

BrightEdge Master Subscription Agreement

THIS MASTER SUBSCRIPTION AGREEMENT AND THE ORDER FORM (DEFINED BELOW) GOVERN THE USAGE OF THE BRIGHTEDGE'S ON-DEMAND SERVICES.

BY EXECUTING THE ORDER FORM THAT REFERENCES THIS AGREEMENT YOU AGREE TO THESE ADDITIONAL TERMS AND CONDITIONS OF THE AGREEMENT. IF YOU ARE SIGNING UP FOR THE SERVICES ON BEHALF OF A COMPANY, YOU REPRESENT THAT YOU ARE DULY AUTHORIZED TO REPRESENT THE COMPANY AND ACCEPT THE TERMS AND CONDITIONS OF THE AGREEMENT ON BEHALF OF THE COMPANY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

1. Definitions. "Agreement" means this BrightEdge Master Subscription Agreement and the associated BrightEdge-issued Order Form. "Customer" means the entity to which BrightEdge has issued the Order Form and which such entity has timely accepted. "Customer Source Data" means the specific keywords, keyword groups, pages, backlinks, competitors, and any other information defined by Customer for input into BrightEdge or made available by Customer to BrightEdge, provided such information is not available to BrightEdge independently of its relationship with Customer. Customer Source Data does not include information available on the open Internet or licensed by BrightEdge from third parties. "Effective Date" means the issue date of the Order Form, provided such Order Form is accepted and returned to BrightEdge by Customer prior to the offer expiration date stated on the Order Form (or within fourteen (14) calendar days if no expiration date is stated). "Fees" means the fees payable to BrightEdge as specified in the applicable Order Form. "Initial Term" means the period beginning on the Effective Date and ending at the end of the initial commitment period specified in the Order Form. "Order Form" means the BrightEdge-issued order form provided to Customer which lists the purchased Services, pricing and related terms. "Renewal Term" means the one year period beginning after the end of the Initial Term or a prior renewal term and ending one year later. "Services" means the BrightEdge-provided services referenced in the applicable Order Form which have been purchased and paid for by Customer. "Term" means Initial Term and one or more successive Renewal Terms, until this Agreement is terminated as provided herein.

2. License Terms; Restrictions.

(a) Upon payment of all the applicable fees and subject to the terms and conditions herein and those of the associated BrightEdge-issued order form, Customer shall have the non-exclusive, non-sublicensable, non-transferable right, during the Term, to access the Services solely through the password protected account(s) assigned to Customer by BrightEdge and only for Customer's internal business purposes (but excluding purposes that are competitive to BrightEdge). Customer shall be responsible for safeguarding the ID and password for each such account. There are no implied licenses and BrightEdge reserves all rights not expressly granted herein.

(b) Customer will not (and will not allow any third party to): (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Services; (ii) modify, translate, or create derivative works based on the Services; (iii) copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services; (iv) use the Services for timesharing or service bureau purposes or otherwise for the benefit of a third party; (v) remove any proprietary notices or labels from the Services or any portion thereof; or (vi) access or use the Services for purposes of monitoring their functionality, performance or availability, or for any benchmarking or other competitive purpose.

3. U.S. Government Rights. BrightEdge provides the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with BrightEdge to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

4. Term; Termination.

(a) Unless earlier terminated as provided in the Agreement, upon the expiration of the Initial Term this Agreement shall be automatically renewed for one or more successive Renewal Terms unless a new Order Form is signed specifying a new term or either party notifies the other party of non-renewal in writing at least thirty (30) days prior to the expiration of the Initial Term.

(b) If either party breaches a material term or condition of this Agreement, the other party may terminate (at its discretion) this Agreement, upon thirty (30) days' prior written notice to the breaching party if such breach is not cured within such period. BrightEdge may terminate this Agreement immediately upon written notice to Customer in the event of a general shut-down of the Services. This Agreement may be terminated by BrightEdge for cause immediately (i) if Customer ceases to do business, or otherwise terminates its business operations, or (ii) if Customer shall seek protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against Customer. Termination is not the sole remedy under this Agreement and, whether or not termination is effected, except as limited in this Agreement, all other remedies will remain available. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

5. Price and Payment Terms. In consideration for the Services, Customer shall pay BrightEdge the Fees by credit card or, if alternate payment is approved by BrightEdge, within fifteen (15) calendar days of BrightEdge's invoice. Fees for the Initial Term are as provided for in the Order Form and, unless otherwise provided in the Order Form, Fees for the first Renewal Term shall be the same as the Initial Term (if the Initial Term is one year) or else annualized (if the Initial Term is less than one year). Unless otherwise provided in the Order Form, Fees for each subsequent Renewal Term shall be the same as the immediately preceding Renewal Term. Notwithstanding the foregoing, except as otherwise provided in the Order Form, BrightEdge may modify the Fees for any upcoming Renewal Term by providing Customer with at least sixty (60) calendar days advance notice of price change for such upcoming Renewal Term. Unless otherwise provided in the Order Form, Customer's obligation to pay Fees for the full Initial Term and all full Renewal Terms are irrevocable notwithstanding any reference to monthly or other periodic payments of such Fees which may be referenced in an Order Form. All amounts owing to BrightEdge under this Agreement are in U.S. Dollars. Without limiting any other remedies to BrightEdge, amounts past due will incur a finance charge at the rate of 1.5% per month of the amount past due or the maximum amount permitted by law, whichever is lower.

6. Intellectual Property. This Agreement does not transfer from BrightEdge to Customer any BrightEdge or third party intellectual property, and all right, title and interest in and to such property will remain (as between the parties) solely with BrightEdge.

7. Suggestions. BrightEdge shall own all right, title and interest, including all related intellectual property rights, in and to the BrightEdge Services and enabling technology and all suggestions, ideas, enhancement requests, feedback, or recommendations by you or any other party relating to the Services.

