

MASTER SUBSCRIPTION & PROFESSIONAL SERVICES AGREEMENT

This Master Subscription & Professional Services Agreement (this "**Agreement**"), effective as of September 10, 2012 (the "**Effective Date**"), is entered into by ExactTarget, Inc., a Delaware corporation having its principal place of business at 20 North Meridian Street, Suite 200, Indianapolis, Indiana 46204 ("**ExactTarget**"), and Bay Area Air Quality Management District, a government agency having its principal place of business at 939 Ellis Street, San Francisco, CA 94109 ("**Customer**"). This Agreement shall supersede and replace the prior Master Subscription & Professional Services Agreement dated September 3, 2010 entered into between the parties ("**Prior Agreement**"). Therefore, the Prior Agreement shall be null and void.

In consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

"**3sixty**" shall mean ExactTarget's online customer management / social networking application, accessible to Customer via <https://3sixty.exacttarget.com>.

"**Affiliate**" shall mean, with respect to a party, any person, partnership, joint venture, corporation or other entity, domestic or foreign, including but not limited to subsidiaries, that directly or indirectly controls, is controlled by, or is under common control with such party, where "control" (or variants of it) shall mean the ability (whether directly or indirectly) to direct the affairs of another by means of ownership, contract or otherwise.

"**Application Services**" shall mean the on-demand, internet-based email marketing and other one-to-one digital communication platform provided by ExactTarget via <http://www.exacttarget.com> and/or other designated websites, including associated offline components as described by the User Guide.

"**Confidential Information**" shall have the meaning set forth in Section 7.

"**Customer Data**" shall mean all electronic data or information submitted by Customer to the Application Services.

"**Duration**" shall be as specified in each SOW and shall mean the estimated time from the Project Start Date to complete the Professional Services described in such SOW. Duration is an estimate of the time to complete the Professional Services and assumes that Customer's availability, participation and cooperation have not delayed the Project Start Date or ExactTarget's provision of the Professional Services.

"**Malicious Code**" shall mean viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"**Non-Public Personal Information**" shall mean personally identifiable information, including, without limitation, social security numbers, financial account numbers (i.e. credit card, checking account, savings account, etc.), medical, employment, or insurance numbers, and passport numbers.

"**Order Form**" shall mean the ordering documents for Customer's purchases of Services from ExactTarget that are executed hereunder by the parties from time to time. Order Forms shall be deemed incorporated herein.

"**Professional Services**" shall mean the implementation, integration, consulting and similar services described in a Statement of Work.

"**Project Start Date**" shall mean some date mutually agreed upon by the parties following execution of an Order Form, upon which date ExactTarget shall commence provision of Professional Services under a Statement of Work.

"**Services**" shall mean the Application Services and Professional Services collectively.

"**Start Date**" shall mean the date on which ExactTarget shall make the Application Services available to Customer as set forth in an applicable Order Form.

"**Statement of Work**" or "**SOW**" shall mean the document describing the scope and schedule of Professional Services to be performed by ExactTarget for Customer. Each SOW shall be attached to an Order Form and shall be governed by the terms of this Agreement.

"**Subscription Term**" shall mean the subscription period set forth on an applicable Order Form.

"**Term**" shall have the meaning set forth in Section 11.1.

The "**UIGE Act**" shall mean the Unlawful Internet Gambling Enforcement Act of 2006.

"User Guide" shall mean the online user guide for the Application Services and any updates thereto, accessible to Customer via 3sixty.

2. APPLICATION SERVICES

2.1 Provision of Application Services. ExactTarget shall make the Application Services available to Customer pursuant to this Agreement and all Order Forms during a Subscription Term. Customer's purchase of Application Services is not contingent upon the delivery of any future functionality or features. All rights not expressly granted to Customer hereunder are reserved by ExactTarget and its licensors.

