

BrightEdge Master Subscription Agreement

THIS MASTER SUBSCRIPTION AGREEMENT (“MSA”) AND THE ORDER FORM (DEFINED BELOW) (TOGETHER, THE “AGREEMENT”) GOVERN THE USAGE OF BRIGHTEDGE’S ON-DEMAND SERVICE. 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 SERVICE.

1. Definitions. All terms not defined herein shall have the meaning ascribed to them on the Order Form.

2. Ordering; License Terms; Use Restrictions.

(a) Pursuant to this Agreement, Customer may order a license to access and use BrightEdge’s online software-as-a-service platform and affiliated services (collectively the “Service”) as set forth on one or more BrightEdge-issued order forms (each, an “Order Form”) executed by both parties. By executing an Order Form that references this MSA, Customer agrees to the terms and conditions of the MSA. In the event of a conflict, the terms of the MSA shall prevail over the Order Form.

(b) Upon payment of all the applicable fees and subject to the terms and conditions herein and those of the associated Order Form, Customer shall have the non-exclusive, non-sublicensable, non-transferable right, during the applicable Term (as defined in Section 3 below), to access the Service solely through the password protected account(s) assigned to Customer by BrightEdge and only for Customer’s internal business purposes. Customer shall be responsible for safeguarding the ID and password for each such account. There are no implied licenses and BrightEdge and its licensors reserve all rights not expressly granted herein.

(c) Customer will not (and will not allow any third party to): (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of or trade secrets embodied in the Service or any portion thereof, (ii) modify, translate, or create derivative works based on the Service; (iii) copy, rent, lease, distribute, assign, grant sublicenses or otherwise transfer or encumber rights to the Service; (iv) use the Service for timesharing or service bureau purposes or otherwise for the benefit of a third party; (v) remove any proprietary notices or labels from the Service or any portion thereof; (vi) use the Service in a manner in violation of any applicable law, rule or regulation; or (vii) in any way access, use or copy any portion of the Service to directly or indirectly develop, promote, sell or support any product or service that is competitive with the Service.

3. Term; Termination.

(a) Unless earlier terminated as provided in the Agreement, upon the expiration of the initial subscription term set forth in the applicable Order Form (“Initial Term”), this Agreement shall be automatically renewed for one or more successive twelve (12) month renewal terms (each a “Renewal Term”) 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 end of the relevant subscription term. Together the Initial Term and Renewal Terms shall be the “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. This Agreement may be terminated by a party for cause immediately (i) if the other party ceases to do business without a successor, or otherwise terminates its business operations, or (ii) if the other party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party. 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, warranty disclaimers, indemnity, confidential information, and limitations of liability.

4. Price and Payment Terms. For the Services, Customer shall pay BrightEdge all fees (in US Dollars) within thirty (30) calendar days of BrightEdge’s invoice. Fees for the Initial Term are as provided for in the Order Form and fees for each subsequent Renewal Term shall increase by eight percent (8%) above the applicable pricing in the immediately preceding subscription term, accounting for any upsells that occurred during such preceding term as a prorated percentage based on number of months. In the event Customer terminates this Agreement without cause during the Term, Customer’s payment obligation for the full Term is irrevocable and will accelerate (i.e. be due immediately). Past due amounts 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.

5. 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”). Customer’s Confidential Information includes 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 (“Customer Source Data”), provided such information is not available to BrightEdge independently of its relationship with Customer. BrightEdge’s existing or future products, technical information, pricing, costs, performance results, and other proprietary information 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; however, Customer may use data from the Service for its internal business purposes. Receiving Party shall maintain the confidentiality of the Disclosing 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 5 shall not apply to any information which is generally available to the public, or which the Disclosing Party has authorized for non-confidential disclosure.

