

eSilverBullet TERMS OF SERVICE

The terms and conditions of use for the eSilverBullet *beta*, are as follows, and are subject to change without an express notice to each individual user, but will be listed under the Terms of Use agreement at www.esilverbullet.com/eSilverBulletTOS.pdf.

See Glossary for clarification of terms.

1. Scope of agreement

These terms of use are between eSilverBullet (the Provider) and you (either an individual or a legal entity that you represent as an authorized employee or agent) ("You").

Please read them carefully and in their entirety.

BY CLICKING THE "I ACCEPT" BUTTON, COMPLETING THE REGISTRATION PROCESS AND/OR THE USE THE SERVICE BY YOU, OR AN INDIVIDUAL WITHIN YOUR COMPANY, YOU ARE STATING THAT YOU MEET THE REQUIREMENTS FOR AN ACCOUNT AND THAT YOU AGREE TO BE BOUND BY ALL OF THE TERMS, POLICIES AND CONDITIONS OF THE SERVICE ("AGREEMENT") AND THOSE FOUND WITHIN THE eSilverBullet Service. The Service is offered to you wholly conditional to your acceptance without modification of the terms, conditions, and notices contained herein.

These terms and conditions are to be considered binding, and along with all referenced addendums, are the sole governing terms relating to disputes with the Provider.

1. Glossary

"Account" means all services, records, reports, or charges belonging to a single login as is stored at www.eSilverBullet.com or other site as defined by eSilverBullet.

"Customer Data" means the data concerning the characteristics and history of contacts that are collected through use of the CRM and then forwarded to the Servers and analyzed by the Processing Software.

"Documentation" means any accompanying proprietary documentation made available to You by eSilverBullet for use with the Service, including any documentation available online or otherwise.

"Processing Software" means the proprietary eSilverBullet Analytics Software and any upgrades to such, which analyzes the Customer Data and generates the Reports.

"Report" means the resulting analysis shown at www.eSilverBullet.com/ (or such other URL eSilverBullet may provide from time to time) for an individual profile. The number of charts, graphs, and statistics contained in a Report varies with the edition of the Service.

"CRM" means "Customer Relationship Management" as is provided by the proprietary eSilverBullet database code, which is hosted at www.eSilverBullet.com or other site as designated by eSilverBullet, for the purpose of collecting Customer Data, together with any fixes, updates and upgrades provided to you (collectively, the "CRM").

"Servers" means the servers controlled by eSilverBullet (or its Service Partners) upon which the Processing Software and Customer Data are stored.

"Software" means the CRM and the Processing Software.

"Service" means all services hosted at www.eSilverBullet.com or other site as designated by eSilverBullet.

"Provider" means eSilverBullet and its legally designated representatives.

2. FEES AND SERVICES

Subject to Section 15 herein, the Services that are provided by eSilverBullet are without charge to You with the following express limitations listed below-

- A. Accounts are limited to 1 per corporate entity during the beta period until otherwise specified. Multiple users will be allowed to concurrently use the service unless otherwise noted. Duplicate accounts may be removed at the discretion of the Provider.
- B. Support service for eSilverBullet is free by email, with the order of response to said requests at the discretion of the Provider and its designated representatives. Other services such as phone support may be billed at a rate to be agreed upon by both parties.
- C. As a free hosted service, the Provider is not responsible for any charges by third parties related to the accessing of the stated services, including but not limited to cellular or internet service charges.
- D. All third-party services and their corresponding charges, that are offered in and through said service, are bound by their respective agreements and are not the responsibility of the Provider to execute, collect or enforce, and the Provider reserves the right to revoke service for any reason as stated in Section 15 regardless of said third party agreements.

3. MEMBER ACCOUNT, PASSWORD, AND SECURITY. To register for the Service, You must complete the registration process by providing eSilverBullet with current, complete and accurate information as prompted by the registration form, including Your e-mail address (username) and password. You shall protect your passwords and take full responsibility for Your own, and third party, use of Your accounts. You are solely responsible for any and all activities that occur under Your Account. You agree to notify eSilverBullet immediately upon learning of any unauthorized use of Your Account or any other breach of security. From time to time, eSilverBullet's (or its service partners) support staff may log in to the Service under Your customer password in order to maintain or improve service, including to provide You assistance with technical or billing issues. You hereby acknowledge and consent to such access.

