

Netcraft MSA ("Master Agreement")

Netcraft and the Customer shall, collectively, be referred to as the "Parties" and "Party" shall mean either of the Parties, as the context may determine.

1. Structure of Agreement and Order of Precedence

- 1.1. Netcraft and the Customer may from time to time execute written orders for services in the form of an order form ("Order Form") that shall specify the services to be performed under the terms of this Master Agreement (the "Services").
- 1.2. This Master Agreement together with all executed Order Forms (collectively the "Agreement") constitutes a complete agreement regarding the provision of those Services to the Customer.
- 1.3. The following order of precedence shall apply to the Agreement:
 - (a) Order Form;
 - (b) Service Definitions contained in Appendix A to an applicable Order Form;
 - (c) Master Agreement contained in Appendix B to an applicable Order Form or alternative master services agreements as detailed in the Special Terms section of an applicable Order Form.

2. Term and Termination

- 2.1. This Master Agreement will commence upon signing of an Order Form referencing this Master Agreement by both Parties and shall continue until terminated, as provided under this clause 2.
- 2.2. Each Order Form shall commence upon signing by both Parties, and the Services will be provided for the duration of the initial Subscription Period specified in the Order Form, and any renewed Subscription Period under clause 3.4.
- 2.3. Either Party shall be entitled to terminate this Master Agreement or an applicable Order Form forthwith by notice in writing to the other Party if the other Party shall:
 - (a) pass a resolution for winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect;
 - (b) make any voluntary arrangement with its creditors or become subject to an administration order;
 - (c) have an administrative receiver appointed of it or over any part of its undertaking or assets;
 - (d) cease, or threaten to cease, to carry on business; or
 - (e) commit a material breach of this Master Agreement, and (in the case of remediable breach) fails to remedy the breach after receiving thirty (30) days' written notice.
- 2.4. If Netcraft elects to terminate this Master Agreement or any Order Form for any other reason, the Customer will be due a pro rata refund for any outstanding time left in the Subscription Period for the terminated Service(s). The termination of any individual Order Form(s) will not terminate this Master Agreement, or any remaining Order Form(s).
- 2.5. Either Party may give notice to terminate the Master Agreement which shall take effect at the point there are no active Order Form(s) under the Master Agreement. For the avoidance of doubt, termination of this Master Agreement shall not in any way impact the provision of any Services from any current executed Order Forms, where the terms of this Master Agreement will continue to apply, and the Services will continue to be provided to the end of their respective Subscription Periods.

3. Fees and Invoicing

- 3.1. The Customer shall pay Netcraft the Subscription Fee(s) specified in each Order Form in the currency specified in the Order Form ("Fee(s)").
- 3.2. Netcraft may during a Subscription Period increase any Fee if the scope of the Services are increased at the Customer's written request. Any increased Fees shall be agreed with the Customer and due when calculated by Netcraft and invoiced to the Customer.
- 3.3. Fees for each initial Subscription Period shall be due as stated in an applicable Order Form once that Order Form is counter-signed by the Parties.
- 3.4. Unless sooner terminated in accordance with clause 2, an Agreement will automatically renew on the terms and conditions contained in the Agreement for additional one (1) year periods. A Party may provide written notice to the other Party if it does not wish to renew an Agreement at least ninety (90) days prior to the end of the then-current Subscription Period.
- 3.5. The Fees for any automatically renewed Subscription Period may be increased by Netcraft: (a) where there has been an increase in the economic burden of Netcraft's performance of the Services under an Agreement due to: (i) an increase in the number of countermeasures required, (ii) the nature/operation of attacks on the Customer and/or (iii) in Customer's business operations; or (b) for some other reason.
- 3.6. If any Fee increase:
 - (a) Exceeds the greater of:
 - (i) five percent (5%) of those Fees applying to the preceding Subscription Period; or

- (ii) the percentage increase in the UK ONS Consumers Price Index over the most recent twelve (12) month period for which such statistics are available;
- (b) Then:
 - (i) Netcraft shall provide at least thirty (30) days prior written notice of the Fee increase; and
 - (ii) In the event that Customer doesn't wish to renew for the subsequent renewal Subscription Period, Customer may terminate an Agreement/applicable Order Form at the end of the then-current Subscription Period without entering a new renewal Subscription Period.

