

End User Subscription Agreement

Marketo EMEA, Limited (“Marketo”) and Customer 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 a “Sales Order”). This End User Subscription Agreement and all executed Sales Orders, including any incorporated attachments, 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 Sales 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 Sales 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 a Sales Order executed by such Customer Affiliate and either Marketo or a Marketo Affiliate. Customer Affiliates who sign a Sales Order will be deemed to be the Customer hereunder and solely responsible for its performance or non-performance thereunder. The Marketo Affiliate who signs a Sales 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 Sales Order, Marketo will make the Subscription Services available to Customer and its authorized Affiliate’s employees, agents or contractors (“Users”), for access and use by such individual Users solely for Customer’s direct beneficial 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. Customer will not: (i) share its login credentials for the Subscription Services with unauthorized third parties; (ii) allow such login credentials to be simultaneously used by two or more Users; or (iii) utilize group email addresses in the creation of User credentials.

2. Restrictions; Adobe Acceptable Use Policy; Usage Rights; Privacy Law; Suspension.

2.1 Restrictions. Customer will not, and will ensure 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) copy, use, distribute, republish, download, display, transmit, sell, rent, lease, host, or sublicense the Subscription Services; (iii) attempt to interact with the operating system underlying the Subscription Services, or modify, create derivative works of, adapt, translate, reverse engineer (including monitoring or accessing the inputs and output flowing through the Subscription Services), decompile, or otherwise attempt to discover within the Subscription Services, the source code, data representations, or underlying algorithms, processes and methods; (iv) modify, translate or create derivative works based on the Subscription Services or remove, obscure or alter 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; (vi) offer, use, or permit the use of the Subscription Services in a computer service business, third-party outsourcing service, on a membership or subscription basis, on a service bureau basis, on a time-sharing basis, as part of a hosted service, or on behalf of any third party; or (vii) utilize the Subscription Services in a Restricted Country unless specifically allowed in a Sales Order. “Restricted Country” means mainland China, Russia and any other country where access or usage is restricted by local laws.

2.2 Adobe Acceptable Use Policy. Customer will, and will ensure that its Users, use the Subscription Services only in compliance with the Adobe Acceptable Use Policy available at <https://www.adobe.com/legal/terms/aup.html>.

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 Sales Order ("Usage Rights"). If Marketo determines Customer is exceeding its Usage Rights, Marketo will notify Customer in writing (email notification sufficient) specifying such Usage Rights overage, 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 Sales Order.

2.4 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 unauthorized 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.

2.5 Suspension. Marketo may immediately suspend Customer's account and access to the Subscription Services if (i) Customer fails to pay an undisputed invoice within 15 business days after Marketo has provided Customer with a written reminder notice of late payment; or (ii) Customer violates Section 2.1 (Restrictions) or Section 2.2 (Adobe Acceptable Use Policy). Any suspension by Marketo of the Subscription Services under the preceding sentence will not relieve Customer of its payment obligations hereunder. Marketo will promptly lift the suspension upon Customer's payment or remedy of the triggering violation, as applicable.

3. Ownership: Subscription Services; Customer Data; Permitted Use of Customer Data.

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 without any marking or further designation.

3.3 **Permitted Use of Customer Data.** Customer grants Marketo and its Affiliates a non-exclusive, worldwide, royalty-free license to use, copy, transmit, sub-license, index, store, and display Customer Data: (i) to the extent necessary to perform its obligations or enforce its rights under this Agreement; (ii) where required or authorized by law; (iii) developing, modifying, improving, supporting, customizing, and operating the Subscription Services, and (iv) publishing, displaying and distributing any anonymous information (i.e., information where neither Customer, its Affiliates nor their site visitors are capable of being identified) derived from Customer usage of the Subscription Services (such as, but not limited to, statistical and performance information, web browser, screen resolution, mobile device-type information, image resolution and number of pages in a document).

