



Terms of Service

Revision 3.1

This Agreement was last modified on July 25, 2024.

These Terms of Service (the “Agreement”) govern the use of the Request Metrics Performance Monitoring described at <https://requestmetrics.com/> (the “Service”) operated by TrackJS LLC doing business as Request Metrics, a Minnesota limited liability company with offices at 2112 Broadway St NE STE 225 PMB 25, Minneapolis, MN 55413-3081 USA (“Request Metrics”, “we”, or “us”). This Agreement sets forth the legally binding terms and conditions for your use of the Service. “You” or similar terms means you, the person accessing the Service, the business or entity on whose behalf you access the Service, as well as any person on whose behalf you are using the Service or who may have rights through you.

By creating an account, by logging into the Service, and/or by accessing or using the Service in any manner, including, but not limited to, visiting or browsing the Service or sending data to the Service, you acknowledge that you have reviewed and accept the terms of service, agree to become bound by its terms, and certify that you are an authorized representative of the entity purchasing the service, and that you have the right and authority to enter into this agreement on the entity’s behalf.

Account Terms

You must be at least 13 years or older to use Request Metrics.

1. Grant of License and Restrictions on Use

Subject to the terms of this Agreement and proper payment to Request Metrics, Request Metrics grants you a non-exclusive, non-transferable, limited right to use the Service and Performance Monitoring Agents (the “Agents”) solely for your own internal business purposes for the term of this Agreement. You may embed the Agents within your own materially-larger software product or similar item (“Customer’s Product”) and you may distribute the Agents to third parties as a supporting and component part of Customer’s Product, but you may not distribute the Service or Agents (collectively, the “Software”) as a stand-alone or primary element to any third party. In addition, you will not (and you will not allow any third party to): copy, distribute, rent, lease, transfer or sublicense all or any portion of the Software to any third party other than as part of Customer’s Product explicitly permitted above; modify or prepare derivative works of the Software; use the Software in any commercial context or for any commercial purpose or in any commercial product including reselling the Software other than as permitted above as part of Customer’s Product; use the Software in any manner that threatens the integrity, performance or availability of the Software; or reverse engineer, decompile, or disassemble the Software.

2. Grant of License to Request Metrics

You grant Request Metrics a worldwide right to use, store, and reproduce the data gathered by Request Metrics of your website (the “Data”) as necessary for Request Metrics to (i) create reports or statistics of the Data for you; (ii) provide Service to you; and (iii) create reports or statistics using the Data in the aggregate, provided that no such report identifies you by name or other distinguishing mark.

3. Ownership

Request Metrics warrants that, as of the date of this Agreement, (i) Request Metrics is the sole and exclusive owner of the Software, (ii) Request Metrics has full right, title and authority to grant all rights, title and interest of the Software under this Agreement, (iii) the Software does not infringe any valid United States: patent, copyright, trade secret, trademarks or other intellectual property rights of a third party.

You acknowledge that the Software is the exclusive property of Request Metrics. Request Metrics retains all rights, title and interest in and to copyrights, trade secrets, trademarks and other intellectual property rights in the Software and you shall not acquire any right, title, or interest in the Software, except the right to use it in

accordance with the limited license granted in this Agreement. Any rights to the Software granted are licensed and not sold.

4. Term and Termination

Either party may terminate this Agreement at any time with notice. Upon termination Request Metrics will stop providing and you will stop accessing Services. Further, all rights and license to the Agents immediately terminate, you will immediately stop using the Agents in any way, and you will immediately delete and not retain any and all copies of the Agents in your possession or control. In the event of any termination you will not be entitled to any refunds or any other fees. This Agreement will automatically terminate if you do not comply with any terms or conditions of this Agreement, including paying for the Services. All terms of this Agreement which by this nature are intended to survive termination of this Agreement shall survive.

5. Compliance with Laws

You represent and warrant that your use of Request Metrics will comply with all applicable laws and regulations. You are responsible for determining whether the Software is suitable for you to use with regard to all applicable laws and regulations, including, but not limited to HIPPA, PCI, GLB, EU data protection or privacy laws, California Consumer Privacy Act, or other laws. You are also responsible to notify the end-user of data collection in connection with the Software, as required by applicable law.

You represent and warrant that in using the Software, you:

1. Will get consent or use any other available, legally-valid mechanism to transfer data to Request Metrics and be processed, and you'll otherwise comply with your posted privacy policy.
2. Have collected, stored, used, and transferred all data relating to any individual in compliance with all applicable data protection laws and regulations. You have the necessary permission to allow Request Metrics to receive and process data on your behalf.
3. Acknowledge in all cases that Request Metrics acts as the processor of Customer Data and you remain the controller of Customer Data for all applicable data protection or privacy laws AND regulations.

4. Agree to indemnify and hold Request Metrics harmless from any losses, including attorney fees, that result from your breach of any part of these warranties.
5. Have reviewed, accepted, and executed the Request Metrics Data Processing Agreement published at <https://requestmetrics.com/dpa/>.

6. Warranty Disclaimers

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, THE AGENTS AND SERVICES ARE BEING PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT WARRANTY OF ANY KIND. REQUEST METRICS DOES NOT WARRANT THAT THE SERVICE WILL MEET CUSTOMER’S REQUIREMENTS. REQUEST METRICS HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES AS TO NON-INFRINGEMENT.

