

TERMS

These Email Data Source Terms of Use apply to you if you signed up for Email Data Source's Services before February 28, 2022. If you signed up for Email Data Source's Services on or after February 28, 2022, the Email Data Source Services are governed by the MessageBird General Terms and Conditions available [here](#).

TERMS OF USE

Thanks for choosing eDataSource! Please carefully read these terms of use as they form a part of the legal agreement between you and eDataSource. If you have any questions about these terms of use, please contact us at legal@sparkpost.com.

BY ACCEPTING THESE TERMS OF USE BY EXECUTING AN ORDER THAT REFERENCES THESE TERMS OF USE, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT, IN WHICH CASE THE TERMS "YOU", "YOUR" OR "CUSTOMER" WILL REFER TO SUCH ENTITY AND ITS AFFILIATES AS APPLICABLE. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS OF USE, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE PRODUCTS.

These terms of use ("**Terms of Use**"), together with the applicable Order(s) form the full legal agreement (the "**Agreement**") between Customer and Email Data Source, Inc., a Delaware corporation ("**EDS**") regarding the Products and is made as of the date the Customer first completes an Order and accepts these Terms of Use ("**Effective Date**"). If you are a User of the Products on behalf of Customer, and EDS and Customer have entered into a separate written agreement regarding the Products which is signed by Customer and EDS, then the terms of that agreement (and not these Terms of Use) define the terms and conditions under which Customer and User is permitted to use the Products.

ARTICLE 1: DEFINITIONS

- 1.1 **"Business Unit"** means Customer's internal business unit identified Order, which, upon any reorganization of Customer, shall be circumscribed for purposes of this Agreement to the functional business activities and their supporting personnel applicable to such business unit as was the case on the Effective Date if such reorganization results in greater responsibilities for such business unit. If no Business Unit is specified, it shall have the same meaning as "Customer."
- 1.2 **"Licensed Data"** means the information and data contained within the Product(s) identified in the Order that is accessible to Customer under the Order and this Agreement, and any further information and data created when using the same, including any report, analysis (e.g., forecasts, predictions and confidence intervals) or other derivative transformation of selections of such data or information. The Licensed Data may be a circumscribed set from the total data available in a Product as provided in the Order.
- 1.3 **"Order"** means an ordering document (online or otherwise) entered into between Customer and EDS specifying the Products to be provided, including any addenda, exhibits, schedules, and additional terms relevant to a specific Product referenced therein.
- 1.4 **"Permitted Purposes"** means Customer's lawful uses of the Product, as limited by the number of seats/licenses identified in the Order and other limitations contained therein. Permitted Purposes shall include publishing information derived from the License Data using the Products so long as: (i) the Licensed Data itself is not disclosed or otherwise reproduced as part of such marketing, and (ii) EDS is clearly referenced as a source in printed publications and in online publications, such as blog posts, as the source of such results and a link to www.edatasource.com is included in such marketing. It shall not be a Permitted Purpose to use the Licensed Data for blacklisting, SPAM filtering or any other activity that would restrict, limit or otherwise infringe upon the legal transmission of email marketing messages.
- 1.5 **"Products"** means the EDS product(s) identified in the Order for which a subscription is purchased by Customer, and their related documentation.
- 1.6 **"Support Services"** means technical support for the Products provided under EDS policies in effect on the date of the applicable Order.
- 1.7 **"Users"** means Customer's employees who are designated as licensed named users of the Products through the creation of access credentials for each such User.

ARTICLE 2: SUBSCRIPTION TERMS

- 2.1 **Product License.** Subject to the terms of this Agreement, EDS grants Customer a non-exclusive and non-transferable license for Users access and use the Products obtained under the Order and this Agreement on Customer's behalf for the Term, subject to the following obligations and limitations:
 - A. Customer shall and shall cause the Users to limit use of the Products for the Permitted Purposes and to no more than the number of seats/licenses identified on the Order.
 - B. Customer may not and shall not permit its Users to: (i) disclose the Licensed Data to any third party, (ii) make the Licensed Data or Products available to or allow for use by any third party, (iii) sell, assign, lease, or otherwise dispose of the Licensed Data

or Product, (iv) use the Licensed Data or Products for service-bureau or (v) use the Licensed Data or Products for commercial time-sharing or market the Licensed Data or Products in any way, with or without charge.

