

General Terms and Conditions for Professional Services Searchmetrics, Inc.

Last updated February 1, 2020

1. Scope of Agreement. These General Terms and Conditions for Professional Services set forth the terms and conditions under which Searchmetrics, Inc. (“**Provider**” or “**Searchmetrics**”) will provide professional services to Customer pursuant to one or more Offers accepted by Customer which reference these General Terms and Conditions (together, the “**Agreement**”).

2. Definitions.

- a. “**Affiliate**” shall mean an entity that is either controlled by or under common control with a party.
- b. “**Confidential Information**” means information that one party (the “**Disclosing Party**”) provides to the other party (“**Receiving Party**”) during the term of this Agreement that is identified in writing at the time of disclosure as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.
- c. “**Intellectual Property Rights**” means any methodologies, know-how, technologies, software, database structure, copyrights, trademarks, patents, trade secrets, and other intellectual property or proprietary rights arising under United States and/or foreign laws, statutes, treaties, conventions, or the like.
- d. “**Offer**” means a document, prepared and transmitted to Customer by Searchmetrics, that provides Customer with the opportunity under this Agreement to order Professional Services for the period of time specified in such Offer.
- e. “**Professional Services**” (“**Services**”) means consulting services provided to Customer, such as training, workshops and technical recommendations, as described in the applicable Offer.

3. Services.

- a. **Provision of Services.** In consideration of the payment by Customer to Provider of the applicable fees, Provider will provide to Customer the Services indicated on each applicable Offer. Provider shall perform the Services in a workmanlike manner consistent with generally accepted industry standards.
- b. **Additional Services.** In the event that in the future Customer desires to obtain from Provider additional Services, the parties may execute one or more additional Offers, setting forth the additional Services to be provided by Provider to Customer, along with the applicable additional fees to be paid by Customer to Provider.
- c. **Customer Obligations.** Customer agrees to provide Provider with such cooperation, materials, information, access and support which Provider deems to be reasonably required to allow Provider to successfully provide the Services. Customer understands and agrees that Provider’s obligations hereunder are expressly conditioned upon Customer timely providing such cooperation, materials, information, access and support. If there are delays for which Customer is responsible, such as subsequent requests for changes or delay in providing information, delivery may be postponed.

- d. **Approval.** All Professional Services on a time and materials basis will be deemed accepted upon delivery to Customer. Searchmetrics must be notified promptly, in writing, regarding any necessary corrective actions for deliverables. If Customer does not respond within 5 working days, any deliverables will be deemed accepted.
- e. **Subcontractors.** Provider reserves the right to use subcontractors or Affiliates to perform Services or parts thereof on Provider's behalf. Provider will be responsible for the acts or omissions of each subcontractor or Affiliate of Provider and for their compliance with all of the terms and conditions of this Agreement to the same extent as Provider is responsible for its own acts or omissions under this Agreement.

4. Grant of Rights.

- a. Subject to the provisions of this Agreement and the applicable Offer, and in consideration of payment of the contractual fees set forth in the Offer, Searchmetrics hereby grants Customer a limited, non-exclusive, non-transferable license, without the right to grant sublicenses, to use the results or the reports delivered by Searchmetrics to Customer in relation to the Services and for Customer's internal business purposes. The access to the Searchmetrics software ("**Searchmetrics Suite**") is expressly excluded from this license.
- b. Customer hereby grants Searchmetrics, its Affiliates, and its and their successors and assigns the perpetual, irrevocable, non-exclusive, royalty-free, worldwide right and license to (i) use, store, and transmit Customer's data solely in order to provide the services rendered to Customer and (ii) use Customer's name and/or trade name for customer reference and marketing, advertising and promotional purposes.
- c. Customer agrees that, as between Customer and Searchmetrics, Searchmetrics and its parent company Searchmetrics GmbH (whichever is applicable) owns all right, title and interest in and to all trademarks and service marks used on or in connection with the Searchmetrics services ("**Searchmetrics Marks**"). Nothing in this Agreement grants Customer any right or license to use any Searchmetrics Marks. Customer may not use metatags or any other hidden text that incorporates any Searchmetrics Marks or any marks confusingly similar to any Searchmetrics Marks.