2.2 Customer Affiliates. Customer Affiliates may purchase and use subscriptions to the Application Services subject to the terms of this Agreement by executing Order Forms hereunder. This Agreement shall apply to such Customer Affiliates and such Affiliates shall be deemed the "Customer" as contemplated herein.

2.3 Riders for Certain Additional Services. If Customer desires to purchase certain one-to-one digital marketing solutions such as voice and/or text messaging as part of the Application Services, Customer acknowledges that certain aspects of such additional Application Services shall be provided by third parties and that Customer must execute a Voice Rider and/or Text Rider to this Agreement.

3. USE OF THE APPLICATION SERVICES

3.1 ExactTarget Responsibilities. ExactTarget shall: (a) provide the Application Services in a manner consistent with general industry standards reasonably applicable to the provision thereof; (b) use commercially reasonable efforts to ensure that the Application Services perform in material compliance with the User Guide; (c) provide basic support to Customer at no additional charge (a description of basic support can be found at <http://www.exacttarget.com/ClientSuccess>); and (d) use commercially reasonable efforts to make the Application Services available 24 hours a day, seven days a week, except for: (i) planned downtime (for which ExactTarget shall make good faith efforts to give at least five business days' notice via email, the Application Services and/or by other means and which ExactTarget shall schedule to the extent reasonably practicable during the weekend hours from 10:00 p.m. ET Friday to 4:00 a.m. ET Saturday); or (ii) any unavailability caused by circumstances beyond ExactTarget's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving ExactTarget employees), computer, telecommunications, internet service provider or hosting facility failures or delays involving hardware, software or power systems not within ExactTarget's possession or reasonable control, and denial of service attacks.

3.2 Customer Responsibilities. Customer is responsible for all activities that occur in Customer's account(s). Customer shall: (a) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (b) prevent unauthorized access to, or use of, the Application Services, and notify ExactTarget promptly of any such unauthorized access or use; and (c) comply with all applicable local, state, federal and foreign laws in using the Application Services. Customer shall not upload to, or store within, the Application Services (and the Customer Data shall not contain) any Non-Public Personal Information. Customer understands and acknowledges that: (i) ExactTarget may, in its reasonable discretion, refuse to distribute any message content that ExactTarget reasonably believes is defamatory, infringing, or otherwise unlawful; (ii) ExactTarget may, in its reasonable discretion, refuse to distribute any email to any recipient that ExactTarget reasonably believes has not granted permission (or otherwise "opted-in") to Customer to send such message(s) or that ExactTarget reasonably believes is unlawful; (iii) ExactTarget has no obligation to review message content, recipient addresses or other Customer Data; (iv) all recipient addresses are supplied solely by Customer and ExactTarget has no obligation to supply or "scrub" any message recipient list; and (v) Customer is solely responsible for the creation, initiation and sending of messages via the Application Services, including, but not limited to, the content, recipients, and timing of such messages.

3.3 Use Guidelines. Customer shall use the Application Services solely for its internal business purposes as contemplated by this Agreement and shall not: (a) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Application Services available to any third party except as contemplated by this Agreement; (b) send via or store within the Application Services infringing, obscene, threatening, defamatory, fraudulent, abusive, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (c) send via the Application Services any unsolicited commercial or non-commercial communication; (d) send via, upload to, or store within the Application Services any Malicious Code; (e) interfere with or disrupt the integrity or performance of the Application Services or the data contained therein; or (f) attempt to gain unauthorized access to the Application Services or its related systems or networks.

3.4 Email Footer. Customer acknowledges and agrees that a default footer shall be added to each email sent via the Application Services, which footer shall include (a) Customer's physical mailing address; (b) links to ExactTarget's profile update and unsubscribe centers; (c) a link to ExactTarget's Privacy Policy (which may be viewed at www.exacttarget.com); and (d) an attribution that the email was powered by ExactTarget. Notwithstanding the foregoing, Customer may request in writing (which request may be submitted via 3sixty) to ExactTarget that one or more portions of the default footer be deleted from email messages sent via the Application Services; provided, however, that Customer shall add within the body of such email messages (i) the identification of the sender; (ii) instructions on how the recipient can opt-out of future commercial mailings; (iii) the sender's valid physical mailing address; and (iv) a link to Customer's privacy policy, which policy shall be substantially similar to ExactTarget's Privacy Policy.

