

CUTTING EDGE SOFTWARE SUBSCRIPTION LICENSE AGREEMENT

This Subscription License Agreement ("Agreement") is made between ("you"), and Cutting Edge Computing, Inc. with its principal place of business at 1734 Mallard Ct., Livermore, California 94551 ("Cutting Edge").

BY CLICKING THE [ENTER] OR THE [ACCEPTED] ICON BELOW, OR BY EXECUTING THIS AGREEMENT AND RETURNING IT TO CUTTING EDGE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IN ORDER TO USE THE PRODUCT, YOU MUST AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

YOU MUST HAVE A CONNECTION TO THE INTERNET AND A CURRENT INTERNET BROWSER TO USE THIS PRODUCT. CUTTING EDGE IS NOT AN INTERNET SERVICE PROVIDER AND DOES NOT OFFER YOU INTERNET CONNECTIVITY.

INTRODUCTION.

Cutting Edge has developed certain promotional email computer software ("Product") which allows businesses to send promotional emails to their customer base. Cutting Edge offers its customers access to the Product via its world wide web site located at www.ContactMax.com ("Site") on a monthly subscription basis ("Service").

TERMS AND CONDITIONS.

1. CHANGES. Cutting Edge reserves the right to change or modify any of the terms and conditions contained in this Agreement. Cutting Edge will post a notice of any such changes on the Site. By continuing to use the Service following Cutting Edge's posting of changes, you accept the changes and agree to be bound by such changes.

2. GRANT OF RIGHTS. Cutting Edge hereby grants you a nonexclusive right and license to access the Product by using the Service, subject to these Terms and Conditions. All right, title and interest in and to the Product and any enhancements or updates shall remain with Cutting Edge.

3. MINIMUM TERM. By accepting this Agreement, you agree to a minimum one-year Service period ("Initial Term"). This Agreement shall continue from year to year thereafter unless terminated sooner in accordance with this Agreement ("Renewal Term").

4. SPAM POLICY. Using the Product or Service to send duplicative, unsolicited e-mail messages (commercial or otherwise), or to collect the responses from unsolicited e-mail, is prohibited. Similarly, posting advertisements or messages that violate the charter of any newsgroup or mailing list is prohibited conduct in connection with e-mail or Usenet news that is an obvious nuisance (such as 'mail bombing') or that would be unlawful in other contexts (for example defamation, harassment, obscenity, threats or software piracy) is prohibited ("Anti SPAM Policy"). Cutting Edge reserves the right to make the determination whether a given message violates its Anti SPAM Policy in its discretion. Cutting Edge provides a SPAM reporting feature directly from the end user to Cutting Edge if an end user feels it has been SPAMMED using the Product or Service.

5. TERMINATION BY CUTTING EDGE. Cutting Edge has the right to terminate this Agreement and cease providing the Service for any reason whatsoever upon two (2) weeks prior notice to you or in accordance with Section 9. (Payment), below. Cutting Edge is not responsible for the loss of any data or graphic images that results from termination or refusal of the Service. Cutting Edge reserves the right to refuse to provide the Service to you for any reason whatsoever. Cutting Edge may terminate this Agreement immediately upon written notice in the event you use the Product and Service in violation of its Anti SPAM Policy.

6. TERMINATION BY YOU. You may terminate this Agreement upon at least thirty (30) days written notice to Cutting Edge prior to the end of either the Initial Term or any Renewal Term, or pursuant to Section 8. (Fees), below. In the event you have made any advanced monthly payments for the Service as of the date of termination for future months, Cutting Edge will return such unused fees for any whole unused months. In no event shall Cutting Edge refund any partial monthly payments.

7. STARTUP COSTS. There are certain costs associated with the commencing of the Service ("Startup Costs"). The fees charged by Cutting Edge for such Startup Costs are set forth in Exhibit A. You agree to pay all Startup Costs upon execution of this Agreement or as otherwise set forth in Exhibit A and in accordance with Section 9. (Payment) below. The Startup Costs are non-refundable.