7. Limitation of Liability

REQUEST METRICS’ ENTIRE LIABILITY UNDER, FOR BREACH OF, OR ARISING OUT OF THIS AGREEMENT AND/OR RELATED TO THIS AGREEMENT, THE AGENTS AND SERVICES, IS LIMITED TO THE PAYMENTS ACTUALLY MADE BY THE CUSTOMER FOR THE SERVICE DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE OF THE EVENT GIVING RISE TO ANY LIABILITY. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL REQUEST METRICS BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOSSES OR EXPENSES, WHETHER OR NOT REQUEST METRICS WAS ADVISED OF, KNEW OF SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

8. Indemnification

You agree to indemnify and hold Request Metrics, and its subsidiaries, affiliates, officers, directors, agents, partners and employees, harmless from any claim or demand, including reasonable attorneys’ fees, made by any third party due to or arising out of your use of the Services provided under this Agreement or any act or omission by you (including the entity on whose behalf you are entering into this Agreement). This

indemnity obligation will survive the expiration or termination of this Agreement by either party for any reason.

Request Metrics will indemnify and hold you, and your subsidiaries, affiliates, officers, directors, agents, partners and employees harmless from any claim or demand made by any third party claim that the Service infringes, misappropriates, or violates such third party's valid United States: patent, copyright, trade secret, trademarks or other intellectual property right. If any of the Service or any portion thereof is held, or in Request Metrics' reasonable opinion is likely to be held, in any such claim to constitute such an infringement, misappropriation, or violation, Request Metrics will, within a reasonable time, at its expense and option, either: (i) secure for you the right to continue the use of such Service; or (ii) replace such Service with a substantially equivalent item that is not subject to any such claim, or modify such Service so that it becomes no longer subject to any such claim. If Request Metrics is, in Request Metrics' reasonable discretion, unable to either procure the right to continued use of such Service or replace such Service, as provided in clauses (i) and (ii) of the immediately preceding sentence, you will cease using the Service, and Request Metrics will refund to you any fees for the Service pro rata for the time remaining in the applicable term.

9. Confidentiality

Request Metrics acknowledges that you may disclose non-public, confidential information to Request Metrics under this Agreement and you acknowledge that the Agents and Services provided to you, and the terms and conditions of this Agreement are confidential and proprietary to Request Metrics. Each party agrees to take all reasonably necessary action, including appropriate instructions and agreements with employees and agents, to protect such confidential and proprietary information of the other party from unauthorized disclosure. In the event of any breach of this section, each party acknowledges that the non-breaching party would suffer irreparable harm and shall therefore be entitled to seek injunctive relief without the necessity of posting bond. You also acknowledge that infringement or unauthorized copying of the intellectual property of Request Metrics would cause irreparable harm to Request Metrics.

10. Publicity

You are permitted to state publicly that you are a Subscriber of Request Metrics. You agree that Request Metrics may include your name and trademarks in a list of Request

Metrics Customers, online or in promotional materials. You also agree that Request Metrics may verbally reference you as a customer of the Service. You may opt out of the provisions in this Section by sending an email opt-out request to hello@requestmetrics.com.

11. Governing Law and Venue

The Service is controlled and operated within the United States, and is not intended to subject Request Metrics to any law or jurisdiction outside of the United States. Use of the Service is prohibited in any jurisdiction having laws that would void this Agreement in whole or essential part or which makes accessing the Site illegal. This Agreement is entered into and performed in the State of Minnesota, United States of America. It is governed by and shall be construed under the laws of Minnesota, exclusive of any choice of law or conflict of laws provisions. In any claim or action directly or indirectly arising under this Agreement or related to the Site, Services or Agents, each party irrevocably submits to the personal jurisdiction of the Minnesota State District Court sitting in Washington County, Minnesota or of the United States Court for the District of Minnesota. Each party waives any jurisdictional, venue or inconvenient forum objections to these courts. You agree that you shall pursue any claim against Request Metrics in your individual capacity only, and you will not participate in any collective or so-called “class” action against us.

12. General Provisions

This Agreement is the complete and exclusive statement of the agreement between us concerning its subject matter and supersedes all prior agreements and representations between the parties. Any waiver of or modification to the terms of this Agreement will not be effective unless executed in writing and signed by Request Metrics. If any provision of this Agreement is held to be unenforceable, in whole or in part, such holding shall not affect the validity of the other provisions of this Agreement. The software is controlled by U.S. Export Regulations, and it may not be exported to or used by embargoed countries or individuals. By agreeing to this Agreement you also agree to our collection, use and disclosure of information as described in the most-recent version of our Privacy Policy published at <https://requestmetrics.com/privacy/>.

Changes To This Agreement

Request Metrics reserves the right, at our sole discretion, to modify or replace these Terms of Service by posting the updated terms on the Site. Your continued use of the Site after any such changes constitutes your acceptance of the new Terms.

Please review this Agreement periodically for changes. If you do not agree to any of this Agreement or any changes to this Agreement, do not use, access or continue to access the Service or discontinue any use of the Service immediately.

IN WITNESS WHEREOF, this Agreement is entered into and becomes a binding with effect from the first date of Service.

Customer:

Signature:

Name:

Title:

Date Signed:

TrackJS LLC doing business as Request Metrics

Signature: 

Name: Todd Gardner

Title: CEO

Date Signed: July 25, 2024