4. NONEXCLUSIVE LICENSE. eSilverBullet hereby grants You a limited, revocable, non-exclusive, non-sublicensable license to use the Service solely as intended by eSilverBullet . Subject to the terms and conditions of this Agreement, You may remotely access, view and download Your Reports stored at eSilverBullet.com(or such other URL eSilverBullet may provide from time to time). Your license of, use of and access to the Software and the Service (which may include, without limitation, the Software, Documentation and the Reports) is conditioned upon Your compliance with the terms and conditions of the Agreement, including the following:

You will not nor will You allow any third party to (i) copy, modify, adapt, translate or otherwise create derivative works of the Software or the Documentation; (ii) reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code of the Software, except as expressly permitted by the law in effect in the jurisdiction in which You are located; (iii) rent, lease, sell, assign or otherwise transfer rights in or to the Website, the Processing Software, the Documentation or the Service; (iv) remove any proprietary notices or labels on the Software or placed by the Service; or (v) use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Service or the Software. You will use

the Software, Service and Reports solely for Your own internal use, and will not make the Software or Service available for timesharing, application service provider or service bureau use. You will comply with all applicable laws and regulations in Your use of and access to the Documentation, Software, Service and Reports.

This license will terminate immediately if You fail to comply with the terms of this Agreement. Upon such termination, You must cease any further use of the Service without the express written consent of eSilverBullet.

5. CONFIDENTIALITY. "Confidential Information" includes any proprietary data and any other information disclosed by one party to the other in writing and marked "confidential" or disclosed orally and, within five business days, reduced to writing and marked "confidential". Notwithstanding the foregoing, Confidential Information will not include any information that is or becomes known to the general public, which is already in the receiving party's possession prior to disclosure by a party or which is independently developed by the receiving party without the use of Confidential Information. Neither party will use or disclose the other party's Confidential Information without the other's prior written consent except for the purpose of performing its obligations under this Agreement or if required by law, regulation or court order. In which case, the party being compelled to disclose Confidential Information will give the other party as much notice as is reasonably practicable prior to disclosing such confidentiality of Your password(s) and user name(s) issued to You by eSilverBullet, and for any use or misuse of Your information. Upon termination of this Agreement, the parties will promptly either return or destroy all Confidential Information and, upon request, provide written certification of such. You are responsible for safeguarding the confidentiality of Your password(s) and user name(s) issued to You by eSilverBullet, and for any use or misuse of Your Account resulting from any third party using a password or user name issued to You. You agree to immediately notify eSilverBullet of any unauthorized use of Your account or any other breach of security known to You.

6. INFORMATION RIGHTS AND PUBLICITY. eSilverBullet may retain and use, subject to the terms of its Privacy Policy (located at <http://www.eSilverBullet.com/privacy.html> , or such other URL as eSilverBullet may provide from time to time), information collected in Your use of the Service. eSilverBullet will not share information associated with You or your Site with any third parties unless eSilverBullet (i) has Your consent; (ii) concludes that it is required by law or has a good faith belief that access, preservation or disclosure of such information is reasonably necessary to protect the rights, property or safety of eSilverBullet, its users or the public; or (iii) provides such information in certain limited circumstances to third parties to carry out tasks on eSilverBullet's behalf (e.g., billing or data storage) with strict restrictions that prevent the data from being used or shared except as directed by eSilverBullet. When this is done, it is subject to agreements that oblige those parties to process such information only on eSilverBullet instructions and in compliance with this Agreement and appropriate confidentiality and security measures.

7. PRIVACY. You will not (and will not allow any third party to) use the Service to track or collect personally identifiable information of Internet users, nor will You (or will You allow any third party to) associate any data gathered from Your website(s) (or such third parties' website(s)) with any personally identifying information from any source as part of Your use (or such third parties' use) of the Service. You will have and abide by an appropriate privacy policy and will comply with all applicable laws relating to the collection of information from visitors to Your websites. You must post a privacy policy and that policy must provide notice of your use of a cookie that collects anonymous traffic data.

8. INDEMNIFICATION. You agree to indemnify, hold harmless and defend eSilverBullet at Your expense, any and all third-party claims, actions, proceedings, and suits brought against eSilverBullet or any of its officers, directors, employees, agents or affiliates, and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees and other litigation expenses) incurred by eSilverBullet or any of its officers, directors, employees, agents or affiliates, arising out of or relating to (i) Your breach of any term or condition of this Agreement, (ii) Your use of the Service, (iii) Your violations of applicable laws, rules or regulations in connection with the Service, or (iv) Your Brand Features. In such a case, eSilverBullet will provide You with written notice of such claim, suit or action. You shall cooperate as fully as reasonably required in the defense of any claim. eSilverBullet reserves the right, at its own expense, to assume the exclusive defense and control of any matter subject to indemnification by You.

9. THIRD PARTIES. If You provide access to Your Account or any portion thereof to any third party or use the Service to collect information on behalf of any third party ("Third Party"), whether or not You are authorized to do so by eSilverBullet the terms of this Section 9 shall apply to You.