8. FEES. In addition to the Startup Costs set forth in Section 7. (Startup Costs), above, the fees charged by Cutting Edge for the monthly subscription of the Product and Service are set forth in Exhibit A. ("Fees"). Cutting Edge reserves the right to increase its Fees upon written notice to you; provided, however, in the event of any increase, you shall have the option to terminate this Agreement in accordance with the procedures set forth in Section 6. (Termination By You), above. In addition, you acknowledge, and agree that the Fees may be increased to match the current volume of e-mails that you send out each month ("Volume

Increase"). You acknowledge and agree to notify Cutting Edge when a Volume Increase is necessary. In the event the Fees are increased, the increased Fees will apply until this Agreement is terminated or there is a further Volume Increase. You shall be charged the pro-rated amount of the increase from the day the Volume Increase request is made. You shall not have the right to terminate this Agreement as a result of any Volume Increase.

9. PAYMENT. All Startup Costs must be paid as set forth in Exhibit A, and all Product and Service Fees must be paid monthly in advance according to the then current prices applicable for the Service. If your payment of the Startup Costs or Fees is delinquent by ten (10) days or more, you will be charged late charges of one and one-half percent (1 ½%) per month. In addition, any failure to pay any Startup Costs or Fees when due which continues for twenty five (25) days may result in Cutting Edge suspending your use of the Product and Service without notice, or immediately terminating this Agreement upon written notice to you. You will be responsible for any Fees associated with reactivation of the Service. Any suspension or termination of the Services does not waive your responsibility to pay all past due Fees plus late charges. In the event of collection enforcement, you agree to pay for any costs associated with such collection, including, without limitation, reasonable attorneys' fees, court costs, and collection agency fees.

10. WARRANTY LIMITATIONS. THE SERVICE AND PRODUCT ARE PROVIDED "AS IS." CUTTING EDGE DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING BUT NOT LIMITED TO, ALL EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES WILL CUTTING EDGE BE LIABLE TO YOU FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, OR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, AND/OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF CUTTING EDGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUTTING EDGE ACCEPTS NO LEGAL LIABILITY FOR ANY OF THE PRODUCTS AND/OR SERVICES SOLD, OFFERED FOR SALE, OR OTHERWISE MADE AVAILABLE FOR PUBLIC OR PRIVATE CONSUMPTION BY WAY OF THE SERVICE. YOU ACKNOWLEDGE AND AGREE THAT CUTTING EDGE EXERCISES NO CONTROL OVER, AND ACCEPTS NO RESPONSIBILITY FOR, THE CONTENT OF THE INFORMATION PASSING THROUGH CUTTING EDGE'S SERVICE OR ITS COMPUTER SYSTEMS. CUTTING EDGE DOES NOT WARRANT THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

11. REMEDY LIMITATIONS. Cutting Edge's entire liability and your sole and exclusive remedy for any breach of this Agreement shall be to refund to you the Fees paid by you during the two (2) months immediately preceding the date on which such liability arose.

12. INDEMNIFICATION.

12.1 Indemnification for Product Liability. You agree to indemnify, hold harmless and, upon the reasonable request of Cutting Edge, defend Cutting Edge and its principals, officers, employees, and agents from and against all costs, loss, liability, damages, claims or expenses, including reasonable attorneys' fees and costs, arising out of alleged claims, demands, or actions for damage or injury to third parties or property in connection with, in whole or in part, or result from any of your products and/or services sold, offered for sale, or otherwise made available for public or private consumption by way of the Product or Service ("Your Products/Services"), including, but not limited to, the following:

- a. actions founded on product liability;
- b. any errors, omissions, delays, or losses caused by the use of Your Products/Services; and
- c. incorrect output that has resulted from the use of Your Products/Services.

12.2 Indemnification for Infringement. You agree to indemnify, hold harmless and, upon the reasonable request of Cutting Edge, defend Cutting Edge and its principals, officers, employees, and agents from and against all costs, loss, liability, damages, claims or expenses, including reasonable attorneys' fees and costs, arising out of alleged claims, demands, or actions that Your Products/Services infringe any U.S. copyright or patents, or incorporates any misappropriated trade secrets.

12.3 Conditions of Indemnity. The foregoing indemnities are in addition to any rights otherwise granted under this Agreement, but shall be expressly contingent on Cutting Edge: 1) notifying you in writing of any such claim, demand, action, or liability; 2) cooperating in the defense or settlement thereof; and 3) allowing you to control the defense or settlement of the same.