4. PROFESSIONAL SERVICES

4.1 Who May Order. Customer or a Customer Affiliate may obtain Professional Services from ExactTarget. Each Customer entity purchasing Professional Services shall perform its respective obligations in accordance with the terms and conditions of this Agreement and the relevant SOW.

4.2 Personnel; Use of Subcontractors. Subject to the provisions below and unless otherwise specified in the applicable SOW, ExactTarget shall supply all materials, equipment, and qualified personnel necessary to perform the Professional Services. ExactTarget may use subcontractors to perform the Professional Services. Any subcontractors used by ExactTarget shall have executed a written agreement with ExactTarget that obligates any such subcontractor to protect Customer's Confidential Information to the same extent as is required of ExactTarget hereunder. ExactTarget shall be responsible for all acts and omissions of any such subcontractor to the same extent as if ExactTarget had performed the Professional Services.

4.3 Relationship to the Application Services. The Professional Services may be in support of Customer's subscription to use the Application Services pursuant to an Order Form. No SOW grants Customer any rights to use the Application Services. Except as specifically set forth in a Statement of Work, Customer's purchase of Professional Services is not contingent upon the delivery of any future functionality or features in the Application Services, nor is it dependent upon any oral or written public comments made by ExactTarget with respect to future functionality or features.

5. FEES & PAYMENT

5.1 Service Fees. Customer shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified in an Order Form, fees are based on the Services purchased and not actual usage; payment obligations are non-cancelable; fees paid are non-refundable; and the Services purchased cannot be decreased during the relevant Subscription Term.

5.2 Professional Services Fees.

A. Fixed Price. If an Order Form provides for payment of Professional Services fees on a "Fixed Price" basis, ExactTarget will invoice Customer for work performed as set forth in such Order Form. If ExactTarget is delayed in completing the Professional Services beyond the estimated Duration of the SOW and such delay is due to Customer's unavailability, failure to cooperate, failure to provide information required by ExactTarget to provide the Professional Services, and/or provision of materially inaccurate or misleading information, ExactTarget shall notify Customer that its performance of the Professional Services may be delayed. In such cases ExactTarget's obligations may be reconsidered, the time to provide Professional Services may be extended, and ExactTarget may renegotiate the fixed fee.

B. Time & Materials. If an Order Form provides for payment of Professional Services Fees on a time and materials (or "T&M") basis, the Professional Services shall be provided at ExactTarget's T&M rates in effect as of the Project Start Date. On a T&M engagement, if an estimated total amount is stated in the applicable Order Form, that amount is solely a good faith estimate for Customer's budgeting and ExactTarget's resource scheduling purposes and not a guarantee that the Professional Services will be completed for that amount; the actual amount may be higher or lower. If the estimated amount is expended, ExactTarget will continue to provide Professional Services on a T&M basis under the same rates and terms.

C. Expenses. Customer shall reimburse ExactTarget for reasonable travel and out-of-pocket expenses incurred in conjunction with the Professional Services.

5.3 Invoicing and Payment. Except as otherwise provided, all fees are quoted and payable in United States dollars. Fees for Services will be invoiced in advance and in accordance with the applicable Order Form (or SOW if applicable). Customer shall pay invoices as stated in the Order Form (or SOW if applicable). Customer is responsible for maintaining complete and accurate billing and contact information within the Application Services.