If You use the Service on behalf of any Third Party, You represent and warrant that (a) You are authorized to act on behalf of, and bind to this Agreement, that Third Party, (b) as between the Third Party and You, the Third Party owns any rights to Customer Data in the applicable account, and (c) You shall not disclose Third Party's Customer Data to any other party without the Third Party's consent.

You shall ensure that each Third Party is bound by and abides by the terms of this Agreement. eSilverBullet makes no representations or warranties for the direct or indirect benefit of any Third Party. With respect to Third Parties, You shall take all measures necessary to disclaim any and all representations or warranties that may pertain to eSilverBullet, the Service, the Software or the Reports, or use thereof. You agree to indemnify, hold harmless and defend eSilverBullet at Your expense, against any and all third-party claims, actions, proceedings, and suits brought against eSilverBullet or any of its officers, directors, employees, agents or affiliates, and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees and other litigation expenses) incurred by eSilverBullet, or any of its officers, directors, employees, agents or affiliates, arising out of or relating to (a) any representations and warranties made by You concerning any aspect of the Service, the Software or Reports to Third Parties; (b) any claims made by or on behalf of any Third Party pertaining directly or indirectly to Your use of the Service, the Software or Reports; (c) violations of Your obligations of privacy to any Third Party; and (d) any claims with respect to acts or omissions of Third Parties in connection with the Services, the Software or Reports.

10. DISCLAIMER OF WARRANTIES. The information and services included in or available through the Service, including the Reports, may include inaccuracies or typographical errors. Changes are periodically added to the information herein. eSilverBullet and/or its respective suppliers may make improvements and/or changes in the Service or Software at any time, with or without notice. eSilverBullet does not represent or warrant that the Service will be uninterrupted or error-free, that defects will be corrected, or that the Service, the Software or any other software on the Server are free of viruses or other harmful components. eSilverBullet does not warrant or represent that the use of the Service or the Reports will be correct, accurate, timely or otherwise reliable. You specifically agree that eSilverBullet and service partners shall not be responsible for unauthorized access to or alteration of the Customer Data or data from Your Website.

THE SERVICE, THE SOFTWARE AND REPORTS ARE PROVIDED "AS IS" AND THERE ARE NO WARRANTIES, CLAIMS OR REPRESENTATIONS MADE BY eSILVERBULLET EITHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SERVICE, THE SOFTWARE, THE DOCUMENTATION AND REPORTS, INCLUDING WARRANTIES OF QUALITY, PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, NOR ARE THERE ANY WARRANTIES CREATED BY COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE. eSILVERBULLET DOES NOT WARRANT THAT THE SERVICE, THE SOFTWARE OR REPORTS WILL MEET YOUR NEEDS OR BE FREE FROM ERRORS, OR THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED. THE FOREGOING EXCLUSIONS AND DISCLAIMERS ARE AN ESSENTIAL PART OF THIS AGREEMENT AND FORMED THE BASIS FOR DETERMINING THE PRICE CHARGED FOR THE SERVICE. SOME STATES DO NOT ALLOW EXCLUSION OF AN IMPLIED WARRANTY, SO THIS DISCLAIMER MAY NOT APPLY TO YOU.

11. LIMITATION OF LIABILITY. eSILVERBULLET WILL NOT BE LIABLE TO USER OR ANY THIRD-PARTY CLAIMANT FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOST DATA COLLECTED THROUGH THE SERVICE), OR INCIDENTAL DAMAGES, WHETHER BASED ON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, INDEMNITY OR CONTRIBUTION, OR OTHERWISE, EVEN IF eSILVERBULLET AND/OR ITS SUBSIDIARIES AND AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE EXCLUSION CONTAINED IN THIS PARAGRAPH SHALL APPLY REGARDLESS OF THE FAILURE OF THE EXCLUSIVE REMEDY PROVIDED IN THE FOLLOWING PARAGRAPH. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE LIMITATIONS OR EXCLUSIONS IN THIS AND THE FOREGOING PARAGRAPH MAY NOT APPLY TO YOU.

eSilverBullet's (and its service partners') total cumulative liability to You or any other party for any loss or damages resulting from any claims, demands, or actions arising out of or relating to this Agreement shall not exceed U.S. \$500.

12. SERVICE LEVELS. eSilverBullet does not guarantee the Service will be operable at all times or during any down time (1) caused by outages to any public Internet backbones, networks or servers, (2) caused by any failures of Your equipment, systems or local access services, (3) for previously scheduled maintenance or (4) relating to events beyond eSilverBullet (or its service partners) control such as strikes, riots, insurrection, fires, floods, explosions, war, governmental action, labor conditions, earthquakes, natural disasters, or interruptions in Internet services to an area where eSilverBullet (or its service partners) or Your servers are located or co-located. Complete accuracy in all aspects of Your Statistics at all times also is not guaranteed.

