

## **ORDERMETRICS TERMS OF SERVICE**

### **1. General Terms and Acceptance**

These Terms of Service, together with the details of the service plan you order during the registration process (the “Order”), and any other terms or agreements incorporated herein (collectively, the “Agreement”) govern the relationship between Order Metrics Inc. (“OrderMetrics”) and the entity identified as the contracting entity in your Order (“Client”) and apply to Client’s purchase of a license to use the OrderMetrics analytics platform (the “Platform”).

By accepting this Agreement, either by completing the account registration process, completing an Order, logging into an existing account or commencing use of the Platform (whether during a free trial period or otherwise), you agree to the terms of this Agreement. If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to this Agreement, in which case the terms "you" or "your" in this Agreement shall refer to such entity (i.e., the “Client”). If you do not have such authority, or if you do not agree with this Agreement, you must not accept this Agreement and may not use the Platform.

This Agreement is effective between OrderMetrics and Client as of the date Client first takes any step to affirmatively assent to them (as described herein). OrderMetrics may modify the Agreement or any part thereof, or add and remove terms at any time and such modifications, additions, or deletions will be effective immediately upon posting or providing notice to you. Your logging into your account and/or use of the Platform after such posting or notice shall be deemed to constitute acceptance by you of such modifications, additions or deletions.

### **2. Account/Protection of Log-In Credentials**

As part of the Order process, you will be asked to create an account with a user ID and password. You are responsible for maintaining the confidentiality of your user ID and password. You agree to notify OrderMetrics immediately upon learning of any unauthorized use of your account or any other breach of security. Without limiting the foregoing, you are solely responsible for the acts or omissions of any person who accesses the Platform using your User ID and password. OrderMetrics reserves the right to refuse registration of, or to cancel, accounts that violate the terms and conditions set forth in this Agreement. From time to time, OrderMetrics personnel may log in to the Platform under your account in order to maintain or improve the Platform, including to provide you assistance with technical or billing issues. You hereby acknowledge and consent to such access.

### **3. Limited Right to Use Platform**

Upon entering into this Agreement, OrderMetrics grants you a limited, nonexclusive, nontransferable license, during the term of your subscription, to use the Platform for your

internal business purposes. The foregoing license shall include the right to upload data into the Platform and link your OrderMetrics' account to your accounts with third party storefronts, ad networks, shippers, and analytics providers ("Third Party Accounts and Services").

The foregoing license shall include a license to any improvements, updates, modifications or developments OrderMetrics may make to the Platform in its discretion.

This license does not confer any rights to copy, republish, distribute, assign, sublicense, sell, or prepare derivative works of the Platform.

#### **4. Fees & Free Trials**

You will choose a subscription plan as part of your Order and agree to pay the applicable service charges in such Order. Monthly plans will automatically renew at the end of each month without notice to you unless and until you cancel your plan as set forth below. If you choose a subscription plan under which your pricing is based upon your average monthly revenue, your monthly fees will update automatically based upon a trailing 3 month average, as set forth in more detail in your pricing plan.

From time to time, OrderMetrics may offer free trials to the Platform. Any free trials will continue for the time period specified during registration. When signing up for a free trial, you will be asked to provide a payment method and agree to be billed for the specified subscription plan at the end of the trial period unless you cancel beforehand. If you do not cancel prior to the expiration of your free trial period, OrderMetrics will charge your payment method for the applicable subscription plan immediately upon expiration and, thereafter, your subscription will automatically renew as described above unless and until you cancel.

When completing an Order, you will be required to provide a valid payment method. If you make any changes to the payment method associated with your account, you must update the applicable information in the Plans and Billing. Failure to do so may lead to a termination of your account and /or your loss of access to the Platform.

#### **5. Cancellations & Refunds**

You may cancel your Order, including any free trial, at any time by Plans and Billing and clicking Close Account. You must cancel your Order prior to the commencement of the next subscription period to avoid being charged for that period. If you cancel your Order, your account will automatically close, and you will lose all access to the Platform, at the end of your current subscription period.

OrderMetrics may terminate this Agreement and cancel your Order upon thirty (30) days' written notice to you at any time for any or no reason. OrderMetrics may also terminate this Agreement and cancel your Order immediately in the event of a breach by you of any term of this Agreement, including Sections 6 or 7 below.

