

VerticalResponse's Bonded Sender[™] Program Terms of Use Agreement

The Bonded Sender Program, developed and owned by Return Path, Inc. ("Return Path"), is an e-mail certification program and helps ensure delivery of legitimate commercial e-mail by requiring that end users adhere to certain standards in sending email and post a bond to guarantee the legitimacy of their e-mail address. Through its agreement with Return Path, VerticalResponse is able to offer the Bonded Sender Program as a certified reseller to eligible VerticalResponse users.

The following are the terms of enrollment and participation in the Bonded Sender Program through VerticalResponse (the "Program"). As used in these Terms of Use, the terms "you" and "your" refer to the VerticalResponse User agreeing to abide by these Terms of Use. By signing below you hereby acknowledge each of these Terms of Use and agree to abide by them in all respects.

1. **Acknowledgements.** Subject in each case to the terms listed in the remainder of these Terms of Use, you hereby acknowledge and agree that:

- to be ELIGIBLE to APPLY to participate in the Program, you must be, at a minimum, a current VerticalResponse User for at least 3 months and in good standing with a sufficient mailing history from which VerticalResponse can evaluate the complaint history for your account; generally this means that you should have conducted at minimum 6 email campaigns of 100 subscribers or more to the list(s) which you plan to use in the Program;
- when you submit your application to VerticalResponse to participate in the Program, you are agreeing to pay a one-time non-refundable \$50.00 application fee to VerticalResponse when you submit your application;
- the decision whether you will be accepted to participate in the Program is wholly within the discretion of VerticalResponse and paying the application fee and submitting your application to participate in the Program does not guarantee inclusion in the Program;
- if your application is not approved, your application fee is NOT refundable;
- if your application is approved, you will also be required to pay an annual maintenance fee for the first year based upon your monthly mailing volume;
- you will be eligible to continue to participate in the Program after the first year so long as the complaints made against you are within the program limits (as determined by VerticalResponse in its sole discretion) and you have paid, when due, the debit amounts; for each year that you choose to continue to participate in the Program, you will be required to pay an annual maintenance fee;
- VerticalResponse has posted a bond on behalf of all users participating in the Program which is debited by Bonded Sender for abuse complaints received regarding VerticalResponse Users participating in the Program. For each abuse complaint which relates to your VerticalResponse account, you will be charged \$20.00 to be billed via credit card or invoice, as more fully described below;
- your participation in the Program is neither a guarantee of 100% email delivery or a successful email campaign, nor is it expected to result in 100% email delivery or a successful email campaign; and
- If your participation in the Program terminates for any reason, NONE of the fees you have paid will be refundable.

2. **Participation in The Program**

2.1 **Terms Governing Participation.** The Program is provided subject to these Terms of Use and the terms of the separate VerticalResponse Site Owner Agreement and Software License Terms ("Site Owner Agreement") to which you are a party, the terms of which are incorporated into these Terms of Use. Any use of the Service, including in connection with participation in the Program, shall be subject in all respects to the Site Owner Agreement. You can view an electronic copy of the current version of this Site Owner Agreement and Software License Terms at VerticalResponse's website (http://www.verticalresponse.com/about/tos_bondedsender.html). In the event of a conflict between these Terms of Use and the Site



Owner Agreement as to your participation in the Program, these Terms of Use shall control, but nothing in this Agreement shall amend, alter, supersede or otherwise modify the terms of the Site Owner Agreement as it applies in any respect to use of the Service.

2.2 Minimum Eligibility Requirements. To apply to participate in the Program, you must (a) be a current VerticalResponse user (at least 3 months of service) with a current, valid and fully paid-up subscription to use the VerticalResponse service (the "Service"), (b) be a party to the Site Owner Agreement, and (c) have sufficient mailing history to enable VerticalResponse User to evaluate the complaint history of your account; generally this means that you should have conducted at minimum 6 email campaigns of 100 subscribers or more to the list(s) which you plan to use in the Program.