5.4 Overdue Payments. Customer's failure to pay as set forth herein shall constitute a material breach of this Agreement and ExactTarget may impose late fees as contemplated in each Order Form. If Customer's account is 30 days or more overdue (except with respect to charges then under reasonable and good faith dispute), ExactTarget may, in addition to any of its other rights or remedies, suspend Customer's access to the Application Services and/or suspend provision of Professional Services until such amounts are paid in full. If such failure to pay has not been cured within 30 days of the due date, then upon written notice ExactTarget may terminate this Agreement and any or all outstanding Order Forms.

5.5 Taxes. Unless otherwise stated, ExactTarget's fees do not include any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder, excluding taxes based on ExactTarget's net income or property. If ExactTarget has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides ExactTarget with a valid tax exemption certificate authorized by the appropriate taxing authority.

6. PROPRIETARY RIGHTS

6.1 Reservation of Rights. Subject to the limited rights expressly granted hereunder, ExactTarget reserves all rights, title and interest in and to the Application Services, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

6.2 Restrictions. Customer shall not (a) modify, copy or create derivative works based on the Application Services; (b) frame or mirror any content forming part of the Application Services, other than on Customer's own intranets or otherwise for its own internal business purposes; (c) reverse engineer the Application Services; or (d) access the Application Services in order to (i) build a competitive product or service, or (ii) copy any ideas, features, functions or graphics of the Application Services.

6.3 Customer Data. As between ExactTarget and Customer, Customer exclusively owns all rights, title and interest in and to all Customer Data. ExactTarget shall not access Customer's user accounts, including Customer Data, except to respond to service or technical problems or at Customer's request.

6.4 Improvements. ExactTarget shall own all rights, title and interest, including all intellectual property rights, in and to any improvements to the Application Services or any new programs, upgrades, modifications or enhancements developed by ExactTarget in connection with rendering the Application Services to Customer, even when refinements and improvements result from Customer's request. To the extent, if any, that ownership in such refinements and improvements does not automatically vest in ExactTarget by virtue of this Agreement or otherwise, Customer hereby transfers and assigns (and, if applicable, shall cause its Affiliates to transfer and assign) to ExactTarget all rights, title, and interest which Customer or its Affiliates may have in to such refinements and improvements.

6.5 Professional Services Deliverables. ExactTarget hereby grants Customer a worldwide, perpetual, non-exclusive, non-transferable, royalty-free license to use for its internal business purposes anything developed by ExactTarget for Customer under a Statement of Work ("**Deliverables**"). ExactTarget shall retain all ownership rights to the Deliverables.

6.6 Publicity; Trademarks. Neither party may issue press releases or any other public announcement of any kind relating to this Agreement without the other party's prior written consent. Notwithstanding the foregoing, during the Term, either party may include the name and logo of the other party in lists (including on its website) of customers or vendors in accordance with the other party's standard logo and/or trademark usage guidelines. In addition, ExactTarget may use the trademarks and trade names of Customer solely in connection with its authorized provision of the Application Services. Except as set forth herein, neither party may use the trademarks and trade names of the other party without the prior written consent of the other party.

7. CONFIDENTIALITY

7.1 Definition of Confidential Information. As used herein, "**Confidential Information**" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**") that (a) if disclosed orally is designated as confidential at the time of disclosure, (b) if disclosed in writing is marked as "Confidential" and/or "Proprietary", or (c) that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including, without limitation, the terms and conditions of this Agreement (including pricing and other terms reflected in all Order Forms hereunder), the Customer Data, provision of the Services, business and marketing plans, technology and technical information, product designs, and business processes. Notwithstanding the foregoing, each party may disclose the existence and terms of this Agreement, in confidence, to a potential purchaser of or successor to any portion of such party's business resulting from the reorganization, spin-off, or sale of all or a portion of all of the assets of any business, division, or group of such party. Confidential Information (except for Customer Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

7.2 Confidentiality. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission. Notwithstanding the foregoing, the Receiving Party may disclose such Confidential Information to those of its and its Affiliates' employees and contractors who need to know such information for purposes of performing the Services and certifies that such employees and contractors have agreed, either as a condition of employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those in this Agreement. The Receiving Party shall use the same degree of care to protect the Confidential Information as it uses to protect its own information of a confidential and proprietary nature, but in no event shall it use less than a reasonable degree of care.