6. Proprietary Rights. BrightEdge will retain all ownership rights in and to the Service, all updates and/or upgrades thereto, and other derivative works of the Service that are provided by BrightEdge, including any suggestions, ideas, enhancement requests, feedback, and recommendations provided by Customer, and all intellectual property rights incorporated into or related to the foregoing. Customer will retain all ownership rights in and to all Customer Source Data. BrightEdge shall own all rights to anonymous usage data derived from Customer's use of the Service ("Usage Data") as aggregated with usage data from BrightEdge's other customers for its own business purposes such as support, operational planning, product innovation and sales and marketing of BrightEdge's Service. For purposes of clarification, such Usage Data shall not include any data that could reasonably identify Customer.

7. Warranties; Disclaimer. Each party represents and warrants that it has the full corporate right, power and authority to enter into this Agreement. BrightEdge represents and warrants that (i) the Service will be provided in a professional and workman like manner, (ii) the Service will comply with all agreed upon written specifications and the SLA attached hereto at Exhibit A, (iii) the Service will be free of material defects, (iv) the Service will not infringe the intellectual property rights of any third party, and (v) its performance will comply with all applicable laws and regulations. Customer's sole remedy for breach of (ii) or (iii) shall be for BrightEdge to promptly correct the applicable defects, or shall be as set forth in the SLA. Customer represents and warrants that it has all rights necessary to provide Customer Source Data and its use of the Service will be in accordance with all applicable laws and regulations. EXCEPT AS SET FORTH IN THIS SECTION, THE SERVICE IS PROVIDED "AS IS" AND BRIGHTEDGE AND ITS LICENSORS HEREBY DISCLAIM ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER BRIGHTEDGE, NOR ITS LICENSORS, WARRANTS THAT ANY OF THE DATA OR OTHER INFORMATION AVAILABLE THROUGH THE SERVICE IS ACCURATE OR UP-TO-DATE.

8. Limitation of Liability. IN NO EVENT WILL EITHER PARTY, OR (IN THE CASE OF BRIGHTEDGE) ITS SUPPLIERS OR LICENSORS, BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY FOR ANY: (I) SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES; (II) COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES; (III) 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, OR (IV) MATTERS BEYOND ITS REASONABLE CONTROL. THE FOREGOING LIMITATION SHALL NOT APPLY TO INDEMNITY OBLIGATIONS, BREACH OF CONFIDENTIALITY, OR BREACH OF USE RESTRICTIONS HEREUNDER.

9. Indemnification. Except for claims arising from Customer Source Data, BrightEdge shall indemnify, defend and hold harmless Customer, its officers, directors, employees, representatives, and agents against any third party claims (and resulting, to the extent payable to third parties: loss, damage or cost including reasonable attorney's fees) alleging infringement by the Service of the intellectual property rights of a third party. The foregoing indemnity is conditioned upon Customer providing BrightEdge with prompt written notice of the claim, sole control of the defense and settlement of same, and all reasonable assistance in connection therewith. In the event a claim of infringement subject to indemnification is made, or BrightEdge believes that such a claim is likely to be made, BrightEdge shall, at its expense, either: (i) procure for Customer the right to continue using the Services; or (ii) replace or modify the Service to make it non-infringing; or (iii) if neither (i) or (ii) above is commercially reasonable, terminate the Agreement and issue a refund equal for any prepaid but undelivered Services through the date of termination. This provision sets forth Customer's sole remedy for third party claims related to the infringement of intellectual property rights.

10. 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 overnight 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's corporate headquarters at <http://www.brightedge.com>.

11. Miscellaneous. BrightEdge and Customer are independent contractors and not partners or otherwise affiliated and neither has any right or authority to bind the other in any way. 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 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. If any part of these this Agreement is held invalid or unenforceable, that part will be construed to reflect the parties' original intent, and all other terms shall 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. Neither party may assign this Agreement without the other party's written consent; provided that, either party may assign this Agreement, without consent, to an acquirer of all or substantially all of its business or assets. If such assignment is to a competitor of the non-assigning party, the non-assigning party may terminate this Agreement upon written notice. This Agreement will be binding upon and will inure to the benefit of the parties, their successors and permitted assigns.