- C. Internal work product created by Customer using information derived from the Products (i.e., information created using the Products that does not involve disclosing the Licensed Data) (the "**Customer Work Product**") may be disclosed to the extent necessary to accomplish the Permitted Purposes. If Customer or Users disclose Customer Work Product to third parties, Customer must include EDS (by name or generically as a licensor or similar descriptor) as a beneficiary of any disclaimer, limitation of liability or other contractual protection to which Customer is a beneficiary under any agreement between Customer and such third party.
- D. To the extent such Customer Work Product is used in advertisements or other marketing, Customer shall not use any Customer Work Product in a manner that a reasonable person could find to be misleading or deceptive, and shall cease such use anytime requested by EDS.
- E. The license shall be used only by the Customer through its authorized Users during the Term, provided that any applicable fees listed on the Order that are due and payable have been paid.
- F. Customer shall and shall cause the Users to use the Products and Licensed Data solely in accordance with all applicable laws, rules and regulations.
- G. Customer shall protect and shall cause its Users to protect the user IDs and passwords assigned to such Users to access the Products. Customer shall be responsible for all use of the Products and Licensed Data accessed using such credentials regardless of the actual user.

2.2 **Additional Limitations.** Customer acknowledges that the Products and the Licensed Data, including the results of using the same (e.g., any reports, forecasts, predictions and confidence intervals), are the confidential trade secrets of EDS and its licensors and may be protected by other intellectual property laws, including copyright and patent, and that any right in or to the foregoing not expressly granted herein is reserved by EDS and its licensors. Customer shall not disclose any Licensed Data to any third party except as explicitly provided herein and then only subject to an obligation forbidding any further disclosure and limiting use solely to the Permitted Purpose; provided that disclosure required pursuant to any court order shall be exempted. Customer shall not (including by attempting to) modify, translate or reverse engineer any aspect of the Products and/or Licensed Data, use any robot or other data mining or extraction tool with regards to the Licensed Data, nor shall Customer use its rights under this Agreement to build any competing product or a product of a similar nature. Customer agrees that any modifications to the Licensed Data, the Products or the results of using the same are derivative works and as such are the sole and exclusive property of EDS or its licensors. Customer acknowledges that use of the Products requires access to the internet and Customer shall be responsible for providing all hardware, software and network infrastructure required for it to access the internet and to use the Products.

ARTICLE 3: ORDERS AND PAYMENTS

- 3.1 **Orders.** Customer may complete an order by executing a manual order form signed by Customer and EDS. The specifics of Customer's order will be set forth on one or more Orders that reference these Terms of Use. Customer's execution of an Order and EDS's acceptance of such Order constitute a binding commitment to purchase the Products described on such Order under the terms and conditions of these Terms of Use.
- 3.2 **Payments.** The total, non-refundable license and subscription fees (the "**Fees**") for each Product listed in the Order are as stated on the applicable Order. Unless explicitly stated otherwise in the Order, all Fees will be payable annually in advance. Any sum due EDS for which a time of payment is not specified will be paid within thirty (30) days after the date of invoice.
- 3.3 **Taxes and Other Charges.** In addition to all applicable license and administrative fees, Customer shall pay all sales, use, personal property and other taxes resulting from this Agreement or any activities under this Agreement, excluding taxes based on EDS net income, unless Customer furnishes proper proof of exemption from payment.

ARTICLE 4: LIMITED WARRANTY

- 4.1 **EDS Limited Warranty.** EDS warrants that: (i) it has full corporate power and authority to grant the licenses granted in this Agreement; and (ii) neither its entering nor performing this Agreement will violate any known rights of or breach any known obligation to any third party under any agreement or arrangement between EDS and such third party.
- 4.1 **Disclaimer.** The foregoing warranties are the sole warranties made by EDS. EDS EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. EDS does not warrant any results from the Products or that operation of the Products or delivery of the Licensed Data will be uninterrupted or error free.
- 4.1 **Customer Warranty.** Customer warrants that: (i) it has all legal rights and permissions necessary to perform its obligations under this Agreement, and (ii) it shall comply with all applicable laws, rules, and regulations in its use of the products and services supplied by EDS hereunder.