4. Fees; Taxes and Currency; GST; Invoices, Failure to Pay and Disputes.

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

4.2 **Taxes and Currency.** Prices do not include applicable taxes. Marketo will invoice Customer for any applicable taxes, and Customer must pay these taxes. Where applicable, Customer must provide a tax-exemption claim to Marketo upon entering a Sales Order. Customer is not responsible for any taxes based on Marketo's net income or property. 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), 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. Except as otherwise specified in a Sales Order, all fees due hereunder will be paid in Australian Dollars.

4.3 **GST.** In this clause 4.3, "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 a Sales 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.

4.4 **Invoices, Failure to Pay and Disputes.** All amounts are due and payable as specified in the Sales Orders. All invoices will only be delivered electronically to Customer. If no payment terms are specified in the Sales Order, payment terms are net 30 days from receipt of invoice. If Customer fails to pay any amount due under this Agreement according to the payment terms set forth herein (and not the subject of a good faith dispute), Marketo will send Customer a written reminder notice. If Customer believes in good faith that Marketo has incorrectly invoiced Customer, Customer must contact Marketo in writing within 30 days of the invoice date, specifying the error. Unless Customer has correctly notified Marketo of the dispute, Customer must reimburse Marketo's reasonable collection costs. Customer must pay the undisputed portions of Marketo's invoice as required by this Agreement. Unpaid invoices not the subject of a written good faith dispute are subject to a finance charge of 1.0% per month or the maximum rate permitted by applicable law on any overdue fees, from the due date until the date the overdue amount (plus applicable interest) is paid in full.

5. Agreement Term; Termination for Cause, Effect of Termination; Survival.

5.1 **Agreement Term.** The Agreement will commence on the Subscription Start Date of the first Sales Order (the "Effective Date") and will remain in effect until the Subscription Term in all Sales 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 Sales Order, the Parties are negotiating a renewal of such Sales 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 Sales Order.

5.2 **Termination for Cause.** If either Party commits a material breach of this Agreement, the non-breaching Party may give written notice describing the nature and basis of the breach to the breaching Party. If the breach is not cured within 30 days of the notice date, the non-breaching Party may immediately terminate the applicable Sales Order or this Agreement in whole.

5.3 **Effect of Termination.** If Marketo terminates a Sales Order for Customer's uncured material breach (i) all undisputed fees set forth in the terminated Sales Order will be immediately due and payable; (ii) all rights granted thereunder will immediately terminate; and (iii) if such terminated Sales 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 a Sales 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. Customer may delete or retain Customer Data during the Subscription Term, subject to applicable Usage Rights. If requested by Customer in writing prior to completion of the Subscription Term, Marketo will maintain Customer Data for up to sixty days after completion of the Subscription Term provided Customer is in compliance with its then-current Usage Rights. Prior to the completion of the sixty day extension period and if requested in writing, Marketo will provide Customer a copy of the Customer Data currently in its possession in the same format then available within the Subscription Services. Upon completion of the sixty days extension period (if requested) or thirty days after the completion of the Agreement Term (if no extension was requested in writing), 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 2.4 (Privacy Law), Section 3 (Ownership: Subscription Services; Customer Data; Permitted Use of Customer Data subsections (ii) and (iv)), Section 4 (Fees; Taxes and Currency; GST; Invoices, Failure to Pay and Disputes), Section 6.4 (Implied Warranties), Section 7 (Indemnification), Section 8 (Limitation of Liability), Section 9 (Confidential Information) and Section 11 (General Terms).

6. Warranties; Warranty Remedies; Warranties Disclaimer; Product Changes.

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) substantially perform in accordance with the applicable documentation located at <https://docs.marketo.com>; 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 45 days of the date on which the condition giving rise to the claim first appeared 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 **Implied Warranties.** **To the maximum extent permitted by law and except for the express warranties in this Agreement, Marketo provides the Subscription Services on an "as-is" basis. Marketo, its Affiliates, and third-party providers disclaim and make no other representation or warranty of any kind, express, implied or statutory, including representations, guarantees or warranties of merchantability, fitness for a particular purpose, title, non-infringement, or accuracy. Customer acknowledges: (i) neither Marketo, its Affiliates nor its third party providers controls Customer equipment or the transfer of data over communications facilities (including the internet); (ii) the Subscription Services may be subject to limitations, interruptions, delays, cancellations, and other problems inherent in the use of the communications facilities (including search engines and social media channels); and (iii) it is fully responsible to install appropriate security updates and patches.**

Marketo, its Affiliates, and its third party providers are not responsible for any interruptions, delays, cancellations, delivery failures, data loss, content corruption, packet loss, or other damage resulting from these problems.