5. **Payment.** Customer agrees to pay Searchmetrics all fees set forth in the applicable Offer. If the parties have not agreed to a specific remuneration, the fees for the Searchmetrics Services provided will be calculated at a daily rate in accordance with the Searchmetrics price list in force at the time of the contract. Unless otherwise specified in the Offer, all fees plus any applicable taxes must be paid in advance in U.S. dollars and are not subject to any deductions, credits or other set-offs. Customer shall reimburse Provider for reasonable travel, accommodation, communications, equipment and out-of-pocket costs or expenses incurred in conjunction with the Services ("**Expenses**"). Invoices for Expenses will be sent following the month in which they were incurred and will be payable upon receipt. Any amount not paid when due will bear interest from the original due date until paid at a rate equal to the lesser of (a) 1.5% per month or (b) the maximum rate of interest allowed by law. In case of late payment, Searchmetrics is entitled to suspend the further provision of Services.

6. Term and Termination.

- a. **Term.** This Agreement shall commence on the Effective Date in the applicable Offer and shall, unless otherwise specified in the Offer or unless earlier terminated under Section 6.b. below, continue in force for a period of one (1) year.
- b. **Termination.** Either party may, upon prior written notice to the other party, terminate this Agreement in the event of a material breach of this Agreement by such other party which remains uncured for a period of thirty (30) days after the breaching party receives notice of such breach.

- c. **Effect of Termination.** Without limiting any other provision of this Agreement, any termination of this Agreement will not relieve Customer of its obligation to pay all fees accrued as of the effective date of the termination (including interest, if applicable), and Customer will be liable for any costs associated with any collection of fees, including attorneys' fees and collection agency fees.

7. Data Protection. In connection with collection, processing and utilization of personal data, Searchmetrics ensures to respect the provisions of applicable data protection regulations, such as the General Data Protection Regulation (“**GDPR**”). Registration data of Customer are subject to the data protection regulations and will only be used as is required for providing contractual services and invoicing processes. Transmission of data to a third party will only take place in the event of sub-processing and after prior notification of Customer.

8. Warranties, Disclaimers and Limitations

- a. **Warranty.** Each party warrants that it has full power and authority to enter into this Agreement and that entering into or performing under this Agreement will not violate any agreement it has with a third party.
- b. **Warranty Disclaimer and Limitations.** EXCEPT AS SET FORTH IN THIS AGREEMENT, THE SERVICES ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, AND PROVIDER MAKES NO WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE DELIVERABLES, MATERIALS OR SERVICES FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, OR OF FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE DELIVERABLES AND SERVICES PROVIDED BY PROVIDER HEREUNDER, AND WITH RESPECT TO THE USE OF THE FOREGOING.

9. Indemnification.

Each party (“Indemnitor”) shall defend and indemnify the Indemnitee and its employees, Affiliates and subsidiaries from any third party claim(s) (each a “Claim”) alleging that the Services or any Customer Content (as applicable) infringes any valid patent, copyright or trademark; provided that Indemnitee (a) promptly ceases use of the applicable content and gives Indemnitor written notice of the Claim; (b) gives Indemnitor sole control of the defense and settlement of the Claim; and (c) provides to Indemnitor all reasonable assistance, at Indemnitor’s expense. This Section 9 sets forth the parties’ sole and entire liability and exclusive remedies for any infringement or misappropriation claims of any kind. Notwithstanding the foregoing, Provider shall have no obligation to indemnify Customer under clause (a) above with respect to any claim alleging that Customer's actions or use of the Services (in whole or in part, and whether directly, indirectly, or on or in combination with systems, software or applications not supplied by Provider) infringes or induces the infringement of a patent claim or copyright if such claim would have been avoided if not for such actions or use of the Services by Customer.

10. Limitation of Liability. NEITHER PARTY TO THIS AGREEMENT NOR ITS AFFILIATES, NOR ITS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, PARTNERS, SHAREHOLDERS, AGENTS, LICENSORS, REPRESENTATIVES, SUCCESSORS OR ASSIGNS, WILL HAVE ANY LIABILITY OR RESPONSIBILITY TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. SEARCHMETRICS IS NOT LIABLE FOR THE ACCURACY OF DATA PROVIDED BY A THIRD PARTY. SEARCHMETRICS IS NOT LIABLE FOR DELAYS THAT ARISE DUE TO INCOMPLETE INFORMATION FROM THE CUSTOMER. EACH PARTY’S TOTAL LIABILITY TO THE OTHER FOR ANY CLAIM ARISING FROM OR RELATING TO THIS AGREEMENT

WILL NOT EXCEED THE AMOUNT THAT CUSTOMER PAID TO SEARCHMETRICS IN THE TWELVE (12) MONTH-PERIOD PRECEDING THE DATE ON WHICH THE CLAIM ARISES.