ARTICLE 5: INDEMNIFICATION

- 5.1 **EDS Indemnification.** EDS shall defend, indemnify and hold Customer harmless from and against all damages, losses, costs and expenses resulting from any third party claim that United States copyright or patent was infringed or a trade secret misappropriated by EDS in its provision of the Products and Licensed Data to Customer, provided, however, that such obligation to indemnify, defend and hold harmless shall not apply to any claim arising from any allegation of or relating to any: (i) the combination, operation or use of the Products with any technology (including any software, hardware, firmware, system or network) or service not provided by EDS or specified for use in EDS' documentation for the Product; (ii) use of any API to the Product without EDS' written permission, (iii) any use of Licensed Data by Customer where the copyright in such Licensed Data is identified as owned by a third party in a manner that does not constitute a fair use, or (iv) a use of the Product by or on behalf of Customer that is outside the purpose, scope or manner of use authorized by this Agreement or the documentation for the Product.
- 5.2 **Customer Indemnification.** Customer shall defend, indemnify and hold EDS harmless from and against all damages, losses, costs and expenses resulting from any third-party claim that arises out of Customer's use of the Products or Licensed Data, including any investment or business decision made using the Licensed Data.
- 5.3 **Indemnification Procedure.** The indemnified party shall promptly notify the indemnifying party in writing of any such claim that comes to its attention and the indemnifying party shall be relieved of its obligation to indemnify to the extent it is prejudiced by any delay in such notice. The indemnified party shall allow the indemnifying party full control of any defense, and shall fully cooperate in the defense of any such claim and all related settlement negotiations. In the event an injunction is sought or obtained against the Products and EDS cannot reasonably expect to secure a license or modify the affected Product so that it does not infringe, it may terminate this Agreement and any affected Order. EDS shall have no liability for any claim based upon the use, modification, operation or combination of the applicable Product or Licensed Data with non-EDS programs, data, equipment or documentation if such infringement would have been avoided but for such use, modification, operation, or combination.

ARTICLE 6: TERM AND TERMINATION

- 6.1 **Term of Agreement.** This Agreement commences on the Effective Date and continues until all Orders entered into under these Terms of Use have expired or have been terminated.
- 6.2 **Term of Order.** Customer's subscription to the Products is as specified in the applicable Order (the "**Initial Term**"). Except as may otherwise be expressly specified in an Order, Orders shall renew automatically for successive twelve (12) month terms (each, a "**Renewal Term**", and together with the Initial Term, the "**Term**") unless either Party notifies the other Party in writing of such Party's intent to terminate the applicable Order not less than thirty (30) days' prior to the expiration of the Initial Term or then-current Renewal Term.
- 6.3 **Termination.** Either party shall be in default if it fails to perform any of its material duties or obligations hereunder and fails to substantially cure such default within fifteen (15) days after written notice is given to the defaulting party. Upon default, the non-defaulting party may terminate this Agreement by providing written notice of termination to the defaulting party. If Customer is in default, EDS reserves the right, in addition to all other rights and remedies it may have, to withhold further performance of its obligations under this Agreement.
- 6.4 **Effect of Termination.** Upon expiration or termination of this Agreement for any reason the provisions of Articles 7, 8 and 9, any obligation protecting a trade secret, and any other right or obligation that by its nature should survive, will survive and Customer will promptly return or destroy any Licensed Data in its possession, and upon request execute and deliver to EDS a certificate stating that all copies of the affected Products have been returned or destroyed.

ARTICLE 7: CONFIDENTIAL INFORMATION

To the extent the performance of its obligations under this Agreement requires EDS to be exposed to the data of Customer pertaining to the technical, business or financial information of the Customer ("**Customer Data**"), EDS shall not disclose such Customer Data to any third parties except its service providers and affiliates, bound by appropriate confidentiality obligations; and will use such Customer Data only to the extent necessary to perform its obligations, including its Support Services; provided that this Article 7 shall not be applicable to information generally known by the public or within the industry, information received by EDS from third parties under no obligation of confidentiality, or information that is independently developed or previously known by EDS. Customer shall use commercially reasonable efforts to disclose to EDS employees only that Customer Data which is necessary for EDS's performance of this Agreement.