6.5 Product Changes. Marketo reserves the right to change or discontinue individual features within the Subscription Services upon prior written notice via the Subscription Services portal. To the extent any such changes result in a material reduction of overall functionality without a comparable replacement, Marketo will refund Customer a pro-rata portion of all prepaid fees associated with the discontinued Subscription Services for which no comparable replacement was provided.

7. Indemnification. For the purposes of this Agreement: (i) “Claim” means a claim, action, complaint, or legal regulatory body, administrative or judicial proceeding filed against or made to a Party; (ii) “Indemnified Party” means Customer when Marketo is the Indemnifying Party and Marketo when Customer is the Indemnifying Party; and (iii) “Indemnifying Party” means (i) Marketo with respect to Claims arising under Section 7.1; and (ii) Customer with respect to Claims arising from Section 7.2.

7.1 Marketo Intellectual Property Indemnity. Marketo will defend, at its expense, any third-party Claim against Customer during the Agreement Term to the extent the Claim alleges: (i) the Subscription Services directly infringes the third party’s patent, copyright, or trademark; or (ii) Marketo has misappropriated the third party’s trade secret (“Infringement Claim”). Marketo will pay any damages finally awarded by a court of competent jurisdiction (or settlement amounts agreed to in writing by Marketo). In the defense or settlement of any Infringement Claim, Marketo may, at its sole option and expense: (a) procure for Customer the right to continue using the Subscription Services under the terms of this Agreement; (b) replace or modify the allegedly infringing Subscription Services to avoid the infringement; or (c) where (a) or (b) are not reasonably or commercially feasible, terminate Customer’s subscription and access to the Subscription Services (or its infringing part) and refund any prepaid unused fees as of the date of termination. Marketo will have no liability for any Infringement Claim that arises from any: (x) use of the Subscription Services in violation of this Agreement; (y) modification of the Subscription Services by Customer (or any third party acting on Customer’s behalf); or (z) third-party products, services, hardware, software, or other materials, or combination of these with the Subscription Services, if the Subscription Services would not be infringing without this combination.

7.2 Customer Data Indemnity. Customer will defend Marketo against any Claim brought against Marketo by a third party alleging Customer Data infringes the intellectual property, privacy or other rights of the claimant and will pay Marketo for finally-awarded damages and costs and Customer-approved settlements of the Claim.

7.3 Conditions, Assistance, Exclusive Remedy. Indemnifying Party, as applicable, will have no liability for any Claim under section 7.1 or 7.2 that arises from any failure of Indemnified Party to: (i) notify Indemnifying Party in writing of the Claim promptly upon the earlier of learning of or receiving a notice of it, to the extent that Indemnifying Party is prejudiced by this failure; (ii) provide Indemnifying Party with reasonable assistance requested by the Indemnifying Party, at the Indemnifying Party’s cost, for the defense or settlement (as applicable) of the Claim; (iii) provide Indemnifying Party with the exclusive right to control and the authority to settle the Claim; or (iv) refrain from making admissions or statements about the Claim without Indemnifying Party’s prior written consent. **The remedies in this Section 7 (Indemnification) are, in addition to any termination or suspension remedies expressly set forth in this Agreement, the Indemnified Party’s sole and exclusive remedies and the Indemnifying Party’s sole liability regarding the subject matter giving rise to any Claim.**

8. Limitation of Liability.

8.1 Subject to Section 8.3, neither Party will be liable to the other Party for any special, indirect, moral, consequential, incidental, punitive, or exemplary damages; loss of profits; loss of reputation, use, or revenue; or interruption of business; or cost of procurement of substitute goods, service or technology. This Section 8.1 does not apply to those amounts expressly recoverable by the Indemnified Party under Section 7

(Indemnification) regardless of how such amounts are classified for damages purposes.

