy Law, shall take all reasonable technical and organizational measures to prevent the unauthorised loss, misuse or disclosure of such Personal Information and shall comply with any requirements of a Privacy Commissioner or other regulator acting under

Privacy Law in relation to such Personal Information. To the extent Customer provides any Personal Information to Marketo, Customer warrants that: (a) Customer has collected the information in accordance with Privacy Law; and (b) the individual to whom the Personal Information relates has consented to Customer providing that Personal Information to Marketo and to a jurisdiction outside Australia.

8. SOW Results. Marketo hereby grants Customer a worldwide, perpetual, non-exclusive, non-transferable, royalty-free license to use for its internal business purposes reports and other materials developed by Marketo as a result of the Consulting Services for which Marketo has received full payment (“SOW Results”). Marketo retains all ownership rights to the SOW Results.

9. Indemnification.

9.1 Marketo. Marketo will defend Customer against any claim brought against Customer by a third party alleging the Consulting 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 a claim is based on (i) Customer Data (as such term is defined in the Subscription Agreement), Customer’s or a third party’s technology, software, materials, data or business processes; (ii) a combination of the Consulting Services with non-Marketo products or services; or (iii) any use of the Consulting Services not in compliance with this Agreement. Marketo may, in its discretion and at no cost to Customer, modify the Consulting Services to avoid infringement.

9.2 Procedure. As a condition to Marketo’s obligations under this Section 9, Customer must (i) promptly give written notice of the claim to Marketo; (ii) give Marketo sole control of the defence and settlement of the claim (provided Marketo may not settle any claim unless it unconditionally releases Customer of all liability); and (iii) provide Marketo, at Marketo’s cost, all reasonable assistance. THIS SECTION STATES CUSTOMER’S SOLE REMEDY, TO THE EXCLUSION OF ALL OTHER REMEDIES (IN CONTRACT, TORT OR OTHERWISE), AND MARKETO’S TOTAL LIABILITY REGARDING THE CLAIMS AND LIABILITIES ADDRESSED BY THIS SECTION 9.

10. Insurance. Marketo will, at its expense, procure and maintain throughout the Agreement Term insurance policies and coverages required by law applicable to its business operations and sufficient to support and cover its obligations hereunder. All such policies identified under this Section shall be issued by reputable and financially sound insurance companies authorised to do business in the geographic area where the Consulting Services are to be performed. Upon Customer’s written request, Marketo shall furnish to Customer a certificate of insurance evidencing that such policies are in full force and effect.

11. General Terms.

11.1 Notice. 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.

11.3 Governing Law. Unless specifically set forth in the applicable SOW, any action, claim, or dispute between the Parties will be governed by the laws of the State of New South Wales, Australia. The Parties agree to the exclusive jurisdiction of and venue in the courts of the State of New South Wales. In any action or proceeding to enforce rights under the Agreement, the prevailing Party will be entitled to recover costs and attorneys' fees. 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 Consulting Services and supersedes any prior or contemporaneous agreements or understandings regarding the Consulting Services. In the event of a conflict between this Agreement and a contemporaneous or later-dated SOW, the terms of the later-dated or contemporaneous SOW 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 Consulting 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. This Agreement may be amended only by written agreement signed by the Parties. If any provision of this 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 Consulting 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 federal, state, and local laws and regulations in the performance of this Agreement.

Attachment: Form Statement of Work (next page)

**Attachment – Form Statement of Work
(Do Not Complete – Form Sample Only)**

A. GOVERNING AGREEMENT

This Statement of Work (“SOW”) is made pursuant to, and governed by, the Consulting Services Agreement between **Marketo EMEA, Limited** and _____.

B. SOW NUMBER, NAME, DATES, TAX ID AND CURRENCY.

Table One - SOW Number, Name, Dates, Tax ID and Currency	
SOW Number:	Opp - #####
SOW Name:	
SOW Effective Date:	The last date of signature below
SOW Expiration Date:	
Marketo ABN:	23 373 851 233
Currency:	Australian Dollars

C. SOW CONTACT INFORMATION.

Table Two - SOW Contact Information	
Marketo	Customer
Primary Contact:	Primary Contact:
Phone:	Phone:
Email:	Email:

D. FEES. Consulting Services will be delivered on a time and materials basis with the scope defined in the Consulting Services Description section below.

Consulting Services rendered within the scope of this SOW are not-to-exceed _____

[INSERT CONSULTING SERVICES FEES TABLE HERE]

E. CONSULTING SERVICES DESCRIPTION. [INSERT CONSULTING SERVICES DESCRIPTION HERE]

F. MARKETO RESPONSIBILITIES.

- 1.
- 2.

G. CUSTOMER RESPONSIBILITIES.

- 1.
- 2.

H. ASSUMPTIONS. This SOW is based on the following assumptions below. Should any of these assumptions or dependencies change, the Marketo project manager will work closely with the Customer project manager to identify the impacts to the overall cost and time for the project set forth herein.

1. Marketo and Customer will mutually agree to priority, tasks, and level of effort for the SOW Result(s) prior to commencing work.
2. [INSERT ADDITIONAL ASSUMPTIONS HERE]

I. ADDITIONAL TERMS.

1. Marketo is under no obligation to commence Consulting Services under this SOW prior to the SOW Effective Date.
2. If this SOW includes any pre-purchased Consulting Services hours, all unused hours as of the SOW Expiration Date will be deemed fully utilized by Customer and may not be carried forward past the SOW Expiration Date unless a new SOW or Change Order extending such hours is signed by the Parties.
3. All fees shall be invoiced beginning on or after the SOW Effective Date. Payment Terms are net thirty (30) days from the date of the invoice.

J. CUSTOMER BILLING INFORMATION. All invoices shall be provided to the billing contact specified below. Customer shall inform Marketo promptly in writing if it changes the person to whom invoices should be sent.

Table Three - Bill To Information (Required to be Completed by Customer)	
Contact Name:	
Company:	
Address:	
Phone:	
Email:	

K. PURCHASE ORDERS. Customer **does** ____ / **does not** ____ (check one) require a Purchase Order (“PO”) in order to make payment to Marketo for the fees set forth in this SOW.

If neither box is checked, Customer agrees that Marketo is entitled to payment of invoices without the requirement of a PO to authorize payment. If Customer checks the box indicating a PO is required, Customer agrees to provide the required PO to Marketo within ten (10) days after the execution of this SOW by Customer. Customer can email a copy to ar@marketo.com.

PO Number (if known and required): _____

Customer’s use or non-use of a PO in no way relieves it of its obligations hereunder. Any POs issued pursuant to this SOW are for administrative purposes only and any terms stated therein shall have no effect.

Customer

Marketo EMEA, Limited

DO NOT SIGN – SAMPLE FORM OF SOW ONLY

By: _____
Authorized Signature

By: _____
Authorized Signature

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____