- 3.7. Unless sooner terminated in accordance with clause 2, Netcraft will submit an invoice relating to a renewal Subscription Period for the appropriate Fees prior to the end of the then-current Subscription Period of each Order Form. For each renewal Subscription Period, the Fees shall become due and payable subject to the payment terms in an applicable Order Form prior to the renewal Subscription Period.
- 3.8. All invoices will be payable as specified in each Order Form. The Customer shall notify Netcraft within ten (10) days of receipt of any invoice which it considers inaccurate or not due for any reason.
- 3.9. All invoices shall be sent by electronic mail to the Customer unless the Customer has notified Netcraft that they should be sent by post in which case they will be sent to the Billing Contact address noted on the Order Form, or other address as provided by the Customer.
- 3.10. All Fees are exclusive of Value Added Tax ("VAT") or any other similar taxes which if appropriate shall be paid additionally at the then prevailing rate by the Customer.
- 3.11. If the Customer is required by law to make any deduction or withholding from any Fees payable hereunder the invoice amount shall be deemed to be the net amount after the deduction of the withheld amount.
- 3.12. If any Fees payable under the Agreement are overdue then without prejudice to its other rights and remedies (including suspension of the Services or termination of the relevant Order Form), Netcraft may charge interest as from the invoice date on a day-to-day basis on any sum outstanding at its due date for payment. In respect of invoices payable in Sterling, interest will accrue at the rate of 2% (two percent) over the then base rate of Barclays Bank Plc.

4. Confidentiality

- 4.1. The Customer acknowledges Netcraft's claim that the Services contain confidential information and are licensed only for the Customer's own use in accordance with this Master Agreement and are not to be resold or made public.

Each Party acknowledges that the other Party may disclose its Confidential Information to the other in the performance of the Agreement. Accordingly, each Party shall: (a) keep the Confidential Information disclosed by the other Party confidential, (b) use Confidential Information only for purposes of fulfilling its obligations hereunder, and (c) disclose such Confidential Information only to the receiving Party's or its affiliates' employees or professional advisors on a need-to-know basis and who are bound by obligations of confidentiality no less restrictive than those contained herein. As used herein, "Confidential Information" means information in the possession or under the control of a Party of a proprietary nature relating to the technical, marketing, product and/or business affairs or trade secret information of that Party in oral, graphic, written, electronic or machine-readable form. For the avoidance of doubt, the pricing contained herein or in any Order Form will be considered the Confidential Information of Netcraft. This undertaking does not apply to Confidential Information that:

- (a) at the time of disclosure is in the public domain;
- (b) after disclosure becomes available to third parties by publication otherwise than in breach of this clause 4;
- (c) becomes rightfully known without confidential restriction from another source;
- (d) was lawfully possessed prior to such disclosure;
- (e) is required to be disclosed by law or has been instructed to be disclosed by a court of competent jurisdiction or relevant regulatory authority; or
- (f) has been independently developed by the receiving Party without use of or access to the disclosing Party's Confidential Information.

- 4.2. The receiving party will use the same standards to protect the Confidential Information of the disclosing party as it affords its own such information, but in no event less than a reasonable degree of care. The receiving Party will remain liable for the breach of any confidentiality obligations hereunder by its or its affiliates' employees or professional advisors.

5. Reference Site

The Customer consents for Netcraft to make reference to the Customer in its promotional activities.