7.3 Compelled Disclosure. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

7.4 Remedies. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

7.5 Survival. Notwithstanding the expiration or termination of this Agreement for any reason, the obligations of confidentiality and non-use set forth in this Section shall extend for a period of two years after such expiration or termination.

8. WARRANTIES & DISCLAIMERS

8.1 Mutual Warranties. Each party represents and warrants that it has the legal power to enter into this Agreement; that the signatory hereto has the authority to bind the applicable organization; and when executed and delivered, this Agreement will constitute the legal, valid, and binding obligation of each party, enforceable in accordance with its terms.

8.2 Customer Warranties. Customer represents and warrants that: (a) the Customer Data shall not infringe on any copyright, patent, trade secret or other proprietary right held by any third party; (b) Customer shall not use the Application Services in a manner that violates any international, federal, state, or local law or regulation relating to individual privacy or the distribution of email and other one-to-one digital messages; (c) Customer engages in no activity in violation of the UIGE Act nor shall Customer use the Application Services to advertise or otherwise promote any activities that would violate the UIGE Act; and (d) Customer has reviewed and executed the ExactTarget Anti-Spam Certification set forth on Exhibit 1 attached hereto and made a part hereof.

8.3 ExactTarget Warranties.

A. Application Services. ExactTarget represents and warrants that: (a) the functionality of the Application Services will not be materially decreased during a Subscription Term; (b) ExactTarget shall utilize software and other security means to prevent the Application Services from containing or transmitting Malicious Code; and (c) it owns or otherwise has sufficient rights in the Application Services to grant to Customer the rights to use the Application Services granted herein.

B. Professional Services. ExactTarget represents and warrants that the Professional Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. Customer must report any deficiencies in the Professional Services to ExactTarget in writing within 90 days of performance of such Professional Services in order to receive warranty remedies. For any breach of the warranty in this Section 8.3(B), Customer's exclusive remedy, and ExactTarget's entire liability, shall be the re-performance of the Professional Services. If ExactTarget is unable to re-perform the Professional Services as warranted within 30 days of receipt of notice of breach, Customer shall be entitled to recover the fees paid to ExactTarget for the deficient Professional Services.

8.4 Disclaimer. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXACTTARGET EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, AND GUARANTEES WITH RESPECT TO THE SERVICES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING, WITHOUT LIMITATION, STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE OF THE SERVICES, NOT CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WARRANTY BY EXACTTARGET.

9. INDEMNIFICATION

9.1 By ExactTarget. ExactTarget shall defend, indemnify and hold Customer, its Affiliates, and their respective officers, directors, and employees, harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits or proceedings ("**Claims**") made or brought against Customer by a third party alleging that Customer's use of the Application Services or Deliverables within the scope of this Agreement infringes the intellectual property rights of such third party; *provided, however,* that ExactTarget shall have no such indemnification obligation to the extent such infringement: (a) relates to use of the Application Services or Deliverables in combination with other software, data products, processes, or materials not provided by ExactTarget and the infringement would not have occurred but for the combination; (b) arises from or relates to modifications to the Application Services or Deliverables not made or authorized by ExactTarget; or (c) where Customer continues the activity or use constituting or contributing to the infringement after notification thereof by ExactTarget.

9.2 By Customer. Customer shall defend, indemnify, and hold ExactTarget, its Affiliates, and their respective officers, directors, and employees, harmless against any loss, damage, or costs (including reasonable attorneys' fees) incurred in connection with a Claim that (a) Customer has used the Application Services other than in compliance with the terms of use set forth in this Agreement; (b) Customer Data, and/or any materials provided to ExactTarget necessary to perform the Professional Services, infringe the intellectual property rights of a third party; (c) ExactTarget's use, in connection with its provision of the Application Services, of any Customer Data has otherwise harmed a third party; or (d) Customer has violated the UIGE Act.

