



## TERMS OF SERVICE

These terms of service (the “Terms”) govern your access to and use of BenchmarkONE (“we” or “our”) websites and services (the “Services”), so please carefully read them before using the Services.

By using the Services you agree to be bound by these Terms. If you are using the Services on behalf of an organization, you are agreeing to these Terms for that organization and promising that you have the authority to bind that organization to these terms. In that case, “you” and “your” will refer to that organization.

You may use the Services only in compliance with these Terms. You may use the Services only if you have the power to form a contract with BenchmarkONE and are not barred under any applicable laws from doing so. The Services may continue to change over time as we refine and add more features. We may stop, suspend, or modify the Services at any time without prior notice to you. We may also remove any content from our Services at our discretion.

### DESCRIPTION OF SERVICE

We provide online marketing automation software and professional services to help businesses better communicate with prospects and customers. You may connect to the Service using any Internet browser supported by the Service. You are responsible for obtaining access to the Internet and the equipment necessary to use the Service.

### MODIFICATION OF TERMS OF SERVICE

We may modify the Terms upon notice to you at any time. You will be provided notice of any such modification by electronic mail. You may terminate your use of the Service if the Terms are modified in a manner that substantially affects your rights in connection with use of the Service. No material change will be binding upon you until you have agreed in writing.



## USER SIGN UP OBLIGATIONS

The Services are not intended for use by you if you are under 13 years of age. By agreeing to these Terms, you are representing to us that you are over 13. You agree to: a) provide true, accurate, current and complete information about yourself as prompted by the sign up process; and b) maintain and promptly update the information provided during sign up to keep it true, accurate, current, and complete.

If you provide any information that is untrue, inaccurate, outdated, or incomplete, or if BenchmarkONE has reasonable grounds to suspect that such information is untrue, inaccurate, outdated, or incomplete, BenchmarkONE may terminate your user account and refuse current or future use of any or all of the Services.

Content which you have uploaded or inputted in the Services may be protected by intellectual property rights of others. Please do not copy, upload, download, or share Content unless you have the right to do so. You, not BenchmarkONE, will be fully responsible and liable for what you copy, upload, download or otherwise use while using the Services.

## ACCOUNT SECURITY

You are responsible for safeguarding the password that you use to access the Services and you agree not to disclose your password to any third party. You are responsible for any activity using your account, whether or not you authorized that activity. We are not responsible for any loss or damage to you or to any third party incurred as a result of any unauthorized acts and/or use of your user account, or otherwise. You should immediately notify BenchmarkONE of any unauthorized use of your account.

## PERSONAL INFORMATION AND PRIVACY

Personal information you provide to BenchmarkONE through the Services is governed by the BenchmarkONE Privacy Policy. Your election to use the Services indicates your acceptance of the terms of the BenchmarkONE Privacy Policy.



## COMMUNICATIONS FROM BENCHMARKONE

The Service may include certain communications from BenchmarkONE, such as service announcements, administrative messages and newsletters. You understand that these communications shall be considered part of using the Services. As part of our policy to provide you total privacy, we also provide you the option of opting out from receiving newsletters from us. However, you will not be able to opt-out from receiving service announcements and administrative messages.

## FEES AND PAYMENTS

Subscriptions to paid Services are available on monthly and yearly subscription plans. Your subscription will be automatically renewed at the end of each subscription period unless you inform us that you do not wish to renew the subscription. The subscription fee will be charged to the Credit Card last used by you. If you would like the payment for the renewal to be made through a different Credit Card, you agree to update your payment information within the Services.

BenchmarkONE reserves the right to change the subscription fee by providing you notice 30 days in advance of any pricing change. You will not be charged for using any Service unless you have opted for a paid subscription plan. Information on the subscription options and charges for all paid Services is available at [www.benchmarkone.com/pricing](http://www.benchmarkone.com/pricing).

## TERMINATION

You have the right to terminate service at any time. Once you terminate service, your credit card will not be charged again, but you are responsible for any charges already incurred. We do not offer partial refunds for any unused time that you may have already paid for. There is no way to restore your data once your subscription has been cancelled.

You understand that upon termination, you will not have access to the Services and certain Services may not work. We reserve the right to suspend or end the Services at any time, with or without cause, and with or without notice. If we suspend or

terminate your use, we will try to let you know in advance and help you retrieve data, though there may be some cases (for example, repeatedly or flagrantly violating these Terms, a court order, or danger to other users) where we may suspend immediately.

## **SPAMMING AND ILLEGAL ACTIVITIES**

You agree to be solely responsible for the contents of your transmissions through the Services. You agree not to use the Services for illegal purposes or for the transmission of material that is unlawful, defamatory, harassing, libelous, invasive of another's privacy, abusive, threatening, harmful, vulgar, pornographic, obscene, or is otherwise objectionable, offends religious sentiments, promotes racism, contains viruses, or that which infringes or may infringe intellectual property or other rights of another.

You agree not to use the Services for the transmission of "junk mail", "spam", "chain letters", "phishing" or unsolicited mass distribution of email. We reserve the right to terminate your access to the Services if there are reasonable grounds to believe that you have used the Services for any illegal or unauthorized activity.

