

Software as a Service Terms and Conditions

These Software as a Service Terms and Conditions (together with any applicable Offer issued hereunder, the “Agreement”), effective as of the date set forth on an applicable Offer (“**Effective Date**”), is between Searchmetrics, Inc., a Delaware corporation, with an address at 1100 Park Place, Suite 150, San Mateo, CA 94403 (“**Searchmetrics**”), and the Customer named in the Offer (“**Customer**”). Searchmetrics and Customer agree as follows:

1. **Scope of Agreement.** The Agreement sets forth the terms and conditions under which Searchmetrics will provide access to the Software and/or Searchmetrics API (as defined below). Professional Services and Content Services (as defined below) may be ordered subject to the Searchmetrics Professional Services Terms and Conditions.
2. **Definitions.**
 - a. “**Affiliate**” with respect to a party to this Agreement, means any person or entity that directly or indirectly controls, is controlled by, or is under common control with that party (but only during the period in which that person or entity meets these requirements), where “control” means the right to exercise, directly or indirectly, the power to direct or cause the direction of the affairs, policies or management of a person or entity, whether through the ownership of voting securities, by contract, as trustee or executor, or otherwise.
 - 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. “**Content**” means any text, video or other audio and sound data or images.
 - d. “**Content Services**” means services provided to Customer that are related to Content, including without limitation content creation, content optimization, and content strategy.
 - e. “**Customer Content**” means all Content created through or submitted to the Platform by Customer.
 - f. “**Improvements**” means any upgrades, updates, improvements, enhancements, modifications, or derivative works.
 - g. “**Intellectual Property Rights**” means any 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.
 - h. “**Offer**” means a document, prepared and transmitted to Customer by Searchmetrics, that provides Customer with the opportunity under this Agreement to purchase Software licenses or API access covering the period of time specified in such Offer.
 - i. “**Platform**” means the web-based platform on the Searchmetrics Site through which Customer accesses and uses the Software as permitted under this Agreement.

- j. **“Professional Services”** means consulting services provided to Customer, including without limitation analysis, audits, strategic planning, workshops, and supplemental training.
- k. **“Searchmetrics API”** refers to Application Programming Interface access to Searchmetrics Data.
- l. **“Searchmetrics Data”** means all data or other information made available to Customer through Customer’s use of and access to the Software and/or Searchmetrics API as permitted under this Agreement.
- m. **“Searchmetrics IP”** means the Software (including modules like Searchmetrics API or plug-ins), the Software Content, the Searchmetrics Data, the Platform and any Improvements to any of the foregoing and all related Intellectual Property rights like but not limited to copyrights, trademarks, patents and database rights, and excludes any Customer Content.
- n. **“Searchmetrics Site”** means app.searchmetrics.com, suite.searchmetrics.com or content.searchmetrics.com (whichever is applicable)
- o. **“Software”** means the applicable Searchmetrics web-based software, such as Searchmetrics Suite™ or Searchmetrics Content Experience™, (including any associated media, printed materials and online or electronic documentation) in the version made available by Searchmetrics under this Agreement.
- p. **“Software Content”** means all content (other than Searchmetrics Data) contained in the Software and their selection and arrangement, including all designs, text, graphics, video, information, music, and sound and other files, but not including Content subject to copyright or trademark of a Third Party or Customer Content.
- q. **“Third Party”** means a person or entity that is not Customer or any of Customer’s Affiliates, or Searchmetrics or any of Searchmetrics’ Affiliates.
- r. **“User Data”** means all data that Customer provides to Searchmetrics in connection with Customer’s access to the Software and/or Searchmetrics API, including, by way of example, the full name and business email address of user.

3. Grant of Rights.

- a. **Access.** Searchmetrics will provide Customer with the instructions to access the Software and/or Searchmetrics API (“Access Information”), as applicable. Customer is responsible for maintaining the confidentiality of the Access Information and for all activity conducted under such Access Information. Customer may provide access to its employees and officers and to its contractors and other representatives acting on its behalf (collectively, “Customer’s Representatives”), provided that the Customer remains liable for Customer’s Representatives’ access or use of the Software and/or Searchmetrics API not in accordance with this Agreement. Customer may not disclose or transfer the Access Information or otherwise provide any other person or entity with access to any part of the Software that requires use of the Access Information unless such person or entity is authorized under this Agreement. Customer undertakes to notify Searchmetrics immediately if it becomes aware that anyone has obtained the Access Information without authorization.
- b. 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 during the Term, without the right to grant

sublicenses, and solely in the United States and Canada, to:

- i. access and perform the Software through the graphical user interface made available by Searchmetrics through the Platform, or access the Searchmetrics API (as applicable), solely for Customer's internal business purposes; and
 - ii. display, download and export Searchmetrics Data received from the Platform or Searchmetrics API, as applicable, through the export and reporting functions provided by the Software (including modules like API or plug-in's), solely for Customer's internal business purposes.
- c. During the Term, Customer hereby grants Searchmetrics, its Affiliates, and its and their successors and assigns hereto a limited, revocable, non-exclusive, royalty-free, worldwide right and license to (i) display, download, modify, reproduce, use, perform, distribute, store, and transmit Customer's User Data and Customer Content in connection with providing and maintaining the services rendered to Customer and (ii) use Customer's name and/or trade name for customer reference and marketing, advertising and promotional purposes.
- d. **Reserved Rights and License Restrictions.** Customer agrees to comply with the provisions of this Agreement and all laws, rules, and regulations applicable to Customer's use of the Searchmetrics IP. All rights not expressly granted to Customer in this Agreement are hereby reserved by Searchmetrics and its licensors. Without limiting the foregoing, except as expressly authorized in this Agreement, Customer may not and may not attempt to, nor may Customer permit, enable or request any Third Party to:
- i. Copy, modify, create derivative works of, reverse engineer, decompile, reverse compile, reverse assemble, translate, disassemble or access without Searchmetrics' authorization any Searchmetrics IP;
 - ii. Provide, transfer, sell, rent, lease, license, sublicense, distribute, disclose, display, or make available the Searchmetrics IP to any Third Party, or use the Searchmetrics IP for any purpose not expressly permitted under this Agreement, including for resale, aggregation or other commercial exploitation;
 - iii. Allow access to any Searchmetrics IP by any user or Third Party other than Customer's Representatives acting on its behalf and subject to the terms of this Agreement;
 - iv. Remove, modify, or obscure any copyright, trademark, or patent notice, or other proprietary or restrictive notice or legend, contained in the Searchmetrics IP;
 - v. Use any type of bot, spider, virus, clock, automated query, script, timer, counter, worm, software lock, drop dead device, packet-sniffer, Trojan-horse routing, trap door, time bomb, or any other codes or instructions that are designed to be used to provide a means of surreptitious or unauthorized access or that are designed to distort, delete, damage, or disassemble the Searchmetrics IP;
 - vi. Use the Searchmetrics IP to develop, transmit, or store information that is unlawful, immoral, libelous, tortious, defamatory, threatening, vulgar or obscene, that is harmful to minors, or that infringes, misappropriates or otherwise violates Searchmetrics' or any Third Party's Intellectual Property Rights;
 - vii. Use the Searchmetrics IP to act as a service bureau on behalf of, or to otherwise provide

processing services or support to, any Third Party;

- viii. Use automated queries with the Platform, such as scripts, except that the automated query of data using the Searchmetrics API as described in the documentation (<http://api.searchmetrics.com/documentation>) is allowed, as applicable.
 - ix. Copy or use any Content of a Third Party displayed within the Platform that is subject to copyright or trademark;
 - x. Upload or copy and paste any Content into the Platform or use the Software and/or, Searchmetrics API in a way that breaches any law or infringes any organization's or individual's rights; or
 - xi. Contest, challenge or otherwise make any claim or take any action adverse to Searchmetrics' ownership of or interest in the Searchmetrics IP.
- 4. User Data.** Customer hereby represents and warrants that all User Data is accurate and complete. Customer further agrees to update any User Data as necessary to keep it accurate and complete, and that Customer will not represent itself as any other person or entity in connection with Customer's access to or use of the Software and/or Searchmetrics API.
- 5. Ownership; Assignment.** Customer agrees that, as between Customer and Searchmetrics, Searchmetrics and its parent company Searchmetrics GmbH (whichever is applicable) is the exclusive owner of all right, title and interest in, to and under all Searchmetrics IP, including all Intellectual Property Rights in and to the Searchmetrics IP. Searchmetrics hereby reserves all rights in, to and under the Searchmetrics IP not expressly granted to Customer under this Agreement. If Customer acquires any rights (other than the rights and licenses granted in Section 3.b) in or to any Searchmetrics IP, Customer hereby irrevocably assigns all such rights to Searchmetrics. At Searchmetrics' request and expense, Customer agrees to perform any and all further actions and execute any additional documents that Searchmetrics may deem necessary or desirable to evidence, protect or confirm Searchmetrics' or its designee's ownership interest in, to and under the Searchmetrics IP, including making further written assignments in a form determined by Searchmetrics. Any Content Services shall be provided according to a separate written agreement or annex to this Agreement. Content such as images that may be displayed within the Searchmetrics Content Experience™ Platform are provided as examples and may be restricted by copyrights and trademark rights of Third Parties. Customer is responsible for ensuring that Customer Content does not violate the terms and conditions of this Agreement.
- 6. Audit.** Upon reasonable advance written notice from Searchmetrics, Customer agrees to allow Searchmetrics to inspect Customer's records, accounts and books (including all log file data) relating to Customer's use of the Searchmetrics IP to document that Customer is using the Searchmetrics IP in accordance with this Agreement and all applicable laws, rules and regulations.
- 7. Payment.** Customer agrees to pay Searchmetrics all fees set forth in the applicable Offer. Unless otherwise specified in the Offer, all fees must be paid in advance in U.S. dollars, exclude applicable taxes, and are not subject to any deductions, credits or other set-offs. Any fees 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.
- 8. Term.** The term of this Agreement (the "**Term**") is set forth in the Offer.