ARTICLE 8: LIMITATION OF LIABILITY

EDS'S ENTIRE LIABILITY TO CUSTOMER ARISING OUT OF OR IN ANY WAY RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, AND REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, SHALL NOT EXCEED AN AMOUNT EQUIVALENT TO THE FEE RECEIVED BY EDS UNDER THIS AGREEMENT IN THE YEAR IN WHICH SUCH CAUSE OF ACTION OR LIABILITY AROSE. NO ACTION ARISING FROM OR PERTAINING TO THE PROVISION OF THE PRODUCTS AND SERVICES MAY BE BROUGHT AGAINST EDS MORE THAN A YEAR AFTER THE ACTION HAS ARISEN. THE PRODUCTS CONTAIN LICENSED DATA THAT WAS CREATED BY THIRD PARTIES AND IS NOT OWNED BY EDS BUT IS COLLECTED, CACHED AND ARCHIVED BY EDS FOR USE WITHIN THE PRODUCTS. CUSTOMER ACKNOWLEDGES THAT EDS NEITHER ENDORSES NOR IS AFFILIATED WITH SUCH THIRD PARTIES AND THAT EDS DOES NOT OWN NOR HAS REVIEWED OR APPROVED SUCH LICENSED DATA AND IS NOT RESPONSIBLE FOR ITS ACCURACY OR COMPLETENESS. THESE THIRD PARTIES NEITHER ENDORSE NOR ARE AFFILIATED WITH EDS. EDS SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OF OR ANY FAILURE TO REMOVE, OR DELAY IN REMOVING, HARMFUL, INACCURATE, UNLAWFUL OR OTHERWISE OBJECTIONABLE LICENSED DATA.

ARTICLE 9: CONSEQUENTIAL DAMAGES WAIVER

Customer understands that the Products and Licensed Data ARE NOT ERROR-FREE and decisions cannot be made using the Licensed Data or other data and information presented by the Products alone but need to be made in the Customer's own judgment. IN NO EVENT SHALL EDS BE LIABLE FOR: (A) ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES, LOST PROFITS, OR LOST DATA, OR ANY OTHER INDIRECT DAMAGES, OR (B) LOSS OF OR DAMAGE TO CUSTOMER DATA FOR ANY CAUSE. EDS shall have no liability with respect to claims relating to or arising from the use of non-EDS products and services, even if EDS has recommended, referred or introduced Customer to such products and services.

ARTICLE 10: GENERAL PROVISIONS

- 10.1 **Entire Agreement.** This Agreement, the Order(s), any exhibits and schedules attached to the Order, and any other terms incorporated by reference herein, contain the entire understanding of the parties with respect to the subject matter hereof, and supersede any and all related prior understandings and agreements, oral or written.
- 10.2 **Severability.** If any provision of this Agreement is declared or found to be illegal, unenforceable or void, then each provision not so affected will remain in full force and effect.
- 10.3 **Assignment.** Customer may not assign this Agreement or any Order by operation of law or otherwise without the prior written consent of EDS, and any assignment without such consent shall be deemed void and of no force or effect. Subject to the foregoing, this Agreement and any Order will bind each party and its successors and assigns.
- 10.4 **Governing Law.** The substantive laws of the State of Maryland, without regard to its conflicts of laws principles, will govern this Agreement and any Order.
- 10.5 **No Waiver.** No course of dealing, course of performance, or failure of either party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of any other term, right or condition. No waiver or breach of any provision of this Agreement shall be construed to be a waiver of any subsequent breach of the same or any other provision.
- 10.6 **Relationship of the Parties.** EDS and Customer are independent contractors.
- 10.7 **Force Majeure.** Each party shall be excused from performance under this Agreement for any period of time and to the extent that it is prevented from performing any of its obligations under this Agreement, in whole or in part, as a result of delays caused by the other party or by an act of God, natural disaster, power interruption, acts of a government or official thereof, court order, third party non-performance, or other cause, events or circumstances beyond its reasonable control. Such non-performance will not be a default under this Agreement nor a ground for termination of this Agreement so long as the excused party makes reasonable efforts to remedy, if and to the extent reasonably possible, the cause for such non-performance.

