

SEARCHMETRICS SUITE™

END USER LICENSE AGREEMENT (US and Canada)

Last updated August 20, 2010

THIS END USER LICENSE AGREEMENT (THIS “**AGREEMENT**”) IS A LEGAL AGREEMENT BETWEEN YOU AND SEARCHMETRICS, INC. (“**SEARCHMETRICS**”) GOVERNING YOUR ACCESS TO AND USE OF THE SEARCHMETRICS SUITE™ SOFTWARE (INCLUDING ANY ASSOCIATED MEDIA, PRINTED MATERIALS AND ONLINE OR ELECTRONIC DOCUMENTATION) IN THE VERSION MADE AVAILABLE BY SEARCHMETRICS AS OF THE DATE OF THIS AGREEMENT (THE “**SOFTWARE**”).

BY SELECTING THE “I AGREE” BUTTON BELOW, YOU REPRESENT THAT YOU HAVE CAREFULLY READ, ACCEPT AND AGREE TO BE LEGALLY BOUND BY THE PROVISIONS OF THIS AGREEMENT AND OF ANY OTHER DOCUMENT REFERENCED IN THIS AGREEMENT.

IF YOU DO NOT ACCEPT THE PROVISIONS OF THIS AGREEMENT, SELECT THE “I DECLINE” BUTTON, IN WHICH CASE YOU MAY NOT ACCESS OR USE THE SOFTWARE.

IMPORTANT: IF YOU HAVE AUTHORITY TO ACT ON BEHALF OF A COMPANY OR OTHER ORGANIZATION OR ENTITY (EACH, A “**COMPANY**”), YOU MAY ENTER INTO THIS AGREEMENT ON THE COMPANY’S BEHALF. BY DOING SO, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THE COMPANY TO THIS AGREEMENT. IF YOU DO NOT HAVE THAT AUTHORITY, OR IF YOU DO NOT AGREE TO THE PROVISIONS OF THIS AGREEMENT, SELECT THE “I DECLINE” BUTTON BELOW AND DO NOT USE THE SOFTWARE. FOR A COMPANY ENTERING INTO THIS AGREEMENT, “YOU” OR “YOUR” AS USED BELOW REFERS TO THE COMPANY.

- 1. Changes to Agreement.** Searchmetrics reserves the right to modify this Agreement at any time, and you are responsible for checking the Searchmetrics Site periodically for modifications. Searchmetrics will post a notice of any modified terms at suite.searchmetrics.com (the “**Searchmetrics Site**”) and may require you to agree to the modified terms by selecting an “I Agree” button. Your use of the Software after that notice is posted (or, if applicable, after you select “I Agree”) constitutes your agreement to the modified terms. If you do not agree to the modified terms, you are not authorized to use the Software.
- 2. Access to Software.** Searchmetrics will provide you with information to access the Software (“**Access Information**”) on electronic storage media or via electronic transmission within five (5) business days after Searchmetrics receives a duly executed Offer from you. You are responsible for maintaining the confidentiality of the Access Information and for all activity conducted under your Access Information. You may not disclose or transfer your Access Information to any other person or entity (including to your Affiliates (as defined below)) or otherwise provide any other person or entity with access to any part of the Software that requires use of the Access Information (except, if you are a Company, you may provide access to your employees, officers and other representatives). You must notify Searchmetrics immediately if you become aware that anyone has obtained your Access Information without authorization.

3. Grant of Rights.

a. For purposes of this Agreement,

i. **“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.

ii. **“Improvements”** means any upgrades, updates, improvements, enhancements, modifications, or derivative works.

iii. **“Platform”** means the web-based platform on the Searchmetrics Site through which you access and use the Software as permitted under this Agreement.

iv. **“Searchmetrics Data”** means all data or other information made available to you through your use of and access to the Software as permitted under this Agreement.

v. **“Searchmetrics IP”** means the Software, the Software Content, the Searchmetrics Data, the Platform and any Improvements to any of the foregoing.

vi. **“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.

vii. **“User Data”** means all data you provide to Searchmetrics in connection with your access to or use of the Software, including any suggestions, ideas, enhancement requests, feedback or recommendations you provide that relate to the Software.

b. Subject to the provisions of this Agreement and the Offer, and in consideration of your payment of the monthly license fee set forth in the Offer, Searchmetrics hereby grants you a limited, non-exclusive, non-transferable license during the Term, without the right to grant sublicenses and solely in the United States, to:

i. access and perform the Software through the graphical user interface made available by Searchmetrics through the Platform, solely for your internal business purposes; and

ii. display, download and export Searchmetrics Data received from the Platform through the export and reporting functions provided by the Software, solely for your internal business purposes.

c. You hereby grant Searchmetrics, its Affiliates, and its and their successors and assigns the perpetual, irrevocable, non-exclusive, royalty-free, worldwide right and license to (i) display, download, modify, reproduce, use, distribute, store, and transmit your User Data for its and their internal business purposes, and (ii) use your name and/or trade name for customer reference and marketing, advertising and promotional purposes.