6. Limitation of Liability

- 6.1. NOTHING IN THE AGREEMENT SHALL LIMIT OR EXCLUDE EITHER PARTY'S LIABILITY FOR: (A) DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE; (B) FRAUD OR FRAUDULENT MISREPRESENTATION; OR (C) ANY OTHER LIABILITY WHICH CANNOT BE LIMITED OR EXCLUDED BY APPLICABLE LAW. SUBJECT TO THE PRECEDING SENTENCE AND EXCEPT FOR EACH PARTY'S BREACH OF CLAUSE 4, EACH PARTY (INCLUDING ITS AFFILIATES AND SUBCONTRACTORS) SHALL NOT BE LIABLE TO THE OTHER PARTY, WHETHER IN TORT (INCLUDING WITHOUT LIMITATION FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY HOWSOEVER ARISING), CONTRACT, MISREPRESENTATION (WHETHER INNOCENT OR NEGLIGENT) OR OTHERWISE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF ANTICIPATED SAVINGS, LOSS OF OR DAMAGE TO GOODWILL,

LOSS OF USE OR CORRUPTION OF SOFTWARE, DATA OR INFORMATION, AND ANY OTHER INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSS ARISING OUT OF OR RELATED TO THE AGREEMENT OR THE USE OR INABILITY TO USE THE SERVICES, EVEN IF THE OTHER PARTY HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH LOSS. SAVE AS SET OUT IN THE FIRST SENTENCE OF THIS CLAUSE 6.1 AND EXCEPT FOR EACH PARTY'S BREACH OF CLAUSE 4, EACH PARTY'S CUMULATIVE MAXIMUM LIABILITY FOR ANY LOSS SUFFERED BY THE OTHER PARTY ARISING OUT OF OR RELATED TO THE AGREEMENT (WHETHER IN TORT (INCLUDING WITHOUT LIMITATION FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY HOWSOEVER ARISING), CONTRACT, MISREPRESENTATION (WHETHER INNOCENT OR NEGLIGENT) OR OTHERWISE) SHALL NOT EXCEED THE FEES PAID OR PAYABLE BY THE CUSTOMER UNDER THE APPLICABLE ORDER FORM WITHIN ANY TWELVE (12) MONTH PERIOD. ANY "TWELVE (12) MONTH PERIOD" COMMENCES AT THE START OF THE SUBSCRIPTION PERIOD STATED IN AN APPLICABLE ORDER FORM OR ANY OF ITS YEARLY ANNIVERSARIES (AS THE CASE MAY BE). THE CUSTOMER ACKNOWLEDGES THAT NETCRAFT IS NOT RESPONSIBLE FOR THIRD-PARTY SERVICES OR CONTENT MADE AVAILABLE THROUGH THE SERVICES. THE FOREGOING LIMITATION SHALL NOT APPLY TO CUSTOMER'S PAYMENT OBLIGATIONS TO NETCRAFT UNDER THE AGREEMENT.

- 6.2. The Customer acknowledges and agrees that the allocation of risk contained in this clause 6 is reflected in the Fees and is also recognition of the fact that, inter alia, it is not within Netcraft's control how and for what purpose the information supplied as part of the Services is used by the Customer.

7. Disclaimer

SUBJECT TO THE FIRST SENTENCE OF CLAUSE 6 AND EXCEPT AS EXPRESSLY PROVIDED HEREUNDER, NETCRAFT (AND ITS LICENSORS) MAKE NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW) OR STATUTORY, AS TO ANY MATTER WHATSOEVER. NETCRAFT EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT ON ITS BEHALF AND ON BEHALF OF ITS LICENSORS. NETCRAFT DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR BE ERROR-FREE. THE CUSTOMER ACKNOWLEDGES THAT NETCRAFT IS NOT RESPONSIBLE FOR THIRD-PARTY SERVICES OR WEBSITES MADE AVAILABLE THROUGH THE SERVICE. NETCRAFT DISCLAIMS ALL LIABILITY FOR ANY MALFUNCTIONING, IMPOSSIBILITY OF ACCESS, OR POOR USE CONDITIONS OF THE SERVICE DUE TO INAPPROPRIATE EQUIPMENT, DISTURBANCES RELATED TO INTERNET SERVICE PROVIDERS, TO THE SATURATION OF THE INTERNET NETWORK OR ANY OTHER ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMMUNICATIONS LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, OR ALTERATION OF, USER COMMUNICATIONS, PROBLEMS RELATED TO THE SERVICE OR ITS USE, LOSS OF PERSONAL CONTENT ON THE SITES NOT WITHIN NETCRAFT'S REASONABLE CONTROL.