REPUTABLE SENDER ADDENDUM

THIS ADDENDUM SHALL ONLY APPLY TO CUSTOMER AND SHALL BE INCORPORATED INTO THE FOREGOING AGREEMENT IF ANY ORDER BETWEEN CUSTOMER AND EDS INCLUDES THE REPUTABLE SENDER PROGRAM AS PART OF THE PRODUCTS PROVIDED THEREIN. FOR THE AVOIDANCE OF DOUBT, THIS ADDENDUM SHALL NOT APPLY TO CUSTOMER IF REPUTABLE SENDER PROGRAM IS NOT INCLUDED IN ANY ORDER BETWEEN CUSTOMER AND EDS.

ARTICLE 11: REPUTABLE SENDER PROGRAM

- 11.1 **Reputable Sender Program.** The Reputable Sender Program (the “**Accreditation Program**”) is EDS’s performance-based preferential treatment program. The Accreditation Program requires Customer to adhere to EDS Reputable Sender Standards defined within the Order (the “**Program Standards**”). If Customer exceeds its permitted email volume listed in the Order during the applicable term, Customer must upgrade its permitted email volume accordingly for an additional fee. EDS may require Customer to

permitted email volume accordingly for an additional fee. EDS may require Customer to provide information that is reasonably necessary to confirm the accuracy of Customer's Accreditation Program application and for compliance with the Program Standards. Such information request shall be conducted remotely by EDS and shall not require EDS to connect to Customer's system or network.

- 11.2 **Accreditation Termination for Cause.** Customer acknowledges and agrees that EDS may terminate Customer's participation in the Accreditation Program if: (i) Customer is in violation of the Program Standards and does not cure such violation within fifteen (15) business days of being notified of such violation; (ii) Customer's volume of email sent over Customer's IP addresses or domains enrolled in the Accreditation Program exceeds the maximum volume permitted under the Order; or (iii) any of Customer's IP addresses or domains in the Accreditation program are not in and/or have not been in compliance with Program Standards on multiple occasions (even if Customer has in each instance cured such non-compliance).
- 11.3 **Suspension of Accreditation IP Addresses, Domains, and/or Account.** Customer acknowledges that EDS may immediately suspend and/or exclude one or more of Customer's IP Address and/or domain from the Accreditation Program for any activity that is inconsistent with the objectives of this Agreement or the Program Standards, as determined by EDS in its sole discretion, including, but not limited to, an increase in the number of complaints, triggering of "spam traps," excessive "blacklisting," high unknown user rates, and performance against metrics specified in the Program Standards. By way of illustration and not limitation, EDS, in its sole discretion may suspend: (i) Customer's account if the volume of email sent exceeds the maximum volume allowed under the Order, unless Customer received prior written approval for excess volume from EDS, and (ii) Customer's IP addresses, domains, or Customer's account if Customer sends any unauthorized material over IP addresses or domains or if content of email messages sent does not meet applicable Program Standards.
- 11.4 **Confidential Information.** Customer agrees: (i) not to use or disclose to any third party the Confidential Information of EDS, except that it may disclose relevant aspects of EDS's Confidential Information only to its officers, employees, designees, directors, legal counsel, and financial advisors on a need to know basis to the extent that such disclosure is necessary to participate in the Accreditation Program; and (ii) to protect EDS's Confidential Information with at least the same degree of care it uses to protect its own Confidential Information, but at a minimum to use commercially reasonable efforts. In no event will Customer share any EDS Confidential Information with any EDS competitors or entities that engage in activities that are competitive with EDS's products or services, notwithstanding the fact that such entity may otherwise be a professional working for Customer.
- 11.5 **Scope of Use.** Customer shall not: (i) participate in the Accreditation Program for the benefit of any third party or otherwise commercially exploit or make available to any third party the Accreditation Program or any part thereof in any way; (ii) use the Accreditation Program to send or store material containing software viruses, worms, trojan horses or other harmful computer code; (iii) interfere with or disrupt the integrity or performance of the Accreditation Program; (iv) attempt to gain unauthorized access to EDS's systems or networks; (v) reverse engineer, decompile or disassemble the Accreditation Program, or any of EDS's techniques, processes, methods, know-how or other technology; (vi) access or use the Accreditation Program in order to build a competitive product or service, or feature or function thereof; or (vii) aid or permit others to do any of the foregoing.

Version 2 - May 14, 2020