9.3 Procedure. As an express condition to the indemnifying party's obligation under this Section 9, the party seeking indemnification must: (a) promptly notify the indemnifying party in writing of the applicable Claim for which indemnification is sought; and (b) provide the indemnifying party with all non-monetary assistance, information and authority reasonably required for the defense and settlement of such Claim. The indemnifying party may select counsel for defense of the Claim and direct the course of any litigation or other disputed proceedings concerning the Claim. The indemnified party may select its own counsel and direct its own defense of a Claim if it chooses to do so, but it must bear the costs of its own counsel and any activities in any disputed proceeding conducted by counsel of its

choosing. The indemnifying party may settle any Claim, to the extent it seeks a money payment, with or without the consent of the indemnified party. The indemnifying party must obtain the indemnified party's consent to any settlement to the extent it consents to injunctive relief or contains contract terms governing future activities that would materially affect the indemnified party's business or interests, said consent not to be unreasonably withheld, conditioned or delayed.

10. LIMITATIONS

10.1 Limitation of Liability. IN NO EVENT SHALL EXACTTARGET'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE LESSER OF \$500,000 OR THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY.

10.2 Exclusion of Consequential and Related Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND OR NATURE HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.3 Time to File Claim. NO CLAIM MAY BE BROUGHT BY CUSTOMER UNDER THIS AGREEMENT MORE THAN ONE YEAR AFTER THE ACCRUAL OF THE CLAIM.

11. TERM & TERMINATION

11.1 Term of Agreement. This Agreement commences on the Effective Date and continues until terminated as set forth in this Section 11 (the "Term").

11.2 Term of Subscriptions. Subscriptions to the Application Services commence on the Start Date and continue for the Subscription Term specified in the applicable Order Form. Unless otherwise set forth in an Order Form, subscriptions to the Application Services shall automatically renew for additional periods of one year for the fees set forth in the applicable Order Form unless either party gives the other notice of non-renewal at least 30 days prior to the end of the relevant Subscription Term.

11.3 Term of Statements of Work. Professional Services shall commence on the Project Start Date and shall continue until such Professional Services are completed.

11.4 Termination for Convenience. Notwithstanding any other term or provision of this Agreement, Customer shall have the right, in its sole discretion, to terminate this Agreement upon thirty (30) days prior written notice to ExactTarget and subject to payment to ExactTarget of all outstanding amounts due for Subscriptions and Professional Services rendered to the date of termination.

11.5 Termination for Cause. A party may terminate this Agreement for cause: (a) upon 30 days' written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (b) immediately if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. ExactTarget may immediately terminate this Agreement upon notice to Customer if (i) ExactTarget or Customer receives notice from any governmental entity that ExactTarget (in connection with its provision of the Application Services to Customer) or Customer is alleged to be in violation of the UIGE Act, or (ii) ExactTarget learns of any Customer activity that ExactTarget deems, in its sole discretion, to be in violation of the UIGE Act. Upon any termination for cause by Customer, ExactTarget shall refund Customer any prepaid fees covering the remainder of the Subscription Term after the date of termination. Termination for cause by Customer shall not relieve Customer of the obligation to pay any fees accrued or payable to ExactTarget prior to the effective date of termination. Upon any termination for cause by ExactTarget, Customer shall remain obligated to pay all fees owed for the remainder of the Subscription Term, all of which fees shall become immediately due and payable in full.

11.6 Customer Data. Following the termination or expiration of this Agreement, Customer shall have 30 days to access its account and download / export Customer Data. Upon expiration of such 30-day period, ExactTarget shall convert Customer's account to an inactive status. ExactTarget shall delete all Customer Data within 90 days of Customer's account converting to inactive status.

