



Munchkin™ Limited Software License Agreement

IMPORTANT – PLEASE READ CAREFULLY

This Software contains computer programs and other proprietary material and information, the use of which is subject to and expressly conditioned upon acceptance of this Munchkin Limited Software License Agreement (the "Agreement"). This Agreement is a legally binding document between you (meaning the individual person or the entity that the individual represents that has obtained the Software for an Internal Business Purpose and not, for example, for outright resale) (the "Customer") and MARKETO, Inc. ("MARKETO").

By proceeding with the installation, downloading, Use, modification, or reproduction of this Software, or authorizing any other person to do so, you are representing to MARKETO that you are: (i) authorized to bind the Customer; and (ii) agreeing on behalf of the Customer that the terms of this Agreement shall govern the relationship of the parties with regard to the subject matter in this Agreement and are waiving any rights, to the maximum extent permitted by applicable law, to any claim anywhere in the world concerning the enforceability or validity of this Agreement. If you do not have authority to agree to the terms of this Agreement on behalf of the Customer, or do not accept the terms of this Agreement on behalf of the Customer, then immediately cease any further attempt to install, download, use, modify or reproduce this Software for any purpose, and remove any partial or full copies made from this Software from your computer system(s).

MARKETO and Customer enter into this Agreement and this Agreement shall become effective on the date on which Customer downloads or Uses the Software, whichever occurs first. NOW, THEREFORE, in consideration of the premises and obligations contained herein, it is agreed as follows:

1. DEFINITIONS.

A. "Affiliate" means a legal entity that is controlled by, controls, or is under common "control" of MARKETO or Customer. "Control" means more than 50% of the voting power or ownership interests.

B. "Documentation" means the then-current and generally available code comments, written user manuals and online help and guides for Software provided by MARKETO as substantially described at: <https://docs.marketo.com/display/public/DOCS/Add+Munchkin+Tracking+Code+to+Your+Website>.

C. "Internal Business Purposes" means a production Use on Customer's computer system(s) and integrated with the MARKETO Engagement Marketing Platform as substantially described at: <https://www.marketo.com/software/platform/>.

D. "Software" means the MARKETO software product which requires acceptance of this Agreement, and any copies made by or on behalf of Customer, Software Releases, and all Documentation for the foregoing. Examples of this MARKETO software product include the source code as substantially described at: <https://munchkin.marketo.net/munchkin.js> & <http://munchkin-cdn.marketo.net/153/munchkin.js>

E. "Software Release(s)" means any subsequent version of Software provided by MARKETO after initial delivery of Software, but does not mean a new item of Software.

F. "Support Services" means the annual service available from MARKETO (at its discretion) or its designee which provides Software Releases and support services for Software.

G. "Use" or "Using" means to perform as defined under 17 U.S.C. § 101 et seq. or other applicable copyright statute. For avoidance of doubt, Use does not include the right to- i) distribute, ii) publicly display, iii) create derivatives of, iii) transmit, or iv) sublicense the Software.

2. LICENSE TERMS.

A. License Grant. Subject to Customer's compliance with this Agreement, MARKETO grants to Customer a non-exclusive, world-wide, royalty free, full-paid, terminable, and nontransferable license, under MARKETO's copyrights, to Use: (i) the Software for the Customer's Internal Business Purposes; and (ii) the Documentation related to Software for the purpose of supporting Customer's Use of Software for Customer's Internal Business Purposes. Documentation is licensed solely for purposes of supporting Customer's Use of Software as permitted in this Section.

B. License Restrictions. Notwithstanding the definition of Use (see Section 1.G), the Customer is: (a) permitted to reproduce Software as necessary to install and run it in accordance with the license granted herein; and (b) Customer may reproduce the Documentation insofar as reasonably necessary in connection with Customer's authorized Use for Internal Business Purposes of Software. Customer shall not, without MARKETO's prior written consent: (i) use Software in a service bureau; (ii) use or make the Software available as a service to a third party; (iii) disclose to any third party the results of any comparative or competitive analyses, benchmark testing or analyses of Software performed by or on behalf of Customer; (iv) make available Software in any form to anyone other than Customer's employees or contractors; (v) attempt to utilize the rights prohibited under Section 1.G; or (v) transfer the Software to an Affiliate or a third party.

C. Software Releases. Software Releases shall be subject to the license terms applicable to Software.

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3. DISCLAIMER OF WARRANTY.

A. **DISCLAIMER OF WARRANTIES GENERALLY.** MARKETO PROVIDES ALL SOFTWARE HEREUNDER ON AN “AS-IS,” “WHERE IS” BASIS, AND MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR ORAL, AND ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. UNLESS OTHERWISE AGREED TO IN WRITING, MARKETO SHALL HAVE NO OBLIGATION TO PROVIDE SUPPORT, SUPPORT SERVICES, OR MAINTENANCE OF ANY KIND UNDER THIS AGREEMENT. UNDER THIS AGREEMENT, MARKETO IS NOT RESPONSIBLE FOR ANY DATA LOSS OR CORRUPTION DUE TO THE USE OF THE SOFTWARE.

B. **Express Disclaimer of IP Warranty and Representation.** MARKETO makes no warranty or representation regarding third-party intellectual property rights infringed through the Use (or use) of the Software, and shall have no liability to Customer for any action (or any prior related claims) brought by or against Customer alleging that Customer's sale, use or other disposition of Software licensed under this Agreement infringes any patent, copyright, trade secret or other intellectual property right. In event of such an action, MARKETO retains the right to terminate this Agreement and take possession of the Software. UNLESS OTHERWISE AGREED TO IN WRITING, THIS SECTION STATES MARKETO'S ENTIRE LIABILITY WITH RESPECT TO ALLEGED INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS BY THE SOFTWARE OR ANY PART OF IT OR ITS OPERATION. THIS SECTION STATES MARKETO'S ENTIRE LIABILITY WITH RESPECT TO ALLEGED INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS BY SOFTWARE OR ANY PART OF IT OR ITS OPERATION.