11. Confidentiality.

- a. **Confidential Information.** The parties acknowledge that, in the course of performing their obligations under this Agreement, each may receive Confidential Information. Each party covenants and agrees that neither it nor its agents, employees, officers, directors or representatives will disclose or cause to be disclosed any Confidential Information of the Disclosing Party, except (a) to those employees, representatives, or contractors of the Receiving Party who require access to the Confidential Information to exercise rights under this Agreement and who are bound by written agreement, with terms at least as restrictive as these, not to disclose Confidential Information, or (b) as such disclosure may be required by law or governmental regulation, subject to the Receiving Party providing to the Disclosing Party written notice to allow the Disclosing Party to seek a protective order or otherwise prevent the disclosure. Nothing in this Agreement will prohibit or limit the Receiving Party's use of information: (a) previously known to it without obligation of confidence, (b) independently developed by or for it without use of or access to the Disclosing Party's Confidential Information, (c) acquired by it from a Third Party that is not under an obligation of confidence with respect to such information, or (d) that is or becomes publicly available through no breach of this Agreement. The Receiving Party acknowledges the irreparable harm that improper disclosure of Confidential Information may cause; therefore, the injured party is entitled to seek equitable relief, including temporary restraining order(s) or preliminary or permanent injunction, in addition to all other remedies, for any violation or threatened violation of this Section.
- b. **Destruction.** Within five (5) days after a Disclosing Party's request, the Receiving Party shall return or destroy the Disclosing Party's Confidential Information; provided, however, that the Receiving Party shall be entitled to retain archival copies of the Confidential Information of the Disclosing Party solely for legal, regulatory or compliance purposes unless otherwise prohibited by law.

12. Miscellaneous.

- a. **Governing Law and Venue.** This Agreement is governed by and will be interpreted in accordance with the laws of the State of California. The parties to this Agreement expressly exclude the application to this Agreement of the United Nations Convention on Contracts for the International Sale of Goods. The parties to this Agreement unconditionally and irrevocably consent to the exclusive jurisdiction of the federal and state courts located in San Francisco, San Mateo or Santa Clara County, California and waive any objection with respect to those courts for the purpose of any action or proceeding arising out of or relating to this Agreement or the transactions contemplated by this Agreement, and further agree not to commence any such action or proceeding except in those courts.
- b. **Notices.** All notices, requests, claims, demands and other communications regarding this Agreement must be in writing and must be given or made (and will be deemed to have been duly given or made upon receipt) by delivery in person, by reputable overnight courier services (with signature required) or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties to this Agreement at the addresses provided in the Offer.
- c. **Additional Terms.** This Agreement, including the Offer and any other terms and conditions agreed between the parties in writing, constitutes the entire agreement between Customer and Searchmetrics regarding its subject matter and supersedes any prior agreements or understandings between Customer and Searchmetrics relating to the same subject matter. If any provision of the Offer conflicts with the provisions of this Agreement, the provision contained in the Offer will govern to the extent of the conflict. This Agreement may not be amended or

modified except by a written instrument signed by an authorized representative of each party to this Agreement. The failure by either party to this Agreement to exercise or enforce any right or provision of this Agreement does not constitute a waiver of that right or provision in that or any other instance. If any provision of this Agreement is invalid, unlawful, void or unenforceable for any reason, then that provision will (if possible) be modified to the minimum extent necessary to render it valid and enforceable and the remaining provisions will remain in full force and effect, so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to either party to this Agreement. Neither party will be liable for, or be considered to be in breach of or default under this Agreement, other than monetary obligations, as a result of any cause or condition (for example, natural disaster, act of war or terrorism, riot or governmental action) beyond such party's reasonable control. Each party is an independent contractor, and nothing contained in this Agreement shall be construed to create or imply a joint venture, mandate, partnership, principal-agent or employment relationship between the parties. No party shall take any action or permit any action to be taken on its behalf which purports to be done in the name of or on behalf of the other and neither shall have any power or authority to bind the other party. This Agreement is personal to Customer, and Customer may not assign it without Searchmetrics' express written consent. Any assignment in violation of this Section is null and void. As used in this Agreement, "includes" or "including" means "includes (or including), without limitation."

Any changes to the terms and conditions must be agreed in writing by the parties in order to be effective.