13. PROPRIETARY RIGHTS NOTICE. The Service, which includes but is not limited to the eSilverBullet website and the eSilverBullet CRM Software and all intellectual property rights in the Service are, and shall remain, the property of eSilverBullet (and its service partners). All rights in and to the Processing Software not expressly granted to You in this Agreement are hereby expressly reserved and retained by eSilverBullet and its licensors without restriction, including, without limitation, eSilverBullet (and its service partners') right to sole ownership of the eSilverBullet CRM Software and Documentation. Without limiting the generality of the foregoing, You agree not to (and to not allow any third party to): (a) sublicense, distribute, or use the Service outside of the scope of the License granted herein; (b) copy, modify, adapt, translate, prepare derivative works from, reverse engineer, disassemble, or decompile the Processing Software or otherwise attempt to discover any source code or trade secrets related to the Service; (c) use the trademarks, trade names, service marks, logos, domain names and other distinctive brand features or any copyright or other proprietary rights associated with the Service for any purpose without the express written consent of eSilverBullet; (d) register, attempt to register, or assist anyone else to register any trademark, trade name, service marks, logos, domain names and other distinctive brand features, copyright or other proprietary rights associated with eSilverBullet (or its service partners) other than in the name of eSilverBullet ; or (e) remove, obscure, or alter any notice of copyright, trademark, or other proprietary right appearing in or on any item included with the Service.

14. U.S. GOVERNMENT RIGHTS. If the use of the Service is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), in accordance with 48 C.F.R. 227.7202-4 (for Department of Defense (DOD) acquisitions) and 48 C.F.R. 2.101 and 12.212 (for non-DOD acquisitions), the Government's rights in the Software, including its rights to use, modify, reproduce, release, perform, display or disclose the Software or Documentation, will be subject in all respects to the commercial license rights and restrictions provided in this Agreement.

15. TERM and TERMINATION. Either party to the Agreement may terminate it at any time and for any reason.

Upon any termination or expiration of this Agreement, eSilverBullet will cease providing the Service, and You will delete all copies of eSilverBullet CRM code from all Pages and certify thereto in writing to eSilverBullet within three (3) business days of such termination. In the event of any termination (a) You will not be entitled to any refunds of any usage fees or any other fees, and (b) any (i) outstanding balance for Service rendered through the date of termination, and (ii) other unpaid payment obligations during the remainder of the Initial Term will be immediately due and payable in full and (c) all of Your historical report data will no longer be available to You unless a purchase or professional services agreement for the exchange and transfer of such data is entered into as a component of termination.

16. MODIFICATIONS TO TERMS OF SERVICE AND OTHER POLICIES. eSilverBullet reserves the right to change or modify any of the terms and conditions contained in this Agreement or any policy governing the Service, at any time, by posting the new agreement to the site located at www.eSilverBullet.com (or such other URL as eSilverBullet may provide). You are responsible for regularly reviewing the policy. No amendment to or modification of this Agreement will be binding unless (i) in writing and signed by a duly authorized representative of eSilverBullet, (ii) You accept updated terms online, or (iii) You continue to use the Service after eSilverBullet has posted updates to the Agreement or to any policy governing the Service.

17. MISCELLANEOUS; APPLICABLE LAW AND VENUE. eSilverBullet shall be excused from performance hereunder to the extent that performance is prevented, delayed or obstructed by causes beyond its reasonable

control. This Agreement (including any amendment agreed upon by the parties in writing) represents the complete agreement between us concerning its subject matter, and supersedes all prior agreements and representations between the parties. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed to the extent necessary to make it enforceable to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect. This Agreement shall be governed by and construed under the laws of the state of Utah without reference to its conflict of law principles. In the event of any conflicts between foreign law, rules, and regulations, and Utah law, rules, and regulations, Utah law, rules and regulations shall prevail and govern. Each party agrees to submit to the exclusive and personal jurisdiction of the courts located in Salt Lake County, Utah. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act shall not apply to this Agreement. The Software is controlled by U.S. Export Regulations, and it may be not be exported to or used by embargoed countries or individuals. Any notices to eSilverBullet must be sent to: eSilverBullet, 2501 Grant Avenue, Ogden, UT 84401, USA, with a copy to Legal Department, via first class or air mail or overnight courier, and are deemed given upon receipt. A waiver of any default is not a waiver of any subsequent default. You may not assign or otherwise transfer any of Your rights hereunder without eSilverBullet's prior written consent, and any such attempt is void. The relationship between eSilverBullet and You is not one of a legal partnership relationship, but is one of independent contractors. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto. The following sections of this Agreement will survive any termination thereof: 1, 4, 5, 6 (except the last two sentences), 7, 8, 9, 10, 11, 13, 15, and 17.