## **DATA OWNERSHIP**

We respect your right to ownership of content created or stored by you. You own the content created or stored by you. Unless specifically permitted by you, your use of the Services does not grant BenchmarkONE a license to use, reproduce, adapt, modify, publish or distribute the content created by you or stored in your user account for BenchmarkONE's commercial, marketing or any similar purpose.

But you grant BenchmarkONE permission to access, copy, distribute, store, transmit, reformat, publicly display and publicly perform the content of your user account solely as required for the purpose of providing the Services to you.

## **USER GENERATED CONTENT**

BenchmarkONE may provide sample marketing materials and campaigns for

the purpose of demonstrating the possibility of using the Services effectively for specific purposes. The information contained in any such sample files and applications consists of random data. BenchmarkONE makes no warranty, either express or implied, as to the accuracy, usefulness, completeness or reliability of the information or the sample files and applications.

In the course of using any of the Services, if you come across any content with copyright notice(s) or any copy protection feature(s), you agree not to remove such copyright notice(s) or disable such copy protection feature(s) as the case may be. By making any copyrighted/copyrightable content available on any of the Services you affirm that you have the consent, authorization or permission, as the case may be from every person who may claim any rights in such content to make such content available in such manner.

Further, by making any content available in the manner aforementioned, you expressly agree that BenchmarkONE will have the right to block access to or remove such content made available by you, if BenchmarkONE receives complaints concerning any illegality or infringement of third party rights in such content. By using any of the Services and transmitting or publishing any content using such Service, you expressly consent to determination of questions of illegality or infringement of third party rights in such content by the agent designated by BenchmarkONE for this purpose.

## **SAMPLE MARKETING MATERIALS AND CAMPAIGNS**

BenchmarkONE may provide sample marketing materials and campaigns for the purpose of demonstrating the possibility of using the Services effectively for specific purposes. The information contained in any such sample files and applications consists of random data.

BenchmarkONE makes no warranty, either express or implied, as to the accuracy, usefulness, completeness or reliability of the information or the sample files and applications.



## TRADEMARK

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## DISCLAIMER OF WARRANTIES

YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN AS-IS AND AS AVAILABLE BASIS. BenchmarkONE EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BenchmarkONE MAKES NO WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR VIRUS FREE. USE OF ANY MATERIAL DOWNLOADED OR OBTAINED THROUGH THE USE OF THE SERVICES SHALL BE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM, MOBILE TELEPHONE, WIRELESS DEVICE OR DATA THAT RESULTS FROM THE USE OF THE SERVICES OR THE DOWNLOAD OF ANY SUCH MATERIAL. NO ADVICE OR INFORMATION, WHETHER WRITTEN OR ORAL, OBTAINED BY YOU FROM BenchmarkONE, ITS EMPLOYEES OR REPRESENTATIVES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TERMS.

## LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER LOSS OR DAMAGE WHATSOEVER OR FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, COMPUTER FAILURE, LOSS OF BUSINESS INFORMATION, OR OTHER LOSS ARISING OUT OF OR CAUSED BY YOUR USE OF OR INABILITY TO USE THE SERVICE, EVEN IF SAID PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL EITHER PARTY'S ENTIRE LIABILITY IN RESPECT OF ANY SERVICE, WHETHER DIRECT OR INDIRECT, EXCEED THE FEES PAID BY YOU TOWARDS SUCH SERVICE.



## INDEMNIFICATION

To the fullest extent allowed by law, you shall defend, indemnify, and hold harmless BenchmarkONE, its directors, officers, agents, employees, and guests against any claim or demand arising from any actual or alleged act, error, or omission by you or your directors, officers, agents, employees, volunteers, or guests arising from your duties and obligations described in this agreement or imposed by law.

To the fullest extent allowed by law, BenchmarkONE shall defend, indemnify, and hold harmless you, your directors, officers, agents, employees, and guests against any claim or demand arising from any actual or alleged act, error, or omission by BenchmarkONE or its directors, officers, agents, employees, volunteers, or guests arising from BenchmarkONE's duties and obligations described in this Agreement or imposed by law.

## ARBITRATION

Any controversy or claim arising out of or relating to the Terms shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The decision of the arbitrator shall be final and unappealable. The arbitration shall be conducted in California and judgment on the arbitration award may be entered into any court having jurisdiction thereof. Notwithstanding anything to the contrary, BenchmarkONE may at any time seek injunctions or other forms of equitable relief from any court of competent jurisdiction.

## SUSPENSION AND TERMINATION

We may suspend your user account or temporarily disable access to whole or part of any Service in the event of any suspected illegal activity, extended periods of inactivity or requests by law enforcement or other government agencies.

Objections to suspension or disabling of user accounts should be made to support@benchmarkone.com within thirty days of being notified about the suspension.



We may terminate a suspended or disabled user account after thirty days. We will also terminate your user account on your request. In addition, we reserve the right to terminate your user account and deny the Services upon reasonable belief that you have violated the Terms and to terminate your access to any Beta Service in case of unexpected technical issues or discontinuation of the Beta Service. Termination of user account will include denial of access to all Services, deletion of information in your user account such as your email address and password and deletion of all data in your user account.

## CONTACT US

If you have any questions or concerns regarding our Terms of Service, please contact us. We shall respond to all inquiries within 30 days of receipt upon ascertaining your identity.

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