9. Suspension and Termination.

- a. **Suspension.** Searchmetrics reserves the right to suspend Customer's access to the Software and/or Searchmetrics API (without notice) if it determines in its sole discretion that Customer is in breach of section 3 or 15 of this Agreement or any applicable laws, rules, or regulations. Searchmetrics may suspend this Agreement in the event Customer fails to pay any fees payable under this Agreement and/or the Offer after receiving at least one notice of late payment with ten (10) days to cure such late payment. Searchmetrics is not liable to Customer for any loss or damage that may result from Customer's inability to access the Software and/or Searchmetrics API.
- 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 Suspension and Termination.** Without limiting any other provision of this Agreement, any suspension of this Agreement will not relieve Customer of its obligation to pay all fees agreed in the applicable Offer (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. Upon termination of this Agreement, all rights granted to Customer under this Agreement immediately cease, and Customer must delete or otherwise destroy all Access Information provided to Customer (and any copies thereof).

10. Trademarks. 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 IP ("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.

11. Third Party Websites. The Software may contain links to websites controlled by Third Parties. Access to Third Party websites from the Software is at Customer's own risk. Searchmetrics does not endorse or take responsibility for the content on other websites or the availability of other websites, and Customer agrees that Searchmetrics will not be liable for any loss or damage that Customer may suffer by using other websites. Customer is responsible for reading and complying with the terms of use and privacy policies that govern Customer's use of Third Party websites.

12. Disclaimer. SEARCHMETRICS PROVIDES THE SEARCHMETRICS SITE AND SEARCHMETRICS IP TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT TO THE EXTENT EXPRESSLY SET FORTH IN THIS AGREEMENT, SEARCHMETRICS DISCLAIMS ALL WARRANTIES OF ANY KIND WITH RESPECT TO THE SEARCHMETRICS SITE AND SEARCHMETRICS IP, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER CONTENT IS THE SOLE RESPONSIBILITY OF CUSTOMER. CUSTOMER ACKNOWLEDGES AND AGREES THAT SEARCHMETRICS DOES NOT ASSUME ANY, AND HEREBY DISCLAIMS ALL, RESPONSIBILITY AND LIABILITY FOR CUSTOMER CONTENT AND ANY MODIFICATIONS THERETO.

13. 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 AND/OR CUSTOMER'S USE OF OR INABILITY TO USE THE SEARCHMETRICS SITE OR SEARCHMETRICS IP, EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. EACH PARTY'S TOTAL LIABILITY TO THE OTHER FOR ANY CLAIM ARISING FROM OR RELATING TO THIS AGREEMENT OR CUSTOMER'S USE OF THE SEARCHMETRICS SITE OR SEARCHMETRICS IP WILL NOT EXCEED THE AMOUNT THAT CUSTOMER PAID TO SEARCHMETRICS FOR USE OF THE SEARCHMETRICS SITE OR SEARCHMETRICS IP IN THE TWELVE (12) MONTH-PERIOD PRECEDING THE DATE ON WHICH THE CLAIM ARISES.