11.7 Surviving Provisions. Section 1 and Sections 5 through 12 shall survive any termination or expiration of this Agreement.

12. GENERAL PROVISIONS

12.1 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

12.2 Government Contracts. ExactTarget's performance of its obligations under this Agreement is not related to Customer's performance of any government contracts it has, nor does it involve performing, undertaking or assuming any obligation that Customer may have under any government contract. Customer will notify ExactTarget in writing any time such a situation arises or appears it may arise so that ExactTarget can determine if it wishes to alter its contractual relationship under those changed circumstances.

12.3 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

12.4 Notices. All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (a) personal delivery; (b) the second business day after mailing; (c) the second business day after sending by confirmed facsimile; or (d) the second business day after sending by email. Notices to ExactTarget shall be addressed to the attention of its General Counsel. Notices to Customer shall be addressed to Customer's signatory of this Agreement unless otherwise designated below.

12.5 Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

12.6 Severability. Any provision of this Agreement which is prohibited and unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction.

12.7 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this Section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

12.8 Governing Law. This Agreement shall be governed exclusively by the internal laws of the State of Indiana, without regard to its conflicts of laws rules. The state and federal courts located in Marion County (Indianapolis), Indiana shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party consents to the exclusive jurisdiction of such courts. Each party also waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

12.9 Attorneys' Fees. If either party hereto resorts to legal action for the redress of a breach of this Agreement, the prevailing party shall be entitled to an award of all costs and reasonable attorneys' fees.

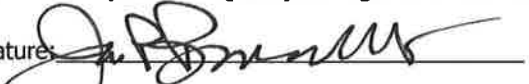
12.10 Entire Agreement. This Agreement, including all Exhibits, Order Forms and Statements of Work, constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any Exhibit, Order Form, or Statement of Work, the terms of this Agreement shall prevail unless expressly stated otherwise in such Exhibit, Order Form, or Statement of Work. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation (excluding Order Forms and Statements of Work) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void. The language used in this Agreement shall be deemed to be language chosen by both parties hereto to express their mutual intent, and no rule of strict construction against either party shall apply to rights granted herein or to any term of condition of this Agreement.

12.11 Counterparts. This Agreement may be executed in counterparts, which taken together shall form one legal instrument. Delivery of an executed counterpart signature page of this Agreement by facsimile, email, or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

IN WITNESS WHEREOF, the authorized representatives of the parties hereto have executed and delivered this Agreement with the intent to be bound as of the Effective Date.

Customer: Bay Area Air Quality Management District

ExactTarget, Inc.

Signature: 

Signature: _____

Printed: Jack P. Broadbent

Printed: _____

Title: APCO/Executive Officer

Title: _____

Date: 1/18/13

Date: _____

Exhibit 1

ExactTarget Anti-Spam Certification Form

In order to comply with federal law, email best practices, and the policies set forth by ISPs and other email filtering organizations, ExactTarget requires all clients to certify their compliance with ExactTarget's Anti-Spam email policy as well as the opt-in status of any lists they distribute using the Application Services.

If you cannot provide the certifications requested below, please contact your ExactTarget representative to discuss the means by which your email distribution list(s) may be brought into compliance with our opt-in list requirements.

First Certification: ExactTarget Anti-Spam Policy

I, or another member of my organization, have read and understand ExactTarget's Anti-Spam Policy (attached hereto).


initials

Second Certification: List Source

I certify that **Bay Area Air Quality Management District** is the owner of all email distribution lists distributed using the Application Services, and that **Bay Area Air Quality Management District** is solely responsible for the composition and membership of each list.


initials

Third Certification: List Opt-In Status

I certify that all subscribers to be used in connection with the Application Services have provided permission to **Bay Area Air Quality Management District** to send them email.


initials

Certified by: Bay Area Air Quality Management District


Signature

Jack P. Broadbent

Name

APCO/Executive Officer

Title

ExactTarget Anti-Spam Policy

Anti-SPAM at ExactTarget

Our clients certify that they will use our software only to send emails to customers and prospects that have directly consented (opted-in) to receive email. They are forbidden to transmit unsolicited commercial email (spam) via our system. ExactTarget does not buy or sell email lists, nor do we allow our clients to use purchased or harvested email lists (see below).

