

SEARCHMETRICS SUITE™ END USER LICENSE AGREEMENT (US and Canada)

Last updated Dec 01, 2014

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 will require you to agree to the modified terms by selecting an "I Agree" button. Your use of the Software after that notice is posted and you have selected "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. 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. **"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.

iii. **"Improvements"** means any upgrades, updates, improvements, enhancements, modifications, or derivative works.

iv. **"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.

v. **"Offer"** means a document, prepared and transmitted to you by Searchmetrics, that provides you with the opportunity under this Agreement to purchase licenses covering the period of time specified in such Offer.

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

vii. **"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.

viii. **"Searchmetrics IP"** means the Software (including Modules like API or Plug-in's), the Software Content, the Searchmetrics Data, the Platform and any Improvements to any of the foregoing.

ix. **"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.

x. **"Third Party"** means a person or entity that is not you or any of your Affiliates, or Searchmetrics or any of Searchmetrics's Affiliates.

xi. **"User Data"** means all data that you provide to Searchmetrics in connection with your access to or use of the Software.

b. Subject to the provisions of this Agreement and the applicable 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 and Canada, 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 (including Modules like API or Plug-in's), 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 solely in order to provide the services rendered to you 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 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; 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 applicable 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.** 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 12-17 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. EACH PARTY'S TOTAL LIABILITY TO THE OTHER 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 THAT 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. Mutual Indemnification.

a. Indemnification by Searchmetrics. Searchmetrics shall defend you against any claim, demand, suit or proceeding made or brought against you by a Third Party alleging that your 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 You**"), and shall indemnify you for any damages, attorney fees and costs finally awarded against you as a result of, or for amounts paid by you under a court-approved settlement of, a Claim Against You; provided that you (a) promptly give Searchmetrics written notice of the Claim Against You, (b) give Searchmetrics sole control of the defense and settlement of the Claim Against You (provided that Searchmetrics may not settle or defend any Claim Against You unless Searchmetrics unconditionally releases you of all liability), and (c) provide Searchmetrics with all reasonable assistance, at Searchmetrics' expense. In the event of a Claim Against You, 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 you (i) modify the Searchmetrics Site or Searchmetrics IP so that they no longer infringe or misappropriate, (ii) obtain a license for your continued use of the Searchmetrics Site or Searchmetrics IP in accordance with this Agreement, or (iii) terminate your right to use such Searchmetrics Site or Searchmetrics IP upon thirty (30) days' written notice and refund you any prepaid fees covering the applicable portion of the remainder of the Offer term after the effective date of termination. If a court orders you to cease using part or all of the Searchmetrics Site or Searchmetrics IP in connection with a Claim Against You, 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 you.

b. Indemnification by You. You 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 your breach of this Agreement (a "**Claim Against Us**"), 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 Us; provided that the Indemnified Parties (a) promptly give you written notice of the Claim Against Us, (b) give you sole control of the defense and settlement of the Claim Against Us (provided that you may not settle or defend any Claim Against Us unless you unconditionally release the Indemnified Parties of all liability), and (c) provide to you all reasonable assistance, at your 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. 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 following addresses:

If to Searchmetrics:

Searchmetrics, Inc.
1100 Park Place
Suite 150
San Mateo, CA 94403
Telephone: 1 866-411-9494
Attention: Legal Counsel
With a copy to contracts@searchmetrics.com

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 applicable Offer.

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/ as well as <http://www.searchmetrics.com/en/terms-and-conditions/>, 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