8.2 Subject to Section 8.3, the maximum aggregate liability of each Party for all Claims under this Agreement is limited to an amount equal to the aggregate of the fees payable by Customer under the applicable Sales Order during the 12 months before the initial Claim.

8.3 Sections 8.1 and 8.2 (Limitation of Liability):

8.3.1 Apply regardless of the form or source of Claim or loss, including negligence, whether the Claim or loss was foreseeable, and whether a Party has been advised of the possibility of the Claim or loss; and

8.3.2 Do not apply to Customer's liability for Claims arising out of use of Subscription Services beyond the scope of any rights granted under this Agreement, or Customer's failure to pay any amounts owing to Marketo under this Agreement.

8.4 Regardless of anything to the contrary herein, Marketo undertakes no liability for any Customer Data elements prohibited by the Adobe Acceptable Use Policy or any third party technology acquired by Customer to interact with the Subscription Services. The limitations of liability set forth in this Section 8 do not apply to the extent prohibited by law.

9. Confidential Information. As used herein, "Confidential Information" means non-public or proprietary information about a disclosing Party's business related to technical, commercial, financial, employee, or planning information that is disclosed by the disclosing Party to the other Party in connection with this Agreement, and (i) is identified in writing as confidential at the time of disclosure, whether in printed, textual, graphic, or electronic form; or (ii) is not identified as confidential at the time of disclosure, but is by its nature confidential or the receiving Party knows, or ought reasonably to know, is confidential. The terms and conditions of this Agreement will be deemed Confidential Information of Marketo without any marking or further designation. "Confidential Information" does not include information that: (a) has become public knowledge through no fault of the receiving Party; (b) was known to the receiving Party, free of any confidentiality obligations, before its disclosure by the disclosing Party; (c) becomes known to the receiving Party, free of any confidentiality obligations, from a source other than the disclosing Party; or (d) is independently developed by the receiving Party without use of Confidential Information.

9.1 The receiving Party will treat Confidential Information with reasonable care, and disclose only on a need to know basis or as permitted under this Agreement. The receiving Party will only use Confidential Information for the purposes of performing its obligations or as permitted under this Agreement. However, a receiving Party may disclose Confidential Information: (i) if approved by the other Party in writing; (ii) if required by law or regulation; (iii) in the event of dispute between the Parties, as necessary to establish the rights of either Party; or (iv) as necessary to provide the Subscription Services hereunder. In the case of (ii) and (iii), the disclosing Party will provide reasonable advance notice to the other Party and provide reasonable assistance to limit the scope of the disclosure unless prohibited by law or regulation.

9.2 For the purpose of this Section 9 (Confidentiality) and the definition of "Confidential Information," a reference to a Party means a Party and its Affiliates. The receiving Party is responsible for ensuring that its representatives and Affiliates fully comply with the obligations of the receiving Party under this Section.

10. Data Security. Marketo shall maintain appropriate administrative, physical, and technical safeguards designed to protect the security of the Subscription Services and Customer Data in accordance with the attached Marketo Security Standards. If Customer's use of the Subscription Services involves processing personal data pursuant to Regulation 2016/679 (the "GDPR") and/or transferring personal data outside the European Economic Area or Switzerland to any country not deemed by the European Commission as providing an adequate level of protection for personal data, the terms of the data processing addendum shall apply to such personal data