14. Mutual Indemnification.

- a. **Indemnification by Searchmetrics.** Searchmetrics shall defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a Third Party alleging that Customer's use of the Searchmetrics Site or Searchmetrics IP as permitted hereunder infringes or misappropriates the patent, copyright, and trademark rights of a Third Party (a "**Claim Against Customer**"), and shall indemnify Customer for any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a court-approved settlement of, a Claim Against Customer; provided that Customer (a) promptly gives Searchmetrics written notice of the Claim Against Customer, (b) give Searchmetrics sole control of the defense and settlement of the Claim Against Customer (provided that Searchmetrics may not settle or defend any Claim Against Customer unless Searchmetrics unconditionally releases Customer of all liability), and (c) provide Searchmetrics with all reasonable assistance, at Searchmetrics' expense. In the event of a Claim Against Customer, or if Searchmetrics reasonably believes that the Searchmetrics Site or Searchmetrics IP may infringe or misappropriate a Third Party's Intellectual Property Rights, Searchmetrics may in its discretion and at no cost to Customer (i) modify the Searchmetrics Site or Searchmetrics IP so that they no longer infringe or misappropriate, (ii) obtain a license for Customer's continued use of the Searchmetrics Site or Searchmetrics IP in accordance with this Agreement, or (iii) terminate Customer's right to use such Searchmetrics Site or Searchmetrics IP upon thirty (30) days' written notice and refund Customer any prepaid fees covering the applicable portion of the remainder of the Offer term after the effective date of termination. If a court orders Customer to cease using part or all of the Searchmetrics Site or Searchmetrics IP in connection with a Claim Against Customer, Searchmetrics shall take the actions described in subpart (i) or (ii) of the preceding sentence, or if Searchmetrics cannot accomplish (i) or (ii) in a commercially reasonable manner, Searchmetrics shall take the actions described in subpart (iii) of the preceding sentence, all at no cost to Customer.
- b. **Indemnification by Customer.** Customer shall defend Searchmetrics and Searchmetrics' Affiliates, and its and their respective officers, directors, employees, partners, shareholders, agents, licensors and representatives ("**Indemnified Parties**"), against any claim, demand, suit or proceeding made or brought against one or more Indemnified Parties by a Third Party arising from or based on Customer's breach of this Agreement or alleging that Customer's use of the Searchmetrics Site or Searchmetrics IP in violation of the terms of this Agreement infringes or misappropriates the patent, copyright, trademark or other intellectual property rights of a Third Party (a "**Claim Against Searchmetrics**"), and shall indemnify the Indemnified Parties for any damages, attorney fees and costs finally awarded against the Indemnified Parties as a result of, or for any amounts paid by any Indemnified Party under a court-approved settlement of, a Claim Against Searchmetrics; provided that the Indemnified Parties (a) promptly give Customer written notice of the Claim Against Searchmetrics, (b) give Customer sole control of the defense and settlement of the Claim Against Searchmetrics (provided that Customer may not settle or defend any Claim Against Searchmetrics unless Customer unconditionally releases the Indemnified Parties of all liability), and (c) provide to Customer all reasonable assistance, at Customer's expense.

- c. **Exclusive Remedy.** This “Mutual Indemnification” section states the indemnifying party’s sole liability to, and the indemnified party’s exclusive remedy against, the other party for any type of claim described in this section.

15. Confidentiality.

- a. **Confidential Information.** The parties acknowledge that, in the course of performing their obligations under this Agreement, each may receive Confidential Information. “Confidential Information” means any and all information or data furnished in writing or orally to the Receiving Party which is (i) marked “Confidential” or “Proprietary” or (ii) should by its nature or consent be reasonably understood to be considered confidential or proprietary. Confidential Information includes, but is not limited to, any information, technical data or know-how that relates to research, products, services, customers, markets, software, developments, inventions, processes, designs, drawings, engineering, marketing, finances or trade secrets. 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.

16. Injunctive Relief. The parties agree that any actual or threatened breach of Section 3 or Section 15 will constitute irreparable harm for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach or threatened breach. The parties agree that in the event of such breach or threatened breach, the aggrieved party will be entitled to seek immediate injunctive relief and may obtain an order restraining any threatened or future breach, without having to furnish proof of actual damages or posting a bond or other surety. Nothing in this Section 16 limits any remedies available to the aggrieved party at law or in equity for a breach of this Agreement.

17. 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 signature block.

- 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. 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.”

Sections 3(c), 3(d), 5, 7, 9, 10, and 12-17 survive any termination of this Agreement.