All payments made hereunder are non-refundable, even if you cancel your subscription in the middle of a monthly or annual subscription period. Nevertheless, at any time, and for any reason, OrderMetrics may choose to provide a refund, discount, or other consideration to you or any of its other customers ("credits"). The amount and form of such credits, and the decision to provide them, are at OrderMetrics' sole and absolute discretion. The choice to give a credit to you or any other customer in one instance does not entitle you to credits in the future for similar instances, or under any other circumstance.

The following provisions shall survive the termination or expiration of this Agreement for any reason and shall remain in effect after any such termination or expiration: Sections 8, 9, 10, 14, 15, 16, 17, and 18 and any other provisions reasonably expected to survive given their subject matter.

## **6. Restrictions**

Except as expressly permitted in this Agreement, neither Client nor any of its authorized users shall directly or indirectly (a) use any of OrderMetrics' Confidential Information (defined below) to create any service, software, documentation or data that is similar to any aspect of the Platform, (b) disassemble, decompile, reverse engineer or use any other means to attempt to discover any source code of the Platform, or the underlying ideas, algorithms or trade secrets therein, (c) encumber, sublicense, transfer, rent, lease, time-share or use the Platform in any service bureau arrangement or otherwise for the benefit of any third party, (d) copy, distribute, manufacture, adapt, create derivative works of, translate, localize, port or otherwise modify any aspect of the Platform, (e) use or allow the transmission, transfer, export, re-export or other transfer of any product, technology or information you obtain or learn pursuant to this Agreement (or any direct product thereof) in violation of any export control or other laws and regulations of the United States or any other relevant jurisdiction or (f) permit any third party to engage in any of the foregoing proscribed acts. You may not access or use (or permit a third party to access or use) the Platform for purposes of monitoring the availability, performance or functionality of the Platform or for any other benchmarking or competitive purposes. The foregoing restrictions shall also be personally binding on any individual accessing and using the Platform under Client's account.

## **7. Acceptable Use of the Platform**

Neither Client nor any of its authorized users shall use the Platform to: (i) send spam or any other form of duplicative and unsolicited messages; (ii) harvest, collect, gather, or assemble information or data regarding users without their consent; (iii) knowingly transmit or post through the Platform unlawful, immoral, libelous, tortuous, infringing, defamatory, threatening, vulgar, or obscene material or material harmful to minors; (iv) knowingly transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs; (v) knowingly interfere with or disrupt the integrity or performance of the Platform or the data contained therein; (vi) attempt to gain unauthorized access to the Platform, computer

systems, or networks related to the Platform; (vii) harass or interfere with another user's use and enjoyment of the Platform; or (viii) otherwise use the Platform in any manner that would violate any applicable law, rule or regulation or that would constitute a criminal offense. The foregoing prohibitions shall also be personally binding on any individual accessing and using the Platform under Client's account.

## **8. Intellectual Property**

OrderMetrics owns all right, title and interest in and to the Platform and all functionalities and features therein, including as it may be upgraded, modified or improved. The rights owned and retained by OrderMetrics include: (i) all OrderMetrics trademarks; and (ii) all technology, software code (source, object or compiled), products, processes, algorithms, user interfaces, know-how, works of authorship and other trade secrets, techniques, designs, inventions, and other tangible or intangible technical material or information used to provide the Platform, and/or conceived or developed under or in connection with any Order, and all intellectual property rights therein, including without limitation copyrights and patent rights (collectively "OrderMetrics IP"). Other than as expressly set forth in this Agreement, no license or other rights in the OrderMetrics IP are granted to Client, and all such rights are hereby expressly reserved.

You grant to OrderMetrics a worldwide, perpetual, irrevocable, royalty-free, transferable, sublicensable license to use and incorporate into OrderMetrics' products and services any suggestion, enhancement request, recommendation, correction or other feedback you may provide relating to the operation of the Platform or any other product or service of OrderMetrics.