Additionally, ExactTarget offers confirmed opt-in as an optional tool for our clients to use to help minimize allegations of spam and abuse. When a list is designated as "confirmed opt-in," ExactTarget's system automatically sends a follow-up email to each subscriber on such lists asking the recipient to verify that they wish to receive communications via email. Only those subscribers responding affirmatively will be opted-in to future mailings sent via the ExactTarget system.

We additionally require that clients reconfirm (permission pass) or stop mailing an existing list when it is determined to be in violation of our anti-spam policies. Repeated violations or failures to comply with our policies will result in termination of that client's access to the ExactTarget system.

Members Agreement

Our clients agree not to send unsolicited email via our system. For any opt-in list of email addresses used in ExactTarget's system, clients agree to provide us with the source of the email addresses, the method used for recipient signup, and details surrounding the process used, and whatever other information relates to the transaction or sign-up process used. This includes, but isn't limited to, date and time of sign up, IP address of signup, website signed up from, and whatever other information the client asked of the recipient at point of sign up.

Our clients certify that they will not use rented or purchased lists, email append lists, or any other list that contains email addresses captured in any other method than opt-in. The use of opt-out lists is prohibited in our system. ExactTarget retains the right to review client lists and emails to verify that clients are abiding by the privacy and permission policies set forth herein. Our clients are required to comply with our policies and all applicable law.

How do we protect your privacy?

We use strict security measures to protect against the loss, misuse and alteration of data used by our system. We promise to keep your email address secure and private and will not use it for other purposes. Please review our Privacy Policy for more details.

Why did you receive an email from our system?

You should only receive email from our system from some client of ours that you recognize signing up to receive email from. Our clients certify that all email addresses used in our system are opt-in names that have given permission to the client to send them email. As we indicate above, ExactTarget does not allow nor desire that any client use our email services to send unwanted mail or spam. If you don't recognize who sent you the message, see the next section.

Reporting Unwanted Mail as Spam

If you don't recognize who used the ExactTarget service to send you a given message, you can report it to us as spam by sending it to abuse@exacttarget.com. We receive, investigate, catalog, and take action based on these complaints. If you're worried that we would simply "list wash" your address without further investigation, feel free to report the message to whatever spam reporting entity you feel most comfortable working with. Spamcop at www.spamcop.net provides an easy way to report unwanted mail as spam. You can also use your email provider's (AOL, Hotmail, Yahoo) "report as spam" mechanism to notify the ISP that the message is spam. ISPs use this information to determine good senders from bad senders, and we regularly work with ISPs to take action based on that data. Alternately, there are reputable anti-spam blacklist groups that you can work with to identify an issue and inform service providers of that issue. We work with anti-spam blacklist groups and strive to address all issues to their satisfaction.

How do I get off an email list?

Each email sent through the ExactTarget system contains a link that allows subscribers to unsubscribe from receiving emails from the sender. Each email contains an easy and automated way for you to unsubscribe. You may also change your expressed interests at any time. If you wish to unsubscribe or change your interests, simply follow the instructions at the bottom of any email. If you have received an unwanted email sent by the ExactTarget system, please see above for options on how to handle and report an issue.

Will your information ever be shared, sold or rented?

We will never share, sell, or rent individual personal information without your advance permission, unless ordered by a court of law. Information submitted to us is available only to employees responsible for managing this data.

If you have any questions about ExactTarget's Anti-Spam Policy, please contact us at 317-423-3928 or email us at abuse@exacttarget.com.

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