C. **Disclaimer of Warranties Related to Performance.** No representation or other affirmation of fact, including but not limited to a statement regarding capacity, suitability for use (or Use) or performance of Software, whether made by MARKETO employees or otherwise, shall be deemed to be a warranty for any purpose or give rise to any liability of MARKETO whatsoever unless contained in this Agreement or otherwise agreed to in writing by MARKETO.

4. NO INDEMNITY.

A. **No Indemnification Generally.** In no event and under no legal theory, whether in tort (including negligence), contract, or otherwise, unless required by applicable law (such as deliberate and grossly negligent acts) or agreed to in writing, shall MARKETO be liable to Customer for damages, including any direct, indirect, special, incidental, or consequential damages of any character arising as a result of this Agreement or out of the use (or Use) or inability to use (or Use) the Software (including but not limited to damages for loss of goodwill, work stoppage, computer failure or malfunction, or any and all other commercial damages or losses), even if such Customer has been advised of the possibility of such damages.

B. **No Indemnification for Intellectual Property.** MARKETO shall have no liability to Customer for any action (and all prior related claims) brought by or against Customer alleging that Customer's use (or Use) or other disposition of any Software infringes any patent, copyright, trade secret or other intellectual property right. In event of such an action, MARKETO retains the right to terminate this Agreement and

take possession of the Software. This section states MARKETO's entire liability with respect to alleged infringements of intellectual property by the Software, or any part of the Software by its operation.

C. LIMITATION ON LIABILITY. IN NO EVENT WILL MARKETO BE LIABLE TO CUSTOMER FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OF THE SOFTWARE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT MARKETO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE FOREGOING LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. IN ANY CASE, MARKETO'S AGGREGATE LIABILITY TO CUSTOMER ARISING WITH RESPECT TO THIS AGREEMENT WILL NOT EXCEED FIFTY UNITED STATES DOLLARS (\$50). SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO CUSTOMER.

5. TERMINATION.

A. Customer or MARKETO may terminate this Agreement for its convenience upon thirty (30) days' notice to the non-terminating party. Either Customer or MARKETO may terminate this Agreement upon written notice due to the other party's material breach of the terms governing use of the Software; provided that such breach is not cured within thirty (30) days after the provision of written notice to the breaching party specifying the nature of such breach. Upon termination of this Agreement, Customer shall cease all use and return or certify destruction of the applicable Software (including copies) to MARKETO. Any provision that by its nature or context is intended to survive any termination or expiration, including but not limited to disclaimer of warranty, and indemnity, shall so survive. For avoidance of doubt, any provision related to licensing shall cease to have legal effect when this Agreement is terminated.

6. MISCELLANEOUS.

A. Notices and Language. Any notices permitted or required under this Agreement shall be in writing, and shall be deemed given when delivered: (i) in person; (ii) by overnight courier, upon written confirmation of receipt; (iii) by certified or registered mail, with proof of delivery; (iv) by facsimile transmission with confirmation of receipt; or (v) by email, with confirmation of receipt (except for routine business communications issued by MARKETO, which shall not require confirmation from Customer). Notices shall be sent to the address, facsimile number or email address set forth below, or at such other address, facsimile number or email address as provided to the other party in writing. Notices shall be sent to: MARKETO Inc. (Attn: MARKETO Legal), 901 Mariners Island Boulevard, Suite #500, San Mateo, CA 94404, USA. The parties agree that this Agreement has been written in the English language, that the English language version shall govern and that all notices shall be in the English language.

B. Entire Agreement. This Agreement: (i) is the complete statement of the Agreement of the parties with regard to the subject matter hereof; and (ii) may be modified only by a writing signed by both parties. All

terms of any purchase order or similar document provided by Customer, including but not limited to any pre-printed terms thereon and any terms that are inconsistent or conflict with this Agreement, shall be null and void and of no legal force or effect.

C. Force Majeure. Except for the payment of fees, if any, due MARKETO from Customer, neither party shall be liable under this Agreement because of a failure or delay in performing its obligations hereunder on account of any force majeure event, such as strikes, riots, insurrection, terrorism, fires, natural disasters, acts of God, war, governmental action, or any other cause which is beyond the reasonable control of such party.

D. Assignment. Customer shall not assign this Agreement or any right or delegate any performance without MARKETO's prior written consent, which consent shall not be unreasonably withheld. Customer shall promptly notify MARKETO, and MARKETO may terminate this Agreement on thirty days' (30) notice, if Customer merges with or is acquired by a third party or otherwise undergoes a change of control.

E. Governing Law. This Agreement is governed exclusively by the laws of the state of California. In the event of a dispute concerning this Agreement, Customer consents to the sole and exclusive personal jurisdiction (and venue) of the courts of competency in the location where MARKETO is domiciled.

F. Waiver. No waiver shall be deemed a waiver of any prior or subsequent default hereunder. If any part of this Agreement is held unenforceable, the validity of the remaining provisions shall not be affected.

G. Partial Invalidity. If any part of this Agreement, a purchase order or an MARKETO quote is held unenforceable, the validity of the remaining provisions shall not be affected.

H. Injunctive Relief. Customer acknowledges that a violation of the sections contained in this Agreement may cause irreparable harm to MARKETO not adequately compensable by monetary damages. In addition to other relief, it is agreed that temporary and permanent injunctive relief may be an appropriate remedy to prevent any actual or threatened violation of such sections or to enforce such section according to their terms.