2.3 Limited License Grant. Subject to all other terms and conditions of this Agreement, VerticalResponse grants you a limited, nonexclusive, nontransferable, nonsublicensable, revocable license, during the term of this Agreement, to (i) participate in the Program and (ii) use the names "Bonded Sender" and "Bonded Sender Program, as Certified by Truste" and their associated logos as more fully described at http://www.bondedsender.com/tm_usage.jsp (the "Trademarks") subject to the usage guidelines set forth therein as amended from time to time. You hereby acknowledge and agree that all intellectual property rights in and to the Program and the Trademarks remain with VerticalResponse or its licensors.

3. Application; Fees and Debit Amounts

3.1 Application; Fee Not Refundable. To participate in the Program, you must meet the minimum eligibility requirements, apply for enrollment and be accepted into the Program by VerticalResponse. You will be charged a \$50.00 application fee. The application fee will be charged to your credit card on file with VerticalResponse or via invoice. Applying to participate in the Program does not guarantee that you will be accepted into the Program. VerticalResponse will determine in its sole discretion whether you will be accepted into the Program once you have made a formal application. VerticalResponse will evaluate your application within 5 business days and notify you if it determines to accept you into the Program. The application fee will not be refunded if you are not accepted into the Program.

3.2 Annual Maintenance Fees; Fees Not Refundable. On acceptance into the Program, you must pay the annual maintenance fee for the first year of your participation in the Program before your participation in the program will commence. The annual maintenance fee is based on your monthly email volume. VerticalResponse reserves the right to increase your annual maintenance fee pro rata should you request an increase in your permitted monthly mail volume. You are responsible for reviewing the Fee Schedule from time to time and remaining aware of the annual maintenance fees charged by VerticalResponse. VerticalResponse, in its discretion, may change the Fee Schedule at any time. VerticalResponse will attempt to notify you via email prior to the effectiveness of any change to the Fee Schedule. On each anniversary of your acceptance into the Program, you must pay the applicable annual maintenance fee to continue your participation in the Program for the coming year. This fee will be charged to your credit card on file with VerticalResponse or via invoice. The annual maintenance fees are not refundable even if your participation in the Program terminates at any time during a given year.

3.3 Abuse Complaints; Debit Amounts. Emails that you send as part of the Program may from time to time generate "Abuse Complaints" from recipients of your emails. Typically an Abuse Complaint is generated when the recipient of your email believes that you have not received his or her permission to send the recipient email messages and that your message is spam. As part of the Agreement which allows eligible VerticalResponse Users to participate in the Program, VerticalResponse has agreed to post a bond which Bonded Sender will debit as a consequence of Abuse Complaints. For each Abuse Complaint that relates to emails that you send as part of the Program, you will be assessed a Debit Amount of \$20.00, which you agree VerticalResponse may charge to your credit card on file with VerticalResponse or be invoiced.

3.4 Fees Non Refundable. ALL FEES AND DEBIT AMOUNTS PAID BY YOU TO VERTICALRESPONSE ARE NON-REFUNDABLE.

3.5 Payment of Fees, Debit Amounts. Payment of all Fees and Debit Amounts will be made by a valid credit card accepted by VerticalResponse or via invoice. Fees are payable in US dollars. You hereby authorize VerticalResponse to charge your credit card for all applicable Fees and Debit Amounts, when assessed. If VerticalResponse is for any reason unable to effect an automatic payment via your credit card, VerticalResponse will attempt to notify you via email and your participation in the Program will be suspended until payment is received.