13. CONFIDENTIAL INFORMATION.

13.1 "Confidential Information" means any data or information, oral or written, treated as confidential that relates to either party's past, present, or future research, development or business activities, including any unannounced product(s) and service(s). Confidential Information shall also include the terms of this Agreement. Notwithstanding the foregoing, Confidential Information shall not be deemed to include information that (1) is publicly available or in the public domain at the time disclosed; (2) is or becomes publicly available or enters the public domain through no fault of the party receiving such information; (3) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (4) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (5) is independently developed by the recipient; or (6) is approved for release or disclosure by the disclosing party without restriction.

13.2 Limitation on Disclosure. During the course of performance of this Agreement, a party may disclose certain Confidential Information to the other solely to permit performance by such party under this Agreement. The receiving party shall

use its best efforts to maintain the secrecy of all such Confidential Information. The receiving party shall refrain from using, disclosing, or otherwise exploiting any Confidential Information for any purpose not specifically authorized by the disclosing party in this Agreement.

14. GENERAL.

14.1 Prohibited Materials. You are prohibited from posting or transmitting any unlawful, threatening, libelous, defamatory, obscene, scandalous, inflammatory, pornographic, or profane material or any material that could constitute or encourage conduct that would be considered a criminal offense, give rise to civil liability, or otherwise violate any law. Cutting Edge may immediately terminate this Agreement for your failure to abide by this provision.

14.2 Counterparts; Entire Agreement; Modifications. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. This Agreement constitutes the entire understanding and contract between the parties and supersedes any and all prior and contemporaneous, oral or written representations, communications, understandings, and agreements between the parties. This Agreement may not be modified or amended, including by custom, usage of trade, or course of dealing, except by an instrument in writing signed by duly authorized representatives of both parties.

14.3 Waiver of Construction Against the Drafter. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against either of the parties hereto.

14.4 Severability. In the event that any provision is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms.

14.5 Assignment. This Agreement shall not be assignable by either party and neither party may delegate its duties without the prior written consent of the other party, except to a successor, parent, or subsidiary of such party, or in the event of an acquisition, merger, or sale of the majority of the assets or shares of such party. Any attempt by a party to assign any of its rights or delegate any of its duties without the prior written consent of the other party shall be null and void and shall result in immediate termination of this Agreement.

14.6 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California. The parties agree that venue for any dispute under this Agreement shall be San Francisco County, California.

14.7 Force Majeure. Neither party shall be responsible for any failure to perform due to unforeseen circumstances or to causes beyond a party's reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation, facilities, fuel, energy, labor, or materials.

14.8 Notices. Unless otherwise specifically provided, all notices required or permitted by this Agreement shall be in writing and may be delivered personally, or may be sent by certified mail, return receipt requested, or facsimile with a confirming copy by U.S. mail, to the addresses at the top of this Agreement, unless the parties are subsequently notified of any change of address under the terms of this Agreement. Any notice shall be deemed to have been received as follows: 1) by personal delivery or facsimile, upon receipt; and 2) by certified mail, five (5) business days after delivery to the U.S. postal authorities by the party serving notice.

14.9 Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof shall be settled by arbitration in San Francisco County, California, administered by the American Arbitration Association in accordance with its then current Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator may award monetary damages, punitive damages, injunctive relief, rescission, restitution, costs and attorney's fees. The arbitration award shall be final and binding regardless of whether one of the parties fails or refuses to participate in the arbitration. The arbitrator shall not have the power to amend this Agreement in any respect. Notwithstanding the foregoing, the parties agree that this Section does not apply to the breach of provisions pertaining to confidentiality.

14.10 Attorneys' Fees. In the event of any dispute with respect to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and other costs and expenses incurred in resolving such dispute.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first shown above.

CLICK THE ACCEPTED BUTTON TO SHOW YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS
OR
PRINT OUT THIS AGREEMENT AND EXECUTE IT RETURNING IT TO CUTTING EDGE AT

Cutting Edge Computing, Inc.
P.O. Box 2576
Livermore, CA 94551-2576