## **9. Company Data**

You are solely responsible for the accuracy, reliability and completeness of all information, materials, content and data that you input into or provide access to through the Platform, including that which is accessed through Third Party Accounts and Services (collectively "Company Data"). Company Data shall include, without limitation, customer information ("Customer Data"), financial and cost data, advertising and shipping costs, and business information. By providing Company Data in any manner to OrderMetrics through the Platform, you represent and warrant that you have the right to provide such Company Data for the uses set forth herein. You further agree that you have the rights to the Third Party Accounts and Services from which Company Data is derived and further agree not to provide any Company Data that violates the privacy rights of any individual or intellectual property rights of any third party or to which you do not have rights. Without limiting the foregoing, you expressly represent and warrant that all Customer Data was collected by you in accordance with your privacy policy and all applicable laws. You will retain any and all rights in the Company Data subject to your grant to OrderMetrics of a non-exclusive right and license to use, copy, reproduce, modify, adapt, publish, and display such Company Data, including data from Third Party Accounts and Services, in order to provide you with the functionalities and features of the Platform.

## **10. Customer Data**

Except as otherwise set forth herein, OrderMetrics will only collect and process your Customer Data in order to provide the features and functionalities of the Platform. In no event will OrderMetrics sell your Customer Data or use it for marketing or promotional purposes. All collection, use, and processing of Customer Data shall comply with all applicable laws, rules and regulations. OrderMetrics shall implement and maintain commercially reasonable administrative, physical, and technical safeguards designed to protect the security, confidentiality, and integrity of Customer Data provided that you acknowledge that no security measures involving transmission of information on the Internet are perfect. OrderMetrics shall maintain security incident management policies and procedures and shall, to the extent permitted by law, promptly notify you in the event of any unauthorized access to or disclosure of your Customer Data. OrderMetrics shall make reasonable efforts to identify and remediate the cause of such actual or reasonably suspected security breach.

Notwithstanding the foregoing, you agree that OrderMetrics is free to use and disclose Customer Data in aggregated, anonymous form for the purposes of general statistical analysis, improvement of its services, and to create reports, evaluations, benchmarking tests, studies, analyses and other work product related to the foregoing; however, OrderMetrics shall not distribute any such aggregated data in a manner that identifies any of Client's customers or is otherwise identifiable as originating from Client without Client's prior, written consent.

Without limiting any of the foregoing, to the extent Client is located in the EU or provides any Customer Data emanating from the EU, Client and OrderMetrics agree to the following Data Protection Addendum: <https://ordermetrics.com/OMDPA.pdf> which is hereby incorporated into this Agreement.

## **11. Third Party Accounts and Services**

By linking your Third Party Accounts and Services to the Platform in the Order process or at any other time, you authorize OrderMetrics to access such Third Party Accounts and Services and to collect and process any Company Data provided thereby. You represent that you have the rights to access such Third Party Accounts and Services, and that you are an owner or authorized user of such Third Party Accounts and Services. You further agree and acknowledge that OrderMetrics does not own or operate such Third Party Accounts and Services and is therefore not responsible for the operations, security, or performance of such Third Party Accounts and Services or the Company Data provided thereby. You further acknowledge that Third Party Accounts and Services are governed by their terms, including terms of use, contract terms and privacy policies, and that OrderMetrics has no control over, and is not a party to, such terms.

## **12. Operations Disclaimer**

Although the OrderMetrics Platform seeks to adhere to commercially reasonable standards of operability and availability, OrderMetrics does not guarantee that the Platform shall be error free

and available. OrderMetrics is not liable for any consequences of the Platform not being fully operational or available.

### **13. External Links**

The OrderMetrics Platform may provide links to Third Party Accounts and Services and to websites or platforms of other third parties. OrderMetrics does not control the content or security of these external accounts, services and platforms. OrderMetrics does not ensure that the information received from Third Party Accounts and Services are correct or free from security flaws, including viruses or malware.

### **14. Confidentiality**

As used herein, "Confidential Information" means all information of a party ("Disclosing Party") which the Disclosing Party designates in writing as being confidential when it discloses such information to the other party ("Receiving Party") or that which would be reasonably expected to be confidential information, including without limitation the terms and conditions of this Agreement, Company Data, the OrderMetrics IP, business and marketing plans, technology and technical information, product designs, and business processes (whether in tangible or intangible form, in written or in machine readable form, or disclosed orally or visually). Confidential Information shall not include any information that: (i) is or becomes generally known to the public without the Receiving Party's breach of any obligation owed to the Disclosing Party; (ii) was independently developed by the Receiving Party without the Receiving Party's breach of any obligation owed to the Disclosing Party; or (iii) is received from a third party who obtained such Confidential Information without any third party's breach of any obligation owed to the Disclosing Party.