4. Program Complaint Limits; Calculation of Number of Abuse Complaints. The Program Complaint Limits defines the maximum aggregate number of Abuse Complaints that may be assigned to you during any seven day, thirty day, six month, or year period before VerticalResponse, in the exercise of its sole discretion, terminate your participation in the Program under paragraph 5.1(a). You agree and acknowledge that VerticalResponse has sole discretion to determine the Program Complaint Limits to which your continued use of the Program is subject. The number of Abuse Complaints relating to VerticalResponse Users participating in the Program is calculated by the Bonded Sender Program based on information received from available data sources and then provided to VerticalResponse. Bonded Sender has reserved the right to add or delete available data sources from time to time. If the Bonded Sender Program identifies your VerticalResponse account in connection with an Abuse Complaint, VerticalResponse will assess Debit Amounts to your account and will include the Abuse Complaint in determining whether the number of complaints assigned to you exceed the Program Complaint Limits. You agree that you will accept as final VerticalResponse's determination, in its sole discretion, that an Abuse Complaint relates to your account. VerticalResponse will monitor all Abuse Complaints and the corresponding number of Abuse Complaints relating to your account to ensure that you are not in violation of the Program Complaint Limits. VerticalResponse will notify you (a) if you are in violation of the Program Complaint Limits, (b) of any Debit Amounts to be assessed based on your e-mail activity, and (c) may request that you modify your VerticalResponse Usage as necessary. Information identifying the specific recipient who filed the complaint cannot and will not be provided to you by Bonded Sender or VerticalResponse.

5. Termination; Reapplication.

5.1 Termination. VerticalResponse may terminate your participation in the Program immediately and without notice if (a) VerticalResponse determines, in its sole discretion, that the Abuse Complaints assigned to you exceed the Program Complaint Limits, (b) you fail to timely pay the annual maintenance fee, any Debit Amount assessed to you or any amount owing on your VerticalResponse account, (c) your use of the Service is terminated for any reason by you or by VerticalResponse, or (d) you use the Service or the Program in violation of the Site Owner Agreement and/or these Terms of Use. You may terminate your participation in the Program at any time immediately upon written notice to VerticalResponse. You understand and agree that you shall not be entitled to a refund of any Fees or Debit Amounts which you have paid as a participant in the Program in the event that you or VerticalResponse shall terminate your participation in the Program.

5.2 Reapplication. In the event that VerticalResponse terminates your participation in the Program pursuant to paragraph 5.1, you may reapply for participation in the Program after 180 days so long as you otherwise meet the Minimum Eligibility Requirements.

6. Representations. By entering into this Agreement, you hereby represent, acknowledge and agree (a) that you currently meet and will comply with the standards set forth by the Bonded Sender Program, as defined at <http://www.bondedsender.com/standards.jsp>; (b) that the fees and Debit Amounts paid to VerticalResponse in connection with the Program are not refundable, (c) that the Bonded Sender Program may, at any time in its discretion, suspend your participation in the Program or VerticalResponse's participation in the Bonded Sender Program, and (d) that you have no right to, and will not, use any trademarks or service marks of Return Path or the Bonded Sender Program.

7. Indemnification. Each party hereto shall indemnify and defend the other party, and its officers, directors and employees, against any third party action arising from the gross negligence or intentional misconduct of such party, and such indemnifying party shall pay all settlements entered into, and all final judgments and costs (including reasonable attorneys' fees) awarded against such other party in connection with such action. You also agree to indemnify and defend Return Path, and its officers, directors and employees, against any third party action arising from your gross negligence or intentional conduct, and to pay all settlements entered into, and all final judgments and costs (including reasonable attorneys' fees) awarded against Return Path in connection with such action. Indemnity hereunder is granted only upon the conditions that (i) the party to be indemnified ("Indemnitee") provides prompt written or electronic notice of any such claim, action or demand, (ii) the Indemnitee allow the party to provide indemnity ("Indemnitor") to control the defense and related settlement negotiations, provided, however, that Indemnitee shall have the right to participate in such defense with counsel of its own choosing at its own expense, (iii) the Indemnitee provides the Indemnitor, upon request, with reasonable assistance in the defense of such claim, action or demand, so long as the Indemnitor reimburses the Indemnitee for the Indemnitee's reasonable out-of-pocket expenses associated therewith, and (iv) the Indemnitor may not settle a claim in a manner that causes the Indemnitee to incur unidentified liability, take legal action, or suffer other injury, without Indemnitee's written or electronic consent, which consent shall not unreasonably be withheld.