and be incorporated into the Agreement upon the execution and submission of the data processing addendum to Marketo in accordance with its terms. The data processing addendum may be accessed at <https://nation.marketo.com/docs/DOC-5691>. Customer agrees Marketo may engage Marketo Affiliates and the third party sub-processors currently listed at <https://documents.marketo.com/legal/sub-processor-list> (the “Sub-Processor List”) to process personal data on Marketo's behalf in order to provide the Subscription Services. Customer can be notified of changes to the Sub-Processor List by following the subscribe mechanism set forth in the preceding link. Customer may object to the appointment of a new sub-processor within fourteen (14) calendar days of such notice on reasonable data protection grounds, in which case, Marketo shall either: (i) offer an alternative to provide the Subscription Services without use of such sub-processor; or (ii) cease to provide the particular aspect of the Subscription Services that involve use of the objectionable sub-processor. If Customer has an active Sales Order involving use of the sub-processor to which it objects and for which no alternative is provided by Marketo, Customer may terminate the impacted portion of the Subscription Services and receive a pro-rata portion of all prepaid fees associated with the terminated portion of the Subscription Services.

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 with a copy to contractnotifications@adobe.com, 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 is liable for failure to perform its obligations under this Agreement (except for any payment obligations) to the extent performance is delayed, prevented, restricted or interfered with as a result of any causes beyond its reasonable control, including acts of God, terrorism, labor action, fire, flood, earthquake, denial of service attacks and other malicious conduct, utility failures, power outages, or governmental acts, orders, or restrictions. Each Party will use reasonable efforts to mitigate the effect of a force majeure event.

11.3 Governing Law, Venue. Unless specifically set forth in the applicable Sales Order: (i) this Agreement is governed by and construed under the laws of the State of New South Wales, Australia, without regard to any conflict of law rules or principles, and excluding the application of the United Nations Convention on Contracts for the International Sale of Goods; and (ii) the Parties irrevocably submit to the exclusive jurisdiction of the courts of competent jurisdiction in the state and federal courts of the State of New South Wales, Australia, respectively, provided however, Marketo will have the right to pursue Claims against Customer in any other jurisdiction worldwide to enforce its rights under this Agreement or to enforce its intellectual property rights.

11.4 Entire Agreement, Order of Precedence. This Agreement contains the entire understanding of the Parties relating to the subject matter and supersedes all earlier agreements, understandings, proposals, discussions, negotiations, representations and warranties, both written and oral, regarding the subject matter. In the event of a conflict between this Agreement and a contemporaneous or later-dated Sales Order, the terms of the contemporaneous or later-dated Sales Order will control.

11.5 Customer's Purchase Order. Any terms or conditions in Customer's purchase order or any other related documentation submitted by or on behalf of Customer to Marketo do not form part of this Agreement and are void, unless otherwise expressly agreed in writing and signed by both Customer and Marketo.

11.6 Waiver, Modification. Neither Party's waiver of the breach of any provision constitutes a waiver of that provision in any other instance. This Agreement may not be modified nor any rights under it waived, in whole or in part, except in writing signed by the Parties.

11.7 Assignment.

11.7.1 Customer may assign this Agreement in its entirety to a surviving entity under a merger or acquisition of Customer, upon written notice to Marketo if the assignment does not expand the scope of the Subscription Services and provided that the assignee agrees in writing, for the benefit of Marketo, to assume all of Customer's obligations under this Agreement.

11.7.2 Marketo may assign this Agreement or delegate its obligations, in whole or in part, to its Affiliates or in connection with a merger, change of control, or acquisition of Marketo or the assets of the business to which this Agreement relates, upon written notice to Customer.

11.7.3 Except as provided in this Section 11.7 (Assignment), Customer may not assign, voluntarily, by operation of law or otherwise, any rights or obligations under this Agreement without the prior, written consent of Marketo.

11.7.4 Any (attempted) assignment in derogation of this Section 11.7 (Assignment) will be null and void.

11.8 Compliance with Laws. Each Party agrees to abide by all laws, ordinances and regulations (whether international, federal, state, local or provincial) applicable to its performance under this Agreement.

11.9 Counterparts and Signatures. This Agreement (or a component) may be executed in one or more counterparts, each of which constitutes an original and all of which taken together constitutes the same agreement. Each Party may sign this Agreement using an electronic or handwritten signature, which are of equal effect, whether on original or electronic copies.