- d. Reserved Rights and License Restrictions.** You agree to comply with the provisions of this Agreement and all laws, rules, and regulations applicable to your use of the Searchmetrics IP. All rights not expressly granted to you in this Agreement are hereby reserved by Searchmetrics and its licensors. Without limiting the foregoing, except as expressly authorized in this Agreement, you may not and may not attempt to, nor may you 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 your employees or officers;
 - 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 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 (collectively, "**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; or
 - viii.** 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.** You hereby represent and warrant that all User Data is accurate and complete. You further agree to update any User Data as necessary to keep it accurate and complete, and that you will not represent yourself as any other person or entity in connection with your access to or use of the Software.
- 5. Ownership; Assignment.** You agree that, as between you and Searchmetrics, Searchmetrics 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 you under this Agreement. If you acquire any rights (other than the rights and licenses granted in Section 3.b) in or to any Searchmetrics IP, you hereby irrevocably assign all such rights to

Searchmetrics. At Searchmetrics' request and expense, you will 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.

6. **Audit.** Upon reasonable advance notice from Searchmetrics, you will allow Searchmetrics to inspect your records, accounts and books (including all log file data) relating to your use of the Searchmetrics IP to ensure that the Searchmetrics IP is being used in accordance with this Agreement and all applicable laws, rules and regulations.
7. **Payment.** You agree to pay Searchmetrics all fees set forth in the Offer. Without limiting any other provision of this Agreement, Searchmetrics may immediately suspend or terminate this Agreement in the event you fail to timely pay any fees payable under this Agreement and/or the Offer. Any suspension or termination of this Agreement will not relieve you from your obligation to pay all fees accrued as of the effective date of the suspension or termination (including interest, if applicable), and you will be liable for any costs associated with any collection of fees, including attorneys' fees and collection agency fees. 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 or Termination.** You or Searchmetrics may terminate this Agreement (effective upon receipt of written notice) no later than thirty (30) days before the end of each calendar quarter during the Term. Searchmetrics reserves the right to suspend your access to the Software (without notice) or immediately terminate this Agreement (effective upon your receipt of written notice from Searchmetrics) if it determines in its sole discretion that you are in breach of any provision of this Agreement or any applicable laws, rules, or regulations. Upon termination of this Agreement, all rights granted to you under this Agreement immediately cease, and you must delete or otherwise destroy all Access Information provided to you (and any copies thereof) and return to Searchmetrics all copies or other physical embodiments of any Searchmetrics IP in your possession or control. Searchmetrics is not liable to you for any loss or damage that may result from your inability to access the Software. Sections 3(c), 3(d), 5, 7, 9, 10, and 12-16 survive any termination of this Agreement.
10. **Trademarks.** You agree that, as between you and Searchmetrics, Searchmetrics 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 you any right or license to use any Searchmetrics Marks. You 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. If you access third-party websites from the Software, you do so at your own risk. Searchmetrics does not endorse or take responsibility for the content on other websites or the availability of other websites, and you agree that Searchmetrics will not be liable for any loss or damage that you may suffer by using other websites. You are responsible for reading and

complying with the terms of use and privacy policies that govern your use of third-party websites.

- 12. Disclaimer.** SEARCHMETRICS PROVIDES THE SEARCHMETRICS SITE AND SEARCHMETRICS IP TO YOU 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.
- 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 YOUR USE OF OR INABILITY TO USE THE SEARCHMETRICS SITE OR SEARCHMETRICS IP, EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. YOU AGREE THAT SEARCHMETRICS’ TOTAL LIABILITY TO YOU FOR ANY CLAIM ARISING FROM OR RELATING TO THIS AGREEMENT OR YOUR USE OF THE SEARCHMETRICS SITE OR SEARCHMETRICS IP WILL NOT EXCEED THE AMOUNT YOU 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. Indemnification.** You agree to indemnify and hold harmless Searchmetrics, its Affiliates, and its and their respective officers, directors, employees, partners, shareholders, agents, licensors and representatives from and against all claims, losses, liabilities, expenses, damages and costs, including attorneys’ fees, arising from or relating to any violation of this Agreement by you. Searchmetrics reserves the right to assume, at its sole expense, the exclusive defense and control of any matter subject to indemnification by you, in which event you will fully cooperate with Searchmetrics in asserting any available defenses.
- 15. Injunctive Relief.** You agree that any actual or threatened breach of Section 3 will constitute irreparable harm to Searchmetrics for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach or threatened breach. You agree that in the event of such breach or threatened breach, Searchmetrics 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 limits any remedies available to Searchmetrics at law or in equity for a breach of this Agreement.
- 16. Miscellaneous.**

 - a. Governing Law and Venue.** This Agreement is governed by and will be interpreted in accordance with the laws of the State of New York applicable to agreements wholly made and performed in that state, without giving effect to the conflict of laws rules of the State of New York to the extent that those rules would require the application of another jurisdiction’s laws. 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 New York, New York 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 following addresses:

If to Searchmetrics:

Searchmetrics Inc.
1115 Broadway
12th Floor, Room 1213
New York, NY 10022
Telephone: 1 866-411-9494
Attention: Legal Counsel

If to you (except where in this Agreement other methods of giving notice to you are specified): The address and primary contact person set forth in the Offer.¹

c. Additional Terms. This Agreement, including the Offer and Searchmetrics' general business terms and conditions as updated from time to time and made available at www.searchmetrics.com/en/imprint/, which are fully incorporated in this Agreement, constitutes the entire agreement between you and Searchmetrics regarding its subject matter and supersedes any prior agreements or understandings between you 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 you, and you 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."

By clicking "I Agree" below, you hereby affix your electronic signature and indicate your assent to all terms of this Agreement. Please print a copy of this Agreement for your records.

- I Agree
- I Decline