8. Service Availability

- 8.1. Netcraft will use commercially reasonable endeavours to ensure the availability of the Services. The provision of the Services may be interrupted when Netcraft conducts improvements or other work on its own systems, when its own internet connection is unavailable, and when, through outages and congestion elsewhere on the internet, Netcraft's network cannot be reached from some other parts of the internet.
- 8.2. If the Services are unavailable continuously for three (3) days or unavailable for an aggregate of one hundred and twenty (120) hours within the Subscription Period the Customer may terminate the Services and receive a pro-rated refund for the unused period.

9. Force Majeure

Neither Party shall be liable for any delay in performing or failure to perform its obligations (other than a payment obligation) under the Agreement due to any cause outside its reasonable control. Such delay or failure shall not constitute a breach of the Agreement and the time for performance of the affected obligation shall be extended by such period as is reasonable.

10. Severability

If any part of the Agreement is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part shall be severed from the remainder of the Agreement which shall continue to be valid and enforceable to the fullest extent permitted by law.

11. Notices

All notices required or permitted to be given under the Agreement shall be in writing and shall be sent by letter, facsimile or delivered by hand to the registered office address or such other address as the receiving Party may from time to time designate.

12. Waiver

The failure of either Party hereto at any time to enforce any provision of the Agreement shall in no way affect its right thereafter to require complete performance by the other Party, nor shall the waiver of any breach of any provision be taken or be held to be a waiver or any subsequent breach of any provision or be a waiver of the provision itself. Any waiver to be effective must be in writing.

13. Assignment

Neither Party shall assign any rights or obligations hereunder without the other's prior written consent which will not be unreasonably withheld, delayed or conditioned. Netcraft reserves the right to employ sub-contractors, including its own affiliates, but such sub-contracting shall not relieve Netcraft from its obligations under the Agreement.

14. Third Party Rights

Nothing in the Agreement is intended to confer any benefit on any third Party who is not a Party to the Agreement or any right to enforce a term of the Agreement. As such and if applicable, all rights under the Contracts (Rights of Third Parties) Act 1999 are expressly excluded.

15. Entire Agreement

Save for fraudulent misrepresentations made by either Party, the Agreement is the entire agreement of the Parties concerning the subject matter of the Agreement and supersedes all prior agreements, communications, representations and arrangements, written or oral. The Customer acknowledges that no reliance is placed on any statements, warranties, representation (oral or written) made but not embodied in the Agreement. The printed terms of any purchase order or other correspondence and documents of the Customer issued in connection with the Agreement shall not apply unless expressly accepted in writing by Netcraft. Except as otherwise permitted by the Agreement no variation of the provisions of the Agreement shall be effective unless expressly agreed in writing by both Parties.

16. Governing Law and Jurisdiction

Depending on where the Customer's place of business is as detailed in an applicable Order Form: (a) the Agreement shall be interpreted, governed and construed in accordance with the laws as stated in the table below, without giving rise to any conflict of laws principles; and (b) relating to any dispute under the Agreement, the Parties hereby irrevocably submit to the exclusive jurisdiction of the courts as stated in the table below. In any event, the Parties agree that the United Nations Convention on Contracts for the International Sale of Goods and Services and Uniform Computer Information Transaction Act are expressly excluded from application to an Agreement.

	Governing Law	Jurisdiction
If Customer's place of business as detailed in an applicable Order Form is anywhere except the United States of America	England and Wales	England and Wales
If Customer's place of business as detailed in an applicable Order Form is in the United States of America	State of New York (unless overridden by applicable United States federal law)	New York City, New York

17. IPR and Indemnity

As between the Customer and Netcraft, the Netcraft Intellectual Property is, and shall at all times remain, the sole and exclusive property of Netcraft. The Customer will not have any rights to the Services except as expressly granted in the Agreement. Netcraft shall have the right, in its sole discretion, to modify the Netcraft Intellectual Property.