11.10 No Agency. Nothing in this Agreement is intended to constitute a fiduciary relationship, agency, joint venture, partnership, or trust between the Parties. No Party has authority to bind the other Party.

11.11 Severability. If any term of this Agreement is held invalid or unenforceable for any reason, the remainder of the Agreement Term and this Agreement will continue in full force and effect.

Attachment: Marketo Security Standards (starting on next page)

Attachment – Marketo Security Standards

1. **Definitions.** Capitalized terms used in this attachment and not otherwise defined herein shall have the meanings set forth in the underlying agreement for Subscription Services entered into between the Parties to which these security standards are attached (the “Agreement”).
2. **Security Controls and Safeguards**
 - 2.1. Marketo will comply with all applicable privacy and data security laws and regulations governing its use, processing and storage of Customer Data.
 - 2.2. During the Agreement Term, Marketo shall maintain a security program materially aligned with applicable industry standards designed to ensure the security, confidentiality, availability and integrity of Customer Data and protect against unauthorized disclosure or access of Customer Data. Such security program shall include the implementation of administrative, technical and physical safeguards appropriate for the type of information that Marketo processes and the need for security and confidentiality of such information.
 - 2.3. Marketo implements controls aligned to industry standards intended to keep Customer Data secure and throughout the Agreement Term shall maintain security measures designed to: (i) protect the security of Marketo systems which interact with Customer Data; (ii) protect against any anticipated threats or hazards to the security or integrity of Marketo systems which interact with Customer Data and (iii) protect against unauthorized access to or use of Marketo systems which interact with Customer Data that could result in harm to Customer’s Users of the Subscription Services.
 - 2.3.1. Marketo maintains access controls which include, but are not limited to, the following:
 - 2.3.1.1. Limiting access to its information systems and the facilities in which they are housed to properly authorized persons;
 - 2.3.1.2. Access by Marketo personnel to Customer Data is removed upon termination of employment or a change in job status that results in the personnel no longer requiring access to Customer Data;
 - 2.3.1.3. System passwords conform to strong password standards (9 characters minimum) that include length, complexity and expiration. A maximum of ten (10) password attempts can be made, after which access is blocked until the password is reset by authorized personnel. Password policies conform with NIST Special Publication 800-53.
 - 2.3.1.4. Limited access to its information systems using multifactor authentication.
 - 2.4. All customer communications transmitted over the internet are encrypted. Marketo utilizes encryption on its own email servers to ensure point-to-point encryption via opportunistic TLS. Customer can elect, for an additional charge, to configure the Subscription Services to use encrypted channels for its own collection of data via landing pages and from user activity on Customer’s web site. Customer may elect to apply high grade encryption to data at rest for an additional fee. All backups are encrypted with high-grade encryption.
 - 2.5. Marketo monitors its network and production systems and implements and maintains security controls and procedures designed to prevent, detect and respond to identified threats and risks. Such monitoring and testing includes, but is not limited to, the following:
 - 2.5.1. Employing an industry standard network intrusion detection system to monitor and block suspicious network traffic;