Each party will not disclose the other party's Confidential Information, or use the other party's Confidential information for any purpose other than to perform its obligations or exercise its rights under this Agreement, and will protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information. A transfer or disclosure of Client's Confidential Information by OrderMetrics to a third party as an asset in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets shall not be deemed a breach of its confidentiality obligations hereunder.

If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior written notice of such compelled disclosure and reasonable assistance (at Disclosing Party's cost) if the Disclosing Party wishes to contest the disclosure.

If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this section, the Disclosing Party shall have the

right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate

## **15. Indemnification**

Client shall defend, indemnify, and hold OrderMetrics, its officers, directors, employees, affiliates, successors, agents and representatives harmless against any loss or damage (including without limitation reasonable attorney's fees) incurred in connection with claims, demands, suits, or proceedings ("Claims") made or brought against OrderMetrics by a third party arising out of (i) a breach of Client's reps, warranties, covenants or agreements herein; (ii) Client's intentional misconduct or gross negligence; (iii) OrderMetrics' use of Company Data or Customer Data as permitted hereunder; (iv) OrderMetrics' access to or use of Third Party Accounts and Services as permitted hereunder or (v) the acts or omissions of any user using Client's account. OrderMetrics shall (a) promptly give written notice of the Claim to Client; (b) give Client sole control of the defense and settlement of the Claim using counsel reasonably approved by OrderMetrics (provided that Client may not settle or defend any Claim unless it unconditionally releases OrderMetrics of all liability without the obligation to take or refrain from any action or pay any amounts); and (c) provide to Client, at Client's cost, all reasonable assistance.

## **16. Warranties and Disclaimers**

EXCEPT AS PROVIDED IN THE AGREEMENT, THE PLATFORM AND ITS CONTENT ARE PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. ORDERMETRICS, ITS AFFILIATES, PARENTS AND SUBSIDIARIES, TO THE FULLEST EXTENT PERMITTED BY LAW, DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OF THIRD PARTIES' RIGHTS, FITNESS AND FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, ORDERMETRICS MAKES NO WARRANTY THAT (i) THE SERVICES AND MATERIALS AVAILABLE ON THE PLATFORM WILL MEET YOUR REQUIREMENTS; (ii) THE PLATFORM WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (iii) THAT THE PLATFORM WILL LINK TO THIRD PARTY ACCOUNTS AND SERVICES; OR (iv) THAT THE CUSTOMER DATA DISPLAYED ON THE PLATFORM IS ACCURATE.

ALL CONTENT PROVIDED BY OR THROUGH ORDERMETRICS AND ITS PLATFORM, INCLUDING DATA FROM THIRD PARTY ACCOUNTS AND SERVICES, MUST BE VIEWED AND EVALUATED BY YOU, THE END USER TO ENSURE SUITABILITY FOR ANY PURPOSE. ORDERMETRICS DOES NOT GUARANTEE THE RESULTS OF THE USE OF THE PLATFORM OR THAT IT IS SPECIFICALLY SUITED FOR ANY FURTHER PURPOSE ANTICIPATED BY YOU. ORDERMETRICS DOES NOT GUARANTEE THE INFORMATION PROVIDED FROM EXTERNAL PLATFORMS IS ACCURATE OR COMPLETE. ORDERMETRICS DOES NOT HAVE CONTROL OVER THE CONTENT, ACTIVITIES, SECURITY OR PRIVACY POLICIES OF THIRD PARTY ACCOUNTS AND SERVICES AND ACCEPTS NO RESPONSIBILITY OF THE SAME. IT IS THE END USER'S RESPONSIBILITY TO EVALUATE ALL EXTERNAL LINKS FOR SUITABILITY OF USE, INCLUDING THIRD PARTY ACCOUNTS AND SERVICES.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR RELATED LIMITATIONS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

PLATFORM CONTENT, INCLUDING CONTENT DISPLAYED BY THIRD PARTY ACCOUNTS AND SERVICES, MAY CONTAIN TYPOGRAPHICAL ERRORS OR INACCURACIES IN THE MATERIALS POSTED THAT ARE NOT CREATED BY ORDERMETRICS. ORDERMETRICS MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE ACCURACY, RELIABILITY, COMPLETENESS OR TIMELINESS OF THE PLATFORM OR ITS CONTENT, INCLUDING CONTENT DISPLAYED BY THIRD PARTY ACCOUNTS AND SERVICES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ORDERMETRICS SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR FOR LOST PROFITS, REVENUES, USE OR DATA ARISING OUT OF THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CUMULATIVE LIABILITY OF ORDERMETRICS TO YOU FOR ALL CLAIMS WHATSOEVER ARISING OUT OF THIS AGREEMENT, INCLUDING ANY CAUSE OF ACTION SOUNDING IN CONTRACT, WARRANTY, TORT, OR STRICT LIABILITY (BUT EXCLUDING EACH PARTY'S INDEMNIFICATION OBLIGATIONS HEREIN) SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID BY CLIENT TO ORDERMETRICS DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE LOSS.