8. **Limited Warranty.** PARTICIPATION IN THE PROGRAM AND ANY RELIANCE BY YOU UPON SUCH PARTICIPATION, INCLUDING ANY ACTION TAKEN BY YOU BECAUSE OF SUCH USE OR RELIANCE, IS AT YOUR SOLE RISK. THE PARTIES ACKNOWLEDGE AND AGREE THAT NEITHER VERTICALRESPONSE NOR RETURN PATH GUARANTEES THE EFFECTIVENESS OR RESULTS OF THE PROGRAM OR THE BONDED SENDER™ PROGRAM OR ANY OTHER SERVICE, OR PRODUCT PROVIDED BY VERTICALRESPONSE OR RETURN PATH UNDER THIS AGREEMENT. VERTICALRESPONSE MAKES NO WARRANTY, EXPRESS OR IMPLIED UNDER THIS AGREEMENT TO ANY PERSON OR ENTITY, AND END USER SHALL DEFEND AND INDEMNIFY VERTICALRESPONSE AND RETURN PATH FROM AND AGAINST ANY CLAIMS MADE ARISING FROM, OR BASED ON, ANY WARRANTY OR REPRESENTATION ALLEGEDLY MADE BY END USER TO ANY THIRD PARTY REGARDING THE PROGRAM, RETURN PATH'S BONDED SENDER™ PROGRAM, PRODUCTS, OR SERVICES, OR END USER'S RELIANCE THEREON. ANY AND ALL WARRANTIES, IMPLIED OR OTHERWISE, ARE EXPRESSLY EXCLUDED AND DISCLAIMED EXCEPT TO THE EXTENT THAT SUCH WARRANTIES ARE SPECIFICALLY AND EXPRESSLY PROVIDED FOR UNDER THIS AGREEMENT.

9. **Limitation on Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (TORT, CONTRACT, OR OTHERWISE) SHALL VERTICALRESPONSE OR ANY OF ITS UNDERLYING SERVICE PROVIDERS, BUSINESS PARTNERS (INCLUDING, WITHOUT LIMITATION, RETURN PATH, INC.), INFORMATION PROVIDERS, ACCOUNT PROVIDERS, LICENSORS, EMPLOYEES, DISTRIBUTORS OR AGENTS (COLLECTIVELY REFERRED TO FOR PURPOSES OF THIS SECTION AS "VERTICALRESPONSE") BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY MONEY DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES, EVEN IF VERTICALRESPONSE HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. IN THE EVENT THAT NOTWITHSTANDING THE FOREGOING, VERTICALRESPONSE IS FOUND LIABLE TO YOU FOR DAMAGES FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE), THE LIABILITY OF VERTICALRESPONSE TO YOU WILL BE LIMITED TO THE AMOUNT YOU PAID TO PARTICIPATE IN THE PROGRAM FOR THE MOST RECENT ONE-YEAR PERIOD. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU. THIS PARAGRAPH 9 DOES NOT APPLY TO THE INDEMNIFICATION OBLIGATIONS IN PARAGRAPHS 7 AND 8.

10. **Amendment.** VerticalResponse may at any time in its discretion change these Terms of Use, effective immediately and without your having received notice of such change. VerticalResponse will keep a current version of these Terms of Use (reflecting the most current terms, which may differ from those described herein) on its website at http://www.verticalresponse.com/about/tos_bondedsender.html. In addition, VerticalResponse may notify you by electronic mail in the event that it changes any of these Terms of Use.

By signing below you acknowledge and agree to VerticalResponse's Bonded Sender™ Program Terms of Use Agreement:

Print Name

Sign Name

Date Signed

VerticalResponse Username

Business Phone Number