- 2.5.2. Reviewing access logs on servers and security events and retaining network security logs for 180 days;
 - 2.5.3. Reviewing all access to production systems;
 - 2.5.4. Performing network vulnerability assessments on a regular basis. Scans will be performed using industry standard scanning tools that identify application and hosting environment vulnerabilities. Marketo shall maintain a vulnerability remediation program;
 - 2.5.5. Engaging third parties to perform network penetration testing on at least an annual basis.
- 2.6. Marketo shall ensure that:
- 2.6.1. All endpoints run an anti-virus solution and apply timely signature updates;
 - 2.6.2. All critical, exploitable vulnerabilities are patched in a timely manner.
- 3. Uses and Disclosures of Customer Data.** Marketo will not use or disclose Customer Data except as necessary to provide the Subscription Services or as otherwise set forth in the Agreement.
- 4. Security Breach Notification.** Marketo shall notify Customer within seventy-two (72) hours of becoming aware of the unauthorized acquisition, destruction, loss, modification, use or disclosure of Customer Data (“Security Breach”).
- 4.1. Marketo will immediately investigate and take all reasonable necessary steps to eliminate or contain the exposures that lead to such Security Breach.
 - 4.2. Marketo will, as soon as reasonably practicable, provide Customer with a written description of the Security Breach, as well as the mitigation steps taken by Marketo.
- 5. Audit**
- 5.1. Marketo will obtain attestation reports related to its information security program (SSAE 16, SOC 2 or an equivalent report) at least annually and keep such reports for at least three (3) years following each attestation.
 - 5.2. Customer shall have the right, upon written request and not more than once annually, to conduct reasonable information security assessments that consist of a review of Marketo’s records relating to its compliance with this Agreement. Customer and Marketo will discuss and agree in advance on the reasonable start date, scope and duration of and security and confidentiality controls applicable to any audit. Marketo reserves the right to charge a fee (based on Marketo’s reasonable costs) for any audit and Marketo will provide further details of any applicable fee and the basis of its calculation to Customer in advance of an audit. Marketo shall provide reasonable assistance by allowing inspection of relevant documents or records, to the extent such information directly relates to the transaction records for the services provided by Marketo under this Agreement. Marketo will provide appropriate management personnel to engage with Customer and supervise any records review. During any such records review, Marketo shall have no obligation to expose its customers’ or employees’ personal or private information or any data that Marketo reasonably believes would adversely impact its customers’ or employees’ security or privacy and such review shall be subject to reasonable confidentiality provisions and restrictions that Marketo may impose. An auditor shall not be permitted to remove any physical or electronic copies of Marketo’s Confidential Information.

6. **Security Awareness and Training.** Marketo requires at least annual security and privacy training for all personnel.
7. **Background Checks.** Marketo shall perform a background check on all employees and independent contractors that include criminal and financial checks, education verification, employment verification, and reference checks.
8. **Business Continuity and Disaster Recovery**
 - 8.1. Marketo has policies and procedures in place for responding to an emergency or other occurrence (for example, fire, vandalism, system failure, pandemic, and natural disaster) that could affect the availability, integrity or confidentiality of Customer Data or production systems that contain Customer Data or that would interrupt Marketo's ability to provide Subscription Services under the Agreement.
 - 8.2. Marketo's data protection, high availability, and built-in redundancy are designed to ensure application availability and protect information from accidental loss or destruction. Marketo's Disaster Recovery plan incorporates geographic failover between its U.S. data centers. Subscription Service restoration is within commercially reasonable efforts and is performed in conjunction with a data center provider's ability to provide adequate infrastructure at the prevailing failover location.
 - 8.3. Marketo relies on reputable data center providers' multiple levels of power redundancy, uninterrupted power supply (UPS) and backup power for Marketo's system containing Customer Data. The power systems of the data centers processing Customer Data are designed to run uninterrupted during a total utility power outage, with every server receiving conditioned UPS power. The UPS power subsystem is redundant, with instantaneous failover if the primary UPS fails. All Marketo data center providers are ISO 27001:2013 certified.
 - 8.4. Data center facilities containing Customer Data have advanced fire suppression systems and redundant heating, ventilation and air conditioning systems providing appropriate and consistent airflow, temperature and humidity levels.
 - 8.5. Backup and Recovery. Data center facilities in the U.S. utilize snapshot and data mirroring capabilities. The integrity of local backups is tested quarterly by restoring a complete database from a selected snapshot copy to test systems and validate the data integrity. Data in the UK data center facility is backed-up to tapes daily and data in the Australia data center is backed-up electronically daily; the backup processes for the UK and Australia data center facilities are tested quarterly. Backup data is not transferred across international borders.
 - 8.6. Network and Storage Redundancy. The SaaS infrastructure is designed and built for high availability. All network devices, including firewalls, load balancers, and switches are fully redundant and highly-available. High availability for Internet connectivity is ensured by multiple connections in each data center to different ISPs.