#### **17. Governing Law**

The Platform is operated in the State of California. As such, the laws of the State of California will govern this Agreement, without giving effect to any provisions of California law that direct the choice of another state's laws.

#### **18. Dispute Resolution**

Any controversy or claim arising out of or relating to this Agreement or any related agreement, their enforcement or interpretation, or because of an alleged breach, default or misrepresentation in connection with any of their provisions, shall be determined by binding arbitration. The arbitration proceedings shall be held and conducted by a single arbitrator in accordance with the Comprehensive Arbitration Rules and Procedures of JAMS (the "JAMS Rules"), as modified by this Agreement. Such arbitration shall occur in Los Angeles, California, and be initiated by any party in accordance with the JAMS Rules. The demand for arbitration shall be made by any party hereto within a reasonable time after the claim, dispute or other matter in question has arisen, and in any event shall not be made after the date when institution of legal proceeding, based on such claim, dispute or other matter in question, would be barred by the applicable statute of limitations. Discovery issues shall be decided by the arbitrator. Post-hearing briefs shall be permitted. The arbitrator shall render a decision within twenty (20) days after the conclusion of the hearing(s). In reaching a decision, the arbitrator shall have no authority to change, extend, modify or suspend any of the terms of this Agreement, or to grant an award or remedy any greater than that which would be available from a court under the statutory or common law theory asserted. The arbitrator shall issue a written opinion that



includes the factual and legal basis for any decision and award. The arbitrator shall apply the substantive law (and the law of remedies, if applicable) of California or federal law, or any of them, as applicable to the claim(s) asserted. Judgment on the award may be entered in any court of competent jurisdiction. The parties may seek, from a court of competent jurisdiction located in Los Angeles County, California, provisional remedies or injunctive relief in support of their respective rights and remedies hereunder without waiving any right to arbitration. However, the merits of any action that involves such provisional remedies or injunctive relief, including, without limitation, the terms of any permanent injunction, shall be determined by arbitration under this paragraph. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall allocate all costs and expenses of the arbitration (including legal and accounting fees and expenses of the respective parties) to the parties in the proportions that reflect their relative success on the merits (including the successful assertion of any defenses).

You agree to pursue any arbitration in an individual capacity and not as class representative or class member in any purported class action proceeding.

BY AGREEING TO ARBITRATE DISPUTES, THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THEY ARE IRREVOCABLY WAIVING ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIVITIES CONTEMPLATED HEREBY.

### **19. Assignment**

OrderMetrics may transfer, sub-contract or otherwise delegate its rights and/or obligation under this Agreement without notifying you or obtaining your consent.

Client may not transfer, sub-contract or otherwise delegate its rights and/or obligations under this Agreement without OrderMetrics' prior written approval except such assignment is made to a successor to its business or substantially all of its business (whether by sale, acquisition, merger, operation of law, or otherwise) provided that the successor agrees in writing to fulfill all of Client's obligations hereunder.

### **20. Severability**

If a provision of these terms and conditions is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

### **21. Privacy Policy**

OrderMetrics' Privacy Policy (<https://ordermetrics.com/privacy/>) is hereby made a part of this Agreement.

## **22. Force Majeure**

Neither party will be deemed in breach of this Agreement if the failure to perform is caused by circumstances beyond its reasonable control, including without limitation acts of God, acts of government, flood, fire, earthquake, civil unrest, acts of terror, strikes or labor problems, health-related epidemics or pandemics, computer, internet, or telecommunications failures, delays or network intrusions, or denial of service attacks.

## **23. Notices**

Except as explicitly stated otherwise, any notices under this Agreement shall be given by e-mail to [support@ordermetrics.com](mailto:support@ordermetrics.com) and to the e-mail address that you associate with your account with the Platform.