"Netcraft Intellectual Property" means the Services, and all improvements, changes, enhancements and components thereof, and all other proprietary materials of Netcraft and/or its licensors that are delivered, provided or used by Netcraft in the course of performing the Services, as well as all other intellectual property owned by Netcraft and all copyrights, patents, trademarks and trade names, trade secrets, specifications, methodologies, documentation, algorithms, criteria, designs, report formats and know-how, as well as any underlying source code and object code related thereto.

If the Services become, or in Netcraft's opinion is likely to become the subject of an infringement claim, Netcraft may, at its option and expense, either (a) procure for the Customer the right to continue using the Services; or (b) replace or modify the Services so that they become non-infringing and remain functionally equivalent. If Netcraft determines that these alternatives are not reasonably available, Netcraft may terminate the Services without any liability to Customer upon notice to Customer and with the return of any prepaid and unused fees. Netcraft will defend at its own expense any action against the Customer brought by a third party to the extent that the action is based upon a claim that the Services infringe any third party's valid U.S. or European patent or copyright existing as of the Effective Date, and Netcraft will pay those costs and damages finally awarded against the Customer in any such action that are specifically attributable to such claim. The foregoing obligations are conditioned on the Customer notifying Netcraft promptly in writing of such action, the Customer giving Netcraft sole control of the defence thereof and any related settlement negotiations, and the Customer cooperating and, at Netcraft's request and expense, assisting in such defence. Notwithstanding the foregoing, Netcraft will have no obligation under the Agreement with respect to any infringement claim based upon any use of the Services not in accordance with the Agreement or for purposes not intended by Netcraft. This clause 17 states Netcraft's sole and exclusive liability, and the Customer's sole and exclusive remedy for the actual or alleged infringement of any third-party intellectual property right by the Services.

18. Data

As between Netcraft and the Customer, the Customer Data remains the sole property of the Customer. Netcraft may use the Customer Data to provide and improve the Services and support in accordance with the Agreement or the Customer's instructions and the Threat Identifiers for any lawful business purpose. As between Netcraft

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and the Customer, the Service Data, remains the sole property of Netcraft; provided however, the Customer may use any insights or reporting generated by the Services solely for its internal business purposes. The foregoing shall not preclude Netcraft from using any information that is publicly available.

"Customer Data" means any information, data or content that the Customer or its authorized users submit to, or use with, the Services (e.g., content in the user's profile) but excludes any Threat Identifiers.

"Threat Identifiers" mean any phishing URLs, crimeware or other threat identifiers either provided by the Customer to Netcraft under the Agreement or collected by Netcraft in the ordinary operation of the Services.

"Service Data" means all models, observations, reports, analyses, statistics, databases and other information created, compiled, analysed, generated or derived by Netcraft in the course of providing the Services.

19. Information Security

Netcraft shall take commercially reasonable administrative, technical, physical and organisational measures designed to protect against: (i) unauthorised or unlawful processing of Customer Data and (ii) accidental loss or destruction of, or damage to, Customer Data. The foregoing shall be undertaken having regard to: (a) the state of technological development, (b) the cost of implementing any measures, (c) the nature of Customer Data and (d) severity of the impact on the Customer.

20. Export Control

The Parties shall comply with Export Control Laws in the performance of the Agreement. Customer shall not directly or indirectly export, re-export, release or transfer Confidential Information in violation of Export Control Laws. Customer is solely responsible for compliance with Export Control Laws related to Customer Data, including obtaining any required export authorisations for Customer Data. Customer shall not use the Services from any countries prohibited and/or sanctioned under Export Control Laws. Customer warrants that Customer is not subject to any sanctions under Export Control Laws.

Upon Netcraft's request, Customer shall promptly provide information any documents to support obtaining an export authorisation.

"Export Control Laws" means all applicable import, export control and sanctions laws and restrictive measures, including without limitation: (a) the laws of the United Kingdom, the European Union, the United States of America and any other applicable jurisdiction; and (b) any measures implemented and enforced by the United Nations and any other applicable intergovernmental organisation.

21. Survival

Any terms that by their nature should survive termination or expiration of the Agreement, will survive.