8. Confidential Information. During the term of this Agreement, each party (a "Disclosing Party") may provide the other party (a "Receiving Party") with confidential and/or proprietary materials and information ("Confidential Information"). The Customer Source Data is considered Customer Confidential Information. BrightEdge's existing or future products, technical information, pricing, and costs are considered BrightEdge's Confidential Information. The data that Customer receives from the service is the result of BrightEdge's proprietary data acquisition, processing, and analysis and is also considered BrightEdge's Confidential Information. Receiving Party shall maintain the confidentiality of the other party's Confidential Information and will not disclose such information to any third party without the prior written consent of Disclosing Party; provided that, Receiving Party may disclose such information to a third party (that is bound in writing to confidentiality and non-use obligations at least as protective of the Disclosing Party's Confidential Information as this Agreement) as necessary for Receiving Party to exercise its rights hereunder. Receiving Party will only use the Confidential Information for the purposes contemplated hereunder. Receiving Party will return to Disclosing Party or destroy all of Disclosing Party's Confidential Information upon termination of this Agreement. The obligations contained in this Section 8 shall not apply to any information which is generally available to the public, or which the Disclosing Party has authorized for non-confidential disclosure.

9. Customer Representations and Warranties. Customer represents and warrants that its use of the Services will be in accordance with all applicable laws and regulations. Customer further represents and warrants that it is not a competitor of BrightEdge and that it will not access or use the Services in order to create a competitive product or service or copy any features or functions of the Services. Customer agrees to indemnify and hold harmless BrightEdge, its contractors, and its licensors, and their respective directors, officers, employees and agents from and against any and all loss, claims and expenses (e.g. attorneys' fees), arising out of Customer's use of the Services, including, but not limited, to out of Customer's violation of this Agreement.

10. Warranty Disclaimer. THE SERVICES ARE PROVIDED "AS IS." BRIGHTEDGE AND ITS SUPPLIERS AND LICENSORS HEREBY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NEITHER BRIGHTEDGE, NOR ITS SUPPLIERS OR LICENSORS, MAKES ANY WARRANTY THAT THE SERVICES WILL BE ERROR FREE OR THAT ACCESS THERETO WILL BE CONTINUOUS OR UNINTERRUPTED. IN ADDITION, NEITHER BRIGHTEDGE, NOR ITS SUPPLIERS OR LICENSORS, WARRANTS THAT ANY OF THE DATA OR OTHER INFORMATION AVAILABLE THROUGH THE SERVICES IS ACCURATE OR UP-TO-DATE.

11. Limitation of Liability. IN NO EVENT WILL BRIGHTEDGE, OR ITS SUPPLIERS OR LICENSORS, BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR: (I) ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES; (II) THE COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES; (III) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA; OR (IV) FOR ANY AMOUNTS THAT EXCEED THE FEES PAID BY CUSTOMER TO BRIGHTEDGE UNDER THIS AGREEMENT DURING THE ONE YEAR PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION ACCRUES. BRIGHTEDGE SHALL HAVE NO LIABILITY FOR ANY FAILURE OR DELAY DUE TO MATTERS BEYOND ITS REASONABLE CONTROL. THE FOREGOING SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW. EXCEPTING FOR A VIOLATION OF BRIGHTEDGE'S INTELLECTUAL PROPERTY RIGHTS WHERE LOST PROFITS MAY BE A STATUTORY OR OTHER ITEM OF RECOVERABLE DAMAGE, IN NO EVENT WILL CUSTOMER BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

12. Publicity. The Customer agrees that BrightEdge may use Customer's name and logo in conjunction with a client list. Such client list might be included in commercial proposals, on the BrightEdge web site, and in marketing collateral.

13. Independent Contractors. BrightEdge and Customer are independent contractors and not partners, joint venturers or otherwise affiliated and neither has any right or authority to bind the other in any way. Each party shall make no representations to the contrary to any third party.

14. Notices. All notices required or permitted by this Agreement shall be deemed to have been given upon: (i) personal delivery, or (ii) the third business day after dispatch by certified or registered air mail, postage prepaid, or by UPS or FedEx courier

service. Notices to Customer shall be sent to the contact name and address listed on the Order Form, or such other subsequent address as Customer designates in writing to BrightEdge in the manner provided herein. Notices to BrightEdge shall be sent "Attn: Legal Department" to BrightEdge at the address then listed for BrightEdge at <http://www.brightedge.com>.

15. Miscellaneous. This Agreement constitutes the entire agreement between BrightEdge and Customer concerning the subject matter hereof, and may only be modified by a written amendment signed by the parties. Without limiting the foregoing, Customer and BrightEdge expressly agree that any purchase order or other document issued by Customer will not modify or supplement this Agreement. Except to the extent applicable law provides otherwise, this Agreement will be governed by the laws of the state of California, excluding its conflict of law provisions, and controlling United States federal law, and the exclusive venue for any disputes arising out of or relating to any of the same will be the state and federal courts located in San Francisco County, California. The parties agree to accept a digital image of this Agreement, as entered into between them, as a true and correct original and admissible as best evidence for the purposes of State law, Federal Rule of Evidence 1002, and the like statutes and regulations. If any part of these this Agreement is held invalid or unenforceable, that part will be construed to reflect the parties' original intent, and the remaining portions will remain in full force and effect. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, will not waive such term or condition or any subsequent breach thereof. Customer may assign its rights under this Agreement to any party, excepting a competitor that consents to, and agrees in writing to be bound by, the terms and conditions of this Agreement. BrightEdge may assign its rights under this Agreement without condition. This Agreement will be binding upon and will inure to the benefit of the parties, their successors and permitted assigns.