

# Trial Services Agreement

THIS IS A BINDING LEGAL TRIAL SERVICES AGREEMENT ("Agreement") BETWEEN YOU (THE "CUSTOMER") AND NETCRAFT LTD. ("NETCRAFT"). CUSTOMER IS RESPONSIBLE FOR CAREFULLY READING THE TERMS OF THIS AGREEMENT BEFORE ACCESSING OR USING ANY NETCRAFT TRIAL SERVICES. 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 AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. Netcraft and Customer may be referred to herein collectively as the "Parties" or individually as a "Party."

## 1. The Services; Access and Use.

(a) Services. Netcraft shall provide certain software-as-a-service services to Customer on a proof of concept basis (the "**Services**"). Customer acknowledges that Netcraft is providing the Services on a proof-of-concept basis only and solely for Customer's internal evaluation of the Services. Subject to the terms and conditions of this Agreement, Netcraft hereby grants Customer a limited, non-exclusive, non-transferable and non-sublicensable right to access and use the Services solely for Customer's internal evaluation of the Services.

(b) Use Restrictions. Customer shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. Except as otherwise set forth in this Agreement, Customer shall not at any time, directly or indirectly, and shall not permit any of its users to: (i) copy, modify, or create derivative works of the Services, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services; or (v) use the Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

(c) Reservation of Rights. Netcraft reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party, any intellectual property rights or other right, title, or interest in or to the Services, any related documentation, or any and all intellectual property provided to Customer or any Customer end-user in connection with the foregoing ("**Netcraft IP**").

## 2. Customer Responsibilities. Customer is responsible and liable for all uses of the Services resulting from the access provided by Netcraft to Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement.

## 3. Confidential Information. If the Parties have entered into a Mutual Non-Disclosure Agreement, the terms of that agreement shall govern the Parties' exchange of confidential or proprietary information. In the absence of such an agreement, the following terms shall apply. In connection with the provision of the Services hereunder, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether conveyed orally, in writing, electronically, or through any other medium, and whether or not marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party without access to the Confidential Information. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees, agents, advisors, contractors and other representatives who have a need to know the Confidential Information for the receiving Party to exercise its

rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Services, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and, upon request, certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the provisioning of the Services and will expire two years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law. Notwithstanding anything in the foregoing to the contrary, Threat Identifiers shall not be Customer Confidential Information and Netcraft shall be free to use Threat Identifiers for any internal or external purpose without any obligation to account to Customer for such use. "**Threat Identifiers**" mean any phishing URLs, crimeware or other threat identifiers either provided by the Customer to Netcraft under this Agreement or collected by Netcraft in the ordinary operation of the Services, including any evidence provided in connection with the foregoing.

4. Intellectual Property Ownership.

(a) Netcraft IP. Customer acknowledges that, as between Customer and Netcraft, Netcraft owns all right, title, and interest, including all intellectual property rights, in and to the Netcraft IP.

(b) Customer Data. Netcraft acknowledges that, as between Netcraft and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or a Customer end-user through the Services, excluding, however, Threat Identifiers ("**Customer Data**"). Customer hereby grants to Netcraft a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Netcraft to provide the Services to Customer.

5. Disclaimer of Warranties. THE SERVICES ARE PROVIDED "AS IS" AND NETCRAFT HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. NETCRAFT SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NETCRAFT MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

6. Limitations of Liability. IN NO EVENT WILL NETCRAFT BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER NETCRAFT WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL NETCRAFT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT

LIABILITY, AND OTHERWISE EXCEED \$500. THE PARTIES AGREE THAT THIS PROVISION FAIRLY ALLOCATES THE PARTIES' RISKS AND ARE ESSENTIAL ELEMENTS OF THE BASIS OF THE BARGAIN, EVEN IF A PARTY IS AWARE OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITY OR DAMAGES, AS THE CASE MAY BE.

7. Term and Termination. The term of this Agreement begins on the date the Customer first accesses the Services and, unless earlier terminated pursuant to the terms of this Agreement, will continue in effect until the later of (i) Netcraft removing Customer's access to the Services; and (ii) thirty (30) days after Customer is first provisioned access to the Services. Either Party may terminate this Agreement at any time, without cause, upon written notice to the other Party. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Services and, without limiting Customer's obligations under Section 3, Customer shall delete, destroy, or return all copies of the Netcraft IP and certify in writing to the Netcraft that the Netcraft IP has been deleted or destroyed. This Section 7 and Sections 3, 4, 5, 6, and 8 shall survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

8. Miscellaneous.

(a) Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter.

(b) Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(c) Legal Proceedings. This Agreement, for all purposes, shall be construed in accordance with the laws of the State of Delaware without regard to conflicts-of-law principles. The Parties hereby irrevocably submit to the exclusive jurisdiction of the state and federal courts sitting in the state of Delaware and waive the defense of inconvenient forum to the maintenance of any such action or proceeding in such venue, and the substantially prevailing party shall be entitled to its reasonable attorneys' fees and court costs.

(d) Assignment. Customer may not assign or transfer any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Netcraft. Any purported assignment, transfer, or delegation in violation of this Section is null and void.